98-212 #3

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

(1) LOCKBOX # 358115

FEDERAL COMMUNICATIONS COMMISSION

REMITTANCE ADVICE

PAGE NO. 1 OF 1

APPROVED BY OMB 3060-0589

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (If paying by credit card, enter name exactly as it appears on your card): Sidley & Austin

(3) TOTAL AMOUNT PAID (dollars and cents): $ 3,120.00

(4) STREET ADDRESS LINE NO. 1: c/o Mark D. Schneider

ORIGINAL

(5) STREET ADDRESS LINE NO. 2: 1722 Eye Street, N.W.

(6) CITY: Washington

(7) STATE: DC

(8) ZIP CODE: 20006

(9) DAYTIME TELEPHONE NUMBER (Include area code): 202-736-8058

(10) COUNTRY CODE (if not in U.S.A.):

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME (If paying by credit card, enter name exactly as it appears on your card): AT&T Corp.

(12) STREET ADDRESS LINE NO. 1: c/o Lawrence J. Lafaro

(13) STREET ADDRESS LINE NO. 2: 295 North Maple Avenue

(14) CITY: Basking Ridge

(15) STATE: NJ

(16) ZIP CODE: 07920

(17) DAYTIME TELEPHONE NUMBER (Include area code): 908-221-8410

(18) COUNTRY CODE (if not in U.S.A.):

COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/OTHER ID	(20A) PAYMENT TYPE CODE (PTC)	(21A) QUANTITY	(22A) FEE DUE FOR (PTC) IN BLOCK 20A	FCC USE ONLY
N/A	C U T	1	$ 780.00	

(23A) FCC CODE 1 | (24A) FCC CODE 2

(19B) FCC CALL SIGN/OTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK 20B	FCC USE ONLY
N/A	C U T	1	$ 780.00	

(23B) FCC CODE 1 | (24B) FCC CODE 2

(19C) FCC CALL SIGN/OTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	FCC USE ONLY
N/A	C U T	1	$ 780.00	

(23C) FCC CODE 1 | (24C) FCC CODE 2

(19D) FCC CALL SIGN/OTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK 20D	FCC USE ONLY
N/A	C U T	1	$ 780.00	

(23D) FCC CODE 1 | (24D) FCC CODE 2

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25) PAYER TIN: 0 3 6 2 1 5 8 6 9 4

(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-11 IS DIFFERENT FROM PAYER NAME IN A-2)
APPLICANT TIN: 0 1 3 4 9 2 4 7 1 0

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT

I, Mark D. Schneider (PRINT NAME) Certify under penalty of perjury that the foregoing and supporting information are true and correct to the best of my knowledge, information and belief. SIGNATURE Mark D Schneider

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28) ☐ MASTERCARD — MASTERCARD/VISA ACCOUNT NUMBER: — EXPIRATION DATE: MONTH YEAR

☐ VISA — I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorizations(s) herein described. → AUTHORIZED SIGNATURE — DATE

SEE PUBLIC BURDEN ESTIMATE ON REVERSE

FCC FORM 159 JULY 1997 (REVISED)

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

025627

SIDLEY & AUSTIN
WASHINGTON, DC 20006

CITIBANK, F.S.B.
WASHINGTON, DC 20038-0967

15-7011
2540

DATE
11/09/98

AMOUNT
******$3,120.00

PAY ONLY THREE ONE TWO ZERO CTS CTS
$3120 00

VOID OVER $3,120.00

SIDLEY & AUSTIN

PAY
TO THE
ORDER OF

FCC

FORM NO. 9851L

0000129647

⑈025627⑈ ⑆254070116⑆ ⑈3740 0053⑈

#3

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

In the Matter of	)
	)
The Global Venture of AT&T Corp. and	)
British Telecommunications plc	)

TO: The Commission

APPLICATION OF VLT CO. L.L.C. FOR SECTION 214 AUTHORITY

Pursuant to Section 214 of the Communications Act of 1934 ("the Act"), as amended, 47 U.S.C. § 214, and Sections 63.18(e)(1), (e)(2) and (e)(6) of the Commission's rules, 47 C.F.R. §§ 63.18(e)(1), (e)(2), (e)(6), VLT Co. L.L.C. ("US LLC") hereby requests authority from the Federal Communications Commission ("FCC" or "Commission") to operate as a facilities-based carrier and reseller of international basic switched, private line, data, television and business services. The detailed description of the transaction pursuant to which US LLC will provide service, including the demonstration that the grant of authority to US LLC will serve the public interest, convenience and necessity, is contained in the main body of this filing.

I. REQUEST FOR SECTION 214 AUTHORITY

Pursuant to Section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, Applicant submits the following information:

(a) The name, address and telephone number of Applicant are:

VLT Co. L.L.C.
c/o Larry Lafaro
AT&T Corp.
295 North Maple Avenue
Basing Ridge, NJ 07920
(908) 221-8410

(b) US LLC is a limited liability company organized and existing under the laws of Delaware.

(c) Correspondence concerning this Application should be addressed to:

Lawrence J. Lafaro
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07290
Tel: (908) 221-8410
Fax: (908) 953-8360

Rick D. Bailey
AT&T Corp.
1120 20th Street, N.W.
Washington, DC 20036
Tel: (202) 457-2131
Fax: (202) 457-3205

with copies to:

James E. Graf II
Cheryl Lynn Schneider
BT North America Inc.
601 Pennsylvania Ave., N.W.
North Building, Suite 725
Washington, DC 20004
Tel: (202) 639-8222
Fax: (202) 434-8867

Mark C. Rosenblum
AT&T Corp.
295 North Maple Avenue
Basking Ridge, New Jersey 07290
Tel: (908) 221-2000
Fax: (908) 953-8360

Joel S. Winnik
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
Tel: (202) 637-5600
Fax: (202) 637-5910

Mark D. Schneider
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006
Tel: (202) 736-8058
Fax: (202) 736-8711

(d) Applicant does not presently hold any Section 214 authorizations.

(e)(1) Applicant requests Section 214 authority to acquire and operate facilities previously authorized by the Commission in order to provide international basic switched, private line, data, television and business services to all international points over facilities owned by US LLC pursuant to the terms and conditions of Section 63.18(e)(1).

(2) Applicant requests Section 214 authority to resell the international services of authorized U.S. common carriers for the provision of international basic switched, private line, data, television and business services to all international points over facilities owned by US LLC pursuant to the terms and conditions of Section 63.18(e)(2).

(3) Not applicable.

(4) No response required.

(5) Applicant is not seeking authority to acquire facilities through a transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization.

(6) Pursuant to Sections 63.18(e)(1)(ii)(A) and 63.18(e)(2)(ii)(A)(2) of the Commission's rules, Applicant requests specific authority to provide facilities-based international basic, switched, private line, data, television and business services to the United Kingdom ("U.K.") and Gibralter, countries where the Applicant is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market.

(f) No response required.

(g) Applicant does not propose any new construction that would constitute a major action or otherwise have a significant environmental effect under the Commission's rules. Accordingly, authorization of the services proposed by this Application is categorically excluded as defined by Section 1.1306.

(h)(1) US LLC certifies that it has affiliations within the meaning of Section 63.18(h)(1) of the Commission's rules in the following countries:

Australia	Italy
Belgium	Japan
Canada	Malaysia
Chile	Mexico
France	Netherlands
Germany	Philippines
Gibraltar	Russia
Hong Kong	Spain
Ireland	Sweden
	United Kingdom

(2) AT&T and British Telecommunications plc ("BT") each indirectly own 50 percent, and share control, of US LLC. US LLC's sole member will be TNV [Netherlands] BV, a corporation organized under the laws of the Netherlands. AT&T's 50 percent interest will be held through its wholly-owned subsidiary VLT Corp., a Delaware corporation. BT's 50 percent interest will be held through its wholly-owned subsidiary, BT Netherlands Holding BV, a corporation organized under the laws of the Netherlands.

AT&T is a corporation organized and existing under the laws of the State of New York and primarily provides domestic and international telecommunications services in the U.S. The address of AT&T is: 295 North Maple Avenue, Basking Ridge, New Jersey 07290.

BT is a public limited company organized and existing under the laws of England and Wales. BT primarily provides domestic and international telecommunications services in the U.K. The address of BT is: BT Centre, 81 Newgate Street, London EC1A 7AJ England.

US LLC is affiliated with its parent company, AT&T and BT, as well as TNV [Bahamas] Limited, which is simultaneously requesting Section 214 authority. US LLC therefore requests consent to have interlocking directorates with TNV [Bahamas] Limited, AT&T, BT and their affiliates.

(3) Not applicable.

(4) No response required.

(5) Australia, Belgium, Canada, Chile, France, Germany, Hong Kong, Ireland, Italy, Japan, Malaysia, Mexico, the Netherlands, the Philippines, Spain, Sweden and the United Kingdom are all members of the World Trade Organization ("WTO"). Applicant's Russian affiliate lacks sufficient market power in Russia to affect competition adversely in the U.S. market. 1/ Applicant should be regulated as non-dominant on the U.S.-Gibraltar route given that the amount of traffic on this route is *de minimis* and Applicant's affiliate in Gibraltar therefore cannot affect competition adversely in the U.S. 2/

(6) Australia, Belgium, Canada, Chile, France, Germany, Hong Kong, Ireland, Italy, Japan, Malaysia, Mexico, the Netherlands, the Philippines, Spain, Sweden and the United Kingdom are all members of the WTO. Applicant's Russian affiliate lacks sufficient market power in Russia to affect competition adversely in the U.S. market. 3/ Applicant should be regulated as non-dominant on the U.S.-Gibraltar route given that the amount of traffic on this route is *de minimis* and Applicant's affiliate in Gibraltar therefore cannot affect competition adversely in the U.S. 4/

(7) The Commission has previously found that the Applicant's affiliated foreign carriers in Australia, Belgium, Canada, France, Germany, Hong Kong, Ireland, Italy, the Netherlands, the Philippines, Russia and Spain lack sufficient market power to affect competition adversely in the U.S. market. 5/ Applicant's affiliates in Chile, Japan, Malaysia and Sweden, and its other affiliate in Mexico, are not able to discriminate against unaffiliated U.S. carriers for the reasons stated in AT&T's and BTNA's affiliation notices and should be declared non-dominant. 6/ As stated above, Applicant should be regulated as non-dominant on the U.S.-Gibraltar route. With regard to the provision of service to the United Kingdom, Applicant

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1/ *See BT North America, Inc., Application Under Section 214 for Authority to Provide Facilities-Based and Resold Services to Russia*, ITC-98-005, ¶ 8 (rel. May 14, 1998) (Order and Authorization).

2/ *See Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15351, 15463-15464 (1997) (Memorandum Opinion and Order) ("*BT/MCI II*") (forbearing from regulation of MCI as dominant on U.S.-Gibraltar route given *de minimis* traffic).

3/ *See supra* note 1.

4/ *See supra* note 2.

5/ *BT/MCI II*, 12 FCC Rcd at 15464 (finding that BT's affiliates in Australia, Belgium, France, Germany, Hong Kong, Ireland, Italy, the Netherlands and Spain are non-dominant); *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, FCC 96-209, ¶ 89 (rel. May 14, 1996) (Order) (finding that AT&T's affiliates in Canada and the Philippines cannot discriminate against unaffiliated U.S. carriers).

6/ *Foreign Affiliation Notice of AT&T Corp.*, FCN-98-012 (April 22, 1998) (Chile); *Foreign Affiliation Notice of BT North America*, FCN-97-014 (Sept. 23, 1997) (Sweden); FCN-98-015 (June 2, 1998) (Japan and Malaysia).

will file the quarterly traffic reports required by Section 43.61(c) of the Commission's rules.

(8) US LLC certifies that it has affiliations within the meaning of Section 63.18(h)(1) of the Commission's rules in the following countries:

Australia	Italy
Belgium	Japan
Canada	Malaysia
Chile	Mexico
France	Netherlands
Germany	Philippines
Gibraltar	Russia
Hong Kong	Spain
Ireland	Sweden
	United Kingdom

The Commission has previously found that the Applicant's affiliated foreign carriers in Australia, Belgium, Canada, France, Germany, Hong Kong, Ireland, Italy, the Netherlands, the Philippines, Russia and Spain lack sufficient market power to affect competition adversely in the U.S. market. Applicant's affiliates in Chile, Japan, Malaysia and Sweden, and its other affiliate in Mexico, are not able to discriminate against unaffiliated U.S. carriers for the reasons stated in AT&T's and BTNA's affiliation notices and should be declared non-dominant. As stated above, Applicant should be regulated as non-dominant on the U.S.-Gibraltar route.

(i) Applicant hereby certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future.

(j) Applicant hereby certifies that no party to this Application, as defined in 47 C.F.R. § 1.2002(b), is subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).

II. CONCLUSION

Accordingly, Applicant respectfully requests that the Commission grant this application.

Respectfully submitted,

VLT CO. L.L.C.

By: _____

Rick D. Bailey
Vice President
c/o AT&T Corp.
1120 20th Street, N.W.
Washington, DC 20036

By: _____

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David L. Lawson
Sidley & Austin
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Counsel For VLT Co. L.L.C.

Date: November 10, 1998.

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

In the Matter of	)
	)
The Global Venture of AT&T Corp. and	)
British Telecommunications plc	)

APPLICATIONS AND PUBLIC INTEREST STATEMENT
IN SUPPORT OF THE GLOBAL VENTURE OF
AT&T CORP. AND BRITISH TELECOMMUNICATIONS PLC

Pursuant to Sections 214 and 310 of the Communications Act of 1934, 47 U.S.C. §§ 214, 310 (1997), and the Cable Landing License Act, 47 U.S.C. §§ 34-39 (1997), AT&T Corp. ("AT&T"), VLT Co. L.L.C. ("US LLC"), Violet License Co. LLC ("US Sub LLC") and TNV [Bahamas] Limited ("TLTD") seek the authorizations from the Commission that are required to establish and operate a joint venture between AT&T and British Telecommunications plc ("BT") that will provide voice, data and video communications services to customers throughout the world (the "Global Venture"). In particular, the applicants seek the Commission's (1) grant of Section 214 authority to Global Venture companies US LLC and TLTD to provide the foregoing services; (2) modification of certain of AT&T's Section 214 authorizations and certificates to the extent necessary to transfer its ownership interests in international cable facilities to US LLC and TLTD; and (3) consent to the assignment of earth station radio licenses and submarine cable landing licenses held by AT&T or its subsidiaries to US LLC and US Sub LLC.[1]

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[1] This Application And Public Interest Statement is being filed concurrently with the requisite FCC application forms and pleadings for the Global Venture, as follows: Application to modify certain (continued...)

I. INTRODUCTION AND SUMMARY

AT&T and BT have entered into the proposed Global Venture because new arrangements are essential if they are to continue to compete effectively with MCI WorldCom-Telefonica Espana, Sprint-France Telecom-Deutsche Telekom and a host of other entities that aggressively serve multi-national customers in providing global corporate services. In addition, AT&T and BT have concluded that combining and enhancing their international networks and assets will enable each to compete more effectively in the international telecommunications services that they offer to all customers, to help drive down inflated accounting rates, and to offer international transport, transiting and other services to other carriers on a far broader and more effective basis.

The public interest overwhelmingly supports the grant of the authorizations required to create and operate the proposed Global Venture. Indeed, because the Commission recently conducted an extensive analysis of such alliances and concluded that a complete merger of BT and another major non-dominant United States ("US") carrier (MCI) would have been in the public interest,[2] applicants respectfully suggest that little or no extended analysis is required to grant these

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[1] (...continued)
Section 214 authorizations of AT&T and certain subsidiaries; application to assign certain cable landing licenses of AT&T and certain subsidiaries; applications to assign certain Section 312 authorizations of AT&T and certain subsidiaries; application of US LLC for Section 214 authorizations; and application of TLTD for Section 214 authorizations. As part of these applications the applicants are seeking consent to the interlocking directorates that may occur between these commonly-owned affiliates.

[2] *Merger of MCI Communications Corporation and British Telecommunications plc*, GN Docket No. 96-245, 11 FCC Rcd. 15369 (1997) ("*BT/MCI II*").

applications. The reality is that the proposed joint venture between AT&T and BT promises similar public benefits as did the MCI-BT merger (or even greater) and does not present even those risks of anticompetitive consequences that were identified in *BT-MCI II* and found to be too insubstantial to block the merger.

Foremost, in *BT-MCI II*, the Commission correctly found that a venture between BT and a strong US carrier offers immense benefits to the public. The Commission concluded that such an alliance "is likely to enhance competition in . . . the market for global seamless services" that should prove to be "one of growing importance over time." *BT/MCI II*, ¶¶ 209-210. As explained in detail below, the proposed Global Venture between AT&T and BT will not only offer these same benefits, but also is now an essential step for maintaining vigorous competition in the market for global communications services in view of the consummation of the MCI WorldCom merger and other intervening developments since 1997.

In the 1997 *BT/MCI II* order, the Commission identified two competitive concerns that a full merger of BT and MCI could have raised, but concluded that neither was sufficiently substantial to outweigh the public benefits that the merger would have allowed. The AT&T-BT joint venture does not remotely create a substantial competitive issue on these (or any other) grounds.

The Commission's first concern about the BT-MCI merger was that the combined entity might have obtained a short-term advantage in transatlantic cable capacity (by the Commission's estimate, as much as 33% of end-to-end transatlantic circuits, *i.e.*, both eastern and western halves)

on TAT 12/13, such that it might have exerted a degree of market power over the transport of calls on the US-United Kingdom ("UK") route. *BT/MCI II,* ¶¶ 134-41. However, the Commission concluded that this potential competitive risk was adequately addressed by BT's commitment to divest some of its eastern half circuits and to agree to afford nondiscriminatory access to other carriers (*id.* ¶ 136), and because large amounts of new capacity would be deployed in the near term (*id.* ¶¶ 139-40).[3] By contrast, in the case of the proposed Global Venture, there is no plausible issue of undue concentration of transatlantic capacity -- and hence no conceivable basis for even the conditions imposed in *BT/MCI II* -- because subsequent upgrades and new construction have left AT&T and BT combined with less than 6 percent of the relevant undersea cable capacity.

The Commission next considered the likelihood that the merged BT-MCI would discriminate in favor of its US affiliate MCI in providing access to BT's network facilities within the UK. The Commission determined that the then-nascent competition within the UK and the availability of regulatory and other remedies would provide substantial checks against any such conduct, and that any residual risk was insufficient to outweigh the public benefits that the BT-MCI merger promised. *BT/MCI II,* ¶¶ 164-65, 199-201. Here, too, the proposed Global Venture presents a much easier case. First, the instant transaction is an international services joint venture, and BT will have no financial stake in AT&T. Second, UK competitive and regulatory checks and controls are even stronger now than they were when the MCI-BT merger was proposed.

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[3] More recently, the Commission has recognized the very large increases in transatlantic capacity. *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, ¶¶ 102-08 (rel. September 14, 1998) ("*MCI WorldCom Merger Order*").

In this regard, there is a single intervening development that starkly illustrates that neither of the two concerns that were found insufficient to block the MCI-BT merger present even substantial issues here: the decline in accounting rates that has occurred since the MCI-BT merger was proposed. In particular, the growing competition that exists in each component of BT's historic correspondent services (transmission, gateway switching, and backhaul) has caused accounting rates on the US-UK route to drop approximately 40 percent (from $.11 per minute in April 1996 to $.06 per minute in the fall of 1998). Because BT's settlement rates are now at cost, and because numerous alternative means of delivering traffic to the UK are available that bypass BT's international facilities entirely, BT would have no ability to distort competition in the provision of international service to the UK even if it had the incentive to do so.

This application will now provide a detailed description of why the authorizations required to establish and operate a proposed Global Venture are manifestly in the public interest. Part II describes the transaction. Part III provides a more detailed description of why, as with other recent decisions, the Global Venture promises immense public benefits (Part III.A, *infra*), and no substantial risks to competition in any relevant market (Part III.B, *infra*), and thus will serve the public interest.

II. THE APPLICANTS AND THE PROPOSED GLOBAL VENTURE

AT&T is a New York corporation that provides domestic and international voice and data telecommunications services. AT&T also provides local exchange services to a relatively small

number of US customers, and has limited domestic operations in other countries, including AT&T's wholly-owned subsidiary AT&T Communications-U.K. AT&T holds Section 214 authorizations and certificates to provide international telecommunications services and to maintain ownership interests in international cable facilities. AT&T also holds Title III radio licenses for earth stations used to provide international services.

BT is a company organized under the laws of England and Wales that provides local, long distance, and international voice and data telecommunications services, primarily in the United Kingdom. BT has limited operations in other countries, including BT's wholly-owned United States affiliate, BT North America Inc. ("BTNA"), which is authorized by the FCC to provide certain US international services pursuant to Section 214 of the Act.

The proposed Global Venture will be comprised of a Dutch corporation owned equally by AT&T and BT, TNV [Netherlands] BV ("Holding Co"),[4] which in turn will control directly or indirectly a number of subsidiary companies, including US LLC, a Delaware limited liability company, US Sub LLC, also a Delaware limited liability company, and TLTD, a Bahamas corporation. Pursuant to the Framework Agreement between the parties (the "Agreement"), AT&T will transfer to US LLC and US Sub LLC its interests in its cable stations and certain of its earth stations. US

[4] Holding Co will be governed by a management board, comprised of a single director, Director Co., a Delaware limited liability company ("DirectorCo"). DirectorCo will have a board comprised of seven representatives, three appointed by AT&T, three appointed by BT, and the then-current Chief Executive of the Global Venture. The Chief Executive Officer (and other principal officers) will be appointed by a majority vote of each of the AT&T representatives and BT representatives on the DirectorCo board.

LLC also will take AT&T's ownership interests in international cable facilities within the US territorial limits. AT&T will transfer to TLTD AT&T's ownership interests in international cable facilities outside of the US territorial limits.[5] AT&T will retain ownership of its backhaul facilities and switches, as well as all of its facilities used primarily for domestic telecommunications.[6]

AT&T will also transfer to TLTD (or otherwise make available to the Global Venture) its existing correspondent contracts for the provision of international services.[7] TLTD will then manage relationships with foreign carriers and negotiate accounting rates and settlements. As with all carriers providing service pursuant to Section 214, TLTD will comply with the FCC's International Settlements Policy and all other applicable policies and regulations in its relationships with correspondents.[8]

Under these new arrangements, AT&T will continue to offer international services as it does today on a common carrier basis pursuant to its current Section 214 authority. TLTD will

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[5] Thus, with respect to submarine cables US LLC will own the facilities from and including the cable station to the territorial limit and TLTD will own international facilities beyond that point.

[6] In the UK, BT will transfer its equivalent facilities within UK territorial limits to a UK subsidiary of Holding Co and will transfer its facilities located beyond the UK territorial limits to TLTD.

[7] BT correspondent agreements will also move to TLTD.

[8] See, *e.g.*, *Implementation and Scope of the Uniform Settlements Policy for Parallel Routes*, CC Docket No. 85-204, Report and Order, 51 Red. Reg. 4736 (Feb. 7, 1986), *modified in part on recon.* 2 FCC Rcd. 1118 (1987), *further recon.*, 3 FCC Rcd. 1614 (1988).

provision to AT&T underlying international service components comprised of the portion from and including the cable station (or earth station) and through the international cable facilities.[9]

There are four major aspects of the proposed Global Venture's operations. First, after transferring their international assets to the venture, AT&T and BT will make substantial capital investments to enable the Global Venture to enhance the capabilities of these international facilities. The Global Venture will, over time, replace existing circuit-switched international facilities with a global network that is able to accommodate state-of-the-art transmission technologies such as the Internet or ATM protocol (generally, "packet-switched services") by deploying new switching and transmission facilities throughout the world.

Second, and correlatively, the Global Venture will design and implement a global network architecture, based on open standards, and ensure that the venture's international network is fully compatible with the networks of AT&T, BT, and the foreign carriers who will operate in conjunction with the venture outside the United States and the United Kingdom.

Third, the Global Venture will design and develop new services and products to meet the evolving needs of multi-national corporations (or "MNCs"). These new products will be incorporated by AT&T and BT (and other distributors) into the integrated service packages that they develop and offer to meet the domestic and international needs of MNCs and other customers

[9] Because US LLC will own the international facilities from and including the cable station to the US territorial limit, TLTD will use the facilities of US LLC to reach the network of AT&T and to provide its common carrier services to other telecommunications operators.

worldwide. Because participation in the retail provision of global corporate services will allow the Global Venture to be more effective in developing those services, the Global Venture will directly provide global services specially tailored to multinational corporate customers in certain industry sectors.[10]

Fourth, because the proposed Global Venture will own and control not merely AT&T's and BT's international network facilities but also each party's contracts with foreign correspondents, the proposed venture will also act as a provisioning unit for the international transport and foreign termination components of all the international message toll (IMTS) and private line services that AT&T directly offers to customers in the United States (and that BT offers to customers in the UK). It is a primary purpose of the venture to reduce accounting rates and international access costs -- and to hasten the demise of today's correspondent system -- through efficient routing arrangements such as hubbing that exploit the opportunities created by the WTO agreement and by emerging technologies. These cost savings will benefit not only retail customers of AT&T and BT but also will enable the proposed venture more effectively to offer transport, transiting, and termination services to United States and other carriers on a common carrier basis and stimulate other facilities-based international carriers to take the same measures to drive down their termination costs.

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[10] The parties have initially identified certain industry sectors as having global needs, but the venture is not restricted from serving other customers and meeting other market demand for its products and services as they develop over time.

III. ALTHOUGH THE PROPOSED GLOBAL VENTURE CAN BE SUMMARILY APPROVED UNDER *BT/MCI II*, A DETAILED ANALYSIS OF THE VENTURE CONFIRMS THAT IT WILL PRODUCE SUBSTANTIAL PUBLIC BENEFITS AND RAISES NO SIGNIFICANT COMPETITIVE CONCERNS.

In *BT/MCI II* and its subsequent decisions, the Commission has employed a three-stage analysis to determine whether, on balance, a proposed transaction serves the public interest.[11] First, the Commission has identified and assessed likely public benefits of the transaction. Second, the Commission has identified and analyzed potential public interest harms by: (i) defining relevant product and geographic markets, (ii) identifying the most significant actual and potential competitors in those markets, and (iii) determining whether the proposed integration could reduce competition by creating or enhancing market power. Third, the Commission has balanced public interest benefits against potential public interest harms.

In *BT/MCI II*, the Commission applied this test to approve a complete merger of BT and another nondominant United States carrier (MCI). The instant applications present an even clearer case and can be expeditiously approved.[12] The Global Venture offers at least the same (if not more) of the benefits to the public that the Commission correctly found would serve the public

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[11] *See BT/MCI II*, ¶¶ 33-42; *MCI WorldCom Merger Order*, ¶¶ 16-22.

[12] The Global Venture easily qualifies to serve the US market under the Commission's foreign carrier entry standards. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891 (1997) ("*Foreign Participation Order*"). The Venture's affiliation with BT is consistent with the Commission's open entry policy, because BT is based in the UK, a WTO country. The fact that TLTD is incorporated (under the ultimate control of AT&T and BT) in the Bahamas, a non-WTO country, poses no issue because TLTD and its affiliates does not operate as a "carrier" in the Bahamas.

interest in *BT-MCI II*. Conversely, because of intervening developments, the proposed Global Venture does not present any of the risks to competition that the Commission identified in *BT-MCI II* and found insufficient to outweigh the promised benefits of that transaction. In particular, AT&T and BT now have only a small (and still falling) share of transatlantic cable capacity, domestic competition in the United Kingdom has grown stronger, and BT's settlement rates have been driven to cost.

A. The Venture Will Benefit The Public By Allowing AT&T and BT Rapidly To Enhance Their International Facilities, To Compete More Effectively In the Market For Global Corporate Services, And To Accelerate The Reductions In Settlement And Collection Rates For Mass Market IMTS Services.

The Global Venture will offer the public substantial benefits. First, the proposed venture will be able to fulfill customer demands for more sophisticated, secure, and reliable communications products and will further increase competition in the global MNC services market with the MCI WorldCom and Sprint consortia as well as the many other full service and niche competitors. Second, the venture will accelerate the technological enhancement, and more efficient deployment, of the international facilities of AT&T and BT. Third, the venture will help reduce settlement rates and hasten the demise of historic correspondent practices.

1. Maintaining And Promoting Effective Competition In Global Corporate Services.

The Global Venture will develop new products and services and enhance the ability of AT&T and BT to compete effectively in the rapidly growing and increasingly important market for what the Commission has termed the "global seamless services" demanded by multinational enterprises.[13] That is so both because AT&T's and BT's previously-established arrangements for meeting this demand either have proven insufficient or, in BT's case, need to be replaced for other reasons, and because other entities (such as the MCI WorldCom consortium) have assembled or can rapidly assemble all the capabilities required for success in this market. The proposed venture is far and away the most efficient method for AT&T and BT to meet this competition and effectively compete in this market.

Multinational enterprises have unique needs. They not only demand highly sophisticated and complicated data, video, and voice transmission services, but also demand the same communications capabilities between offices in different countries as they enjoy between offices in the United States.

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[13] *E.g., Foreign Participation Order*, 12 FCC Rcd. at 23952; *BT/MCI II*, 12 FCC Rcd. at 15377-78; *Sprint Corporation*, Petition for Declaratory Ruling Concerning Section 310(b) and (d), 11 FCC Rcd. 1850, 1864 (1996) ("*Sprint Declaratory Ruling*"); *MCI Communications Corp. and British Telecommunications plc*, Declaratory Ruling and Order, 9 FCC Rcd. 3960, 3971 & n.98 (1994) ("*BT/MCI I*").

AT&T and BT each previously established their own separate alliances with foreign carriers to meet these global corporate customers demands. AT&T has relied on joint offerings with foreign carriers, including AT&T's WorldPartners and AT&T Unisource. Through these alliances, AT&T and foreign carriers (primarily the established public telecommunications operators) agreed to provide a common set of services and a minimum level of service quality -- with each carrier responsible for providing the customer with all services originating in its territory through the technology it selected and with each customer required to contract with each member carrier individually. These arrangements allowed AT&T and the member carriers to serve MNCs far more effectively than they otherwise could have. However, the alliances are less than maximally effective for a growing number of services that MNCs increasingly demand and that require consistent service levels, customer support systems with a single point of contact, and use of comparable technologies and architectures worldwide.

BT created Concert with MCI to overcome the inefficiencies associated with the correspondent system. Concert has successfully provided end-to-end MNC services, over a global managed platform, that are distributed by several telecommunications operators worldwide. BT began Concert by partially integrating with MCI (by acquiring a 20 percent stake in that company) and forming a successful venture with it (Concert) that developed and provided international components of services (with MCI providing the domestic US components and distributing Concert's products in North America). BT primarily relied on second carriers to distribute Concert's products in foreign countries other than the US and the UK. BT subsequently sought to merge outright with MCI because BT determined, among other things, that complete integration of MCI's and BT's

international facilities would allow more effective participation in the global services market. But MCI merged instead with WorldCom, sold its minority interest in Concert to BT, and no longer has any incentive aggressively to promote Concert services. To the contrary, because MCI WorldCom already owns or controls substantial high-capacity facilities in the UK, Europe and elsewhere (including capacity in the eastern half of transatlantic cables and an international IP network) and is closely allied with Telefonica Espana and carriers in Latin America, it will itself compete vigorously in the global services market. Further, MCI will eventually withdraw as even a nominal distributor of Concert services.

The proposed Global Venture will enable AT&T and BT to replace their current arrangements with ones that will maintain their market positions and better meet customers needs and the competition from MCI WorldCom and others and allow them to be more effective providers of sophisticated global services in the future. In particular, the complete integration of AT&T's and BT's international operations will allow them efficiently to establish a single enhanced technology and architecture for delivery of global services. That, in turn, will establish uniform standards to which distributors in countries outside the US and UK (or suppliers of international inputs) can commit. Finally, this structure will enable the proposed venture and its parents to offer customers a single point of contact for ordering and customer support. All of these enhancements in AT&T's (and BT's) ability to serve the global market are certain, substantial and plainly in the public interest.

2. Rapid Enhancement Of International Networks.

The Global Venture will also provide the vehicle for the most rapid possible deployment of a new network employing advanced protocols such as IP and capable of providing a host of innovative global services to meet customers' evolving needs. The Commission has recognized the key role that IP and other packet-switched technologies play in providing data services. These same technologies and protocols have emerged as the basis for the operation of broader telecommunications networks that will replace the circuit-switched networks that carry most telecommunications traffic today.

A key purpose of the proposed venture is to meet the challenge of other competitors who already are developing and deploying packet-switched networks. A number of these competitors are carriers with circuit-switched networks that have entered this market through acquisitions of packet-switched networks. For example, MCI WorldCom, through its predecessor's acquisition of UUNet, has created a vertically integrated packet-switched international network capable of providing service outside traditional bilateral correspondent arrangements. Cable & Wireless acquired an extensive packet-switched network from MCI, and Sprint entered this field through its GlobalOne joint venture with France Telecom and Deutsche Telekom. A number of other global competitors also are deploying international packet-switched networks, including SITA/Equant, Teleglobe/Excel, Qwest, Level 3, Carrier One, and Espirit.

Migration to a packet-switched network has become necessary to remain competitive. The integration of AT&T's and BT's existing international facilities in the Global Venture would enable them most efficiently to design, build and deploy end-to-end packet-switched international services. Similarly, the venture will be a strong competitor in the provision of packet-switched international services, to the benefit of customers both in the United States and around the world. The parties plan to provide to consumers, large and small, packet-switched telecommunications services with a degree of sophistication, flexibility, and reliability that is not now available.

3. Reducing or Bypassing Inflated Settlement Rates.

Finally, the Global Venture will promote effective implementation of one of the most important international policy objectives of the Commission: reducing the costs of terminating international calls. As noted above, excessive settlement rates are not an issue on the US-UK route, because BT and Mercury have essentially reduced these rates to cost. However, above-cost rates remain a problem in all but a handful of countries in the world, and are a very serious problem in the majority of countries. While the effective implementation of the Commission's *Benchmark Settlements Order* promises to reduce the currently inflated rates to the benchmarks, even those rates exceed cost, and it is an important policy objective that all such rates be reduced to a level as close to cost as possible.

Through efficient arrangements for the routing of traffic (such as hubbing or re-origination), the Global Venture will be able to exploit opportunities created by the WTO agreements.

The venture's international carrier services unit will offer transport, termination, and transiting services to other US carriers on a common carrier basis, so US carriers and consumers will be able to benefit broadly from the venture's new arrangements. Further, to the extent that the venture uses hubbing and other efficient arrangements, the venture will spur all international carriers to make maximum efficient use of these devices and new technology to drive down the costs of terminating international calls, to the direct benefit of all US customers. See, *e.g.*, *BT/MCI II*, ¶ 312 (other carriers "will have an equal incentive and ability as BT/MCI to reoriginate traffic through the United States," and therefore no restrictions on BT/MCI's ability to engage in reorigination were warranted).

B. The Proposed Global Venture Raises No Significant Competitive Concerns.

In *BT/MCI II* and the *MCI WorldCom Merger Order*, the Commission identified two relevant "end-user" product markets: (1) international telecommunications services provided to large businesses (or global corporate communications services), and (2) mass market international services provided between the United States and the foreign carrier's home country. The Commission likewise evaluated potential vertical effects through analysis of a series of international services "input markets" in the foreign carrier's home country. As demonstrated below, the proposed venture raises no significant horizontal or vertical concerns with respect to any of these markets.

1. End-User Services.

As explained above, the Global Venture will promote competition for the provision of global corporate communications services. Moreover, given the explosive growth in the capacity of transatlantic cable on the US-UK route (and elsewhere), there can be no conceivable claim that the Global Venture will reduce competition by enabling the Global Venture to achieve unilateral market power over transport, or by reducing the number of holders of rights on those cable facilities to the point where competitors could collectively exercise market power to increase rates, see *BT/MCI II*, ¶¶ 124-25.

Global Corporate Communications Services. Since 1994, the Commission has recognized that the market for international telecommunications services provided to large multinational businesses constitutes a separate, "emerging product market of worldwide geographic scope."[14] The provision of these global corporate communications services includes the furnishing of a combination of voice, data, video and other telecommunications services over a compatible international network of facilities that have the same quality, characteristics, features and capabilities wherever they are provided.[15] Customers targeted for global service offerings typically are multi-

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[14] *BT/MCI I*, 9 FCC Rcd. at 569; *Sprint Declaratory Ruling*, 11 FCC Rcd. at 1864.

[15] *BT/MCI II*, 12 FCC Rcd. at 15379 (quoting *Sprint Declaratory Ruling*, 11 FCC Rcd. at 1864).

national corporations, but smaller businesses also may seek such service. The Commission has recognized the public interest in the further development of global telecommunications offerings.[16]

As explained above, the proposed venture will increase competition in the dynamic global corporate communications services market by enhancing the ability of AT&T and BT to compete with other existing alliances, including MCI WorldCom and Global One. The proposed venture will have no corresponding negative effects on competition in this market. As the Commission recently recognized, there are numerous active participants in this market -- many of whom are at least as substantial as the proposed venture -- as well as many other potential participants.[17] For example, Global One, Sprint's alliance with Deutsche Telekom and France Telecom, already has achieved a significant position in the market.[18] In addition, the newly merged MCI WorldCom constitutes a formidable global competitor. Both of these alliances, comprised of large and well-capitalized telecommunications companies from strategic regions, are well on their way to developing advanced packet-switched global networks.

Moreover, in the short time since the Commission approved the BT/MCI alliance in *BT/MCI II,* it has become clear that the proposed venture will face still more substantial providers of worldwide or specialized global communications services. Indeed, within 90 days the adoption of the WTO agreement and the Commission's *Foreign Participation Order*, the Commission granted

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[16] *See BT/MCI II,* 12 FCC Rcd. at 15379, 15401; *Sprint Declaratory Ruling,* 11 FCC Rcd. at 1864.

[17] See *MCI WorldCom Merger Order*, ¶ 126.

[18] See *BT/MCI II*, 12 FCC Rcd. at 15386.

26 applications of foreign carriers seeking to provide service in the US, including 13 applications from foreign carriers possessing market power in their own market.[19] In addition, City of London Telecommunications ("COLT"), a London-based competitive local exchange carrier, has extensive plans to establish a network that covers European financial centers and arrangements with other service providers to establish global service.[20] Esprit Telecom Group plc presently is constructing a broadband European transmission network linking the UK and five other countries, and has a direct connection to COLT's London facilities-based network. Global Telesystems ("GTS") has formed a number of joint ventures with substantial foreign partners to provide service.[21] IDT Corporation, a US-based company, focuses on routing traffic to niche markets in South America, the Caribbean and the Far East. Pacific Gateway Exchange, Inc. ("PGE") has partial ownership interests in 18 digital undersea fiber optic cables covering the Atlantic, Pacific, Eastern Europe, the Caribbean and the US, with international gateway facilities in New Zealand, Russia, the US and the UK. Primus Telecommunications, Inc., one of the five largest emerging multinational carriers ("EMCs") based upon annual revenue, operates its own global network with digital gateway switches deployed in the US, Canada, Australia, the UK and Mexico. STAR Telecommunications, Inc., the largest independent wholesale and retail EMC, has a proprietary network that extends to 40 countries. All

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[19] See Public Notice, PN No. 83367, "FCC Grants Over 200 International Service Applications in First 90 Days of New Foreign Participation Rules" (released May 14, 1998).

[20] COLT presently has high capacity networks in the nine major European cities, and will cover approximately 25 European cities by 2000. COLT also is teaming with Hermes to develop a Pan-European backbone, has an agreement with Energis for collaboration on service delivery and network development, and an interconnection agreement with Scottish Telecom.

[21] GTS has an ownership interest in SSI Atlantic Crossing's AC-1 transatlantic cable between the US, UK, Netherlands and Germany, and a cross-English Channel link between London and Continental Europe.

of these EMCs, as well as others including Teleglobe/Excel, RSL Communications Ltd., Telegroup, Inc., and Viatel, have sought to acquire strategic network facilities and alliances that will provide large customer bases in key markets or complementary business strategies and products.

Additionally, and most significantly, today information technology companies, such as Infonet, SITA/Equant, GEIS, EDS, and Compuserve, are among the most successful competitors in this market. Finally, SBC Corp., Ameritech Corp. and others have announced broad plans to provide global corporate services when they obtain interLATA authority. In short, not only will the global corporate services market contain three large global alliances both before and after the joint venture, but the global alliances will continue to face stiff competition from an ever-growing coterie of large, medium-sized and niche providers.[22]

Given the dynamic nature of this transitional market, a traditional market share analysis is of questionable value. However, recognizing the data limitations posed by rapid growth and the increasing diversity of firms that have deployed their own global offerings, such an analysis confirms that the proposed venture will not significantly increase concentration and poses no risk to the vigorous competition that exists in this market. Third parties have estimated that the size of the global services market in 1997 was between $14 billion and $30 billion. Based on those estimates, AT&T and BT *together* account for less than ten percent of sales, and there are others with equal or greater shares of this rapidly growing and developing market.

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[22] See *MCI WorldCom Merger Order*, ¶ 126 (noting that numerous competitors already compete in this market, and that the BOCs and other foreign carriers governed by the WTO Basic Telecom Agreement are likely to enter).

Against this array of competitors, the proposed venture will not have any ability to act anticompetitively in the global corporate services market, for several reasons. As the Commission recently noted, the ability of any carrier to provide international services to large business customers depends on three factors: (1) "the ability to obtain critical inputs such as international transport capacity;" (2) the ability to obtain operating agreements with foreign carriers; and (3) the technical ability to provide the services demanded by larger business customers. *MCI WorldCom Merger Order*, ¶ 131. The proposed venture will not adversely affect the capabilities of its many competitors in any of these three areas.

As shown below, the venture will not have market power (or even substantial share) in the provision of international transport capacity on the US-UK (or any other) route, and thus could not conceivably "adversely affect the ability of other carriers to obtain capacity." See *MCI WorldCom Merger Order*, ¶ 131. As the Commission expressly found in *MCI WorldCom*, "US carriers generally are able to obtain operating agreements or use alternative arrangements to provide international services." As the Commission also found, "there are many carriers that have the technical capability to provide larger business services." Indeed, because the purchasers of such services generally are extremely sophisticated MNCs, the "special assets and capabilities (*i.e.*, brand recognition, reputation, and local customer base) that are important attributes in serving the mass market are not as important here." *Id.* ¶ 132. MNC customers are capable not only of assessing the comparative values of service from Infonet, SITA/Equant, GEIS, MCI WorldCom, Global One, the Global Venture and others, but also the value provided by any of the specialized global service providers discussed above. As the Commission concluded: "carriers [offering service to large

business customers] need only have the ability to offer dedicated services (end-to-end or virtual), bundle specialized services, and provide significant support and maintenance. Many carriers have these capabilities." *Id.* at ¶ 132.

Outbound Mass Market International Services On The US-UK Route. AT&T is the largest provider of outbound US-UK international services with a share of approximately 50 percent.[23] BT, in contrast, has a *de minimis* share of these services. Thus, even if current US-UK traffic share was a good proxy for market power on that route -- and it most assuredly is not -- the proposed venture will have no significant impact on concentration. Nor does the elimination of BT as a potential competitor to AT&T on this route raise any competitive concerns, especially where there are so many other substantial competitors. Indeed, the Commission held in *BT/MCI II* that BT is not now and is not likely to ever become, a significant carrier of mass market traffic on the outbound US-UK route.[24]

More fundamentally, as described in detail in the international transport section below, the venture will control only a very small share of transatlantic cable capacity. Since the Commission approved the BT/MCI merger, there has been (and continues to be) huge growth in both the amount of international transport capacity on the US-UK route and the number of carriers seeking to use that

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[23] *See, e.g.*, 1996 International Traffic Data Report, Table E1 (AT&T, 50.9%; MCI 23.3% and WorldCom 4.8%; Sprint, 13.8%; Others 7.2%). The Commission has treated all US-UK outbound international traffic as a single service, without respect to the region in the United States from which the traffic originates. *See BT/MCI II*, 12 FCC Rcd. at 15379.

[24] See *BT/MCI II*, 12 FCC Rcd. at 15392, 15402.

capacity to offer service. Indeed, the US-UK transport market is so vigorously competitive that rates are already at or near cost. Thus, regardless of the venture's current share of US-UK outbound traffic, it is undeniable that other carriers have multiple alternate competitively priced routes into the UK. In short, the combination of AT&T's US-UK mass market traffic and BT's insignificant US-UK traffic poses no competitive concerns on this highly competitive route.

2. Inputs.

In assessing a proposed transaction's potential vertical effects on competition, the Commission analyzes whether one party to the transaction would have the incentive and ability to harm consumers by leveraging market power in an "upstream" input market into a "downstream" market for an end-user service. In *BT/MCI II,* the Commission found that, notwithstanding its view that BT had cognizable market power in UK input markets, BT's ability to engage in anticompetitive conduct would be sufficiently constrained by current or anticipated competition, UK regulation, and the structure of the proposed transaction.[25]

Those conclusions apply with even greater force today with respect to BT's participation in the proposed Global Venture. Indeed, the subsequent increase in competitive forces and strengthening of UK regulation, as well as the nature of the transaction, all weigh even more heavily in favor of the conclusion that BT cannot use any of its "input" services to disadvantage competitors in a "downstream" market. In this regard, the competitive forces in the United Kingdom

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[25] *See BT/MCI II,* 12 FCC Rcd. at 15415-23.

that the Commission found adequate to constrain BT's abilities to act on any incentives to favor MCI, *BT/MCI* at ¶ 210, are even stronger constraining forces today. With respect to some of these input markets, changed circumstances make it questionable whether even the threshold premise of market power in the input market could be sustained.

By June 1998, for example, cable companies had laid cable past 11.4 million households, reflecting nearly a 20 percent increase in homes with access to cable telephony in one year, and there were 3.7 million cable telephony lines installed in the UK, an increase of 32 percent over the same period.[26] The share of Cable & Wireless Communications alone reached 10.9 percent across all calls in the period October-December 1997.[27] Other competitors held a further 14.3 percent share. For the same period, in the international call market, BT's revenue market share barely exceeded 50 percent by revenue, and BT's share of the business segment of the international calling market was only 37 percent.[28]

International Transport - US-UK Route. There can no longer be any serious argument that BT has market power over international transport on the US-UK route. Capacity on that route is growing rapidly, and BT has a relatively small share of that capacity. In recent years, other carriers have built a number of new, high-capacity cables, and even the combination of AT&T's and BT's capacity on those cables will be substantially smaller than that of other carriers.

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[26] New Media Markets (September 17, 1998).

[27] OFTEL, "OFTEL's Market Information Update," August 1998.

[28] *Id.*

One year ago, when the FCC approved BT's acquisition of control of MCI, US carriers seeking to transport traffic for termination in the UK on a facilities-based system relied on a limited number of transatlantic submarine cables, owned by certain consortia of carriers. These cables included TAT-8, TAT-9, TAT-11, TAT-12/13, PTAT and CANTAT-3. The TAT-12/13 cable was at that time the only state-of-the-art transatlantic cable and, with a 10 Gigabit capacity (or 4032 x 2Mbits), it accounted for approximately 50 percent of the capacity on the US-UK route. Of the total overall capacity on TAT-12/13, AT&T owned 22.7 percent, BT owned 17.2 percent, and MCI owned 16.8 percent.[29] Moreover, on the UK (or eastern) end, BT owned 38 percent of the half-circuits used to provide service.[30] Nevertheless, the FCC cited a number of reasons why it was not concerned with the possibility that BT and MCI could use their combined control of the capacity of TAT-12/13 to harm competition in downstream markets, either on a short term or long term basis.[31]

First, the FCC anticipated that in 1998 and 1999 companies would deploy four significant new transatlantic cables. WorldCom and Cable & Wireless were scheduled in 1998 to deploy Gemini, a cable with twice as much capacity as TAT-12/13 (8,064 x 2Mbits), and SSI Atlantic Crossing L.L.C. ("SSI") was scheduled to construct and deploy AC-1, a cable with four times as much capacity as TAT-12/13 (16,128 x 2Mbits) during the same time period.[32] Based on the proposed construction of Gemini and AC-1, the FCC concluded that SSI, WorldCom and Cable &

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[29] See *BT/MCI II*, 12 FCC Rcd. at 15390.

[30] *Id.* AT&T also owned 13% of the eastern half-circuits. *Id.*

[31] *Id.* at 15392.

[32] *Id.* at 15393.

Wireless were significant participants in the US-UK transport route.[33] Second, the FCC noted that the owners of TAT-12/13 were scheduled to double the capacity of that cable through the use of wave division multiplexing ("WDM") technology[34] by February of 1999.[35] With this new capacity, the Commission concluded that even the combined share of BT and MCI was not sufficient to warrant the Commission's intervention.[36] Finally, the Commission recognized that BT offered one of the lowest settlement rates in the world.[37]

For all of these reasons, the FCC concluded that the merger of BT and MCI would not pose a threat to fair competition even immediately after the consummation of that proposed merger, and that it would pose even less of a threat with the passing of time.[38] Now, a full year later, the Global Venture between AT&T and BT does not pose even the minimal threat to competition that

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[33] *Id.*

[34] Optical amplifiers, WDM, and high speed data transmission technologies are making it possible to send as much as a 20 Gigabits per second per fiber, with much higher rates potentially obtainable. In addition, existing satellite systems have sufficient capacity for current or foreseeable demand. New generation of LEO satellites are being promoted and are expected to enter service around the year 2000. These are more compatible with voice and data because the propagation delay (which is currently a problem) is much shorter and advances in technology will soon address the problems caused by the delay. Skybridge and Teledesic plan to offer services using Low Earth Orbit satellites.

[35] *Id.* at 15405. In this event, BT's share of the capacity on TAT-12/13 was scheduled to decrease.

[36] *Id.* BT did make certain commitments, including promises (1) to make whole circuits available to third parties, (2) to allow the conversion of leased circuits to indefeasible rights of use ("IRUs"), (3) to waive cancellation charges when long term leased circuits were terminated early as a result of conversion to IRUs, and (4) to sell US carriers the eastern end of matched half-circuits. *Id.*

[37] *Id.* at 15406.

[38] *Id.*

the Commission-approved BT/MCI merger did. Gemini and AC-1 have since been constructed and placed into operation, which has increased by a factor of ten the available transatlantic cable capacity. Indeed, the Gemini and Atlantic Crossing experiences have led the Commission to conclude that "[a] firm or group of firms can decide to construct and begin operating a new cable system in response to an exercise of market power within two years." *MCI WorldCom Merger Order*, ¶ 105. Thus, AT&T's and BT's combined share of transatlantic capacity has now decreased markedly. Indeed, the Commission recently found that "[a]t least 59 entities own US half-circuits on the TAT-12/13, Gemini, and AC-1 cables," and that Global Crossing (50%), pre-merger WorldCom (14%), and Cable & Wireless (12.9%) all own more capacity today than either AT&T (8.1%) or BT (1.6%). *MCI WorldCom Merger Order*, ¶ 91. AT&T and BT estimate that in actuality they together have *less than a 6 percent ownership of cable capacity on both the western and eastern ends of the US-UK route.*[39]

Moreover, as the Commission found in the *MCI WorldCom Merger Order* (at ¶ 92), the amount of capacity is continuing to grow by leaps and bounds and is set to more than double again by the end of 1999. The Commission noted that both Gemini and AC-1 will soon complete construction of their ring configurations, which will add substantial capacity to both cables.[40] And, as noted above, WDM will more than double the capacity of the TAT-12/13 cable. As a result of

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[39] Although in its recent *MCI WorldCom Merger Order* the Commission estimated that AT&T had an 8.1 percent ownership interest and BT 1.6 percent on the western end, those estimates were based on certain assumptions that the Commission admitted were unrealistic. For example, the Commission did not take into account IRU ownership interests, which, as the Commission recognized, resulted in an overstatement of ownership interests in the existing cables. See *MCI WorldCom Merger Order*, ¶ 86.

[40] *Id.*

these upgrades, the Commission estimated that, by the end of 1999, AT&T (with 7.8%) and BT (3.7%) would have significantly smaller shares of US half-circuits on the transatlantic routes than Global Crossing (40%), MCI WorldCom (23.3%), and Cable & Wireless (15.9%).[41]

Even beyond these planned upgrades, SSI plans to construct and deploy AC-2 in the near future, a cable with eight times the capacity of AC-1 (129,024 x 2Mbits). Other cables, including TAT-14 and Oxygen, with a capacity of 258,048 x 2Mbits, are also planned for the near future. See *MCI WorldCom Merger Order*, ¶ 106; Application of Project Oxygen (USA) LLC, filed October 14, 1998, No. 268355. The imminent construction of these additional cables confirms the FCC's prior findings that the barriers to entry in the transatlantic US-UK transport market are low and that carriers today can plan, build, and put into service a high-capacity transatlantic cable with astounding speed. *MCI WorldCom Merger Order*, ¶¶ 105-06 ("[t]hese cable system plans further indicate that entry barriers are low and suggest that there will be ample opportunity for new entrants to obtain capacity on the transatlantic route"). With all of this new capacity and competition, there is no plausible argument that the proposed venture could use the cable capacity of AT&T and BT to exert anticompetitive leverage in any downstream market. *See MCI WorldCom Merger Order*, ¶ 107 ("[g]iven that transport capacity is growing substantially, barriers to entry are low, and more companies have opportunities to gain access to cable ownership and capacity").[42]

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[41] *MCI WorldCom Merger Decision*, ¶ 92. MCI WorldCom "is claiming industry leadership . . . with the entry into service of an advanced optical fibre network code named 'Ulysses' linking Europe's financial centres and the US. The networks in Europe and the US and the undersea cables that connect them link 27,000 US offices and 4,000 buildings in Europe." Financial Times, July 20, 1998.

[42] With respect to the other two major international submarine cable routes — the Pacific region and (continued...)

UK Cable Landing Station Access. Historically, BT's cable landing facility and digital access cross connection-switches ("DACS") equipment at Lands' End have been the entry point to the UK for the majority of capacity between the US and the UK.[43] For at least three reasons, however, the proposed Global Venture does not pose a threat, much less *increase* the risk of a threat, that BT would use a UK cable landing facility in any anticompetitive manner.

First, like MCI, AT&T is not a significant potential provider of competitive cable landing service in the UK, and thus the combination will not increase present or future concentration.[44] Second, OFTEL and the UK government have adopted policies that have encouraged entry into the international facilities-based market in the UK and hence the construction of more submarine cable and cable landing stations in the UK.[45] MCI WorldCom/Cable & Wireless and SSI have constructed new cable landing stations for Gemini and AC-1, and there are no barriers preventing construction of alternative cable landing station sites. Finally, access to BT's cable landing

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[42] (...continued)
the Caribbean/Latin American region — the Global Venture poses no threat to competition. BT's submarine cable capacity in both regions is *de minimis*, and therefore the combination of AT&T's and BT's capacity in these regions will have no appreciable impact on competition. Moreover, as the Commission recently recognized, submarine cable capacity is growing exponentially in the Pacific Region, and with WDM upgrades and the construction of new cables, AT&T will have only a relatively small share of capacity in that region. Similarly, submarine cable capacity is growing rapidly in the Caribbean/Latin American region, and as a result AT&T will not be the largest owner of capacity on the US-Virgin Islands route. See *MCI WorldCom Merger Order*, ¶¶ 93-99.

[43] *BT/MCI II*, 12 FCC Rcd. at 15393.

[44] *Id.* at 15394, 15407 (not listing AT&T as a firm that could potentially provide significant landing station competition in the UK).

[45] *Id.* at 15413-14.

stations by third parties is still regulated by OFTEL as part of its detailed oversight of UK interconnection. For these reasons, the Commission can remain confident that the proposed combination of the international facilities of BT and a strong US carrier raises no issues of vertical leveraging of market power over cable landing facilities.[46]

UK Backhaul. From cable landing stations, traffic is carried via "backhaul" facilities to a carrier's international switch or point of presence in the UK. BT traditionally has been the main provider of backhaul services in the UK, although Cable and Wireless also has provided backhaul from cables in which it has the main UK interest, and some cables have been served by both BT and Cable & Wireless on a competitive basis.[47] BT's operation of backhaul facilities poses even less competitive risk today than it did in the consideration of the BT/MCI merger.

First, regardless of BT's market position, AT&T is not a significant potential provider of backhaul services in the UK, and therefore the formation of the Global Venture does not increase BT's ability to use its provision of backhaul services to disadvantage other carriers.[48] Second, the necessary licenses and rights of way to construct backhaul facilities are available to all international facilities-based operators in the UK if they want them, so there are no material entry barriers to the

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[46] *Id.* at 15417-18.

[47] *BT/MCI II*, 12 FCC Rcd. at 15394, 15407.

[48] See *id.* (not listing AT&T as a potential backhaul service provider).

market for backhaul service.[49] As a result, competitive carriers have begun to provide significant backhaul service in the UK. Apart from BT, backhaul providers in the UK are Cable & Wireless (TAT 12/13, CANTAT-3, PTAT-1, and Gemini), Energis (TAT 12-13, CANTAT-3) and MCI WorldCom (Gemini). Future systems such as TAT-14 will have at least four backhaul providers. In these circumstances, it is again even clearer now than when the Commission approved the BT/MCI merger that any competitive concerns arising from BT's control of UK backhaul facilities are adequately addressed.[50]

UK Intercity Transport. Calls are transferred from a carrier's point of presence or gateway to the local exchange in the UK by intercity transport facilities. BT historically had the only substantial intercity transport service in the UK, but that is no longer true. Other carriers now provide intercity transport services in competition with BT. Cable & Wireless, Energis, NTL/CableTel, Racal Telecom, and Fibernet all have extensive, modern networks serving major cities and towns in the UK, and there are no restrictions on further entry to this market.[51] Moreover, OFTEL has adopted policies encouraging further construction of competing intercity transport systems (and continues to regulate the intercity service in any event). In sum, the proposed transaction raises no legitimate vertical concerns with respect to intercity transport.

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[49] *Id.* at 15395.

[50] *Id.* at 15418.

[51] While AT&T in the past has operated high speed switches and leased intercity circuits, it is not a significant provider of competitive intercity service in the UK.

UK Domestic Services For Terminating and Originating Calls. BT remains the largest provider of local exchange service in the UK, and thus terminates and originates more international calls from the US than any other carrier. Other carriers, however, are rapidly constructing facilities, and BT's market share has continued to fall over the past two years. Cable & Wireless and other cable companies are expected to serve about 75 percent of the UK population by the year 2000.[52] In addition, both WorldCom and COLT have built extensive metropolitan area networks serving business customers in London and other city centers in the UK.

At the time of its decision in *BT/MCI II*, the Commission was satisfied that OFTEL regulated call termination effectively.[53] While the Commission did express concern that the UK regime did not impose an obligation to provide equal access, including carrier preselection and dialing parity,[54] it nonetheless approved BT's acquisition of control of MCI, in part based on the advent of competition in the local exchange service in the UK and in part based on MCI's willingness to commit not to receive traffic from BT "to the extent BT is found to be in non-compliance with UK regulations inplementing the European Union's equal access requirements."[55] In the intervening period, however, the UK has adopted additional regulations requiring BT to provide carrier pre-selection by 2000, and no similar conditions would be appropriate here.

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[52] *Id.*

[53] *Id.* at 15421; *ACC Global Corp. and Alanna, Inc.*, 9 FCC Rcd. 6240, 6252 (1994).

[54] *Id.*

[55] *Id.*

Moreover, as the year 2000 approaches cable systems and wireless systems in the UK will have greater coverage areas, which will further reduce BT's control over local exchange facilities. Additionally, OFTEL effectively regulates call origination and call termination over BT's local network as part of the UK's Network Charge Control regime. Under this regime, BT's prices for these services were initially set by OFTEL on October 1, 1997, on the basis of forward-looking costs. In addition, the price control mechanism requires these prices, which are already among the lowest in the world, to be reduced by the rate of inflation minus 8 percentage points in each year until 2001. Therefore, the Global Venture's affiliation with BT poses no competitive risks due to BT's participation in the local services market.

CONCLUSION

As has been demonstrated above, the proposed Global Venture will increase competition and provide new and enhanced communications services without adversely affecting competition in any communications service. For these foregoing reasons, the FCC should grant the applications contained in the attachments to this Application and Public Interest Statement.

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