

1 CHAIRMAN KENNARD: Let's stipulate to that. Now,
2 certainly you wouldn't expect that a merger of this
3 magnitude would be treated by this Commission in the same
4 manner as, say, the transfer of one AM radio station license
5 in Poughkeepsie or New York or Los Angeles or perhaps one
6 private radio station license in any other community in the
7 country?

8 MR. CARTER: You are really in an area that I am
9 ill-equipped to answer. The gentleman here who was the
10 professor seemed much more in line to answer those sort of
11 questions.

12 CHAIRMAN KENNARD: Okay, I'll let you off the
13 hook. Thank you.

14 MR. CARTER: I appreciate it.

15 COMMISSIONER FURCHTGOTT-ROTH: A follow-up though,
16 Mr. Chairman. I must note that there is a proposed merger
17 that I'm not sure that this commission is going to be taking
18 up, which is Exxon/Mobil which involves more licenses issued
19 by this Commission than is held by Ameritech and that is
20 held by several of the companies that we are looking at
21 today. If the issue is sort of size of merger, if the issue
22 is number of licenses that this Commission issues I'm just
23 not sure how a company such as SBC knows how it is going to
24 be treated versus another company such as Exxon or Mobil.

25 Now, if the issue is we're only going to look at

1 those companies that we traditionally regulate intensely
2 that is fine but I think we ought to put it down on paper.
3 As far as I am aware there is no paper that gives guidance
4 to a company such as SBC as to how they will be treated
5 versus Joe's Taxi Company that may, unbeknownst to itself,
6 wind up in the same position where they are being reviewed
7 in great detail.

8 We certainly have had several C Block licensees
9 that have had licenses that have had a great deal of trouble
10 getting some issues resolved there in the recent past. I
11 would just like to get some clarity to how parties before
12 this Commission will be treated when they come in on 310
13 issues.

14 CHAIRMAN KENNARD: Well, if there is anyone here
15 that thinks that the Exxon/Mobil merger will affect the
16 future structure of the telecommunications marketplace I
17 hope you will come forward because I would like to know
18 whether that is the case.

19 Do we have any other questions from the bench?

20 COMMISSIONER POWELL: Mr. Carter said something
21 earlier that I feel obliged either to give confirmation or
22 disagreement from the two of you on. Quality has been a
23 significant element raised and clearly we are going to have
24 to sort through a lot of conflicting viewpoints about the
25 California experience. But, is he right in saying, Mr.

1 Devlin, that Sprint has indeed awarded awards for quality to
2 SBC in California with respect to the service that they
3 provided to you in your company?

4 MR. DEVLIN: I don't know the answer to that,
5 Commissioner Powell.

6 COMMISSIONER POWELL: Could we find out?

7 MR. DEVLIN: I will. But it is not uncommon. We
8 have different groups in the company. In dealing with
9 suppliers try and encourage them to do more, to do better.
10 It wouldn't surprise me if Mr. Taylor got the "Best Looking"
11 award for SBC or something like that. I will follow up but
12 I can assure you that is nothing that ever reached the
13 executive levels of Sprint. There is some group in the
14 bowels of the organization --

15 COMMISSIONER POWELL: You don't get off that way,
16 Mr. Devlin.

17 (Laughter.)

18 MR. CARTER: That's a very risky assertion.

19 COMMISSIONER POWELL: Mr. Taylor, if you could
20 comment as well, because just in the interest of full
21 disclosure it is important to know, as a factual matter,
22 whether you really are able to opine about the benchmark and
23 whether the services deteriorated if you were not a customer
24 of SBC or PacBell previously and/or if your relationship is
25 relatively infantile. I am not disputing any of your

1 observations but I just think it is only fair that we really
2 know whether that is an accurate statement.

3 MR. TAYLOR: Prior to starting Focal I was a
4 senior executive at MFS Communications where I was
5 responsible for building a lot of the MFS network around the
6 United States and dealt specifically with PacBell prior to
7 the merger. So, I am familiar with PacBell's operating
8 experience for a number of years prior to the merger.

9 More importantly, I am also the Vice Chairman of
10 ALTS. One of the things we are going to begin doing is
11 grading the incumbents. Since we are talking about
12 essentially several carriers here today, just among PacBell,
13 Ameritech, and SBC, PacBell and SBC would be at the bottom
14 end of that scale, Ameritech would be at the middle and the
15 incumbent provider on the East Coast would be significantly
16 higher. So, when we are looking at comparing good actors
17 versus bad actors and not necessarily saying the good actors
18 have complied yet, PacBell is at the bottom of that list.

19 COMMISSIONER POWELL: If I could just, again in
20 the interest of clarity, get some distinctions. When Ms.
21 Costa was testifying her focus on quality seemed to me to
22 emanate from that that would be experienced by individual
23 users of consumers of telecommunications services of SBC
24 versus yours, which I take to mean largely the quality of
25 your relationship with respect to interconnection.

1 MR. TAYLOR: Well, but we buy a lot of services.
2 We pay tariff rates for private lines, for construction, for
3 installation of services, just like any other consumer does
4 in the state of California. So, we are right there buying
5 T1s and DS3s and OC48s, along the same lines as Bank of
6 America is. Quite frankly, the way we look at ourselves
7 being served by a customer, it is not a very customer
8 friendly focus.

9 We also buy lines from WorldCom. They call us up,
10 they ask us, "Hey, how you doing? Are you happy? Can we do
11 more for you?" The folks at PacBell don't act that way. We
12 are not treated like customers. We'd like to be, we'd like
13 to be just treated like everybody else.

14 The competitive side will happen. We're
15 comfortable that that is in our hands.

16 COMMISSIONER POWELL: That is fair enough but you
17 would concede that in our granularity there is a distinction
18 between evaluating "quality considerations" in commercial
19 competitive relationships versus evaluating quality
20 considerations with respect to families taking
21 telecommunications services at their homes?

22 MR. TAYLOR: I think that --

23 COMMISSIONER POWELL: There is no implication by
24 this. It is not a trap, it is just --

25 MR. TAYLOR: Oh, I know. No, I know. I think

1 that both are buying services from the same company, so the
2 person in San Mateo buying a home phone line from PacBell
3 and Focal Communications or Bank of America or the city of
4 San Francisco are all customers of PacBell and I think you
5 should look at all of them. I don't think you should
6 necessarily look at Focal's experience over the consumer's
7 experience but I think we are a business consumer of
8 services from PacBell.

9 COMMISSIONER POWELL: And a competitor.

10 MR. TAYLOR: And a competitor, and that is what
11 makes it more difficult.

12 MR. DEVLIN: Commissioner Powell, if I may, I
13 think when you look at the relationship here and consider
14 the merger you need to look at more than just California.
15 You need to look at SBC and how open and inviting they have
16 been to competition. I think you should consider their
17 litigation strategy as part of that file, making everything
18 go to arbitrations, appealing Commission orders, and so
19 forth. It is a whole part of the calculus as to how
20 inviting SBC is to competition.

21 Frankly, as a customer, I wouldn't want to have to
22 face that same approach in Ameritech. In other words, once
23 Ameritech gets bought out by SBC and SBC replaces the
24 Ameritech managers that is not a very enlightening prospect
25 for Sprint.

1 CHAIRMAN KENNARD: Folks, we are really going to
2 have to wrap up. We are behind schedule. Did you have one
3 other question?

4 COMMISSIONER TRISTANI: Mr. Chairman, I would,
5 after Commissioner Ness, like to make a comment, if I may.

6 CHAIRMAN KENNARD: Okay. Commissioner Ness and
7 then Commissioner Tristani then we will wrap up.

8 COMMISSIONER NESS: I wanted to get back to the
9 benchmarking question. Assuming that we were to grant the
10 merger and assuming that 271 approval were achieved and
11 assuming that SBC fulfilled its statements that it is going
12 to be actively pursuing competition in at least 30 markets
13 around the country, would their pursuit of those markets,
14 competition in those markets, against other local exchange
15 companies not generate the kind of market opening activity
16 that would be helpful for Focal or that would be helpful for
17 Sprint? In other words, would that not stir up the mix, as
18 has been suggested? Can you comment on that? I put that
19 against the notion of -- or the concept of four major
20 companies competing vigorously versus six companies that
21 might be staying within their own regions.

22 MR. DEVLIN: Commissioner Ness, keep in mind,
23 first of all, that SBC and Ameritech are very large
24 companies. They are very capable of competing today, they
25 have just chosen not to do it. This notion that you have to

1 be some mega-size I think is put to rest by the Sprint/PCS
2 experience where we spent billions of dollars without a
3 single customer to build a new high quality wireless service
4 and we are running with that. So, keep that in mind.

5 My second point escapes me so I'll defer.

6 MR. TAYLOR: Certainly more competition in more
7 markets is good. We think that would happen if this merger
8 didn't go through, that Ameritech prior to the merger was
9 poised to go into places like St. Louis. So, we think that
10 those benefits would have occurred, were on the verge of
11 occurring, and the SBC and Ameritech folks have documented
12 that they were going to occur prior to this merger.

13 We think that's the ultimate answer, have SBC,
14 have Ameritech compete against each other and that will help
15 open the markets. there is nothing that is going to help
16 open -- you know, Ameritech is not going to be in a position
17 to help open up Texas if this merger goes through and they
18 are certified in Texas and that is an area where we could
19 use a lot of help because Texas isn't as good as California.

20 MR. DEVLIN: Commissioner, the second point, and I
21 apologize, it is the "big foot print" argument. the
22 monopoly is extended to include this now very large
23 geographic region, a third of the lines in the United
24 States. The impact on competition is going to be within
25 that region. It is going to be very hard to compete against

1 a very large monopoly, this marriage of monopolies, because
2 we need their interconnection and we need their access to
3 compete.

4 MR. CARTER: May I just comment?

5 COMMISSIONER NESS: Please.

6 MR. CARTER: I cannot see how our merger will
7 effect in-region competition, except in the most beneficial
8 way. Certainly I'm not aware of any outstanding complaints
9 from Sprint on our interconnection, in fact, I'm not really
10 aware of very much that Sprint is doing to compete in our
11 region locally, especially amongst residential customers.

12 I go back to the point that we want to be a full
13 facility based competitor across the nation, serving not
14 only big customers, and we have to spread across the nation
15 to service big customers, but also consumers because we do
16 believe that there is a strong market for an alternative
17 competitor in the residential sector.

18 COMMISSIONER NESS: Would you have to have 271
19 approval prior to engaging in your competitive strategy?

20 MR. CARTER: Well, as I said earlier, I believe
21 that the national strategy and 271 are in some way link,
22 otherwise we would end up with 30 stranded cities, or 50
23 stranded cities. We believe it's a plan that can be made to
24 work.

25 CHAIRMAN KENNARD: What about Mr. Taylor's

1 suggestion that you get 271 relief and then as a condition
2 to merger? Can you respond to that?

3 MR. CARTER: I don't really see how they are
4 connected, other than in the sense that it is hard for us to
5 make the national plan without 271 but I think suddenly
6 making 271 and mergers connected together seems wrong to me.
7 I speak as a lay person but I don't see that as being hand-
8 in-hand.

9 I would also say that as Ameritech/SBC without 271
10 relief I think even without 271 relief that the merger would
11 benefit those two companies from giving it additional
12 synergy which perhaps could defray its losses from the
13 business customers that are being taken right now by CLECs
14 and the larger long distance companies.

15 CHAIRMAN KENNARD: Thank you. Commissioner
16 Tristani.

17 COMMISSIONER TRISTANI: I will make my comments
18 after the next panel.

19 CHAIRMAN KENNARD: All right. Thank you. Thank
20 you very much -- Commissioner Powell, did you have one?

21 COMMISSIONER POWELL: I just couldn't resist one
22 last question.

23 (Laughter.)

24 COMMISSIONER POWELL: Not because I'm convinced of
25 this but... At a local level, Mr. Devlin, what is merger

1 specific about the evils of monopoly you describe? That is
2 you have a single monopoly you are facing in Ameritech
3 region, you have a single monopoly you are facing in the SBC
4 region, the fact that they are under joint ownership it is
5 not immediately evident to me why the experience immediately
6 is negative to you as a consequence of aggregate market
7 power. That is, If I flip their regions, if they made some
8 weird deal where Ameritech took over in the Southwest and
9 they took over in the Midwest, you would have the same -- at
10 the local level it is the same monopoly so unless what you
11 are saying, which is what I have taken from most of the
12 comments, that you think that SBC is bad and that badness is
13 going to come to Ameritech.

14 MR. DEVLIN: No, I think it is actually a
15 different point. It is a difficult point. We do have
16 economic analysis that we submitted, expert testimony, but
17 it goes like this: When SBC engages in any competitive
18 behavior it not only hurts the entrant in SBC's territory
19 but in other territories around the country. They are less
20 sufficient throughout the country. That is what economists
21 would call "spill over" effects. That is, the SBC, bad act,
22 actually benefits other LECs. If SBC and Ameritech merge
23 SBC is able to internalize those spill over effects. In
24 other words, capture the benefit internally of their acts in
25 Texas, for example.

1 COMMISSIONER POWELL: I understand.

2 CHAIRMAN KENNARD: Again, thank you very much.

3 MR. DEVLIN: Thank you.

4 CHAIRMAN KENNARD: We will take a five minute
5 recess and then we will come back with the next panel.

6 (Whereupon, a brief recess was taken.)

7 Agenda Item: Bell Atlantic/GTE Panel

8 CHAIRMAN KENNARD: We will reconvene our
9 panelists. We will now turn to the proposed merger of Bell
10 Atlantic and GTE.

11 Just one housekeeping matter on scheduling. We
12 are running behind schedule so what we will do is go for 45
13 minutes on this panel, until 1:15 p.m, then we will take a
14 lunch break from 1:15 to 2:00, then we will reconvene at
15 2:00 for the AT&T/TCI discussion.

16 Again, the panelists will have three minutes to
17 give an opening statement and then there will be question
18 and answer from the bench. We will begin remarks by Mr.
19 Mahoney of RCN. Mr. Mahoney.

20 Agenda Item: Michael J. Mahoney, President and
21 COO, RCN Corporation

22 MR. MAHONEY: Mr. Chairman and Commissioners, my
23 name is Michael J. Mahoney. I am President and Chief
24 Operating Officer of RCN Corporation. Thank you for giving
25 our RCN the privilege of appearing before you today to

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1 address the proposed merger of Bell Atlantic and GTE.

2 Given the size of the merger applicants and the
3 markets served by them today this is one of the most
4 important decisions to come before the Commission since the
5 passage of the 1996 Act. Despite the pro-merger tenor of
6 the times, we urge you to find that it is not in the public
7 interest.

8 RCN is one of the largest CLECs primarily
9 dedicated to serving residential markets. We currently
10 operate in the Northeast, from Virginia to Massachusetts,
11 offering bundled local exchange and intralateral services,
12 high speed internet access, and video services, both as a
13 franchised cable operator and as an open video system
14 operator.

15 You may have seen our recent advertisements in the
16 Washington Post and elsewhere announcing that we are
17 bringing these services to Washington, D.C. and the
18 surrounding areas through our local affiliate, Star Power
19 Communications. We like to think that RCN is the poster
20 child of the 1996 Act because we are doing exactly what
21 Congress hoped the Act would do in bringing about
22 competition.

23 In the Washington area, for example, we are
24 providing the first alternative to Bell Atlantic's local
25 telephone service and the first serious alternative to the

1 incumbent cable companies. Through our ownership of Erols
2 we are also competing for high speed internet access with
3 both telephone and cable companies.

4 My remarks today are not oriented towards the
5 legal issues. Our recently filed comments opposing the
6 merger do that. Instead, I want to approach the issue as a
7 down in the trenches businessman trying to develop and offer
8 services to the residential public.

9 As a CLEC we necessarily devote a great deal of
10 our time and energy to working with the local ILEC,
11 principally in our case Bell Atlantic. On the basis of
12 almost three years of such experience we are compelled to
13 impose the proposed merger. Our opposition is based on
14 facts, not on theory.

15 The applicants have not carried out their
16 obligations under Section 251 and 252 of the Communications
17 Act of 1934. As detailed in our recent formal comments,
18 both of them have failed to discharge in good faith their
19 legal obligations to CLECs, such as RCN. This failure to
20 discharge in good faith their legal obligations arising from
21 the Act is pervasive, covering interconnection agreements,
22 co-location, offering of unbundled network elements,
23 optinagrangements [ph], access to OSS, access to poles and
24 conduit, payment of reciprocal compensation, account
25 management and similar aspect of the CLEC/ILEC relationship.

1 Although both entities are proficient and prolific
2 in touting their pro-competitive efforts in their public
3 relations and regulatory filings I am here to tell you, as a
4 businessman trying to establish a toehold in the
5 telecommunications market place, that their by-word is
6 "delay" in anyway possible.

7 Bell Atlantic and GTE have consistently, with rare
8 exception here and there, demonstrated a pattern of non-
9 responsiveness, including slowness to cooperate, discovery
10 of numerous inhibiting and delaying complications and
11 difficulties and insistence on mindless reargument of
12 issues.

13 Their behavior covers the gamut from the simple
14 failure to return telephone calls to active resistance to
15 pragmatic compromise solutions to practical problems,
16 whether it is waiting an excessively long time for access to
17 conduit space or being denied access to such space so as to
18 preserve its own growth, Bell Atlantic has consistently been
19 uncooperative. Only rarely do we encounter outright
20 refusals. The ILECs understand perfectly well that such
21 outright refusals would be too easy to challenge.

22 While Bell Atlantic is guilty of these stratagems
23 GTE's performance is even worse. I would encourage the
24 Commission to initiate a full scale review of GTE's
25 competitive record, going back to passage of the 1996 Act.

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1 As set forth in detail on our recent comments,
2 this performance is so poor that it must proceed not from
3 mere incompetence or even inattention but, rather, from a
4 clear deliberate and consistent corporate philosophy to
5 fight the pro-competitive provisions of the Act.

6 It would be contrary to common sense, let alone
7 sophisticated legal analysis to reward the unlawful behavior
8 of these two companies by allowing them to merge. No doubt
9 they can save money by combining their operations but it is
10 the public whose interest is harder to quantify but also far
11 more important that will pay the price.

12 For these reasons RCN urges the Commission to
13 reject the proposed merger application. However, in the
14 event that the Commission decides to approve the merger it
15 should adopt the conditions, including performance criteria,
16 set forth in RCN's prior written submission. Moreover, if
17 you conclude that the merger can be approved only with the
18 imposition of conditions we strongly urge you require the
19 fulfillment of the conditions prior to the consummation of
20 the merger.

21 Sad experience has taught us that when conditions
22 are to be met subsequent to approval the industry finds
23 itself mired in costly delay and unproductive arguments
24 about whether the merged entity has adequately fulfilled
25 those conditions. A much sounder course would be to set the

1 achievement of the goals or certain performance criteria a
2 condition precedent to the merger, even if preceding in this
3 fashion delays ultimate consummation of the merger. Thank
4 you very much.

5 CHAIRMAN KENNARD: Thank you, Mr. Mahoney. Mr.
6 Sallet.

7 Agenda Item: Jonathan Sallet, Chief Policy
8 Counsel, MCI WorldCom.

9 MR. SALLET: Thank you, Mr. Chairman,
10 Commissioners. I'm Jonathan Sallet, Chief Policy Counsel,
11 MCI WorldCom.

12 MCI looks at this merger from the perspective of a
13 company that was born in competition, a company whose track
14 record includes bringing competition for the first time to
15 closed telecommunications markets with the concomitant
16 benefits of higher quality, better service and lower prices
17 to consumers, a tradition that continues now.

18 Even since our merger in September of this year
19 our customers have seen new advertisements about our
20 residential services, an announcement of a roll out of new
21 DSL services for residential and business customers, new
22 services for business customers who can use our network
23 exclusively. From that perspective, from the perspective of
24 competition, it is our belief that there is no public
25 interest benefit from the proposed Bell Atlantic/GTE merger

1 that would even come close to our weighing the anti-
2 competitive and anti-consumer consequences of such a
3 combination.

4 In the few minutes I have this morning let me note
5 five points. First, there is no support for the proposition
6 that Bell Atlantic and GTE are too small to be successful in
7 entering out of region local markets. These companies are
8 contiguous in two states, Virginia and Pennsylvania. GTE
9 has been planning its desire to expand into Bell Atlantic
10 states, including, for example, West Virginia. GTE has
11 filed for competitive status in other Bell Atlantic states.

12 The fact is that if much smaller competitive
13 companies can make the effort then there is no reason that
14 Bell Atlantic and GTE cannot. Indeed, if the theory of this
15 merger were correct I wouldn't be here today because MCI
16 WorldCom could not exist. But, the fact that it does
17 demonstrates that incumbent monopoly launching pads are not
18 necessary to enter local markets.

19 Secondly, the Commission in its Bell
20 Atlantic/NYNEX order noted the importance of benchmarking a
21 point Commissioner Ness noted in the earlier panel -- the
22 importance of benchmarking two regulatory efforts.

23 But, the two pending mergers that we discussed
24 this morning would dramatically lessen the ability of the
25 FCC to compare the practices of incumbent local monopolies.

1 Let me give just one example, out of the current debate
2 about reciprocal compensation. We went to GTE and Bell
3 Atlantic and said, "We want to use bill and keep." In our
4 MCI Interconnection agreements. GTE agreed, and we have
5 build and keep. Bell Atlanta said, "No." and demanded the
6 very system reciprocal compensation about which they now
7 complain. It is the diversity of these companies that
8 allows the Commission to understand different practices and
9 how they affect competition.

10 Third, and a point that has not been raised yet
11 this morning, I think you must consider the threat to the
12 internet and data markets. Incumbent monopolies already
13 discriminate in favor of the affiliated internet service
14 providers, ISPs. For example, Bell Atlantic charges three
15 times as much for ADSL equipment if its own affiliated ISP
16 is not used. The ability to carry out such discrimination
17 and to move it into internet content providers, affecting
18 internet content providers, would be dramatically heightened
19 if the nation were not dominated by two mega-RBOCs, each
20 controlling about one third of the nation's access lines.

21 Mr. Chairman, with your indulgence, let me briefly
22 note the last two points.

23 CHAIRMAN KENNARD: Please.

24 MR. SALLET: Fourth, a merged company will only
25 have greater incentives to delay local competition in both

1 the local and the exchange access markets, in particular,
2 inflated access charges offer an easy and illegitimate means
3 of raising rivals costs in an artificial and unfair manor
4 and the merged entity would have additional incentives to
5 delay competitive entry that would eat into those inflated
6 access charges.

7 Fifth and finally, Bell Atlantic is right now in
8 violation of the conditions of the Bell Atlantic/ NYNEX
9 merger order. For example, Bell Atlantic has failed to
10 offer uniform OSS interfaces across its region. There are
11 complaints pending in front of the Commission on other
12 aspects of that merger order. Simply put, it is
13 unthinkable that such flouting of FCC requirements could be
14 rewarded by approval of yet another merger. For all of
15 these points we oppose the granting of this merger
16 application. Thank you.

17 CHAIRMAN KENNARD: Thank you, Mr. Sallet. Mr.
18 Young.

19 Agenda Item: James R. Young, Executive Vice
20 President and General Counsel, Bell Atlantic.

21 MR. YOUNG: Thank you, Mr. Chairman. I will be
22 brief.

23 The discussion this morning has already touched on
24 a number of the very important pro-competitive benefits that
25 the Bell Atlantic/GTE merger will offer. In the national

1 market for bundled services, a market that is now dominated
2 by a handful of firms, a market where the old distinctions
3 based on geography and types of service are rapidly eroding.

4 The combinations of AT&T, BTE, TCG, TCI, and now
5 throw in the IBM network on top, together with Sprint -- Mr.
6 Devlin was very modest, he never talked about his partners
7 Deutsches Telecom and France Telecom, which together are
8 larger than Bell Atlantic and GTE -- and of course MCI and
9 WorldCom have all recognized that no single company, no
10 matter how large or well funded, can go it alone and still
11 hope to compete in this market.

12 The major element in the national market for
13 bundled services is advanced data services. When you look
14 at the comments in this preceding none of the commentators
15 dispute that the merger will allow GTE/Bell Atlantic to
16 provide a range of advanced data services to many more
17 markets than either could alone. By affording GTE access to
18 Bell Atlantic's concentrated Northeast customer base and the
19 out-of-franchise affiliates of those customers the merger
20 will allow the combined company to build out on a national
21 facilities based network that will increase competition.

22 We have also heard about internet services and I
23 won't belabor those. But the point is, Bell Atlantic and
24 GTE have important complimentary skills that will help bring
25 forward a new range of internet services that will benefit a

1 whole range of customers, including consumers. We have
2 listed those in our application, some of those. One of the
3 most interesting is internet telephony, where the
4 complimentary skills of the two companies will offer an
5 important new service to consumers.

6 Yes, there have been a number of objections lodged
7 against the merger. First is the claim that this will
8 create a Bell East and a Bell West. I think the simple
9 answer to that claim, at least as it is directed to Bell
10 Atlantic/GTE, is look at the map that we attached to our
11 application. We did the merger with GTE because it offers
12 us the opportunity to go national. If we had been
13 interested in creating a super regional fortress we wouldn't
14 have done this deal, we would have done another deal.

15 A number of other objections have been raised.
16 Let me just touch on those briefly. As for the argument
17 that we are not meeting the merger commitments, that is just
18 flatly wrong. In our reply we will walk through those
19 merger commitments one-by-one. MCI likes to say it is not
20 true but it is true, we have met the requirement for
21 standardized OSS interfaces. Oh, it is true that in every
22 state you don't input exactly the same information because
23 the services are different from state to state but the
24 statement that we have not implemented uniform interfaces is
25 wrong and I would be happy to talk about that.

1 As far as the benchmarking issue, I think the
2 important thing to recognize is that after the Telecom Act
3 benchmarking takes on a whole new meaning. Benchmarking
4 should be done operating company by operating company. You
5 have detailed statistics, company by company that will show
6 you how benchmarking should work.

7 Let me add, that insofar as there is a claim that
8 losing GTE somehow interferes with benchmarking -- I have
9 been around this industry long enough to remember the day
10 several years ago when companies like mine said we should be
11 benchmarked against companies like GTE and companies like
12 MCI, together with the Justice Department and almost anybody
13 else involved said, "GTE is not a good comparison. You
14 can't benchmark GTE against Bell Atlantic." So, at least as
15 for us there are at least two good reasons why that
16 benchmarking argument doesn't make any sense.

17 Before my time is done, we have had a lot of
18 discussion about procedure this morning and I would like to
19 end, if I could, on a positive note. Regardless of what
20 differences we might have on the Commission's review
21 authority, one of the things I would like to congratulate
22 the Commission on is the fact that in this merger, unlike
23 the Bell Atlantic/NYNEX merger, the Commission has seized
24 the initiative, is moving ahead promptly in parallel with
25 what the Justice Department is doing.

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1 I have to tell you that I think this has expedited
2 the process and I want you to know that we appreciate it
3 greatly. You have listened to a lot this morning so even
4 though the red light hasn't come on I'd be happy to answer
5 your questions.

6 CHAIRMAN KENNARD: Thank you very much, Mr. Young.
7 Agenda Item: Questions and Answers.

8 CHAIRMAN KENNARD: There are some pretty serious
9 allegations flying around here this morning. Mr. Sallet,
10 you've alleged that Bell Atlantic is not complying with
11 conditions imposed by this agency in connection with the
12 Bell Atlantic/NYNEX merger. Mr. Mahoney, you allege, I
13 think, that Bell Atlantic is not complying with the very
14 important market opening provisions of the law. These are
15 serious allegations and we must take them seriously.

16 I think that it is incumbent on anyone making
17 these allegations to be specific so that we can have a basis
18 for understanding what these allegations are. So, I'm going
19 to ask you, Mr. Mahoney, if you can be more specific in
20 outlining for us how you believe Bell Atlantic is not in
21 compliance with the law.

22 MR. MAHONEY: Yes, Chairman, sure. I really think
23 the best way to do that might be to frame our experience in
24 dealing with Bell Atlantic. Let's take in the state of
25 Pennsylvania. The state of Pennsylvania we were granted our

1 CLEC certification in 1996, in February. We began
2 negotiations with Bell Atlantic in September of that year on
3 our co-location interconnection agreement. We signed it on
4 October 29, 1996 and shortly thereafter began the actual
5 technical negotiations for interconnecting, collocating into
6 their central offices, meet points for handing off traffic,
7 the unbundled rates that we were going to be offered and how
8 the elements were going to be unbundled.

9 That process which began in late 1996 stretched
10 through 1997 and into 1998, to the point where in the spring
11 of 1998 when we threatened to initiate a formal complaint we
12 began to get some cooperation from Bell Atlantic. In June
13 of that year we actually filed the formal complaint with the
14 Commission about their unresponsiveness.

15 It wasn't until that time that of the 9 issues or
16 11 issues -- and they are detailed in our comments -- that
17 of those 9 issues about 5 of them were resolved, 4 of them
18 remain open to this day. Bell Atlantic's insistence at the
19 time was that the only way they would continue to negotiate
20 and make concessions was if we withdrew our complaint, which
21 we agreed to do. We withdrew our complaint because entry to
22 the market is much more important to us. So, that is one
23 example I can provide you.

24 Another one, and I guess one that is very
25 important to us as a local competitor to the residential

1 marketplace is access to conduit and right of way that we
2 try to obtain from Bell Atlantic in certain areas in
3 Massachusetts where we are building our own plant. We are
4 attaching to the utility poles that are owned, primarily, by
5 the power company, however, there are certain segments of
6 the plan which require, by necessity, access to Bell
7 Atlantic poles.

8 In some cases we have been eight months in the
9 process of attempting to obtain pole clearance and
10 attachments. By not being able to obtain that clearance we
11 have effectively cold spots in our plant where we can do
12 most of the construction but because we can't interconnect
13 from one point to the other our plant is still idle today
14 waiting for that clearance. That process also involves
15 access to conduit in the state of New York and particularly
16 in the City. We have waited upwards of six months, at
17 times, to get access to conduit from Bell Atlantic in New
18 York.

19 So, that gives you a flavor for the types of
20 obstacles that we're encountering in order to bring
21 competition to the area.

22 CHAIRMAN KENNARD: Mr. Young.

23 MR. YOUNG: Yes, I'd like to respond to that.
24 Let's take the conduit first. I must admit I never thought
25 that my first opportunity to talk to the Commission, rather

1 than being the potted plant next to Mr. Sidenberg at the
2 last hearing, would get into issues like conduit. But,
3 let's take conduit in New York.

4 Conduit in New York is provided by a subsidiary of
5 ours called "Empire City." We keep detailed records of how
6 long it takes to provide conduit to ourselves and to others.
7 The average time it takes to provide conduit to Bell
8 Atlantic in New York is 112 days. It is a shorter period of
9 time for our competitors and we will lay that out for you in
10 detail in the complaint.

11 Does it take time to get conduit in New York?
12 Yes, it does. Getting conduit under the streets of
13 Manhattan is a complicated matter but we are completely non-
14 discriminatory in this matter.

15 In terms of access to the other pole and conduit
16 matters, I must admit, when I read that in the pleading I
17 called our people in Massachusetts. They told me they
18 didn't know anything about it so it is hard to respond to
19 that.

20 To step back from the details, to give you a
21 flavor of the big picture here, two weeks ago RCN's CEO, in
22 an interview with TR Weekly said that RCN was expanding --
23 remember RCN's presence is in the Northeast, in my footprint
24 -- he said that RCN was expanding beyond his wildest
25 expectations and the principle problems it had encountered

1 was because their growth was so rapid they were having
2 internal operational problems.

3 I think when you here a lawyer's list of conduit
4 here, pole there, a little thing over here you have to look
5 at that and take that into perspective. I would also ask
6 you to think about the remarks that Royce Holland made at the
7 ALTS Convention a couple of weeks ago where he singled out
8 Bell Atlantic for its efforts in opening its markets to
9 competition. I think when you look at those, you look at
10 the fact that people like AT&T have paid top dollar for
11 CLECs in our footprint, you put all those market facts
12 together I think they tell a pretty compelling story that we
13 have opened our markets to competition.

14 CHAIRMAN KENNARD: Mr. Young, these complaints are
15 always somewhat difficult because they often involve
16 disputed issues of fact, sometimes disputed issues of law.
17 Of course, our job is to sort all that out and come to a
18 determination. Let me just pose this question to you,
19 assuming that this Commission were to find that there was a
20 pattern of non-compliance by Bell Atlantic with these very
21 important market opening provisions in the law and in our
22 rules, then why should we grant the merger? If the company
23 is not in compliance and if there is a pattern of abuse here
24 why should we grant the merger? I'm not saying that there
25 is, I'm just saying assuming that there were to be such a

1 finding. And, I would like the other panelists to address
2 that question also.

3 MR. YOUNG: I think the good thing is that, at
4 least in the context of Bell Atlantic/GTE merger, you don't
5 have to address that because there is no pattern. Mr.
6 Chairman, I do think that when it comes to the issue that
7 has been brooded about this morning about what the
8 appropriate standard for review of FCC in mergers, there is
9 no question that you and I have a difference there but I
10 guess I would like to leave it with you this way, I don't
11 think there is a need for us to go legal on you, in terms of
12 what the standard is, because we are very confident that our
13 merger meets your standard.

14 So, I don't want to seem evasive but I want to be
15 clear that I think I do have a difference with you on the
16 merger standard. What we are trying to do on our papers is
17 show that we meet the public interest standard as you have
18 laid it out.

19 CHAIRMAN KENNARD: I guess my question though is
20 if there is a pattern that is demonstrated, adjudicated, of
21 violations of the market opening provisions in our rules
22 could a company still meet the public interest standard?

23 MR. YOUNG: Well, I suppose it is like asking,
24 "Should you have approved the MCI WorldCom merger in view of
25 MCI's long pattern of slamming which is an abuse of the

1 customer marketplace?" I guess my view is if you found that
2 the pattern was so substantial I guess I'd have to concede
3 you could take it into account but, as I say, in our case
4 that is not the case.

5 CHAIRMAN KENNARD: Okay. Would the other
6 panelists like to address this question? Mr. Sallet.

7 MR. SALLET: Mr. Chairman, just on one point. It
8 is not surprising to hear a response to your question that
9 attacks us because that is a typical strategy we see. Just
10 for the record let me make plain that MCI has a long history
11 of seeking ways to combat slamming. We've been an industry
12 leader in seeking third-party verification so that there
13 would not be slamming because we are the company that is
14 hurt when unethical slamming takes customers away from us.

15 It is not a surprise that this goes on because in
16 the last three years, since the passage of the Telecom Act,
17 what we have heard from Bell Atlantic consistently is
18 blaming everybody else for its problems. Most recently,
19 even last week, with a Bell Atlantic executive starting to
20 criticize the third-party testing process in New York State
21 that it designed precisely so you will not be face, Mr.
22 Chairman, with factual questions that are difficult to
23 unwind but so that a neutral party will judge the efficacy
24 of operating support systems. That test has not even begun
25 because of delays attributable to Bell Atlantic and it is a

1 disappointment that Bell Atlantic is now criticizing the
2 process.

3 Mr. Chairman, you asked for specifics. If I might
4 just give you one on the suggestions we made that the merger
5 conditions were not being met. As you know, in November of
6 this year it was incumbent upon Bell Atlantic to have a
7 uniform interface within its region, its whole region.

8 The purpose of that being included in the merger
9 order was very obvious, so that we would be able to train
10 our people once to use the same system for entering orders
11 in all of Bell Atlantic region but, in fact, if we want to
12 purchase a simple unbundled parts line with one feature, say
13 call waiting, for a new customer, of the 48 fields, computer
14 fields that need to get filled in that are listed in the
15 CLEC hand point, Bell Atlantic North and Bell Atlantic South
16 share only 9 of them.

17 There are only 9, in other words, that are going
18 to be filled in the same way in both regions. This is not
19 just a difference between regions, within the state of New
20 York, to give one example, in Massapequa Park if we want to
21 enter an order for residential service and someone lives on
22 45th Street, we must put in the abbreviation for street
23 "ST." or else the order is rejected but in Yonkers, in the
24 same state, if we use that same abbreviation the order is
25 rejected, it is not in conformity with the ordering

1 function. That is not a uniform interface.

2 When Bell Atlantic says its interface is uniform I
3 suppose it means they all use the same English language but
4 the fact that James Joyce and Mark Twain both wrote in
5 English did not mean they wrote the same book. The purpose
6 of the FCC's merger order was to ensure that the same book
7 was in use whenever our people had to enter orders and it is
8 demonstrably not.

9 CHAIRMAN KENNARD: Thank you. Mr. Mahoney.

10 MR. MAHONEY: Mr. Chairman, first of all, we don't
11 think the merger should be approved. We do think that the
12 pattern in terms of compliance with the 1996 Act has not
13 been met. We would encourage the Commission to hold some
14 hearings and have it demonstrated. We will provide our
15 evidence and let Bell Atlantic enter evidence on the record
16 as well to see whether or not they have in fact been
17 compliant because we think that is the cornerstone to this
18 whole issue.

19 We have been dealing with Bell Atlantic now for
20 three years in terms of trying to gain competition and we
21 have made in roads and we have made inroads through
22 persistent negotiations, through threats, through filing of
23 complaints. Our concern, quite frankly, we have also had
24 some dealings with GTE in Pennsylvania and in Virginia and
25 they have been far worse.

1 Bell Atlantic has at least had the desire to get
2 271 clearance, encouraging them to be somewhat cooperative.
3 GTE, on the other hand, does not have the same kind of
4 incentive and so just getting interconnection agreements out
5 of GTE has been like pulling teeth.

6 So, our concern is that you put the two entities
7 together and an affiliate then of Bell Atlantic already has
8 271 clearance or did not clearance because they didn't need
9 it and is able to provide intralateral calling, we are
10 concerned that the cooperation level is just going to become
11 that much more difficult.

12 CHAIRMAN KENNARD: Thank you. Other questions
13 from the bench?

14 COMMISSIONER NESS: I want to return to the
15 concept of benchmarking. Mr. Young talked about
16 benchmarking from state to state. I assume you meant that
17 the state commissions, by virtue of their regulation and
18 oversight, provide the benchmarking capability. Is that
19 right?

20 MR. YOUNG: What I meant, Commissioner Ness, was
21 operating characteristics company-by-company. I mean, we
22 already see it happening in our region. Other commissions,
23 like the Pennsylvania commission, the Massachusetts
24 commission look at the operating results of our company in
25 New York and then ask, "Well, why shouldn't we see the same

1 thing in Pennsylvania and Massachusetts?" And, of course,
2 they can also look to the operating capabilities of what is
3 going on in Wisconsin or Illinois or Michigan or Ohio.

4 My point to you, simply, is the 1996 Act, I think
5 that is one of the most important sources of benchmarking
6 information, which is all still there regardless whether the
7 merger occurs.

8 COMMISSIONER NESS: Mr. Sallet, did you want to
9 address that or Mr. Mahoney?

10 MR. SALLET: Yes, if I might, Commissioner Ness.
11 The suggestion was made earlier that somehow GTE is not
12 relevant to benchmarking. I would read the following
13 sentence from the Commission's order in Bell Atlantic/NYNEX
14 where the Commission said, "Further reductions in the number
15 of Bell companies or comparable incumbent LECs would present
16 serious public interest concerns."

17 I can't think of anything else that qualifies as a
18 comparable incumbent LEC more than GTE. So, it seems to me
19 clear that within the Commission's own precedent the
20 Commission very much is looking at GTE, along with the
21 Bells, to establish what it said in that order to meet the
22 additional burden in establishing that a proposed merger
23 will on balance be pro-competitive.

24 The fact of the matter is we will see the number
25 of companies coming be cut in half from eight to four at the

1 time of the Telecommunications Act to the point of the two
2 mergers we are discussing this morning are approved and we
3 will see, and I gave just one example in my own opening
4 statement, a series of ways in which the ability of the
5 Commission to assess how best to regulate until a
6 competitive market takes away the need for that regulation.
7 The Commission's efforts will be thwarted by having such a
8 few number of companies that, frankly, can eliminate
9 diversity that exists even today in the regulatory
10 marketplace.

11 COMMISSIONER NESS: Mr. Mahoney?

12 MR. MAHONEY: Just one quick comment, and that is
13 that when you talk about benchmarking and to the point of
14 whether GTE is an appropriate company to be compared in
15 those benchmarks, I would urge the Commission to look at the
16 statistics and results of GTE to date in terms of opening up
17 their markets to competition. The numbers are incredibly
18 low in terms of access lines that they have lost to
19 competition so if the Commission looks at benchmarking we
20 would encourage them to look at the elements that will make
21 up the merged entity going forward.

22 COMMISSIONER NESS: Mr. Young.

23 MR. YOUNG: Might I respond very briefly to that?

24 COMMISSIONER NESS: Sure.

25 MR. YOUNG: One of the reasons that GTE has never

1 been considered a benchmark is because the service
2 territories that they have are very much different than the
3 traditional Bell company service territories. We tend to
4 serve more urban concentrated areas. GTE serves places like
5 Paw Paw, Michigan, where I grew up. That is reflected in
6 these numbers of unbundled elements. You can play the same
7 game with Sprint.

8 Sprint, you know, is a local telephone company,
9 serves more than 8 million lines. They have yet, despite --
10 I'm sure Mr. Devlin's commitment to the principles of the
11 Act -- Sprint has yet to provide a single unbundled network
12 element. They have at least six states where they have yet
13 to provide a resale line. When you look at their
14 percentages based on lines of UNIs and of resale elements
15 compared to GTE, GTE looks great, about three times the
16 competitive development of Sprint. Now, I don't say that to
17 necessarily tweak Mr. Devlin, the point is that service
18 territories are different and the results are different.

19 COMMISSIONER NESS: Thank you.

20 CHAIRMAN KENNARD: Commissioner Powell.

21 COMMISSIONER POWELL: It is important to me that
22 some of these broad reaching and generic comments get
23 tailored to the question of merger specificity, which I
24 think is important.

25 Mr. Sallet, if I can with you, you mentioned a

1 number of things that don't seem to me immediately evident
2 as concerns that should be -- not necessarily not that they
3 are not concerns but that they really flow from the
4 specificity of the merger. For example, the well worn and
5 understood dissatisfaction that companies like yours have
6 with access charges seems to be legitimate but I question
7 what specifically about the merger makes that a source of
8 legitimate concern for us in this context, rather than
9 through our normal regulatory process which is addressing
10 access charges. There will be other questions.

11 MR. SALLET: Commissioner Powell, I think that is
12 clearly a critical question in your separate opinion and the
13 MCI WorldCom order. In a speech last week you outlined
14 criteria for how the Commission ought to look at mergers.
15 Last week, if I understood it, words that there be a strong
16 nexus between the complaints of people like me and the
17 circumstances of the merger. So, I appreciate the
18 opportunity to address that head on.

19 The difficulty with inflated access charges is
20 that when and if 271 approval is granted the incumbent LEC
21 will have the ability to artificially price squeeze
22 competitors, will have the ability to raise rival's costs by
23 forcing us to pay real money in access charges while it
24 internalizes the costs, basically becoming indifferent
25 whether the money goes from one pocket to another.

1 This is not a theoretical concern. A few years
2 ago NYNEX did precisely this.

3 COMMISSIONER POWELL: That's right but that's not
4 true today, as you have argued frequently in my office,
5 without the consequence of the merger.

6 MR. SALLET: And the consequence of the merger is
7 it gives them more access charges with which to price
8 squeeze. By one calculation in the record after the merger
9 42 percent of long distance calls that originate in Bell
10 Atlantic territory will terminate in Bell Atlantic
11 territory. As they capture both ends of more calls their
12 ability to price squeeze goes up dramatically because now
13 they -- there is no independent LEC to which at least, say,
14 the terminating charges must be paid and, so, for this
15 reason capturing both ends of the access charges makes a
16 significant qualitative difference in their ability to
17 execute a price squeeze regime.

18 COMMISSIONER POWELL: I want to follow up -- and
19 I've read your statement with respect to internet
20 discrimination. As I recall, this was a significant issue
21 with respect to your own merger in MCI WorldCom. Though I'm
22 not familiar with the statistics UUNet and some of the
23 backbone structures under the control of your own company
24 are as significant, if not significantly more significant,
25 than what might be at issue with BBN and then GTE. I just

1 ask you an open ended question with respect to that because
2 I was somewhat surprised the emphasis placed on it in your
3 statement when there are many who make similar complaints,
4 including GTE, about your own dominant position with respect
5 to backbone infrastructure.

6 MR. SALLET: The backbone market is a competitive
7 market. I want to be very precise on this. Our complaint
8 about the merger is not a complaint about BBN as a backbone
9 provider. BBN is relevant to the merger, it is relevant to
10 what the effect of applying 271 to the merged company will
11 be. It is relevant to demonstrate that GTE can easily
12 penetrate the Northeast because it has got 200 points of
13 presence off the BBN network, a majority of which are in
14 Bell Atlantic territory.

15 But, our internet point does not rest on the
16 backbone, it rests on the bottleneck. The bottleneck is the
17 copper. The local loop is the bottleneck to internet access
18 right now. What we are seeing with Bell Atlantic, with US
19 West, with other Bells, is an attempt to roll out xDXL
20 Services and then use those services to affect adversely the
21 now competitive market among internet service providers.

22 So, for example, both PacBell and Bell Atlantic,
23 if you want to buy ADSL service would charge you more if you
24 wanted to go to an independent ISP, say one that RCN owns.
25 Now, that is an attempt to use their bottleneck power over

1 the last mile for data to distort and influence the internet
2 services market which to date has been very competitive.

3 COMMISSIONER POWELL: But before using loaded
4 terms, I mean another economist might say that is an
5 efficiency, that is companies are dragging through our
6 office singing the praises of bundled offerings and the
7 ability for aggregate pricing values to be increased by the
8 combination of these things. I'm not saying that this isn't
9 a legitimate concern but I'm pushing back a little bit on
10 the quick jump to it being market monopolistic
11 discriminatory pressures versus simply a valued economic
12 efficiency for customers.

13 MR. SALLET: Yes, Commissioner, and so I will
14 point back, as you have done, to the MCI WorldCom merger.
15 In that merger the theory which caused the FCC to order us
16 as a condition to divest one of the internet backbone
17 markets was a concern not that we had a majority of internet
18 traffic but that because of network externalities and
19 possible tipping of the leader into a position of unfair
20 dominance in the internet market it was necessary to order
21 divestiture.

22 That logic applied to these two Bell mergers, each
23 of which would control one third of the access lines in the
24 nation, each of which are aggressively rolling out wide band
25 width in which they are trying to attempt in various ways to

1 tie it to an independent internet service provider market.
2 That theory applied to these facts, we believe,
3 Commissioner, demonstrates that the effect on the internet
4 market would be against the public interest.

5 COMMISSIONER POWELL: Does MCI WorldCom offer
6 internet service?

7 MR. SALLET: Yes, sir.

8 COMMISSIONER POWELL: Does it have networks over
9 which it provides those services, at least to large
10 significant business customers?

11 MR. SALLET: Yes.

12 COMMISSIONER POWELL: Does it take advantage of
13 the efficiencies of that combined offer?

14 MR. SALLET: Yes. And the difference is, if I
15 might, Commissioner, is that we built those networks
16 competitively. We didn't come to you and say, "We have to
17 merge with a large monopoly in order to be able to build out
18 those networks." We built those in a competitive
19 marketplace. We do not, and never have, exercised
20 bottleneck control. We are not failing to live up to the
21 Telecom Act as, I must say, Bell Atlantic is when it fails
22 to offer conditioned loops of the kind that would allow us
23 or RCN or anyone else fair opportunity to access internet
24 customers.

25 So, absolutely right, Commissioner, I am trying to

1 be careful, it is not efficiencies that I am noting, it is
2 the possibility of tipping into a position of dominance of
3 the kind that the MCI WorldCom merger order focused upon.

4 COMMISSIONER POWELL: I had another question but
5 I'll get to you later. I'll let me colleagues.

6 CHAIRMAN KENNARD: I wanted to jump in there on
7 the internet access issue. I am wondering, Mr. Sallet, you
8 made a very interesting argument about the bottleneck but
9 I'm wondering if you are stuck in a 1998 marketplace and
10 whether if the internet access market develops as we all
11 would hope and there would be alternative networks providing
12 internet access like the cable networks that are emerging to
13 do this, whether that will in effect cure this problem that
14 you are concerned about.

15 MR. SALLET: We have been all waiting for the
16 technological leap frog that makes copper obsolete. If and
17 when that comes, obviously, concerns about the control of
18 copper from a consumers vantage point will be very different
19 but at the moment copper remains the dominant means of
20 providing voice service and, frankly, data service.

21 Many more home internet connections today go over
22 the copper, even at 56k, than over cable modems. That is
23 why the Telecommunications Act unbundles the copper for both
24 voice and data and that's why we believe so strongly that
25 that market must be open and competitive before it is, we

1 believe, possibly worsened by the consummation of this
2 merger.

3 CHAIRMAN KENNARD: Commissioner Powell, I didn't
4 mean to cut off your last question if you had one.

5 COMMISSIONER POWELL: I just wanted to yield to
6 others but I was going to ask a question about benchmarking.
7 It seems to me that it is easy to throw that around as well
8 but what has to be focused on is benchmarking for what
9 purposes. The thing that occurred to me in response to the
10 question about benchmarking, whether GTE is legitimate, is
11 whether anyone's opinion changes if you think that the
12 greatest value of benchmarking is in the context of 271
13 application in which GTE will never be a party by virtue of
14 historical accident, more than anything else.

15 Professor Krattenmaker started his introduction by
16 saying what is important to note is their box. I meant to
17 ask him what the significance of that observation is but, it
18 seems to me, in benchmarking one might ask if what is really
19 driving your anxiety is local marketing opening measures
20 that are a component of that process, whether you would
21 still say that GTE plays a valuable process.

22 I can't help but to chuckle that all of you think
23 they are so horrible which means to me that they are a
24 horrible benchmark by which to measure anything by. But,
25 leave that one out in the interest of time.

1 MR. SALLET: Well, Commissioner, two points.
2 First of all benchmarking is not important solely in the 271
3 process. I refer here the Commission to the Sprint comments
4 which includes an affidavit from, I believe, Joseph Farrell,
5 in which Dr. Farrell points out the use of benchmarking in
6 two different ways in the Commission's price caps regime,
7 just one example of its use outside the 271 process.

8 Secondly, GTE can be of relevance even within the
9 271 process, although 271 does not apply to it. Why? If
10 for example, something is said to be not technically
11 feasible as part of the satisfaction of a checklist item
12 then if hypothetically GTE were doing it, were engaged in
13 it, that would be relevant evidence within the 271 process,
14 even though GTE was not itself governed by that section of
15 the statute.

16 CHAIRMAN KENNARD: Commissioner Furchtgott-Roth.

17 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.
18 Chairman. I have a question for all the panelists. Two
19 years ago the Commission approved Bell Atlantic/NYNEX
20 merger, a merger that ultimately involved combined entity
21 with roughly a thousand licenses.

22 Today, outside of this Commission, there is a
23 proposed merger between Exxon and Mobil that will lead to a
24 combined entity with nearly 1,600 licenses from this
25 commission. Can any of you point, in the statutory language

1 of the Communications Act, specific language that guides
2 this commission about which types of license transfers to
3 review? I should also note that each of you, perhaps, have
4 in the past few years had routine license transfers from
5 your company, to your company, that have been handled in an
6 administerial manner, even though you were large
7 telecommunications companies. Is there language in the Act
8 that instructs this commission about which license transfers
9 to review with great scrutiny and which ones not to? If
10 there is such language is there specific guidelines that
11 this commission has issued for parties outside of the
12 Commission to understand how best to proceed with license
13 transfers?

14 MR. MAHONEY: Commissioner, we don't profess to be
15 a communications law expert so I am really ill-equipped to
16 answer that question. I am not aware of any specific
17 guidelines, per se, that would discriminate the way you
18 handle one license against the other but I'm not really an
19 expert in that field.

20 MR. YOUNG: I may regret answering this question.
21 The way I have read the Communications Act I think the
22 important language is actually -- I mean it is actually
23 Section 7 of the Clayton Act that sets out procedures for
24 this commission to review mergers and in one particular
25 subparagraph, Subparagraph 4, of that lays out very

1 particular rules to be applied to regulated company mergers.
2 That, to me, has always been the starting point.

3 COMMISSIONER FURCHTGOTT-ROTH: But is there a
4 public interest standard in the Clayton Act?

5 MR. YOUNG: That's a competition standard, that's
6 a Clayton Act standard.

7 COMMISSIONER FURCHTGOTT-ROTH: But it's not public
8 interest per se?

9 MR. YOUNG: This goes back to my point a little
10 while ago. I know that I have a difference with some
11 members of the Commission about what we think the standard
12 is but it seems to me that's a point we may come down to
13 down the road, I hope we don't have to, because of what I
14 can show you about the benefits of the merger, including
15 benefits, just to touch on Mr. Sallet's point, benefits to
16 making the internet backbones, which is the real place where
17 there are competitive problems in the internet, not the
18 handful of DSL services that we are selling in a few
19 isolated markets but it is the internet backbone that is
20 dangerously concentrated and needs more competition and this
21 merger will make more competitive.

22 COMMISSIONER TRISTANI: I have to interject that
23 it may be some isolated markets but you are marketing pretty
24 heavily in this area, DSL.

25 MR. YOUNG: Oh, yes.

1 COMMISSIONER TRISTANI: Including to my home.

2 MR. YOUNG: I hope you'll buy it.

3 (Laughter.)

4 COMMISSIONER TRISTANI: It may be too expensive.

5 (Laughter.)

6 MR. YOUNG: But my only point is that when you
7 talk about something as big as the internet -- Commissioner
8 Powell talked about using loaded words like "leverage" -- it
9 is inconceivable to me to say that a service like this that
10 is just being rolled out that reaches now a very small
11 number of homes, which as the Chairman has pointed out, is
12 being marketed in competition with cable modem -- the idea
13 that you could use that relatively small piece of the
14 business to leverage market position in the internet is
15 unthinkable.

16 COMMISSIONER TRISTANI: I may follow up on that.
17 Excuse me for interrupting.

18 CHAIRMAN KENNARD: Mr. Sallet.

19 MR. SALLET: Commissioner, obviously the public
20 interest convenience and necessity test contained rather
21 broad language. It may not be as specific as matters of
22 process, for example, as your question suggests is possible.
23 But, I will say, Commissioner, as somebody who had some
24 responsibility for two large telecommunications mergers, one
25 of which was closed, in the last two years, I do not believe

1 that we are seeking this commission's scrutiny on these
2 mergers in any manner that is more severe, more strict, or
3 more searching than the scrutiny that the BT MCI and then
4 the successful MCI WorldCom mergers received.

5 CHAIRMAN KENNARD: Commissioner Tristani.

6 COMMISSIONER TRISTANI: Actually, I'd like to
7 follow-up on your difference in legal opinion on what our
8 review should encompass because you have alluded to it
9 several times today and I'd like to hear it.

10 MR. YOUNG: Well, if I might -- and I'll be very
11 brief about this. We have indicated in our pleadings our
12 view that this commission does have the option of reviewing
13 the merger under the Clayton Act, there are certain
14 procedures the Commission has to go through to do that. I
15 believe, as Commissioner Furchtgott-Roth noted before, the
16 Commission hasn't taken that route.

17 So, we have preserved in the filing that we made
18 with you the notion that I know some Commissioners object to
19 that in that case the Commission standard is very very
20 narrow. It is character and fitness.

21 But, as I said, I don't think this is the place to
22 have that argument because we are very much trying to
23 demonstrate to you that we meet the standard that the
24 Chairman has outlined.

25 COMMISSIONER TRISTANI: So, I guess you have an

1 alternative that -- I guess I don't quite get it. You're
2 kind of questioning, are you really questioning, or are you
3 saying that public interest doesn't matter?

4 MR. YOUNG: Forgive me, I guess I'm being a
5 lawyer.

6 COMMISSIONER TRISTANI: You sure are.

7 MR. YOUNG: But what is important to us, what is
8 most important to us -- and let me put a very dark underline
9 under this -- what is important to us is to try to convince
10 you that under whatever standard that you are going to apply
11 that we pass.

12 COMMISSIONER TRISTANI: I have one question to all
13 of you. We have talked about benchmarking. It seems to me
14 we are talking about many different things. I hear more
15 answers attuned to benchmarking that the companies do a mark
16 themselves. I'm thinking about benchmarking for the
17 regulator, how it aids the regulator, whether it is a
18 federal regulator or the state regulator or state consumer
19 advocates, to compare performance.

20 I know that there are many differences between,
21 let's say, GTE and Bell Atlantic and territories but GTE
22 does serve some sizeable urban areas, at least that's what
23 I'd heard. So, I would think there might be some comparence
24 there. But, leaving aside specifically just GTE and Bell
25 Atlantic, what are the values for regulators of having not

1 -- if we end up with four companies to compare against each
2 other as to eight?

3 MR. MAHONEY: What are the values? I think the
4 way I'd answer that, Commissioner is --

5 COMMISSIONER TRISTANI: Well, how is it valuable?

6 MR. MAHONEY: I think the potential value, of
7 course, in all benchmarking is to give the regulators, you
8 the Commission, an opportunity to determine how a particular
9 company is doing in terms of opening up their network, in
10 terms of complying with the act. The danger of limiting the
11 number of companies within the benchmark to four RBOCs, if
12 you will if all these mergers take place is the ability -- I
13 should say how you look at the data. Do you look at the
14 data on a company wide basis which has the ability for such
15 huge numbers to lose some of the impact on how a particular
16 competitor is doing in an area in a particular state.

17 I think the key should be to come up with
18 meaningful information that can be used by the regulators in
19 determining compliance with the Act.

20 COMMISSIONER TRISTANI: Am I correct that you're
21 still looking at it under a more narrow perspective of how
22 competitors benefit from this? I guess I'm thinking of
23 service quality of all these other issues that are very
24 important to regulators. Also, technology, I mean, some
25 companies say, "We can never do that." and then some