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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
The Global Venture of AT&T Corp. and British Telecommunications plc	)	**IB Docket No. 98-212**
	)	
Applications of AT&T Corp., VLT Co. L.L.C., Violet License Co. L.L.C., and TNV [Bahamas] Limited for Grants of Section 214 Authority, Modification of Authorizations, and Consent to the Assignment of Licenses	)	

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To: The Commission

Reply Comments of The Applicants

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To: The Commission

Reply Comments of The Applicants

The Applicants[1] and British Telecommunications plc ("BT") hereby reply to the comments and oppositions to their request for the authorizations required to establish and operate the proposed global venture between AT&T and BT (the "Global Venture").[2]

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[1] The Applicants include AT&T Corp. ("AT&T"), VLT Co. L.L.C. ("US LLC"), Violet License Co. L.L.C. ("US Sub LLC"), and TNV [Bahamas] Limited ("TLTD").

[2] Comments in Opposition to the Global Venture were filed by Cable & Wireless ("C&W") and GTE Service Corporation ("GTE"). Comments seeking additional information from the Applicants or the imposition of conditions on the Applicants were filed by STAR Telecommunications, Inc. ("Star"), MCI WorldCom, Inc. ("MCI WorldCom"), Esprit Telecom (U.K.) Limited ("Esprit"), Level 3 Communications, LLC ("Level 3"), and Sprint Communications Company L.P. ("Sprint"). Comments also were filed by the Secretary of Defense ("DOD") and the Federal Bureau of Investigation ("FBI") advising the FCC of the process for addressing national security and law enforcement issues concerning the Global Venture.

Introduction and Summary.

In the Public Interest Statement filed with their applications (the "Application"), Applicants made a detailed showing of the profound public benefits that will result from the implementation and operation of the proposed Global Venture. It will enable AT&T and BT to be far more effective than either could be alone in meeting the intense competition from MCI WorldCom, Global One, C&W, and other firms in the provision of global corporate communications services to multinational corporations ("MNCs"). The venture similarly will accelerate AT&T's and BT's deployment of the internet protocol-based ("IP") services that MNCs and other customers are increasingly demanding. The Global Venture will further put greater downward pressure on the inflated settlement rates charged by dominant foreign carriers outside the intensely competitive route between the United States ("US") and the United Kingdom ("UK"). The Commission recognized these very public benefits in its decision approving the then-proposed merger of BT and another non-dominant US carrier (MCI), and dismissed competitors' objections on the ground that there were "many firms" who could obtain and successfully use the freely available "inputs" required to provide global services.

No MNCs or other consumers of global services have objected to the Global Venture in any public forum. However, several of the Global Venture's prospective global service competitors either have opposed the grant of the requested authorizations outright or have requested that various conditions be imposed on such grants. Ironically, the most strident comments are those filed by the carriers that are today the world's four leading providers of IP-based services: GTE, C&W, MCI

WorldCom, and Sprint. There is not the slightest substance to any of the objections raised by these or other commenters.

First, GTE and C&W urge the Commission to reject the authorizations outright on the ground that the Global Venture will somehow obtain monopoly power over the provision of services to MNCs. This claim is so far-fetched that it is not even raised by MCI WorldCom, Sprint, or any of the other commenters who compete in this market (Star, Esprit, and Level 3). Nonetheless, GTE and C&W allege that AT&T and BT collectively dominate the provision of services to MNCs today. GTE further alleges that AT&T and BT can and will transfer their current alleged dominant shares to the Global Venture's IP-based network and adopt proprietary interfaces for software that will "lock in" not just existing customers but eventually virtually all the world's MNCs.

However, there is simply no support for any of these allegations. Indeed, they are refuted by the sources on which GTE and C&W rely, including their own public statements. First, all the publicly available data show that AT&T and BT collectively now provide a small minority of the global services used by MNCs. In this regard, no one disputes (and C&W has elsewhere explained) that the alliances with foreign carriers on which AT&T has heretofore relied had serious limitations and that BT's prior partnership with MCI has collapsed due to the intervening MCI WorldCom merger. Second, GTE's claim that AT&T and BT will have closed customer interfaces is false; indeed, GTE here relies on a document that refutes GTE's own allegation. Third, the defining characteristics of the internet and MNC markets would preclude successful implementation of the predatory strategy that GTE hypothesizes, irrespective of whether

AT&T and BT today had a majority of the MNC's global services business or the intentions GTE falsely ascribes to them.

In particular, the Commission has found that MNCs are sophisticated customers that have the demonstrated ability and incentive to shift their business to the carriers that offer the best value, regardless of the relationships the MNCs have had with other carriers, the strength of other carriers' brands, or any other factors. In this regard, MNCs can and do structure their purchasing decisions to assure the availability of multiple sources of supply and to preclude any possibility that they are locked-in to one of the many carriers in the market. For these reasons, the Commission has repeatedly held that there is no risk that any one carrier can obtain market power in an MNC market when, as here, there are "many [other] firms" in the market who have access to the transoceanic transmission capacity and other inputs required to serve MNCs. The Commission approved the proposed merger of BT and MCI in 1997 on this basis. The competitive analysis in this case should therefore begin and end with the fact that the inputs required for success in an MNC market are far more readily available today – as is dramatically confirmed by the vast array of firms who have entered the market and grown rapidly in the intervening years.

Second, C&W and others have made a series of separate claims that the Global Venture would also adversely affect the price or output of "mass market" international MTS services. C&W's initial claim is that approval of the Global Venture will somehow give BT exclusive rights to terminate outbound AT&T calls to the UK and will impair competition from C&W and others for traffic on the US-UK route. C&W "supports" this claim both by erroneously claiming that it now has lower accounting rates

than BT and ignoring that BT's rate on the US-UK route is virtually the lowest in the world. But the short answer to C&W here is that the International Carrier Services unit of the Global Venture will face intense competition from other firms and can and will select the most cost effective UK provider to terminate calls from the US.

C&W also contends that the Global Venture could impede competition by reorginating traffic in the US. While AT&T raised that possibility in the BT-MCI merger proceeding (*before* the conditions for reorigination of traffic by others had been established), C&W ignores that, even then, the Commission rejected this objection. It found that all US carriers have an "equal ability and incentive . . . to reoriginate traffic through the US," and there is no possible distinction between AT&T and MCI on this score. Similarly, C&W's claim that AT&T and BT have monopoly control over "transiting" facilities on "thin" routes is baseless and was rejected in the Commission's *AT&T International Non-Dominance Order* for that reason.

Third, commenters have also sought a series of conditions or "clarifications" that the Applicants will comply with Commission regulations and orders. But that would serve no purpose, for the Applicants are under this duty in all events. For example, the Applicants concede that the Global Venture entities must comply with the Commission's international settlements policy and to the rules applicable to US common carriers. They further concede that, because BT is classified as "dominant" under the FCC's rules, the Global Venture entities (but not AT&T) are affiliates of BT and will be subject to the rules applicable to US affiliates of foreign carriers classified as dominant. Similarly, the Applicants concede that the Global Venture entities (and AT&T) will be barred from accepting "special concessions" from BT. At the same time, the

Commission's rule against accepting special concessions does not apply to transactions among the Global Venture entities or between one of them and AT&T.

Finally, commenters seek other conditions that are extraneous to this proceeding and can be properly raised only in other proceedings. For example, carriers such as Esprit raise claims involving the domestic regulation of BT that are being addressed in proceedings before OFTEL. In its comments, MCI WorldCom, again, seeks to litigate in an adjudicatory licensing proceeding the industry-wide issue of whether cable television systems can be and should be required to offer broadband access to multiple internet service providers. For its part, Sprint has sought to raise claims about AT&T's provision of access to cable landing stations that are irrelevant to this proceeding, have been elsewhere held by the Commission to raise no competitive concerns and to be contractual matters relegated to C&MA proceedings, and that are further meritless.

Each of these points is developed in more detail below. As this discussion will demonstrate, the requested authorizations can be and should be granted forthwith.

I. The Global Venture Will Not Retard, But Will *Promote* Competition In The Provision of Global Services To MNCs.

The most extreme challenges to the Application are those raised by C&W and GTE. They contend that the requested authorizations should be rejected outright on the ground that approval of the Global Venture would give it an effective monopoly over the provision of global services to MNCs, thereby reducing MCI WorldCom, Global

One, C&W, and others to "fringe" players. These claims rest on two basic allegations. First, C&W and GTE assert that AT&T and BT are the two leading competitors in a "global" MNC market that now includes only a handful of firms and that the joint venture would thus eliminate the most important competition that exists today and effectively create a monopoly. Second, although there is widespread agreement that MNCs will obtain services from open IP-based networks in the future, GTE claims that the Global Venture will be able to dominate these future services by adopting proprietary interfaces that "lock-in" MNC customers.

As explained in Parts IB and IC below, each of these claims is frivolous. The available data show that MNCs obtain service in an intensely competitive market in which BT and AT&T have had small shares, and that, in all events, the Global Venture does not diminish the number of competitors but merely reconstitutes the prior alliances of US and European carriers in response to the MCI-WorldCom merger. Further, rather than supporting a claim of potential monopolization, the fact that MNCs will hereafter be served through IP networks flatly forecloses that possibility.

However, as explained in Part IA, there is an even more fundamental threshold objection to the claims of GTE and C&W. They are irrelevant under the Commission's controlling precedents. The Commission has held that when, as here, transport capacity and other critical inputs are available to all carriers, there is no possibility of "dominance" of an MNC market and no reason to attempt to assess the current "market shares" or intentions of the parties to a venture.

A. The Undisputed Facts About The MNC Market Foreclose Any Claim That The Global Venture Would Be "Dominant."

Although there is no substance to any claim that AT&T and BT are today "dominant" in the MNC market (Part IB, *infra*), there is no reason for the Commission even to address the combined "market shares" of these carriers. Nor is there any reason to consider GTE's claim that applicants intend somehow to transfer their current shares to the new IP environment and "lock" them in permanently. The reality is that any suggestion that MNCs could become dependent on a single dominant global supplier is ludicrous in view of the sophistication, purchasing power, and other characteristics of MNCs. That is why the Commission's controlling precedents have held that there is no possibility of dominance in any global MNC market in which "many carriers" participate and in which all have ready access to the "inputs" required for success: transoceanic capacity, access to foreign operational agreements, and technical knowledge. The inquiry can thus began and end here with the undisputed fact that there is a superabundance of excess transoceanic capacity which is not controlled by AT&T and BT and that there are no other barriers to entry by any carriers.

The starting point in analyzing any market power claim is the historical fact that large business customers have the demonstrated ability and incentive to use whatever carriers offer the best value and to assure that they are not captives of a single carriers. Contrary to the assertions of C&W and GTE, large business customers do not select their telecommunications suppliers based on past relationships, brand names, size, headquarters location, or any other factors unrelated to the price and quality of the

services that will be provided in the future.[3] The reality is that these customers purchase extremely large amounts of services that are of critical importance to the customers' own competitiveness, and are, as the Commission has found, "highly demand-elastic" customers.[4] They go to great extremes to assure that they may always choose the suppliers that offer them the best combination of quality, capabilities and prices. *See* Finnegan Aff. at ¶¶ 3, 8.

The MNCs' purchasing practices are vivid proof of the point. As the Commission has found, they are "sophisticated and knowledgeable about the products they buy," and they make purchasing decisions based on "advice from consultants and in-house telecommunications experts about the service offerings and prices that are available to them."[5] Further, as C&W concedes, at 12, they obtain services almost exclusively through structured competitive bid processes. These processes commence with a formal request for proposal ("RFP") that sets out the customer's multi-million dollar requirements in great detail. These RFPs often specify the standards and protocols that must be supported or take other steps to assure compatibility of the customers' software and their carriers' communications services. *See* Finnegan Aff. at ¶ 6.

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[3] *See Application of WorldCom, Inc. and MCI Communications Corp.*, CC docket No. 97-211 (rel. Sept. 14, 1998), ¶ 132 ("*MCI WorldCom Merger Order*") ("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" in competition for large business customers").

[4] *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271, 3306, ¶ 65 (1995) ("*AT&T Non-Dominance Order*").

[5] *AT&T Non-Dominance Order*, 11 FCC Rcd. at 3306. *See also* Finnegan Aff. ¶ 3.

Most MNCs also engage in "multi-sourcing:" that is, purchasing global communications services from two or more different providers and thereby further minimizing their dependence on any one carrier during the term of the contract and beyond.[6] In this regard, MNCs not only allocate their telecommunications purchases by region and service type, but often purchase the same service from two or more carriers in the same region. That assures the carriers with which the customer deals must each support the same protocols and that the customer's software will run on multiple networks. It also causes further reductions in the costs of "switching" away from a supplier that fails to meet the customer's expectations (or, for example, threatens "lock-in"), for it means the customer can tap alternative sources of supply simply by purchasing greater quantities from another of its existing carriers. *See* Finnegan Aff. ¶¶ 4, 8.

In these circumstances, the Commission has recognized that no carrier has the ability to dominate so long as each has the ability to obtain international transmission capacity and other "critical inputs." *See, e.g., Merger of MCI Communications Corp. and British Telecommunications plc*, 12 FCC Rcd. 15351 (1997) ("*BT/MCI II*"); *MCI Worldcom Merger Order*, ¶¶ 131.[7] As the Commission found late last year, "[g]iven that

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[6] *See, e.g.*, James Lindsay Freeze, et al., "MCI WorldCom's Encore," *The Forrester Report*, December 1998 ("more than half of large businesses surveyed don't want one-stop shops, and most have already chosen multicarrier relationships. . . . Multinational corporations' fears about putting all of their eggs in one basket will inhibit the success of MCI WorldCom's one-stop-shopping plans") (citations omitted). *See also* Finnegan Aff. ¶ 4.

[7] *See also, e.g., AT&T Non-Dominance Order*, 11 FCC Rcd. at 3305-06, ¶¶ 63-65; *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd. 5880, 5887-99 (1991) ("*First Interexchange Competition Order*"); *Policy and Rules Concerning rates for Dominant Carriers*, 4 FCC Rcd. 2873 (1989) ("*AT&T Price Cap Order*") (AT&T services targeted at large business customers exempted form price cap regulation).

transport capacity is [widely available and] growing substantially, barriers to entry are low." *Id.* ¶¶ 91-92, 106-07. The Applicants' Public Interest Statement, at 25-29, detailed the current availability of transoceanic cable capacity, the Applicants' small shares of that capacity (collectively less than 6% on both ends of the US-UK route, for example), and the massive publicly-announced expansion plans for new cable.[8] Each day brings additional proof that no carrier need fear an international transport capacity shortage that would squeeze it out of the global corporate communications services business.

For example, three years ago, approximately 32 gigabits per second of capacity landed in the US.[9] Today there are an additional 100 gigabits per second, a quadrupling of capacity in just three years, and by 2001 there will be *one terabit per second* (1,000 Gbps) of such capacity, an increase of over 650 percent in two years and a thirty fold increase in five years. The trend will continue – Project Oxygen alone, scheduled for operation in 2001, promises an *additional* terabit of capacity with 99 landings in 78 countries.[10]

Continued technological innovation promises even greater capacity increases over *existing* cables. Optical amplification and dense wave division multiplexing, for example, have increased the capacity per fiber pair from 5 to 160 Gbps

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8 *Compare MCI/Worldcom Merger Order*, ¶ 91 (estimating that AT&T and BT together own less than ten percent of transatlantic cable capacity) *with id.* (estimating that C&W owns more than twelve percent of such capacity) *and* Press Release, October 14, 1998, www.cplc.com/press/1998/p98Oct14.htm (claiming that C&W owns half of global international fiber optic capacity).

9 *Telegeography 1999*, at 92.

10 Project Oxygen press release, January 27, 1999.

over the past five years. Sprint has announced a new technology that it claims will "enable one pair of Sprint fibers to handle seventeen times today's combined volumes of AT&T, MCI, and Sprint without having to construct any new fiber."[11] In light of these advances in technology and new installation, one industry source estimates that *over 50%* of U.S. transoceanic capacity will be idle in 2000.[12] In short, there can be no serious argument that any carrier lacks access to transport capacity,[13] and that should be the end of the matter – regardless of their current share, AT&T and BT have no ability to dominate the global MNC business.

The best evidence of this fact is the many firms that have entered this market and the incredible rate at which they have grown. Global One – the consortium of Sprint, Deutsche Telekom, and French Telecom – has over 1,400 points of presence in over 65 countries,[14] topped $1.1 billion in revenues in 1997,[15] and states that it has "one of the world's largest and most advanced ATM-based networks, which will be deployed

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11 *Id.*

12 *Telegeography 1999*, at 142.

13 The Commission has likewise determined that carriers "generally are able to obtain operating agreements or use alternative arrangements to provide international services." *MCI Worldcom Merger Order,* ¶ 131. The ISP ensures this for traffic to and from the U.S.; where the ISP has been relaxed, it is because foreign market liberalization provides adequate protection. Further, the rapidly increasing availability of hubbing services provided by C&W and others means that operating agreements are often no longer even critical inputs.

14 *See* Public Interest Statement at 22-23; January 19, 1999 Letter from Mark Schneider and David Lawson to Magalie Roman Salas at 5.

15 "Facts About Global One," www.global-one.net/en/press/facts_body.html.

in more than 200 cities in over 46 countries by the end of 1998."[16] WorldCom was an unknown player in international telecommunications markets only a few years ago, but had (prior to its merger with MCI) more than $1.13 billion in international revenues in 1998, a 56% increase over the previous year.[17] The combined MCI WorldCom advertises "its global network in 114 countries" designed for "multinational companies and their employees,"[18] and is "building what it claims will be the first pan-European network."[19] C&W reported international telecommunications revenues of approximately $4.9 billion in 1998,[20] from 15 million customers in 70 countries.[21] Equant's revenues grew 31.2% in the first half of 1998 to $319.5 million ($639 million on an annual basis),[22] and Equant now claims to operate "the world's largest telecommunications network," reaching 100 countries and 600 cities.[23] Qwest and Royal KPN, which announced a joint venture in 1998, tout their capabilities as "much more aggressive

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16 "*Global One* Announces New Service for Global Business with high Bandwidth Needs," Press Release, October 15, 1998, www.global-one.net/en/press/bandwidth.html.

17 "MCI WorldCom Reports Fourth Quarter 1998 Results," Press Release, February 11, 1999, http://www.mciworldcom.com/cgi-bin/pr/display.pl?cr/19990211-2.

18 *See* http://www.wcom.net/about_worldcom/.

19 "MCI's Dash For Growth," *Financial Times*, January 13, 1999.

20 "Operating and Financial Revenue," Cable & Wireless Annual Report and Accounts 1998, at 1.

21 "Cable & Wireless Extends its Global Network into India," Press Release (January 22, 1998), http://www.cwgmk.com/press/27jan98.html.

22 *See* "EQUANT Announces Financial Results, Revenues Increase 31.2% EBITDA Grows by 203%," Press Release, September 10, 1998, http://www.equant.com/home.htm.

23 EQUANT 1997 Annual Report, at 8.

competitors" than AT&T and BT[24] in support of 40% annual growth projections.[25] These are but some of the many large, aggressive competitors that the Global Venture would face. *See* Public Interest Statement at 20-21. The intensity of the competition is starkly illustrated by the fact that long established telecommunications carriers and new entrants alike are announcing entry, expansion, investment, successful bids, and plans for alliances on virtually a daily basis.[26]

B. C&W's And GTE's Assertions That The Global Venture Would Eliminate Substantial Competition Are Unsupported And False.

In any event, the claims that AT&T and BT today have high shares of the global MNC business are not merely irrelevant. There is no support whatsoever for the assertions that AT&T and BT have more than a fraction of this business, much less that the venture would combine the two leading firms.

Indeed, C&W and GTE do not dispute that all the publicly available data provide that AT&T and BT collectively have relatively small shares of the global MNC services business.[27] Rather, they rely on other "data" and unsubstantiated claims that are

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24 "Qwest, Dutch Carrier KPN Form IP Network Venture," *Telecommunications Reports*, November 23, 1998.

25 *Id.*

26 *See, e.g., id.*; "*Global One* Announces New Service for Global Business with High Bandwidth Needs," Press Release, October 15, 1998, www.global-one.net/en/press/bandwidth.html.

27 *See* Public Interest Statement at 19-21; January 19, 1999 Letter from Mark Schneider and David Lawson to Magalie Roman Salas at 3-4.

irrelevant to any assessment of the role that AT&T and BT now play in meeting the needs of MNCs.

GTE begins with claims that AT&T and BT have high shares of the *domestic* services in their home markets.[28] But a high home market share does not mean a high global share – even with respect to international services originating in the carrier's own country.[29] For example, although GTE states that BT controls over 75% of UK domestic traffic, the latest data from OFTEL show that BT's share of outgoing international long distance ("IDD") was only 48% as of the first quarter of 1998, and that its share of outgoing *business* IDD was less than 33%.[30] Further, when the Commission previously found AT&T nondominant in domestic (and international) services, it specifically rejected the contrary claims that were based on the same domestic market share data on which GTE here relies. The Commission held that these data were

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[28] *See* GTE at 2, 7.

[29] C&W's related observation, at 13, that many MNCs are *headquartered* in the US or UK adds nothing. MCI WorldCom, Sprint, C&W, and many other large telecommunications carriers are also headquartered or have significant operations in one or both countries. In any event, C&W's own experience confirms that MNCs do not choose on the basis of where carriers are headquartered but on the terms and capabilities competing carriers offer for particular services or in particular geographic areas: C&W recently touted its win of a $300 million contract from US-based Andersen Consulting's ServiceNet, quoting the customer's accolade that "Cable & Wireless . . . both understood – and more importantly could deliver on – our business need for fully managed end-to-end communications across a broad global reach." Press Release, October 14, 1998, www.cwplc.com/press/1988/p98Oct14.htm.

[30] *See* OFTEL Market Information Update, November 1998. AT&T's share internationally is likewise substantially less than the 65 percent GTE ascribes by reference to home market access lines. In 1997, for example, AT&T's share of *all* US-billed IMTS minutes was 45.4%. *See* FCC 1997 Section 43.61 International Telecommunications Data. Even this overstates AT&T's share because not all carriers report, and, like BT, AT&T has a higher share of consumer traffic than business traffic.

irrelevant there for the same reasons that they should be irrelevant here – i.e., numerous strong competitors, available capacity and sophisticated purchasers.[31]

GTE next cites a press release stating that the Global Venture will begin with over 6000 "international MNC accounts." But that is a small share of total accounts,[32] and in no sense distinguishes the Global Venture from its many competitors. Among 30,000 business customers Global One claims to serve worldwide, for example, are Acer, Apple Computer, Credit Lyonnais, Hewlett Packard, Mercedes-Benz, Rockwell, Samsung, Unilever, and Volvo.[33] WorldCom's broad MNC customer base includes BP Oil International; JP Morgan; Societe General; Commerzbank AG; BMW/Rolls Royce; UBS; Ericsson; and Chase Manhattan Bank.[34] And Equant serves American Express, Bayerische Verinsbank, Hilton, Interpol, ING Bank, P&O, Rhone-Poulenc, Samsung, SGS Tomson, Shell, SWIFT, Swiss Re, Xerox, Generale de Banque,

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[31] *Compare AT&T Non-Dominance Order*, 11 FCC Rcd. at 3306, *with* Part IA, *supra*.

[32] Applicants estimate that there are more than 80,000 "international MNC accounts" as that term is used in the GTE-cited press release, including 26,000 "international intense" companies, and 50,000 "international aspiring" companies. *See also* United Nations Conference on Trade and Development, "World Investment Report 1997, Transnational Corporations, Market Structure and Competition Policy" at Table I.2, p.6 (estimating that there are a total of 44,312 transnational corporations); Dun & Bradstreet, Directory of "Principal International Businesses--1998/99" (providing information on approximately 50,000 "leading enterprises throughout the world").

[33] "Facts About Global One," www.global-one.net/en/press/facts_body.html.; "France Telecom and *Global One* Selected for 3 billion FF Credit Lyonnais Global Telcoms Contract," Press Release, January 14, 1997, www.global-one.net/en/press/credit.html; "*Global One* to Provide Apple Computer with *Global Managed Bandwidth Service* Throughout Europe," Press Release, December 21, 1998, www.global-one.net/en/press/12_21_98.html.

[34] WorldCom 1997 Annual Report at 15.

British Airways, SABRE, Delta Air Lines, Lufthansa, Thomas Cook, Nortel, Avis, KLM UK, Amtrak, EDS, and Virgin Atlantic, among others.[35]

In any event, customer accounts cannot possibly serve as a proxy for market share in a MNC market. Because of the prevalence of multi-sourcing, many of the same customers on any AT&T/BT list of "international MNC accounts" would also appear on lists of the international MNC accounts of MCI WorldCom, Global One, C&W, Equant, Star, Qwest, Level 3, Teleglobe, Esprit and the many other competitors identified in the Applicants' Public Interest Statement. For many of these customers, AT&T and BT are not even the primary suppliers. *See* Finnegan Aff. ¶ 5. For some, AT&T and BT provide only very limited services for a small fraction of the of the particular customer's multi-million dollar annual spend. *See id.* ¶ 3.[36]

C&W makes a series of other counterfactual claims that have no support. For example, it baldly asserts that BT or AT&T "usually win the bid" as among the "three" to "five" potential suppliers that make a MNC's "short-list." *See* C&W at 12. But this assertion is unsupported and insupportable, as the continued growth of more than a dozen strong competitors makes clear. The individual carriers that comprise MNC "short lists" (and there are often many more than five serious bidders) vary from MNC to

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[35] EQUANT 1997 Annual Report at 6, 10, 12, 20.

[36] GTE makes token efforts to deflate the roles of a couple of Global Venture's many competitors. Here, GTE intentionally misleads, suggesting a meaningless comparison of Global One's 1997 revenues with the Global Venture's *projected* total revenues in 2000 (a significant portion of which GTE concedes are attributable to irrelevant projected sales of international carrier services), when the total market is projected to be many times larger. Tellingly, GTE simply ingores MCI/Worldcom and most of the nearly twenty other competitors identified in the Public Interest Statement.

MNC and deal to deal, precisely because both customers' needs and carriers' strengths vary. *See* Finnegan Aff. at ¶ 4. Further, whatever C&W's perception, the reality is that AT&T and BT win contracts on only a small minority of the MNC deals put out for bid. Even when they do "win" a contract, moreover, there are often other winners as well, reflecting the customer's multi-sourcing strategy.

In the end, therefore, GTE and C&W are reduced to inviting the Commission to "gather" more information.[37] But as explained in Part IA, all the relevant information is already in the record, and it precludes any claim of dominance by AT&T and BT. Moreover, the information on relative market shares that does exist is consistent with the conclusion that the Commission's controlling precedents require. There is thus no conceivable reason or basis to conduct any further inquiries on these scores.

That is particularly so because there is no dispute about the other facts that establish that the creation of the Global Venture would affirmatively promote competition and further the interests of consumers. In this regard, it is simply wrong for C&W and GTE to assert that the venture would reduce the number of competitors in a global MNC market. The venture represents no more than a reshuffling of the preexisting relationships among US and foreign carriers. AT&T is exiting its informal alliances with other European carriers and establishing a venture with BT instead. Similarly, now that MCI has abandoned BT and merged instead with WorldCom, BT is obtaining a different US partner.

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[37] *See* GTE at 9, n.34.

It is telling that neither C&W nor GTE even attempt to contest the Application's showing that the Global Venture will make AT&T and BT more effective competitors than either could now be through continuation of their pre-existing relationships. To the contrary, C&W has elsewhere eloquently confirmed the point made in the Application: if AT&T were to continue to serve MNCs solely through contractual alliances with foreign PTTs (like World Partners), it would some day face serious limitations in meeting the evolving needs of MNCs.[38] While the enhancement of AT&T's and BT's capacity to meet these needs is against the interests of C&W and GTE as competitors for MNCs' business, it undoubtedly promotes competition and furthers the public interest.

C. The Industrywide Shift To IP-Based Networks Will Independently Preclude The Venture From Acquiring Or Exercising Market Power.

As GTE recognizes, at 2-3, its further claim that the Global Venture could use proprietary interfaces to "lock-in" most MNCs must be rejected outright if the Global Venture now has no market power. *See* Ordover/Willig Aff. at ¶ 23 ("If there is no monopoly power, that should be the end of the analysis"). Because the venture has no such power now for the reasons stated above, the Commission need not address the

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[38] *See* "About Global Businesses," http://www.cableandwireless.com/ business/ transglo/about.htm ("global alliances are notoriously difficult to pull off – witness the high number of failures when people have tried it. Even when alliances are agreed, the tensions they create can prevent them delivering the promise. And while alliances can give scale, they can also jeopardise some of the other qualities needed such as speed and innovation").

allegations that AT&T and BT can and will dominate the MNC market by requiring customers to connect their computers and software to proprietary, "closed" interfaces.

However, these claims would be spurious even if there were a basis to find AT&T and BT to be dominant today. The reality is that the undisputed fact that the industry is moving to IP-based networks forecloses any possibility of the anticompetitive conduct that GTE purports to fear.

First, any suggestion that the widely expected shift to IP-based networking will permit greater use of proprietary standards has it exactly backwards. "Although proprietary standards were the norm for computing through the 1980s, the engineers who built the Internet blew them out of the water."[39] "After 25 years, the original open standard, the Internet TCP/IP networking protocol, is in wider use than ever, while proprietary platforms . . . are in precipitate decline."[40] Indeed, the IP landscape is littered with the failed attempts of industry leaders to swim against the rushing tide of open IP standards. *See* Affidavit of Thomas London at ¶¶ 10-11 ("London Aff."). That reflects both the robust IP standards-setting process and increasing customer demand for open standards and the enormous benefits in innovation, interoperability and cost savings that accompany them. *See id.* ¶¶ 8-11. These same powerful forces are already driving

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[39] Greg Olson, "An Open Internet Helps Business, Too," *New York Times*, July 19, 1998, Section 3, at 12 ("Internet standards evolved through collaboration among developers who believed in completely open access to software source codes, referred to today as "open source" software. The integrity of the Internet can be attributed largely to a broad range of open-source applications that enable every facet of Internet function. Internet browsing, Web site serving, Internet addressing and E-mail routing . . . all owe their market pre-eminence to open-source software development").

[40] Dan Sweeney, "Open Network Standards Moving Toward What?" *Cellular Business*, September 1997.

open standards in IP-based telecommunications, *see id.* ¶ 10,[41] where interoperability among networks is even more critical than in the computing.[42] In this regard, while MCI WorldCom, C&W, GTE, and Sprint provide the vast bulk of today's IP services, it is telling that GTE does not suggest that it or any of these other firms have "locked-in" a single customer through proprietary interfaces. *See* Ordover/Willig Aff. ¶¶ 30-31, 35.

Second, GTE's claim, at 4, rests on the false premise that the Global Venture plans to adopt proprietary customer interfaces ("APIs") that "will be available only to AT&T/BT and its allies." That is simply wrong, and GTE's assertion is refuted by the very A&T and BT documents on which GTE has relied. Contrary to GTE, BT and AT&T could hardly have been clearer in stating that the Global Venture plans "to set open APIs in the industry for a platform that would allow any customer of the partnership to create his own services, both local and global, and support innovative third-party

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[41] *See, e.g.,* "Voice Processing: Level 3 Communications, Bellcore Announce Merger of Protocol Specifications for Voice Over IP," *EDGE* (November 23, 1998); http://www.wired.com/news/news/business/story/story/17794.html ("Cisco and Motorola plan to publish proposed technical standards for their wireless networking system in May . . . . The two companies said their strategy is to create an 'open architecture' – a set of standards that other technology developers can base new services and equipment on").

[42] Dan Sweeney, "Open Network Standards Moving Toward What?" *Cellular Business*, September 1997 ("Network computing has been characterized by the proliferation of rival platforms to a far greater degree than telecommunications has. The political and economic needs for a global phone system have compelled the adoption of common and open standards. Nevertheless, centripetal forces prevail in the computer field as well, and among the most powerful of these are the growth of the 'open' Internet and the pressure exerted by large corporate users of computing equipment that have spurred manufacturers to produce devices and systems that can compete under conditions of open bid").

application and service elements."[43] They further emphasized that the Global Venture's "approach includes an innovative and open IP services platform that will allow the venture to . . . drive and use open and accepted standards for the needed components and applications."[44] As a result, "[t]he global venture's open IP platform will be . . . flexible enough to provide features and applications to customers, regardless of the carrier who ultimately delivers it."[45] *See also* London Aff. ¶¶ 4-5.

It is not surprising that "AT&T and BT share a vision for an open IP platform as the foundation for all future voice and data services,"[46] for that is the only sensible course. The benefits of an open standards approach are immediate and obvious: (1) it builds on the enormous existing body of open, public domain IP standards and applications to allow the Global Venture to get its services to market faster and at lower

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43 ATT/BT Joint Technical White Paper at 3, http://att-bt-globalventure.com/ technology/ whitepaper.doc ("*Joint Technical White Paper*").

44 *Joint Technical White Paper* at 1.

45 "Global Venture Network/Technology Backgrounder," http://att-bt-globalventure.com/ technology/index.html ("*Technology Backgrounder*") ("By providing interconnection with the public Internet, and by developing and deploying an open IP platform, AT&T, BT and the global venture will enable multinational corporations to completely integrate their enterprises, at the same time bringing true 'anytime/anywhere' communications to the global consumer marketplace"); *Joint Technical White Paper at 2* ("By establishing an open IP platform for rapid internal and third-party development, the venture will offer the most cost-effective and innovative voice and data services in the world"); *Technology Backgrounder* at 2 ("The [Global Venture's] technology unit will develop and deploy a global IP network with an open platform that will be adopted by the parents' domestic networks as well. This, in turn, will put the global venture in a strong position to guide open industry standards in order to grow its own and third party applications and services").

46 *See* London Aff. ¶ 5; *Joint Technical White Paper* at 2.

cost;[47] (2) because of customer demand for open standards and the enormous existing base of customer applications built to open IP standards, it maximizes the Global Venture's addressable customer market and its ability to attract distributors and partners;[48] and (3) it is the only approach that will allow the Global Venture and its customers to obtain the benefits of the innovations which are produced by the entire industry and which will enhance the service capabilities of carriers better and faster than any carrier could achieve alone.[49]

The arguments against pursuing a proprietary standards approach are equally obvious. It would greatly delay the Global Venture's offering of the services that MNCs demand. That would have especially crippling effects on the Global Venture's prospects for MCI WorldCom, GTE, and C&W collectively control the the lion's share of Internet backbone facilities, IP customer base and IP traffic today and thus have

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47 *See* London Aff. ¶¶ 6-7; "Global Venture Network/Technology Backgrounder," http://att-bt-globalventure.com/ technology/index.html ("IP has established itself as the key design point or architectural force for the 21st century network. The vast array of IP-centric products and services being developed, deployed or manufactured by telecommunications and network vendors validates this").

48 *See* London Aff. ¶ 8; *Joint Technical White Paper* at 2 ("It's a lot easier for worldwide distributors and partners to tap into the venture's network and services through open standard software and interfaces than it is for these distributors to have to adapt their hardware and software to another carrier's proprietary network and system").

49 *See* London Aff. ¶ 9; *Joint Technical White Paper* at 2 ("It's a lot more cost effective to build new services on top of an open software platform than it is to build new services on top of proprietary platforms dependent on network hardware and facilities. These benefits can be passed along to the customer"); *id.* ("A standards-based platform lends itself to rapid internal and third party development, empowering AT&T, BT, the venture and partners to respond to changing customer needs and technological requirements faster than ever before").

significant headstarts.[50] Further, as with every other attempt to "proprietize" IP standards, customers would refuse to tie themselves to a proprietary standard controlled by a single carrier and the Global Venture's addressable market would shrink radically. In addition, the Global Venture would then incur higher equipment costs, for it could not purchase the "off the shell" equipment that is manufactured to industry standards, but could deal only with the limited class of suppliers who would agree to build proprietary products and who would almost certainly be unable to produce innovations as rapidly as the radically larger groups of manufacturers who use open standards.[51]

Third, it is ironic that GTE would invoke "network tipping" and "positive feedback" theories to claim that *some* carrier or group of carriers could use proprietary interfaces to dominate the provision of MNC services. If there were any basis for applying those theories here - and there is not - the only firms that would present any significant risks are GTE, MCI WorldCom, C&W and Sprint, not AT&T or BT. Network tipping "is the tendency of one system to pull away from its rivals in popularity

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[50] *See, e.g.*, Mark Winther, "Internet Service Provider Market Review and Forecast, 1998-2003," IDCNet, Report #17825 (December 1998) ("Approximately 30 companies in the United States act as wholesale backbone providers. However, the market is intensely concentrated in the hand of three wholesale providers – MCI WorldCom, GTE Internetworking, and Sprint"); "MCI's Dash For Growth," *Financial Times*, January 13, 1999.

[51] *See* London Aff. ¶¶ 7-9; Dan Sweeney, "Open Network Standards Moving Toward What?" *Cellular Business*, September 1997 ("Right now, the carriers are finally demanding open standards because it means a much higher degree of competition in the equipment marketplace. . . . With such standards in place, you can go to multiple suppliers who must compete on the basis of both features and price. It also allows you to upgrade your system with new capabilities fairly easily and inexpensively").

once it has gained *an initial edge*."[52] When it comes to IP, AT&T and BT have no such "edge." In the United States, for example, AT&T has only 79 of the 6,639 internet backbone connections and BT has none (IBM has 45).[53] These numbers pale in comparison to C&W (1,888), MCI/WorldCom (1,496), Sprint (1,407), and GTE(BBN) (364).[54] Outside the US and UK, respectively, AT&T and BT have virtually no significant Internet presence.[55] Although AT&T and BT *plan* to roll out an IP-based network in the year 2000, MCI WorldCom, Sprint and others already have deployed such

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[52] Michael L. Katz and Carl Shapiro, "Systems Competition and Network Effects," 8 *Journal of Economic Perspectives* 2 (Spring 1994), at 105-06.

[53] *Boardwatch Magazine's Directory of Internet Service Providers*, Winter 1998-Spring 1999, at 4.

[54] *Boardwatch Magazine's Directory of Internet Service Providers*, Winter 1998-Spring 1999, at 4.

[55] GTE can claim, at 16, that the Global Venture will attain "additional dominance" through AT&T's operation of its IP telephony Global Clearinghouse only by ignoring the vigorous competition among many competing clearinghouses. GRIC Communications, for example, boasts 400 ISP and telecommunications carrier members in over 120 countries with "an aggregate subscriber base of 30 million dial up users and millions of corporate users," and describes itself as the "the leading clearinghouse for Internet telecommunications services" providing "routing, authentication, network management, billing and settlement services to ISPs and telcos worldwide." *See* http://www.gric.com. iPass, which has recently teamed with Deutsche Telekom and France Télécom, has 3,000 POPs in 150 countries and claims to be "the premier provider of settlement and clearinghouse services for the Internet." *See* http://www.ipass.com/services. And MCI WorldCom recently announced its intention to acquire OzEmail, including its Internet Phone division that has affiliates in Australia, Hong Kong, Japan, the Netherlands, New Zealand, Norway, South Africa, South Korea, the United Kingdom, and the United States. *See* http://www.ozemail.investor.aust.com/nvo1998_30.html.; http://www. ozephone.aust.com/products/Prodserv_HTML/phone/ affiliates/affiliates.html. *See also* http://www.deltathree.com/company/company_ body1.asp (claiming to route 17% of all Internet Telephony traffic world-wide).

facilities.[56] Thus, if anyone "begins the [IP] race in a dominant position," GTE at 11, it is GTE and these other "first movers."[57] *See* Ordover/Willig Aff. ¶¶ 22(D); 35-36.

Finally, GTE again ignores that the customers in question are not sheep, but sophisticated businesses that are fully aware of the costs associated with "lock-in" and that have developed effective strategies – including competitive bidding, carefully designed short-term contracts and multi-sourcing – to combat it.[58] Any inkling that the

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[56] *See, e.g.,* http://www.wcom.net/aboutworldcom/news_releases/1999/1-26-99.shtml ("MCI WorldCom Advanced Networks announced today the launch of SafeReach NT VPN, the first fully managed Internet-based Virtual Private Networking (VPN) service for corporate enterprise networks"); "InfoInterActive Announces Global Distribution Agreement with GTE Corporation," Canada NewsWire, January 26, 1999 ("Already 70% complete, [GTE's] high-speed national network will ultimately stretch 17,000 miles, connecting more than 100 major metropolitan markets when finished later this year, and will also interconnect with GTE's international IP network now in place in several key locations worldwide"); "MCI WorldCom to Launch Consumer Internet Service," Reuters News Service, January 28, 1999 (noting C&W's purchase of MCI's wholesale and retail Internet business and infrastructure for $1.75 billion); "Cable & Wireless Buys Leading German Internet Service Provider," Press Release, January 14, 1999 (C&W has announced plans to build a $1 billion pan European IP network).

[57] As Applicants have explained, AT&T's proposed acquisition of IBM's Global Network business will have no significant impact on the Global Venture's IP-based network investment and, accordingly, should have no impact on the Commission's consideration of the Applications. *See* January 19, 1999 Letter at 1-3 ("Most fundamentally, IBM owns no international (or domestic) transport facilities, and, given their scale and vintage, the in-country switches, routers and related facilities AT&T seeks to purchase from IBM, even if eventually transferred to the Global Venture, would not materially advance the Global Venture's IP network plans").

[58] Potential customers would recognize that "lock-in" through proprietary standards could undermine the competition they have promoted through competitive bidding and multi-sourcing, deny them access to the unparalleled stream of innovations that has been spawned by open IP standards, and possibly even cause disruption of the their basic internal and external communications activities that are based on the open TCP/IP standard. That is undoubtedly why GTE itself emphasizes the ability of customers *inexpensively* to migrate their communications services to GTE Internetworking, which provides service using GTE's Global Network Infrastructure, an IP-based network. *See* http://www.bbn.com/ products/iptelecom/backgrd.htm; *see also* Finnegan Aff. ¶¶ 3, 10.

Global Venture was planning to abandon the open standards that are largely responsible for customers' rapid migration toward IP-based solutions would surely drive prospective IP customers into the arms of competitors such as MCI WorldCom, GTE, C&W and other carriers that are promoting the ability to provide IP-based services *now* or in the very near future.[59] In short, there is no basis for GTE's claims that the Global Venture could use proprietary customer interfaces to obtain or maintain market power over MNCs.

II. The Global Venture Will Not Raise Competitive Concerns On Routes Between The United States and The United Kingdom Or On Third Country Routes.

The Commission has already addressed and rebutted the concerns of C&W and others that the Global Venture would allow AT&T and BT to raise competitors' costs on the US-UK and third country routes. In the *BT/MCI II* decision, the Commission squarely rejected any notion that BT's settlement rates pose any competitive concern, and affirmed that reorigination through the US and hubbing through the UK are open to all US carriers and pro-competitive in effect.

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[59] Importantly, no customer would consider switching to a proprietary network in a vacuum. Increasingly, global MNCs seek seamless communications connectivity with their customers, dealers and trading partners. Indeed, the possibility of establishing corporate "extranets" has been one of the principal appeals of purchasing open, IP-based communications. As implausible as GTE's MNC customer "migration" theory is from an individual company perspective, it is perfectly absurd when one recognizes that the proponent of a proprietary IP network would need to convince not only a potential customer but all of that customer's customers, dealers and trading partners.

Further developments in the global and U.S. international market since *BT/MCI II* have confirmed these findings. Consumer prices and settlement rates on the US-UK route are, or are close to, the lowest on any international route in the world. The implementation of the WTO Agreement, the reduction of settlement rates to benchmark levels in many countries, the proliferation of international simple resale ("ISR"), and the forthcoming elimination of the FCC's International Settlements Policy ("ISP") in whole or part on many routes, provide significant new traffic routing and termination opportunities for all carriers. As the Commission recently noted in reaffirming AT&T's international nondominance, concerns about potential discrimination are significantly reduced on routes to "ISR-equivalent" countries like the UK, and the reduction of settlement rates on this route even below the level that applied in *BT/MCI II* further underscores that no such anti-competitive harm is likely here. The Commission's former findings and these recent developments make clear that the Global Venture raises no legitimate concern with regard to competition on US-UK or third country routes.

A. The Global Venture Will Not Diminish Competition on the US-UK Route.

The US-UK route is the world's most competitive, served by more than five hundred facilities-based and ISR providers in the US and by more than three hundred facilities-based and ISR providers in the UK.[60] Settlement rates on this route are among

[60] These include more than fifty US carriers authorized to provide ISR on this specific route, in addition to all other US carriers with global facilities-based or resale authorizations. *See* 47 C.F.R. §§ 63.18(e)(1), 63.18(e)(2); FCC International Bureau, *International Simple Resale (ISR),* http://www.fcc.gov/ib/isr.html. There were 313 (. . . continued)

the world's lowest and widely available US calling prices to the UK of 12 cents per minute are "equivalent to the cost of domestic long distance services."[61] Because of the highly competitive nature of this route with low termination prices available to all carriers in both countries, there would be no adverse effect on competition even if C&W was correct in its claims, at 4-5, 14, that the Global Venture requires AT&T and BT to "lock up" their US-UK traffic with each other -- which it does not.

C&W notably misreads the Framework Agreement, which does not require the exclusive use of AT&T, BT or Global Venture facilities for inbound termination in the US or the UK.[62] Rather, consistent with the mission of the Global Venture to become a low cost, profitable carrier of cross border Communications

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authorized US international resale carriers in 1996, and the Commission issued a further 200 international authorizations in just one three-month period during 1998. *See* FCC International Bureau, *Trends in the U.S. International Telecommunications Industry*, Aug. 1998, at 41; FCC News Release, *FCC Grants Over 200 International Service Applications In First 90 Days of New Foreign Participation Rule*, May 14, 1998.

[61] FCC News Release, *Twin Anniversary of WTO Agreement to Open International Telecom Market and Commission's Benchmarks Order Marked by Decline in International Calling Rates and Greater Service Options*, No. IN 99-6 (released Feb. 5, 1999), at 1.

[62] Article 10.1(a) of the Framework Agreement makes clear that there is "no exclusive purchasing obligation on the [Global Venture] with respect to products, services and facilities" of AT&T and BT for transport services, including traffic on the US-UK route. Although the parents are "preferred supplier[s]," the Global Venture is free to purchase termination services offered at better prices, quality or standards of service. *See id.*, Article 10.1(b). In any event, the fierce and ever-increasing competition AT&T faces in the US obviates any risk that the Global Venture, jointly controlled by AT&T, would accept non-competitive rates for UK termination. Moreover, because the US-UK route is authorized for ISR, all US carriers, including AT&T, are already free to enhance their competitiveness by engaging in self-correspondence on this route and thus diverting their traffic from their existing foreign correspondents.

Services traffic, and applicable regulations, there are no restrictions on the Global Venture terminating US-inbound and UK-inbound traffic wherever it can do so at the lowest cost, including with C&W in the UK.

C&W also has no legitimate complaint in this proceeding with the fact, at 7, that liberalization has encouraged self-correspondence by carriers such as MCI WorldCom on the US-UK route through ISR and other arrangements, even if this reduces the inbound minutes available for termination by C&W.[63] As the Commission has recently noted, in "ISR-equivalent" countries like the UK, "there is a significantly reduced threat of discrimination against U.S. carriers," and these competitive conditions provide equal benefits to UK carriers like C&W.[64] Liberalization at both ends of an

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[63] C&W is wrong in contending, at 5 n.8, that the ISP requires AT&T to provide proportionate return to UK carriers on the US-UK route. First, even where the ISP applies, it requires US carriers to accept no more than their proportionate return of US-inbound traffic, but does not address the provision of US-outbound traffic to foreign carriers. No US law or regulation requires US carriers to send their US-outbound traffic to any specific foreign carrier, and US carriers are free to terminate calls with the foreign carrier that offers the lowest settlement rate. Second, on ISR-authorized routes, as the UK route has been since 1994, US carriers licensed to provide ISR services on the US-UK route can terminate an unlimited amount of inbound and outbound traffic on this route wherever they can do so at the lowest cost without paying traditional settlement rates or observing proportionate return requirements. *See, e.g., Pacific Gateway Exchange, Inc.*, 1998 LEXIS FCC 3207 (Jun. 30, 1998), *1-2 (ISR authorization allows "carriers to route traffic between the two countries outside the traditional settlements system"); FCC International Bureau, *Trends in the U.S. International Telecommunications Industry* (Aug. 4, 1998), at 42 (noting that "[p]roportionate return rules do not apply to ISR traffic").

[64] *Motion of AT&T to be Declared Non-Dominant for International Service*, Order On Reconsideration, 13 FCC Rcd. 21501, ¶ 23 n.68 (1998) ("*International Non-Dominance Reconsideration Order*"). *See also US v. MCI Communications Corp. & BT Forty-Eight Co.*, 62 Fed. Reg. 37594, 37598 (1997) (Proposed Final Judgment and Memorandum In Support of Modification) ("The grant of [ISR licenses by the UK government] alleviates concerns that BT and MCI could bypass the correspondent system

(. . . continued)

international route allows all carriers to reduce costs through self-correspondence, including AT&T and C&W with their affiliates in the US.[65] If C&W wishes to continue to attract inbound traffic from other carriers in this highly competitive environment, it should do so by offering attractive termination rates, not by seeking to obstruct other carriers' arrangements such as those with the Global Venture.

In any event, C&W's claim, at 5-6, that it would be harmed by the loss of US-outbound traffic from AT&T fails to withstand scrutiny. There is no reason why C&W should become a "net exporter[]" of traffic on the route, *id.* at 5, when AT&T traffic terminated with C&W comprises only about 12 percent of US-outbound calling to the UK.[66] C&W could easily make up for any lost AT&T traffic by persuading other US

(. . . continued)
on the US-UK route by sending traffic to the US over ISR when other US carriers could not, thereby gaining an unfair competitive advantage.").

[65] *See, e.g., International Settlement Rates*, 12 FCC Rcd. 19806, 19811 (1997) ("*Benchmark Order*") (noting that "[t]he traditional bilateral correspondent relationships between national monopoly carriers are breaking down as countries open their markets to competition. For example, in markets that permit competition in international services, carriers will be able to provide end-to-end service without the use of accounting rates . . . . At a minimum, the increased competition in the global IMTS market that will result from [the WTO Basic Telecom Agreement] will exert downward pressure on accounting rates in competitive markets as new entrants compete to terminate foreign traffic.").

[66] The average share of AT&T traffic to the UK terminated with C&W in the last three years has been 24 percent. AT&T's share of total US outbound calling to the UK in 1997 was 49 percent. *See* Federal Communications Commission, *1997 Section 43.61 International Telecommunications Data*, Dec. 1998. AT&T further believes that its market shares are overstated by Section 43.61 data because of the under-reporting or non-reporting of traffic by other carriers. *See, e.g., 1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements*, Comments of Sprint Corporation (filed Sept. 16, 1998), at 4 (alleging the existence of "widespread cheating and noncompliance" with the Commission's rules for US international carriers).

carriers to switch their US-UK traffic from BT.[67] Moreover, C&W, as the second-largest UK international facilities-based carrier with an extensive local network, can offer US carriers a substantial stream of UK-outbound traffic for termination in the US. It thus will have no difficulty in attracting inbound traffic from the US if it is willing to provide competitive rates for UK termination.

Nor is C&W correct, at 6, that it "must pay" a settlement rate charged by AT&T in the very unlikely event that it becomes a net exporter of traffic to the US. Because the Commission has authorized ISR on this route, C&W can terminate its UK-outbound traffic to the US at market rates with any of the more than five hundred US carriers authorized to provide ISR on this route, including C&W's own US affiliate. In fact, C&W readily can terminate this traffic in the US at rates below the 4.2 cents it claims to charge in the UK. AT&T understands that several of its foreign correspondents have been offered nationwide US termination rates below this level by US carriers for traffic handed off at the mid-ocean point.

B. BT's Settlement Rate Supports Approval of the Global Venture.

C&W, at 6-7, is equally misguided in claiming that the level of BT's settlement rates on this route should raise concern with the Global Venture. BT's present

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[67] US carriers other than AT&T accounted for 51 percent of US-outbound minutes to the UK in 1997. *See* Federal Communications Commission, *1997 Section 43.61 International Telecommunications Data*, Dec. 1998. Even discounting the 29 percent of outbound minutes sent by MCI WorldCom, it is not correct that "sufficient traffic volumes simply are not available from non-AT&T sources" to replace AT&T traffic, as C&W asserts (p. 7).

settlement rate of 6.5 cents has fallen to almost half the level of the 11-cent settlement rate BT maintained with US carriers in March 1997. Therefore, C&W quotes AT&T's March 1997 comments on that former rate entirely out of context.[68] In approving the proposed merger of BT and MCI in *BT/MCI II*, the Commission stated that BT subsequently agreed in April 1997 to reduce the rate significantly to 7 cents, "one of the lowest in the world," and found the new rate to be "a positive public interest factor" supporting approval.[69] BT's still lower present settlement rate is below both the relevant benchmark (15 cents) and the "best practices" rate to an even greater degree than was the case in *BT/MCI II*.[70] Accordingly, the Commission's finding in *BT/MCI II* also is dispositive here.

C&W disingenuously contends that BT's settlement rate is "above-cost" based on nothing more than the nominal rate of 4.2 cents it belatedly offered AT&T on December 17, 1998, after dragging its feet in negotiations for more than ten months.[71] FCC reports demonstrate that C&W's settlement rate has been higher than BT's

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[68] *See* FCC International Bureau, *IMTS Accounting Rates of the United States, 1985-1999*, Jan. 1, 1999.

[69] *BT/MCI II*, ¶ 270.

[70] *Id.* The present BT settlement rate of 6.5 cents is also close to the bottom of the 6-9 cent range that constitutes the Commission's best estimate of the incremental cost of traffic termination in foreign countries. *See International Settlement Rates*, Notice of Proposed Rulemaking, 11 FCC Rcd. 6184, ¶ 34 (1996) (estimating incremental cost of terminating international traffic at "no more than 6c-9c per minute"); *Benchmark Order*, ¶ 122 (incremental cost in foreign countries "likely does not exceed $0.09 per minute").

[71] AT&T's settlement rate negotiations with C&W remain on-going because agreement has not been reached on other matters, particularly surcharges for termination with mobile carriers in the UK.

settlement rate in five of the last eight years (1991-98).[72] Even today, there is a higher settlement rate of 7 cents on file with the Commission.[73]

There is also no basis to C&W's charges, at 7, that the establishment of the Global Venture will reduce existing incentives to press for even lower settlement rates with BT. Because in this transaction AT&T will not obtain an equity interest in BT, BT will not obtain an interest in AT&T, and BT's UK termination facilities will not be transferred to the Global Venture, BT's settlement rates will not become an "internal transfer" for AT&T, unlike the case with the proposed BT-MCI II merger. Because AT&T will provide services on the US-UK route in fierce competition with MCI WorldCom, Sprint and many other carriers, market forces will support continued efforts to reduce termination costs in the UK, including those with BT.

C. The Global Venture Raises No Competitive Issues on Third Country Routes.

The Commission's findings in *BT/MCI II*, and the further pro-competitive developments in the international market since that Order, also demonstrate the baseless nature of C&W's concerns, at 8-9, regarding the Global Venture's reorigination of traffic on third country routes. C&W conspicuously omits to mention that in approving the BT-MCI merger in *BT/MCI II*, the Commission decisively rejected all the AT&T arguments on this subject that are quoted at length in C&W's comments, at 9.

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[72] *See* FCC International Bureau, *IMTS Accounting Rates of the United States, 1985-1999*, Jan. 1, 1999, http://www.fcc.gov.ib/td/pf/ARTSWEB.XLS.

[73] *See* FCC International Bureau, *Consolidated Accounting Rates of the United States*, Jan. 1, 1999, http://www.fcc.gov/ib/td/pf/CONSOLAR.XLS.

The Commission specifically "decline[d] to restrict BT/MCI's ability to reoriginate BT-third country traffic via MCI's U.S. network, or hub third-country traffic destined to or from the United States through the United Kingdom."[74] The Commission there emphasized that it had "not found that reorigination should be prohibited or limited generally" and stated that "we perceive no need to impose such a restriction uniquely on BT/MCI." The Commission thus concurred with MCI and BT that reorigination is "an industry-wide matter properly considered, if at all, in a separate rulemaking proceeding."[75]

The Commission's finding in *BT/MCI II* that the exact concerns raised by C&W do not require any restriction on reorigination emphasized that BT and MCI would not derive any additional incentive or ability to reoriginate traffic from their merger. The Commission concluded.

> "AT&T (and other U.S. carriers) will have an equal incentive and ability as BT/MCI to reoriginate traffic through the United States. Consequently, we find no reason to impose any restrictions regarding reorigination on BT/MCI."[76]

The UK government took a similar view with regard to the proposed BT-MCI merger and observed that "[o]n the basis that other US carriers can carry out similar activities, the efficient use of transmission capacity would appear to be in the interest of

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[74] *BT/MCI II*, ¶ 312.

[75] *The Merger of MCI Communications Corporation and British Telecommunications, plc*, GN Docket No. 96-245, Opposition and Reply of MCI and BT (filed Feb. 24, 1997), at 30, n.69.

[76] *BT/MCI II*, ¶ 312.

both UK and US customers."[77] The UK government further noted that any use of reorigination to obtain additional return minutes from third countries would be "predicated on a zero response from other operators" and would risk "retaliation from the third country, most obviously by abandoning proportionate return and directing traffic away from BT/MCI."[78]

C&W's make-weight arguments for a different result in this proceeding are easily dismissed. C&W falsely asserts, at 9, that "AT&T control[s] most of the national distribution network in, and international routes extending from, [its] home market[]" -- ignoring that AT&T is a nondominant US domestic and international carrier like MCI, and has no greater "control" over the US "national distribution network" or international routes than MCI.[79]

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[77] *Id., UK Comments On Respondents' Comments To The FCC On The Merger Of BT and MCI* (filed Feb. 24, 1997), ¶ 104.

[78] *Id.* ¶ 102.

[79] *International Non-Dominance Order*, 11 FCC Rcd. at 17978. The Commission recently reaffirmed its finding that AT&T lacks market power in international services and dismissed the petitions requesting reconsideration of that decision as follows:

> "Recent developments reinforce our conclusion that AT&T lacks market power in the U.S. international services market. AT&T's overall market share has fallen further to 49.3 percent in 1996. We also note that submarine cable capacity has increased significantly, with the result that AT&T has even less of an ability than previously to control prices by restricting supply. In short, we see no basis for reversing the conclusion the Commission reached in 1996 that AT&T lacks market power in the IMTS market."

International Non-Dominance Reconsideration Order, ¶ 19.

C&W's unfounded concern that reorigination would reduce AT&T's incentive to press for lower settlement rates "by giving AT&T a stake in the present system" similarly fails to support any restriction on the Global Venture.[80] As the Commission emphasized in the *Benchmark Order*, "[l]east-cost traffic routing is an economically rational response to inflated settlement rates, and will continue as long as carriers maintain excessive settlement rates."[81] While giving full recognition to the existence of these reorigination and hubbing practices, the Commission did not suggest that US carriers' participation in these activities should be restricted in order to encourage them to negotiate more vigorously for lower settlement rates or to protect the carrier-initiated enforcement process established by the *Benchmark Order*. The Commission instead acknowledged that "it is clearly within the interest of a U.S. international carrier to negotiate rates at or below the relevant benchmark."[82]

Because settlement costs comprise a significant proportion of the costs of providing US international services, all US carriers have strong continuing incentives to reduce these costs in every way possible, including through both traffic reorigination and direct negotiations with foreign carriers, and C&W offers no evidence -- and there is none -- that the two approaches are mutually exclusive. In any event, as described above,

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80 C&W has little standing to raise this purported concern in light of its position (as described by a former Chief of the International Bureau) as "the largest single stakeholder" in the debate on reducing high settlement rates "by virtue of its monopolies in many developing countries." P. Cowhey, *FCC Benchmarks and the Reform of the International Telecommunications Market*, Telecommunications Policy 899, 909 (Dec. 1998).

81 *Benchmark Order*, ¶ 11.

82 *Id.* ¶ 186.

the objective of the Global Venture is to "anticipate industry evolution to become a low cost, profitable carrier" of international traffic.[83] The Global Venture accordingly will continue AT&T's policy of pressing for the greatest possible reductions in settlement rates in its negotiations with foreign carriers.

The concerns raised by AT&T in January 1997 with respect to the proposed BT-MCI II merger particularly have no application to the Global Venture under the very different circumstances present in the US and global international telecommunications marketplace in February 1999. Traffic reorigination through the US has greatly expanded in the intervening two years, stimulated by the continued lowering of US settlement rates following the 1997 *Benchmark Order*, and the implementation of the WTO Agreement in February 1998. The effective date of the *Benchmark Order* on January 1, 1998 commenced the "glidepath" toward benchmark rates on all routes, and benchmarks for "high income" countries became effective on January 1, 1999. The lower rates negotiated by US carriers as a result of the *Benchmark Order* have greatly increased the attractiveness of the US as a reorigination hub for traffic from all countries.

Reorigination has been further stimulated by the Commission's repeated statements making clear that reorigination, hubbing and refile are "economically rational" and pro-consumer responses to high settlement rates that should not be subject to regulation.[84] For example, the Commission stated in the *Benchmark Order* that "We do

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[83] Framework Agreement, Exhibit P, Introduction at C.

[84] *See Benchmark Order*, ¶ 11 ("[P]ractices such as hubbing, refile, and reorigination . . . are all examples of routing bilateral traffic through a third country to take advantage of a lower accounting rate between the third country and the destination country . . . . [S]uch least cost routing practices already have begun to erode the stability

(. . . continued)

not believe it benefits [US] consumers to arbitrarily restrict a carrier's ability to route traffic in the most economically efficient manner or to restrict the development of new technologies and new routing methods."[85]

These trends encouraging the reorigination and hubbing of traffic by all US carriers are likely to further accelerate in the very near future as US settlement rates with all countries are reduced to benchmark levels, as an increasing number of US routes are authorized for ISR, and with the likely removal of present ISP restrictions with nondominant carriers on all WTO routes. The Commission's pending rulemaking proposal to remove these ISP restrictions has received the unanimous support of all parties commenting in the proceeding.[86]

In view of the expanding use of the US (and US carriers) for traffic reorigination by many of the world's largest foreign carriers, there can be no claim that

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(. . . continued)
of the accounting rate system. Least-cost traffic routing is an economically rational response to inflated settlement rates, and will continue as long as carriers maintain excessive settlement rates."); *BT/MCI II*, ¶ 312. In particular, the Commission declined to take any action in response to a petition filed by MCI claiming that reorigination of traffic through the U.S. violated FCC rules and policies. *Sprint Communications Co., Reorigination of International Telecommunications Traffic*, File No. ISP-95-004 (filed Jan. 27, 1995). The Petition remained pending for over three years before it was ultimately withdrawn by MCI on May 11, 1998. *See Overseas Common Carrier Section 214 Applications Actions Taken*, 13 FCC Rcd. 11134 (1998). AT&T understands that MCI withdrew its Petition at the request of the Commission.

85 *Benchmark Order*, ¶ 13.

86 *See 1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements*, Notice of Proposed Rulemaking, 13 FCC Rcd. 15320 (1998). The Commission also proposes, among other things, to remove the ISP completely on routes authorized for ISR.