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February 18, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room Number TW-A325  
445 12<sup>th</sup> Street, S.W.  
Washington, DC, 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Sprint Corporation and MCI WorldCom, Inc. --CC Docket No. 99-333

Dear Ms. Salas:

On behalf of AT&T Corp. ("AT&T"), please find enclosed an original plus four copies of Petition of AT&T Corp. to Deny Application in the above referenced proceeding in response to the Public Notice issued January 19, 2000. Please direct any questions to the undersigned.

Respectfully submitted,

*Aryeh S. Friedman* /ha  
Aryeh S. Friedman

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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 )  
Applications for Consent )  
to the Transfer of Control of Licenses and )  
Section 214 Authorizations from )  
SPRINT CORPORATION, )  
Transferor )  
to )  
MCI WORLDCOM, INC., )  
Transferee )

CC Docket No. 99-333

PETITION OF AT&T CORP. TO DENY APPLICATION

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February 18, 2000

**TABLE OF CONTENTS**

SUMMARY ..... i

ARGUMENT ..... 4

THE MERGER WILL HARM COMPETITION IN THE INTERNET BACKBONE MARKETS

    A.    The Merger is Between the Two Largest Providers in A Highly  
          Concentrated Internet Backbone Market ..... 5

        1.    The Existence of a National Backbone Market ..... 5

            a.    There Is a Discrete Internet Backbone Market ..... 5

            b.    Barriers to Entry into the Internet Backbone Market Remain  
                  High..... 8

        2.    The Merger Will Combine the Two Largest Providers In A  
              Highly Concentrated Market ..... 9

        3.    MCI WorldCom and Sprint Have Failed to Demonstrate That The  
              Merged Entity Will Not Dominate the Highly Concentrated Internet  
              Backbone Market..... 11

    B.    The Merger Will Result in Anticompetitive Network Effects..... 13

    C.    Any Effort to Condition this Merger on Divestiture Must Take Into Account  
          The Allegations in the Cable & Wireless Litigation..... 14

CONCLUSION..... 16

## SUMMARY

This merger will combine the Internet backbone facilities, personnel, and, perhaps most importantly, the customer bases of Sprint and MCI WorldCom. The combined entity will be, by far, the largest single nationwide Internet backbone provider. It will undoubtedly possess the ability and incentive to discriminate anticompetitively against competitors who need to interconnect with its network.

MCI WorldCom and Sprint contest the existence of a discrete Internet Backbone market even though Sprint was its primary proponent before the Commission only two years ago, when the Commission was reviewing the MCI/WorldCom merger.<sup>1</sup> Nevertheless, it is clear that the core backbone market Sprint identified in 1998 continues to be a discrete market for which there are no satisfactory substitutes. It is also clear that access to non-discriminatory private peering arrangements remain a significant barrier to competitive entry. Finally, under any reasonable measure of market share, MCI WorldCom is the largest, and Sprint the second (or close to second) largest Internet Backbone Provider ("IBP").<sup>2</sup>

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<sup>1</sup> Letter from Michael B. Fingerhut, General Attorney, Sprint, to Magalie Roman Salas, Secretary, FCC, and Attachment: Charles River Assocs. Inc. Report prepared by Stanley M. Besen, Padmanabhan Srinagesh & John R. Woodbury, "An Economic Analysis of the Impact of the WorldCom-MCI Merger on the Provision of Internet Backbone Services," dated April 7, 1998, at 7-9 (filed June 1, 1998) (hereinafter "CRA Report"), appended hereto as Exhibit A.

<sup>2</sup> See, Denise Caruso, "Digital Commerce," New York Times, February 14, 2000, at C4: "The backbone provider with by far the largest number of physical connections is UUNET, now owned by MCI WorldCom, which is on its way to becoming WorldCom Sprint. In rough descending order, UUNET is followed by Sprint; Cable and Wireless USA, GTE Internetworking and either PSI Net or AT&T Network Services. Upon completion of the WorldCom-Sprint merger, a single company would control nearly half of the Internet's backbone -- making it, literally and figuratively, without peer. Given the furious pace and high stakes of the telecommunications industry today, some fear that it is only a matter of time before one big backbone provider or another refuses to exchange data traffic with one of its peers. What happens then?"

The merger will result in anticompetitive network effects. The merged entity's share of the Internet backbone market will allow it to raise rivals' costs and degrade the quality of their interconnections. The latter is especially significant as the industry moves to Service Level Agreements ("SLAs") and Quality of Service ("QoS") requirements. Unless the merged entity provides competing networks not only with private peering arrangements but also with meaningful cross-network quality of service commitments, the market is likely to "tip", with customers abandoning rivals altogether.

MCI WorldCom and Sprint do not proffer any countervailing procompetitive benefits that would justify the merger of their Internet assets, nor could they. Finally, even while this merger is pending, there is substantial risk that Sprint's customers, aware of the prior merger divestiture order, will shift their traffic to the network which they believe will survive – the MCI WorldCom network – so that they will not be affected by the divestiture. Indeed, in light of the Cable & Wireless ("C&W") lawsuit against MCI WorldCom, wherein C&W alleged that MCI WorldCom failed to divest itself fully of its Internet assets, it is questionable whether any conditions could be imposed by the Commission that would ensure that a divested network would remain viable a competitor.

Because the harmful effects of the merger on the Internet backbone market are so substantial, and the benefits non-existent, the Applications should be denied, or at the very least, conditioned on the divestiture of one of the merging parties' Internet business in a manner that returns the divested assets to their status quo ante as a viable independent competitor to others' Internet businesses.



## ARGUMENT

### THE MERGER WILL HARM COMPETITION IN THE INTERNET BACKBONE MARKETS

In 1998, after an investigation of the WorldCom MCI merger, the Commission held that: (1) “based on the record before us, we are inclined to agree with GTE and other commenters that Internet backbone services, which we define to be the transporting and routing of packets between and among ISPs and regional backbone networks, constitutes a separate relevant product market;”<sup>3</sup> and (2) absent the divestiture the proposed merger could have lead to anticompetitive network effects in that market.<sup>4</sup> The Commission approved the merger because MCI agreed to transfer its Internet assets to Cable & Wireless.<sup>5</sup>

The Commission should therefore approach this Application with the strong presumption that, to acquire Sprint’s backbone facilities, MCI WorldCom would need to demonstrate that entry barriers to this market are virtually non-existent and that the proposed merger would not give the new entity the ability to create anticompetitive network effects in the national Internet backbone market. As demonstrated below, that is

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<sup>3</sup> Memorandum and Order, Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Dkt No. 97-211 (rel. Sept. 14, 1998) (“WorldCom/MCI Order”), ¶148.

<sup>4</sup> Id. ¶150. The Department of Justice had previously “concluded that ... [t]he merger as originally proposed would have given WorldCom/MCI a significant proportion of the nation's Internet traffic, giving the company the ability to cut off or reduce the quality of Internet services that it provided to its rivals....” DOJ Press Release, Justice Department Clears WorldCom/MCI Merger After MCI Agrees to Sell Its Internet Business (July 15, 1998), [http://www.usdoj.gov/atr/public/press\\_releases/1998/1829.htm](http://www.usdoj.gov/atr/public/press_releases/1998/1829.htm).

<sup>5</sup> C&W filed a Complaint against MCI WorldCom alleging that MCI failed to divest its Internet assets in the manner contemplated by the Commission. Compare WorldCom/MCI Order ¶151 with the C&W Complaint, appended hereto as Exhibit E.

not something MCI WorldCom and Sprint can do – the same entry barriers identified in 1998 remain, as do the conditions identified by the Commission in its 1998 Order.

A. This Merger is Between the Two Largest Providers in the Highly Concentrated Internet Backbone Market

1. The Existence of a National Backbone Market

MCI WorldCom and Sprint, in an effort to understate their market share and barriers to entry, seek to combine two discrete markets, (i.e., the Internet Backbone market and the Internet Service market)<sup>6</sup> into a single “Internet Access Services” market that includes all Internet Service Providers (“ISPs”) as competitors.<sup>7</sup> However, as demonstrated below, the national Internet Backbone market remains a discrete market and barriers to entry, including the need for non-discriminatory interconnection, remain high.

(a) There Is a Discrete Internet Backbone Market

The Applicants’ unsubstantiated description of the relevant market is dramatically different from the evidence that Sprint and others provided to the Commission in 1998.

Based on that evidence, the Commission found that:

we are inclined to agree with GTE and other commenters that Internet backbone services, which we define to be the transporting and routing of packets between and among ISPs and regional backbone networks, constitutes a separate relevant product market ... We agree with GTE that there do not appear to be good demand substitutes for ISPs and regional backbone service providers to obtain national Internet access without access to IBPs”<sup>8</sup>

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<sup>6</sup> Sprint defined this market as “connectivity to end user customers through dial up or dedicated connections.” CRA Report at 8, relying on factual statements contained in the Comments of GTE Service Corporation, Its Affiliated Telecommunications Companies and GTE Internetworking on WorldCom/MCI’s Joint Reply to Petitions to Deny and Comment’s, filed March 13, 1998, Appendix 5, Internet Affidavit of Robert G. Harris, (“Harris Affidavit”), appended hereto as Exhibit B, ¶¶23-25.

<sup>7</sup> Supplemental Internet Submission, CC Docket No. 99-333, filed January 14, 2000 (hereinafter “Supplemental Internet Submission”) at 3.

<sup>8</sup> WorldCom/MCI Order, ¶148.

Specifically, the Commission found that the Internet is comprised of three distinct classes of participants: end users, Internet service providers (ISPs) and Internet backbone providers (IBPs). End users send and receive information; ISPs allow end users to access Internet backbone networks; and IBPs route traffic between ISPs and interconnect with other IBPs. The Commission defined IBPs as a discrete group, which “compete with one another for ISP customers.”<sup>9</sup>

Evidence was also submitted to the Commission in 1998 which demonstrated that connectivity at public Network Access Points (“NAPs”) was inadequate because of a serious congestion problem at the NAPs,<sup>10</sup> resulting in high packet-loss and packet-delay. As a result of this congestion, the larger networks began to arrange for private interconnection points between them, with traffic exchanged on a settlements-free basis. But such arrangements were, as a general rule, only entered into by parties with roughly equivalent sized networks. Indeed, smaller IBPs such as Level 3 complained that they were unfairly denied access to such arrangements and suffered anticompetitive consequences.<sup>11</sup> The larger IBPs – MCI, WorldCom and Sprint – charged smaller IBPs “transit fees” for carrying and terminating their traffic. As a result, smaller IBPs could not compete for the business of many larger customers who insisted, in their Request for Proposals (“RFPs”), that bidders have private peering arrangements with the larger IBPs in order to be assured of the highest reliability. On this basis, Sprint and others argued for a finding that there was a discrete national Internet Services backbone market:

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<sup>9</sup> Id., ¶ 144.

<sup>10</sup> Harris Affidavit at ¶13.

<sup>11</sup> WorldCom/MCI Order, ¶155; see also, “Level 3 Assails the WorldCom-MCI Deal,” Wall Street Journal, May 20, 1998, at B 10. See also, “Manager’s Journal, How to Strengthen the Internet’s Backbone,” Wall Street Journal, June 8, 1998.

“Core backbone providers sit at the top of the vertical structure of the Internet. They negotiate interconnection agreements with each other . . . in which each backbone provider makes available an access service that offers information on routes to its customers, delivery to an interconnection point of packets sent by its customers to destinations served by the other backbone provider, and acceptance at an interconnection point of packets originated by the other backbone provider to destinations it serves . . . . Core backbone providers currently interconnect on a settlements free basis with each other and charge a fee for interconnection to non-core backbone providers. A hypothetical monopolist over core backbone services would be able to raise the price charged to non-core backbone providers because there are no close substitutes for the services it provides. As a result, the provision of core Internet Backbone services is a relevant antitrust market.”<sup>12</sup>

The same conditions exist today. Specifically: (1) Internet backbone services continue to be a discrete market;<sup>13</sup> (2) connectivity at the public NAPs continues to be prone to periodic congestion because large IBPs (such as MCI WorldCom and Sprint) assign a lower priority to upgrading public interconnection points than private peering points and because the same IBPs have historically upgraded peering capacity based on historical proof of need, rather than forecasted need;<sup>14</sup> (3) MCI WorldCom and Sprint continue to require IBPs to demonstrate that their networks are roughly the same size as theirs before they will agree to settlements-free private peering;<sup>15</sup> and (4) IBPs with unbalanced traffic are expected to become customers (through transit arrangements) of the larger IBPs.<sup>16</sup> Finally, and most importantly, as shown below, MCI WorldCom and

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<sup>12</sup> CRA Report at 1 (emphasis added). See also, Harris Affidavit at ¶¶ 17-19. Based on this evidence, the Department of Justice similarly concluded that there was a discrete national backbone market. See, speech of Constance Robinson, Director of Operations and Merger Enforcement, Antitrust Division, U.S. Department of Justice, before the Practising Law Institute, San Francisco, California, August 23, 1999, entitled “Network Effects in Telecommunications Mergers, MCI WorldCom Merger: Protecting the Future of the Internet” (“Robinson Speech”) at 7, appended hereto as Exhibit C.

<sup>13</sup> Klimovich Affidavit, appended hereto as Exhibit F, ¶ 5.

<sup>14</sup> Id.

<sup>15</sup> Id. ¶ 6.

<sup>16</sup> Id. ¶ 8.

Sprint are the two largest nationwide IBPs with such settlements-free arrangements (“Tier 1 providers”).

(b) Barriers to Entry into the Internet Backbone Market Remain High

Sprint and others produced evidence in the prior WorldCom/MCI merger proceeding demonstrating that a new entrant would be substantially disadvantaged without a settlements-free private peering arrangement because it had to pay transit fees for interconnection and many businesses were reluctant to become customers of a network that did not have a full set of private peering arrangements.<sup>17</sup> Indeed, John Sidgmore, the then Vice President of WorldCom and the CEO of UUNET, stated that “[h]aving a big network is a huge barrier to entry for competitors.”<sup>18</sup>

The same is true today. Large business customers issuing RFPs continue to insist that ISPs bidding for their business use IBPs that have a specified amount of private peering (i.e., in terms of the number of points and size of interconnections) with particular Tier 1 Internet backbone networks.<sup>19</sup> They do so because of the added reliability of a private peering interconnection.

Indeed, the growth of corporate Intranets and Extranets (network connections to suppliers and customers through the Internet) raises the entry barriers to the Internet

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<sup>17</sup> WorldCom/MCI Order at ¶150.; see, e.g., Comments of Sprint Corporation, In the Matter of Applications of Worldcom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications to WorldCom, Inc., FCC Docket No. 97-211., p.4.

<sup>18</sup> See, also, “MCI, UUNET Set to Reap Benefits from Big Merger,” The Wall Street Journal, January 12, 2000, p. B8 (“the Internet backbone business is dominated by long term contracts and MCI WorldCom remains in a strong position for AOL’s business.”) Those long-term contracts are an additional barrier to entry.

<sup>19</sup> Klimovich Affidavit ¶ 7.

backbone market. New e-commerce applications<sup>20</sup> require the highest quality inter-provider connections and customers are demanding the highest level quality assurance Service Level Agreements.<sup>21</sup> Thus today, while private peering is necessary, it is not sufficient; meaningful cross-network quality of service commitments are crucial.

2. The Merger Will Combine the Two Largest Providers In This Highly Concentrated Market

Because the value of Internet services lies in one's ability to communicate with others, the value of an Internet backbone network increases with the total number of users who join the network (i.e., the so-called "network effect"). Users include content providers whose content is linked to the network (i.e., the number, type, and significance of each network's ".com" websites), and the customers wishing to access such content (i.e., the "eyeballs").<sup>22</sup>

With respect to the content providers whose content is linked to the network, it was reported in June, 1999 that UUNET/MCI WorldCom hosted 178 of the top 500 busiest sites and Sprint 56. Combined MCI WorldCom and Sprint will have approximately 47% of the top web sites.<sup>23</sup>

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<sup>20</sup> These include: (a) internal non-core functions/activities being outsourced and provided by separate firms because the Internet infrastructure allows the connection of supplier platforms with internal production platforms, and (b) connecting customers to the service platforms of corporate customers.

<sup>21</sup> Klimovich Affidavit ¶ 19-20.

<sup>22</sup> In 1998, the DOJ estimated the post-merger market shares for iMCI and UUNet as ranging from 40-75%. Public market share data relied on the by the DOJ included overall Internet industry revenues generated by ISPs that connected through various Internet providers and the percentage of ISPs connected to a specific backbone versus the total number of ISPs connected to all of the backbones combined as measured by Boardwatch Magazine. The DOJ examined market shares using other methods as well and noted that MCI/WorldCom would be the dominant player in the market, and substantially larger than any other player. Robinson Speech at 7-8.

<sup>23</sup> <http://www.data.com/issue/990607/topisps.html>

With respect to the “eyeballs,” International Data Corporation (“IDC”) recently reported that “[t]he most striking development in the ISP market has to be the continuing dominance of UUNet . . . .” IDC found that UUNet (MCI WorldCom) controls 43% in the wholesale segment – “at least almost double the share of the nearest competitor.”<sup>24</sup> Indeed, anticompetitive network effects are far more likely today than was feared in 1998 when there was relative parity between the three largest IBPs.<sup>25</sup> AT&T has similar estimates for U.S. Internet wholesale market shares (end of year 1998): MCI WorldCom is ranked first, with a 34% market share and Sprint is second, with a 17% market share, Moreover, based on daily traffic levels for the largest backbone providers at year end 1998, MCI WorldCom and Sprint combined would be twice as large as the merged entity’s next largest competitor, Cable & Wireless.<sup>26</sup>

The data submitted by MCI WorldCom and Sprint is consistent with this data. All five tables show that MCI WorldCom is the largest backbone provider except the IDC table<sup>27</sup> which identifies AOL as the market leader. But, as explained in the most recent IDC study described above, “America Online is by far the largest consumer-oriented ISP, and UUNet dominates the market for business access, wholesale services [which is the relevant service here], and value-added services by large margins over the number-two carrier in each segment.” As Sprint explained in 1998, citing the consumer-oriented ISP

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<sup>24</sup> IDC, "Internet Service Provider Market Review and Forecast, 1999-2004"  
[http://cyberatlas.internet.com/big\\_picture/hardware/print/0,1323,5921\\_304631,00.html](http://cyberatlas.internet.com/big_picture/hardware/print/0,1323,5921_304631,00.html).

<sup>25</sup> In 1998, IDC calculated market share based on backbone wholesale revenue as follows: MCI 30%, Sprint 30% and UUNet 18-20%. IDC, “The Internet Service Provider Marketplace, 1996-2000: A Dual Telecommunications Opportunity”

<sup>26</sup> See, Exhibit D hereto.

<sup>27</sup> Supplemental Internet Submission, Attachment 2.

data is “misleading.”<sup>28</sup> All five tables submitted by MCI Worldcom and Sprint similarly identify Sprint as one of the largest providers. Moreover, the one analyst’s conclusion that MCI WorldCom’s market share has been declining<sup>29</sup> is contrary to the data collected by others. For example, a comparison of the current IDC wholesale Internet backbone revenues and Boardwatch’s data to their data from the WorldCom/MCI merger indicate that WorldCom’s market share has grown since that merger.<sup>30</sup>

3. MCI WorldCom and Sprint Have Failed to Demonstrate That The Merged Entity Will Not Dominate the Highly Concentrated Internet Backbone Market

None of the statistics cited by MCI WorldCom and Sprint concerning overall Internet growth<sup>31</sup> or the increase in the number of ISPs in any way suggest that the Internet Backbone market is not the appropriate market for analysis, that market concentration has changed, or that barriers to entry have in any way disappeared.<sup>32</sup> As recently reported:

“While there are more than 4,500 ISPs in the United States, the majority of traffic is carried by about 10 of them. Those 10 all have private peering agreements in place—agreements that call for an exchange of traffic without any money changing hands and that guarantee data exchange at high rates of speed. Small and regional ISPs, on the other hand, can’t barter, and must either pay or make do with poorer performance.”<sup>33</sup>

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<sup>28</sup> CRA Report at 17, n.26. It should be noted that AOL has subcontracted its network to MCI WorldCom.

<sup>29</sup> Supplemental Internet Submission at 19.

<sup>30</sup> Comparing the IDC data from the WorldCom/MCI merger to today, UUNet’s share grew from 18% to 34%. See note 26 and accompanying text *supra*. At the time of the WorldCom/MCI merger, the then most current Boardwatch similarly reported UUNet market share as 18%. Boardwatch Directory (July/August 1997). The Boardwatch study submitted by MCI WorldCom herein (Supplemental Internet Submission, Attachment 4) shows that its share has risen to 21.15%.

<sup>31</sup> Supplemental Internet Submission at 12.

<sup>32</sup> *Id.* at 15.

<sup>33</sup> James E. Gaskin, “Can the Industry Resolve Its Own Peering Debate?” (April 26, 1999) <http://www.iw.com/print/1999/04/26/ispworld/19990426-can.html>

More significantly, of those ten providers, the largest are still MCI WorldCom and Sprint.<sup>34</sup> Similarly, MCI WorldCom's and Sprint's attempts to downplay the difficulty of constructing an Internet backbone network<sup>35</sup> is exaggerated. Building a national Internet backbone is both costly and time consuming.<sup>36</sup> In any event, competition in the Internet backbone service market requires more than a physical network. It requires a critical mass of websites and volume; without that a new entrant cannot obtain the interconnection terms it needs to compete.

MCI WorldCom's and Sprint's claims that the number of public interconnection points has increased and that MCI WorldCom has upgraded interconnection at its public access points<sup>37</sup> does not make private peering with the merged entity any less necessary. The increased number of NAPs has not relieved congestion at the most heavily used NAPs (such as MAE-East), and MCI WorldCom's upgrades have not occurred fast enough to keep pace with the growth of Internet traffic.<sup>38</sup>

Moreover, the various content distribution technologies (caching, mirroring and multihoming)<sup>39</sup> identified by MCI WorldCom and Sprint have not in any way diluted the merging parties market power or reduced the need for private peering. These technologies cannot be used by any but the largest content providers. Moreover, because content is becoming more dynamic in nature, generic caching is becoming less effective.<sup>40</sup> Finally, MCI WorldCom's and Sprint's claimed recent willingness to enter

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<sup>34</sup> See, Denise Caruso, "Digital Commerce," *supra*, note 2.

<sup>35</sup> Supplemental Internet Submission at 3-4.

<sup>36</sup> Klimovich Affidavit ¶ 18.

<sup>37</sup> Supplemental Internet Submission at 8-9 and 20-21.

<sup>38</sup> Klimovich Affidavit ¶ 10.

<sup>39</sup> Supplemental Internet Submission at 21.

<sup>40</sup> Klimovich Affidavit ¶ 11.

into more private peering arrangements with its “peers”<sup>41</sup> is meaningless inasmuch as no other IBP will be of even closely comparable size to the merged entity after the merger.

B. The Merger Will Result in Anticompetitive Network Effects

Allowing MCI WorldCom to acquire Sprint's Internet business will render the combined entity virtually unassailable. This merged entity will control so much of the Internet backbone that it will have the ability and incentive to force other IBP's, including those currently considered Tier 1 IBPs, to buy transit from it. The merged entity will also have the ability and incentive to degrade the quality of interconnection needed by competitors.

The ability of a firm to cause these so-called “network effects” was best described by Sprint when it opposed the WorldCom/MCI merger.<sup>42</sup> As Sprint observed, if the two largest Internet backbone providers are combined, creating a disproportionately large network, the merged entity will have no incentive to support efficient interconnections. To the contrary, the merged entity’s incentives will be to “tip” the market by charging existing peers for interconnection or by degrading the quality of interconnections. Indeed, the new firm could decide to delay necessary investments in interconnection facilities needed to keep up with the growth. Those incentives are even greater here, when customers are demanding ever-higher quality of service commitments in their Service Level Agreements.

Finally, it should be noted that there is a substantial risk that customers on Sprint’s backbone will soon – if they have not already begun to – move their business to MCI WorldCom. This will undoubtedly occur because customers assume that, as with

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<sup>41</sup> Supplemental Internet Submission at 20.

<sup>42</sup> CRA Report, p.11; see also, WorldCom/MCI Order, ¶ 149.

WorldCom's prior merger, MCI WorldCom will be required to divest Sprint's backbone. And if customers decide to move their business to MCI WorldCom now, rather than stay with the divested entity, they will avoid some of the problems experienced by C & W. Indeed, by moving now, customers will avoid being locked into what they will view as the inferior network. Accordingly, a simple divestiture of Sprint's backbone will not restore the status quo ante.

C. Any Effort to Condition this Merger on Divestiture Must Take Into Account The Allegations in the C & W Litigation

The divestiture in the MCI/WorldCom proceeding was clearly inadequate. Allowed to select its own purchaser, MCI then apparently then proceeded to violate the commitments it made to the Department of Justice and the Commission not to undermine the competitive significance of the divested entity.

Specifically, in order to obtain the approval of the Commission, the DOJ and the European Union, MCI agreed to sell its Internet assets to C&W. The divestiture was to include, among other things, the transfer of all of MCI's contracts with wholesale and retail customers for the provision of Internet backbone services, the transfer of all necessary employees to support the MCI business being transferred, and all other necessary support arrangements to fulfill existing contractual obligations of the MCI business.<sup>43</sup>

MCI/WorldCom was also to refrain from soliciting or contracting to provide dedicated Internet access services for a specified period.<sup>44</sup>

At least as alleged in C&W's Complaint, MCI WorldCom materially breached those obligations. Specifically, C&W alleged that "MCI WorldCom has not effectively transferred MCI's Internet customer base to Cable & Wireless, has not provided the employees, assets or

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<sup>43</sup> WorldCom/MCI Order, ¶ 151.

services necessary to operate the iMCI business, and has not refrained from soliciting MCI's Internet customers."<sup>45</sup> And as to the last item, C & W alleged that MCI WorldCom "advised some iMCI customers, prior to closing, to obtain UUNet service for the purpose of avoiding the non-compete provision of" their undertaking;<sup>46</sup> improperly included on "overlap" lists customers who were never Internet Customers of WorldCom;<sup>47</sup> provided confidential information regarding C&W customers to MCI personnel "for self-marketing purposes,"<sup>48</sup> and told C&W customers "to anticipate degradation in Cable & Wireless Internet service and performance and to disconnect from Cable & Wireless."<sup>49</sup>

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Id.

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C&W's Complaint, ¶21.

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Complaint, ¶¶57-59 (emphasis added).

47

Complaint, ¶¶60-61.

48

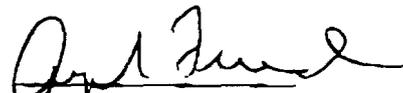
Complaint, ¶¶62-68.

49

Complaint, ¶¶69-70.

**CONCLUSION**

Because of the profound anticompetitive effects that this merger will have on the Internet backbone market, the Application must be denied, or at the very least, conditioned on the divestiture of one of the merging parties' Internet assets in a manner that ensures that the network spun off is viable a competitor and that the merged entity will not discriminate, particularly with respect to quality of service, against competing backbone providers which interconnect with its network.



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