timeliness that the DOJ's *Horizontal Merger Guidelines* consider to be necessary to mitigate the considerable anti-competitive impact of the proposed merger. In fact, it does not. As of this writing, the FCC has approved only one Bell Company application for entry into long distance--Bell Atlantic in New York state.[58]

Further, since FCC approval of Bell Company entry into long distance is taking place on a state-by-state basis, it will take time before any one Bell Company is able to compete in the national long distance market. The Bell Companies enter the national long distance market as re-sellers, without a national backbone of their own. This serves as an additional factor that makes Bell Company entry neither timely, likely or sufficient in magnitude, character, and scope to counteract the anti-competitive impact of the proposed merger in long distance markets.

4. Conclusion

The proposed merger would impair competition in both the mass and larger business long distance markets. In a post-merger duopoly market, carriers would have the incentive and opportunity to raise prices, degrade service, or delay innovation. Factors other than transmission capacity--lack of competition for low-volume customers; lock-step pricing policies; Sprint as a "second choice" alternative to MCI; the high cost of brand name recognition in the mass market; the absence of alternative carriers in the larger business market--serve as effective barriers to entry and expansion by other carriers. Finally, RBOC entry will not sufficiently offset the anti-competitive impact the proposed merger within the forward-looking two-year time frame of this merger review.

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[58] As of this writing, the FCC is considering a second Bell Company 271 applicant, SBC in Texas.

There is on viable remedy, requiring full and complete divestiture of the Applicants' integrated long distance and Internet business, networks, and customers.

B. The Merger Will Result in Anti-Competitive Harm in the Internet Backbone Market

The proposed merger would also adversely affect competition in the Internet backbone market. The proposed merger would combine the largest and second largest Internet backbone carriers with combined market share of more than 50 percent. Under similar market conditions, the U.S. Department of Justice (DOJ) and the European Commission (EC) required MCI to sell its entire Internet business prior to approval of the MCI WorldCom merger. MCI sold its Internet business to Cable & Wireless for $1.75 billion.[59]

At that time, Sprint supported the spin-off. In comments to the FCC, Sprint noted that "the Commission should require as a condition of the WorldCom/MCI merger that the merging parties spin off either WorldCom's or MCI's Internet assets."[60] In applauding the European Commission's decision to launch a full investigation into the impact of the proposed MCI WorldCom merger on competition in the Internet backbone market, Sprint noted that the "MCI/WorldCom merger . . . raises serious anti-competitive issues" which would "short-circuit the growth of the global information network."[61]

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[59] For a description of that divestiture agreement, see *WorldCom/MCI Order* at ¶ 151.

[60] Sprint Corporation Comments to FCC, *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket 97-211 (Mar. 13, 1998).

[61] Sprint Press Release (Mar. 4, 1998).

In their Internet Submission, the Applicants have indicated to this Commission their willingness to work with policymakers to address and resolve concerns regarding Sprint's Internet backbone business.[62] To preserve a "competitive, accessible" Internet "devoid of entry barriers"[63] it is imperative that federal regulators devise an effective remedy. The MCI Internet divestiture was not an effective remedy. The market share of the divested Internet business tumbled from MCI's pre-divestiture 40 percent market share to Cable & Wireless's six to nine percent market share.[64] Based on the Cable & Wireless experience, it appears that it is not possible to achieve an effective spin-off when the divested carrier's Internet business, networks, and customer relationships are fully integrated with its other telecommunications networks, businesses, and customer relationships. This was the case with MCI Internet, and it is also the case with Sprint.

There is one viable remedy, which would require a full and complete divestiture of Sprint's integrated Internet and long distance business, networks, and customers. This remedy would at the same time resolve merger-related anti-competitive problems in long distance and Internet markets.

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[62] MCI WorldCom and Sprint, Supplemental Internet Submission, CC Docket No. 99-333 (Jan. 14, 2000), at ¶ 1. (*Internet Submission*).

[63] *WorldCom/MCI Order* at ¶ 142.

[64] *Boardwatch,* June 1997 for MCI's pre-divestiture market share; *Internet Submission*, Attachment 3 (Cahners In-Stat Group) and Attachment 5 (Sanford Bernstein) for Cable & Wireless' post-divestiture market share.

1. Relevant Market

The relevant product market for competitive analysis is the Internet backbone market. The Applicants appear to acknowledge that there is a distinct Internet backbone market.

According to the Commission's findings in the *WorldCom/MCI Order*, the Internet is an interconnected network of packet-switched networks. There are three classes of participants on the Internet: end users, Internet service providers (ISPs), and Internet backbone providers (IBPs). End users send and receive information; ISPs allow end users to access Internet backbones; and IBPs route traffic between ISPs and interconnect with other IBPs.[65]

The Commission states that the essential service provided by IBPs is transmission of information between all users of the Internet. Although IBPs compete with one another for ISP customers, they also cooperate through interconnection to assure that all end users have access to the full range of content and to other end users. IBPs interconnect with each other and with other ISPs either through settlements-free peering or paid transit.[66] The top-level networks achieve universal connectivity through settlements-free peering; smaller ISPs must pay transit fees to the larger networks to assure universal connectivity.

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[65] *Id.* at ¶ 143.

[66] *Id.* at ¶¶ 144-145.

In the *WorldCom/MCI Order,* the Commission defined an Internet backbone service as "the transporting and routing of packets between and among ISPs and regional backbone networks."[67] The Commission noted 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."[68]

The DOJ and EC reached the same conclusion.[69] According to the DOJ, the Internet backbone is a relevant market for which there is no substitute. "Smaller regional backbone networks would not be adequate substitutes . . . because they would be dependent on [MCI/WorldCom] for Internet connectivity."[70] The EC similarly concluded that the "relevant market on which the merging parties are active is the market for the provision of top level or 'universal' Internet connectivity." The EC defined the market for "top-level or universal Internet connectivity" (i.e., the Internet backbone market) as those Internet access carriers that are able to deliver complete Internet connectivity entirely on their own account. The EC concluded that "[A]pplying the hypothetical monopolist test, if the top-level networks were to act as one unit, then there is no one capable of providing an adequate substitute service in response to price increases."[71]

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[67] *Id.* at ¶ 148.

[68] *Id.*

[69] Address by Constance K. Robinson, Director of Operations and Merger Enforcement, Antitrust Division, U.S. Department of Justice, "Network Effects in Telecommunications Mergers--MCI WorldCom Merger: Protecting the Future of the Internet" (Aug. 23, 1999), 9 (available at http://www.usdoj.gov/atr/public/speeches/3889.htm) (*Constance Robinson speech*).

[70] *Id.* at 9.

[71] Commission Decision of 8 July 1998 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement, Case IV/M.1069 - WorldCom/MCI), (notified under document number C(1998) 1887), Official Journal L 116, 04/05/1999 at 70 (*European Commission Decision).*

In sum, the Commission, the DOJ, and the EC have all concluded that the Internet backbone is a relevant product market for which there is no demand substitute.

In its review of the MCI/WorldCom merger, the Commission analyzed the geographic market as national.[72]

2. Most Significant Market Participants

The Applicants provide various sources of market share data to the Commission which, taken together, show that a combined MCI WorldCom/Sprint would have at least a 50 percent share of the Internet backbone market.[73] As the DOJ noted in assessing various sources for Internet backbone market share in the MCI/WorldCom merger, while "none of these measures is perfect, each of them, while resulting in different absolute numbers, exhibit[s] the same pattern."[74]

The most relevant publicly available Internet market share data for a competitive analysis of the Internet backbone market is data that calculates the percentage of ISPs connected to each backbone. The central issue in analyzing the competitive effects of a proposed merger in the

[72] *WorldCom/MCI* at ¶ 392.

[73] *Internet Submission,* Attachments 1-5.

[74] *Constance Robinson speech* at 11. In their reviews of the MCI/WorldCom merger, the DOJ and EC compiled market share data from a variety of sources, including share of connections to ISPs, revenue figures, traffic flow, and installed capacity links. The EC found market share calculations based on number of POPs and address spaces were less reliable methods to calculate market share. For a more detailed description, see *also European Commission Decision* at ¶¶ 88-116.

Internet backbone market is whether the merger would allow one carrier to dominate the market for Internet connectivity due to the dominant size of the customer base that connects to its network.

Based on the Cahners data cited in the Applicants' Internet Submission, a merged MCI WorldCom/Sprint would connect with 54 percent of ISPs; using the Telegeography data cited in the Applicants' Internet Submission , the merged entity would connect with 47 percent of downstream ISPs.[75] Other sources report that the merged entity would have a combined Internet market share as high as 65 to 70 percent.[76]

Internet revenue figures are subject to distortion because they often include different revenue streams for different carriers. Given this caveat, the Sanford Bernstein data provided in the Internet Submission purports to calculate Internet backbone revenue from wholesale services and business dedicated and dial-up access. This data finds the merged entity's combined market share based on revenue would be 47 percent.[77]

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[75] *Internet Submission*, Attachment 1 (data from Telegeography for winter 1998-99) and Attachment 3 (data from Cahners In-Stat Group for 1998).

[76] Chuck Moozakis, "Users Wary of Mega-Deal," *Internet Week* (Oct. 11, 1999); Mary Mosquera, "Sprint Buy Gives MCI WorldCom More Muscle," *CMP Tech Web* (Oct. 15, 1999).

[77] *Internet Submission*, Attachment 5 (data from Sanford Bernstein, 1999). There is no standard agreement on what constitutes "Internet backbone revenue." The data in Attachment 2 is not useful because it includes non-Internet backbone revenue.

The Applicants fail to provide the Commission with internal traffic flow data which would be necessary to resolve public interest issues. In failing to provide this essential data, the Applicants fail to meet the Commission's "burden of proof" standard for a merger review. The DOJ and EC collected traffic flow data from the large Internet backbone carriers as part of the MCI WorldCom review. The Commission, acting in concert with the DOJ (and, if relevant) the EC, should conduct a similar study in the context of this merger review.

Returning to the publicly available data cited by the Applicants, it also shows that MCI WorldCom and Sprint are the largest and second largest Internet backbone providers with MCI WorldCom by far the largest participant in the market.[78] A merged MCI WorldCom/Sprint would be more than twice as large as its nearest Internet backbone competitor.

While the Applicants note that *Boardwatch* magazine has identified 46 national Internet backbones, the data provided by the Applicants shows that all but four to five have only a small percentage of the market. It appears that today there are four to five top-tier Internet backbone providers dominated by the biggest two--MCI WorldCom and Sprint.[79]

[78] Cahners data (% ISPs interconnected) and Sanford Bernstein data (% Internet revenue); cited in *Internet Submission*, Attachments 3 and 5.

[79] Bell Atlantic and GTE have proposed a divestiture of GTE-I/BBN in order to resolve Section 271 issues related to their proposed merger.

3. Analysis of Competitive Effects

Under similar market conditions, the DOJ and EC concluded that the proposed merger between MCI and WorldCom would threaten the competitive dynamism of the Internet. Absent the Internet divestiture, the DOJ and EC concluded that a merged MCI/WorldCom would have had more than 50 percent of the Internet backbone market, similar to the market share of a merged MCI WorldCom/Sprint, creating unacceptable anti-competitive effects on the Internet market.[80]

As was true in the MCI WorldCom case, a merged MCI WorldCom/Sprint would so dominate the customer base of interconnecting Internet users and downstream Internet Services Providers that the merged entity would have both the incentive and the ability to raise prices or degrade quality of interconnection among competing providers, stifling competition at a critical stage in Internet development.[81] The fact that competing IBPs would have difficulty obtaining settlements-free peering constitutes a "substantial barrier to entry."[82]

Constance Robinson of the DOJ's Antitrust Division explained why the DOJ concluded that a divestiture was necessary to preserve a competitive, dynamic Internet.

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[80] "There is little doubt that the combined entity would hold over 50 percent of the market. The combined network would be significantly larger than * the size of its nearest competitor [Sprint] on either revenue or traffic flow, bearing in mind that the next competitor, the GTE group, is about half the size of Sprint." *EC Decision* at 114. "Post-merger market shares for Internet connectivity ranged from 40 to 75 percent, depending on what measure of market share was used." *Constance Robinson speech* at 10.

[81] "MCI WorldCom would be able to act independently of competitors by raising their costs and decreasing the quality of their service offerings." *EC Decision* at ¶ 120.

[82] *WorldCom/MCI Order* at ¶ 150.

> Prior to the MCI/WorldCom merger, no single backbone provider reached a disproportionate amount of destinations on the Internet relative to other major players. There was a rough equality, with each backbone provider depending on the other. Each backbone provider, therefore, had an incentive to support efficient interconnections because its failure to do so would have caused such a degradation of quality that it risked losing customers to the other networks. That incentive would change, however, if the two largest backbone providers were combined. But the MCI/WorldCom merger threatened to create a very large network with a huge size disparity. By representing a majority of the Internet customers, MCI/WorldCom would have been more valuable and been more important as a point of interconnection for other Internet providers, which would otherwise lose access to a great deal of the Internet. MCI/WorldCom would have far less need to depend on the other backbones than those backbones would have to depend on it. By giving MCI/WorldCom a disproportionately large customer base, the merger would have changed MCI/WorldCom's incentives from favoring compatibility toward favoring incompatibility. Recognizing this, there was widespread industry concern about the effects of the merger on peering arrangements and interconnection prices.
>
> MCI/WorldCom's changed incentives would have increased the likelihood that it would attempt to tip the market by charging existing peers for interconnection or by degrading the quality of interconnections. MCI/WorldCom would have been able to do this, either through unilateral action, or through collusion with the only remaining player with a significant market share. The disproportionate dependence that other backbones would have had on MCI/WorldCom would have given it bargaining leverage to dictate the pricing and terms of interconnection . . . .
>
> . . . . At this early, but critical stage where the development of cost-based pricing and other terms and conditions for interconnection are expected to be developed through bargaining among the industry's participants, allowing one player to achieve dominance through acquisition could have had an irreversible anti-competitive impact on this market. So we either had to try to block the merger or find another way to address our competitive concerns.
>
> . . . . Since entry was not going to constrain a dominant MCI/WorldCom, any remedy had to create a viable competitor that would replace iMCI as a principal player in the national backbone market. The only way this was possible was through the divestiture of MCI's entire Internet business . . . . [83]

Therefore, the DOJ and the European Commission conditioned approval of the merger between MCI and WorldCom upon the spin-off of MCI's entire Internet business to Cable & Wireless.

[83] *Constance Robinson speech* at 12-14. *See also EC Decision* at ¶¶ 117-135.

4. Remedy

The MCI Internet divestiture to Cable & Wireless has not achieved the stated goal of antitrust regulators to create a viable competitor to replace MCI as a principal player in the national backbone market.[84] Cable & Wireless currently has somewhere between six and nine percent of Internet backbone market share,[85] far below MCI Internet's pre-divestiture estimated 40 percent Internet backbone market share.[86] There are two possible explanations for this failure. First, MCI WorldCom apparently did not abide by all terms of the divestiture agreement. Second, the structure of the divestiture was inherently problematic. We examine the evidence for each of these two explanations in turn.

First, MCI WorldCom's may not have lived up to the terms of the divestiture agreement, making it difficult for Cable & Wireless to retain MCI Internet's former customers. MCI WorldCom's alleged violations of its commitments to the DOJ and EC include:

- Failure to transfer all personnel necessary for the operation of the former MCI Internet business at prior performance and service level standards. MCI transferred only 43 sales and sales support representatives to support more than 3,300 business customers.[87] The divestiture agreement required MCI to "transfer all employees necessary to operate the Internet business by allowing C&W to identify those individual employees from a list of approximately 1,000 employees."[88]

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[84] *Constance Robinson speech* at 13.

[85] *Internet Submission*, Attachment 3 (Cahners In-Stat Group) and Attachment 5 (Sanford Bernstein).

[86] *Boardwatch,* June 1997 for MCI's pre-divestiture market share.

[87] Testimony of Mike McTighe, Chief Executive Officer, Cable & Wireless, Global Operations before the U.S. Senate Commerce Committee, Hearings on Telecommunications Mergers (Nov. 8, 1999) (Tighe Testimony). This testimony is the source for all the bulleted items in this list.

[88] *WorldCom/MCI Order* at ¶ 151.

- Failure to provide contract documentation and other key customer information to Cable & Wireless at closing. For example, MCI WorldCom withheld 2,000 written customer contracts half of the contracts provided to date — until at least seven months after closing.[89]

- Failure to provide necessary services, systems, and support, such as competent customer billing services.

- Failure to provide services at favorable rates.

- Failure to conduct business in the ordinary course, including the reasonable retention and solicitation of customers, prior to closing.

- Solicitation of transferred customers, in violation of the non-compete provisions. The divestiture agreement prohibited MCI WorldCom from contracting with or soliciting transferred retail dedicated access customers for 18 months, web-hosting and managed firewall services customers for six months, and transferred ISP customers to provide dedicated Internet access service (unless the ISP already purchased Internet services from WorldCom at the closing of the agreement) for two years.[90]

But, even more important, the failure of the MCI Internet divestiture to transfer its customer base to Cable & Wireless in order to create a viable competitor indicates that it may not be possible to structure an effective divestiture when a carrier's Internet business is fully integrated with its other telecommunications services.

MCI's Internet business was highly integrated with its long distance (and other) telecommunications networks and services and with personnel and facilities serving both Internet and long distance businesses. MCI Internet customers also used MCI for other

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[89] *Id.*

[90] *WorldCom/MCI Order* at ¶ 151.

telecommunications services, such as long distance, local service, messaging, and pre-paid calling cards.

The Sprint Internet business is similar to MCI's Internet business in that it is fully integrated with Sprint's other telecommunications services and long distance network.

Thus, divestiture of Sprint's Internet business in the context of this merger will not resolve the merger-related anti-competitive problems in the Internet backbone market. Based on the Cable & Wireless experience, that remedy would not create a viable competitor able to sustain market share comparable to Sprint's current position in the market. There is only one viable alternative that would simultaneously resolve merger-related anti-competitive problems in both the Internet and long distance markets. This would require Sprint to divest its entire Internet and long distance operations, tied to strong enforcement mechanisms, as a condition for merger approval. This remedy would simultaneously resolve anti-competitive problems in the long distance and Internet markets.

C. The Merger Will Result in Service-Affecting Employment Cuts

The Commission has noted that its public interest review may also assess whether the merger will affect the quality of telecommunications services[91] and service-affecting employment

[91] *SBC/AMT Order* at ¶ 50; *WorldCom/MCI Order* at ¶ 9.

levels.[92] Provision of quality telecommunications service requires a skilled, experienced, and well-trained workforce that is adequate in number to install, maintain, and repair telecommunications facilities and to provide good customer service.

It is highly likely that, absent conditions, the proposed merger will result in post-merger reductions in staffing levels that would have a negative impact on the quality of telecommunications services. Further, Sprint's local telecommunications division has had a hiring freeze on core technical jobs in Sprint's local telecommunications division for over a year. As a result, inadequate staffing in Sprint's local telecommunications division (combined with other factors that we discuss in Section IVA) has seriously compromised service quality in Sprint's local telephone operations. Commitments by the Applicants to lift the hiring freeze and increase staffing levels in Sprint's local telephone operations would provide an important merger-related public interest benefit.

1. The Merger Will Result in Decline in Telecommunications Service Quality

Service-affecting employment cuts are likely be substantial after a MCI WorldCom/Sprint merger. The Applicants anticipate they will realize $1.3 billion in reduced sales, general, and

[92] In the *WorldCom/MCI Order*, the Commission considered the impact of that merger on employment. *See WorldCom/MCI* at 213. In the *SBC/AMT Order,* the Commission cited SBC's commitment to "improving service quality by hiring more employees." *SBC/AMT Order* at 567. In the Puerto Rico Telephone Authority/GTE Merger, the Commission also cited employee commitments as a merger-related public interest benefit. *Puerto Rico/GTE Order* at ¶ 57.

administrative expenses in the first year after the merger, rising to $5.5 billion by the year 2004.[93] MCI WorldCom's president of network operations and vice president for corporate development state in their joint affidavit that they expect SG&A savings to include functions such as "sales, sales tech support, customer service, and quality control" and that there will be "initial headcount reductions . . . ."[94] According to one analyst with the market research firm Dataquest, "MCI will waste little time after closing before cutting staff to justify the deal . . . ."[95]

These anticipated employment cuts are likely to impact the quality of service customers receive from the merged entity. MCI WorldCom customers are already experiencing a serious decline in customer service as a result of the employment cuts and problems integrating the different networks and workforces after the merger between MCI and WorldCom. According to Lisa Pierce, an analyst at Giga Information Group, Inc., in Cambridge, Ma., many of her clients report that turnover and job cuts after the MCI WorldCom merger have resulted in numerous billing errors and installations that didn't happen.[96]

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[93] *Application,* 110 and Joint Affidavit of Wayne Rehberger and K. William Grothe, Jr., Appendix E to *Application* at 15-17 (Rehberger/Grothe Aff.). PaineWebber cites SG&A synergy savings of $5.5 billion in 2004. *See* PaineWebber Company Analysis, "MCI WorldCom, Inc." (Oct. 14, 1999).

[94] Rehberger/Grothe Aff. at 15 and 17. Rehberger and Grothe state that "initial headcount reductions will later turn to employment increases thanks to substantial revenue growth." But as CWA has already noted, the Commission should regard such claims with a great deal of skepticism based on similar unsupported claims made by MCI and WorldCom to the Commission prior to that merger.

[95] Steve Koppman, analyst with Dataquest of San Jose, Ca., *quoted in* Ted Sickinger, "Sprint Merger Will Bring Extensive Job Cuts, Analysts Agree," *Kansas City Star,* Jan. 16, 2000 at A-20.

[96] Matt Hamblen, *supra* n 42.

According to the network manager of a plastic distributor in St. Louis, an MCI WorldCom customer:

> MCI WorldCom staff levels are so low that we are constantly fighting to get jobs accomplished. I constantly have orders that are wrong or haven't even been placed weeks after the request was made. The technical understanding of the network doesn't exist.[97]

The IS manager of the New York Times, another MCI WorldCom customer, complained that "their organization is still in turmoil from the acquisition of MCI" with staff turnover resulting in a negative impact on the quality of MCI's service and support to his organization.[98]

These employment-related quality problems will accelerate after an MCI WorldCom/Sprint merger. The merged entity will be under pressure to meet its multi-billion dollar SG&A cost synergies. Because dissatisfied customers will have fewer market alternatives, the merged entity will feel less constrained from meeting service-affecting cost-cutting targets through job cuts. Further, while the Applicants speculate that they do not "expect" post-merger cost synergies in Sprint's local telecommunications division and that any post-merger SG&A savings in its local operations will be "minimal,"[99] reversal of service quality problems in Sprint's local operations require additional staffing, not the *status quo* of steady decline. (*See* Section IVA for a discussion of service quality problems in Sprint's local exchanges.)

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[97] Mark Collins, manager of network services and telecommunications for Bunzl USA, a plastics distributor in St. Louis *quoted in* David Rohde (Oct. 11, 1999) *supra* n. 38.

[98] Dave Brown, IS manager at the New York Times *quoted in* Stephen Lawson and Nancy Weill, "MCI - Sprint Combo Looms; Proposed Mega-Merger Draws Applause but Raises Fears," *InfoWorld* (Oct. 11, 1999).

[99] *Application,* 107-8 and Rehberger/Grothee Aff. at ¶ 6 ("We do not expect the current merger to create synergies in the form of reductions in expenditures by Sprint's incumbent local exchange carrier (ILEC) operations.") and ¶ 15 (". . . ILEC-related SG&A expenses savings will be minimal.").

The Applicants will undoubtedly respond to the concerns we raise with a statement that revenue growth will lead to long-term employment growth at the merged entity. The Commission should regard such claims with a great deal of skepticism. MCI WorldCom made a similar claim to the Commission during the MCI and WorldCom merger review. At that time, MCI and WorldCom stated to the Commission that the merged MCI WorldCom expected to add up to 10,000 new positions after the merger.[100] Despite these statements to the Commission, just two months after the merger, MCI WorldCom announced 3,750 layoffs, or about five percent of the MCI workforce.[101] (This was consistent with information MCI provided to the Securities and Exchange Commission soon after the merger was announced in late 1998 of its plans to eliminate 4,500 positions.)[102] According to the best publicly available information, MCI WorldCom employs 3,300 fewer employees than did MCI and WorldCom combined before the merger.[103]

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[100] *WorldCom/MCI Order* at ¶ 213 n. 619.

[101] Rebecca Blumenstein, "Layoffs Could Hit 3,750 as Ebbers Slims Down Newly Merged Carrier," *Wall Street Journal* (Dec. 10, 1998).

[102] MCI SEC Form 10-K Annual Report, April 15, 1998 (for year ended Dec. 31, 1997).

[103] MCI WorldCom employment as of Feb. 28, 1999, was 77,000. Pre-merger employment was 60,000 (MCI) and 20,300 (WorldCom) for a combined pre-merger total of 80,300. The difference is 3,300 fewer jobs. *See* SEC Forms 10-K Annual Report for MCI WorldCom for the year ended Dec. 31, 1998 (filed Mar. 30, 1999), WorldCom for the year ended Dec. 31, 1997 (filed Mar. 27, 1998), and MCI for the year ended Dec. 31, 1997 (filed Apr. 15, 1998).

Some analysts calculate higher post-merger job loss figures. Lisa Pierce of Giga Information Group calculates that 5,700 MCI employees were let go after the MCI WorldCom merger. *See* Ted Sickinger, "Sprint Merger Will Bring Extensive Job Cuts, Analysts Agree," *Kansas City Star,* Jan. 16, 2000 at A1 and A-18.

MCI WorldCom states that it has 77,521 employees, compared to a total of 73,558 employees for each company prior to the merger (excluding SHL employees since SHL was sold during the year). *See* Rehberger/Grothe Aff. at 5. Even using these figures, however, MCI WorldCom inflates its current employment figure because it includes approximately 3,600 SkyTel employees that were added to its employment figures after MCI WorldCom purchased SkyTel on Oct. 1, 1999 (after the MCI WorldCom merger). *See* SEC Form 10-K for SkyTel for the year ended Dec. 31, 1998 (filed Mar. 31, 1999). Thus, even using MCI WorldCom's figures, employment levels at MCI WorldCom due to internal growth has been virtually flat since the merger.

2. Employment Commitments

In recent ILEC merger reviews, the Commission has noted that voluntary commitments made by the merging parties to maintain or increase staffing to improve service quality enhances the public interest benefit of the merger. In the *SBC/AMT Order,* the Commission stated that "SBC has increased its commitments to improving service quality by hiring more employees . . . "[104] In the *Puerto Rico/GTE Order,* the Commission cited GTE's commitments not to make any involuntary terminations, except for cause, of PRTC employees employed on the date the sale was announced as one of the merger-related public interest benefits.[105]

In other recent ILEC mergers, merging parties have made voluntary commitments, later affirmed by state Commissions, to maintain or increase staffing to address service quality problems in the local exchange. For example, the New York Public Service Commission affirmed a commitment by Bell Atlantic/NYNEX to hire 750 to 1,000 new employees "for the purpose of addressing service quality problems"[106] and the California Public Utilities Commission affirmed

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[104] *SBC/AMT Order* at ¶ 567. The Commission states that SBC also increased its commitment to invest in infrastructure to improve service quality. Employment commitments were also mentioned in the merger approval orders of the Illinois and Ohio. *See* Before the Public Utilities Commission of Ohio, *In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control,* Case No. 98-1082-TP-AMT; "Illinois Conditionally Okays SBC-Ameritech Merger; 3 Foes Say They Will Appeal," *State Regulation Report (*Oct. 1, 1999) at 1.

[105] *Puerto Rico/GTE Order* at ¶ 57.

[106] Before the State of New York Public Service Commission, *Proceeding on Motion of the Commission as to the Joint Petition of New York Telephone Company, NYNEX Corporation, and Bell Atlantic Corporation for a Declaratory Ruling that the Commission Lacks Jurisdiction to Investigate and Approve a Proposed Merger between NYNEX and a Subsidiary of Bell Atlantic or, in the Alternative, for Approval of the Merger Petition of the New York Citizens Utility Board, the Consumer Federation of America, the American Association of Retired Persons, Consumers Union, Mr. Mark Green, Ms. Catherine Abate, the Long Island Consumer Energy Project and the International Brotherhood of Electrical Workers T-6 Council (collectively the "Consumer Coalition") for an Investigation of the Proposed Merger of NYNEX Corporation and Bell Atlantic Corporation,* Cases 96-C-0603 and

SBC/Pacific Telesis' voluntary commitment to increase employment by a minimum of 1,000 jobs.[107]

In the instant proceeding, absent voluntary commitments by the merged entity to increase staffing in Sprint's local exchanges to improve service quality and (at a minimum) to maintain employment levels in other operations adequate to ensure the provision of high-quality telecommunications services, the Commission has yet another reason to find that the proposed merger would result in significant harm to consumers and is not in the public interest. Nor have the Applicants met the burden of proof standard in demonstrating public interest benefit.

IV. The Applicants Fail to Demonstrate that the Proposed Merger Will Result in Demonstrable, Verifiable, and Merger-Related Public Interest Benefits

The Commission uses a "balancing process" that weighs the probable public interest harms of a proposed merger against probable public interest benefits. As harms to the public interest become greater and more certain, the degree and certainty of the public interest benefits must also increase commensurately in order for the Commission to determine that the transaction serves

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96-C-0599, Order Approving Proposed Merger Subject to Conditions (Mar. 21, 1997).

[107] Before the California Public Utilities Commission, *In the Matter of the Joint Application of Pacific Bell Telesis Group (Telesis) and SBC Communications (SBC) for SBC to Control Pacific Bell (U1001) Which Will Occur Indirectly as a Result of Telesis Merger with a Wholly-Owned Subsidiary of SBC, SBC Communications (NV) Inc.*, Order Denying Rehearing and Modifying D.97-03-067, Decision 97-11-035 (Nov. 5, 1997).

the public interest.[108] For some mergers, the harm to competition may be so significant that it cannot be offset sufficiently by pro-competitive commitments or efficiencies.[109]

As we discussed in Section III above, the proposed MCI WorldCom/Sprint merger would result in considerable harm to competition in long distance and Internet backbone markets and to telecommunications service quality. The Applicants must therefore show that there are strong, demonstrable, justified, and merger-related public interest benefits that would result from the proposed merger, particularly for residential and small business consumers. The Applicants fail to do so. They do not demonstrate even a minimal level of merger-related public interest benefits.

First, the Applicants fail to demonstrate that the proposed merger will benefit the one group of residential and small business consumers for whom such commitments would be readily demonstrable and justified, residential and small business consumers in Sprint's local exchange markets. Sprint serves 7.9 million primarily rural customers in 18 states. Sprint has allowed its local exchange networks to deteriorate and is not deploying broadband technologies such as xDSL-capable loops or its ION service in its non-urban local exchanges. One strong potential public interest benefit that residential and small business consumers could derive from the proposed merger would be specific commitments by the merged entity to improve service quality

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[108] *SBC/AMT Order* at ¶ 256; *Bell Atlantic/NYNEX Order* at ¶ 157.

[109] *Bell Atlantic/NYNEX Order* at ¶ 15.

and accelerate deployment of advanced services in Sprint's local wireline telecommunications networks. But on this, the Applicants are silent.

Instead, the Applicants make their case for the public interest benefits of the proposed merger by arguing that it will facilitate deployment of an as-yet unproven technology, fixed wireless (MMDS), that they claim could be a third facilities-based alternative to the home. This purported benefit is neither demonstrable nor merger-related. The Applicants' post-merger capital investment plan in MMDS is at the same level as each Applicant had planned to make separately in MMDS deployment prior to the merger announcement. There is no merger-related benefit in MMDS.

A. Consumers in Sprint's Local Telephone Operations Will Not Benefit from the Merger

1. Sprint Has Allowed its Local Telephone Operations to Deteriorate

The Applicants claim that Sprint's expertise in operating and managing local exchange systems will enable the new merged entity to expand competition and to provide benefits to consumers in local markets.[110] In fact, in recent years, Sprint Corporation has neglected its local telephone operations. Sprint has diverted local ratepayer money to finance expansion in wireless, Internet, and international operations, even as it allows its local networks to decline.

[110] *Application* at 14.

According to ARMIS service quality data provided by Sprint to the FCC, service quality in Sprint's local operations has seriously declined over the past several years. We provide service quality data for Sprint's three largest local telephone operations Nevada, Florida, and North Carolina, which together represent 55 percent of Sprint's access lines[111] from 1996 to 1998 (the most recent year for which FCC data is available).[112]

<u>Nevada</u>[113] (Where access lines increased 16 percent, 1996-1998)
Service outages increased 56 percent, up from 62,400 to 97,700.
Repeat service outages increased 74 percent, up from 8,400 to 14,700.
Trouble reports increased 29 percent, up from 151,100 to 195,600.
Repeat trouble reports increased 32 percent, up from 21,300 to 28,100.

<u>North Carolina</u>[114] (Where access lines increased 18 percent, 1996-1998)
Service outages increased 66 percent, up from 121,800 to 202,000.
Repeat service outages increased 63 percent, up from 12,700 to 20,700.
Trouble reports increased 51 percent, up from 173,700 to 262,000.
Repeat trouble reports increased 47 percent, up from 18,400 to 27,000.

<u>Florida</u> (Where access lines increased 41 percent, 1996-1998)
Service outages increased 68 percent, up from 204,300 to 343,200.
Repeat service outages increased 108 percent, up from 18,200 to 38,000.
Trouble reports increased 67 percent, up from 264,100 to 440,700.
Repeat trouble reports increased 101 percent, up from 24,500 to 49,400.

What accounts for this disturbing decline in service quality in Sprint's local telephone operations over the past three years? The answer can be found in an examination of cash flow between Sprint's local telephone companies and the holding company over the same period. Sprint has

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[111] *Id.*, 25.

[112] All data from Federal Communications Commission, Armis Report, Table 43-05, various years.

[113] The FCC data for Nevada also includes data for a very small Sprint telephone company in North Carolina.

[114] Carolina Tel & Tel (Sprint's largest local telephone company in North Carolina).

been using local ratepayer money to finance investments in its non-local telephone lines of business rather than re-investing it to maintain and to upgrade its local telephone networks.

Based on data provided by Sprint to the Commission, we trace the flow of dividend payments from Sprint's local telephone operations to Sprint Corporation (the holding company). We find that over the past three years (1996-1998), Sprint Corporation used $1.4 billion in local ratepayer money to subsidize corporate dividend payments and to finance non-local telephone operations.[115] This is money that otherwise would have been available to the local telephone companies for investment in the local network.[116] (A description of the methodology we use to arrive at these figures can be found in Appendix E.)

As a result of Sprint's corporate policy to use local ratepayer money to subsidize corporate dividend payments and to finance its expansion into non-local telephone operations, Sprint has reduced operating and capital budgets in its local telephone operations. According to reports from CWA leaders who represent more than 5,000 employees in Sprint's local telephone

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[115] CWA calculation based on data in FCC, *Statistics of Communications Common Carriers,* Table 2.9, various years. Over the 1996-98 period, Sprint Corporation used $207.6 million in (North) Carolina Tel & Tel ratepayer money, $391.5 million in Nevada ratepayer money, and $294.7 million in Florida ratepayer money to subsidize corporate dividend payments or to finance non-local telephone operations. In 1998, for example, (North) Carolina Tel & Tel sent $92.5 million in dividend payments to Sprint Corporation, an amount which exceeded (North) Carolina Tel & Tel's $74.8 million profits that year by $17.7 million.

[116] The Applicants will likely respond that it is sound business practice to use internal resources from mature lines of business to finance expansion and growth. CWA does not dispute this. The issue, however, is one of degree. Sprint used resources generated by ratepayers in its monopoly local exchange operations to generate $1.4 billion over a three-year period to finance non-local telephone operations.

companies in 12 states where Sprint has local operations, evidence of declining service quality derives from the following corporate policies:

- **Sprint has cut employment levels far below those needed to do the work.** Sprint corporate policy will not allow local managers to hire technicians to fill vacant positions. Sprint imposed a hiring freeze on key technical positions in its local telecommunications division in February 1999 that is still in effect today, 12 months later. According to a Sprint bulletin of the Local Telecommunications Division dated Feb. 4, 1999, "jobs of departing LTD [local telecommunications division] employees will not be backfilled."[117] (A copy of the document is in Appendix D.) Because there are fewer technicians available to install new lines and repair troubles, consumers experience longer service delays.

- **Sprint has all but abandoned preventive maintenance of the network.** Because there are not enough technicians, Sprint has disbanded preventive maintenance crews and redeployed the workers to installation and repair. This is not a temporary situation limited to a few locales; CWA has confirmed that Sprint disbanded preventive maintenance crews in many of Sprint's local telephone operations and that this situation has existed for six months to more than two years in some places.

- **Local operating budgets have been drastically reduced.** The annual budget to repair faulty cable frequently runs out in the first or second quarter of the year. The situation is likely to get worse; a Vice-President in Sprint's local telecommunications division has set a goal of 10 percent reduction in operating costs by 2001. (*See* Appendix D.)

- **Sprint has allowed its outside plant to deteriorate and is not investing in new facilities.** Sprint is not putting in new cable to replace dilapidated sections. In addition, neighborhoods are running out of copper pairs. As a result, when a technician goes in to fix a trouble or install a new line, there are no good pairs left. So the technician "frogs" a pair, moving other customers onto other lines, trying to find a halfway decent pair. Inevitably, the technician is back again with a repeat trouble or another trouble report on the "frogged" line.

- **Sprint pushes technicians to make quick fixes rather than to remedy the underlying problem.** If a customer calls in with a problem, the Sprint technician is told to fix only that customer's pair, even if the technician discovers that the source of the problem is faulty cable serving many households or connecting central offices. Because the technician has not been allowed to fix the real problem, the tech is back again soon with a repeat trouble or trouble on another pair served by the same cable.

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117 Sprint bulletin, "Temporary Hiring and Employee Transfer Restrictions" (Feb. 4, 1999).

- **Sprint gives priority service to its most profitable customers.** Sprint instructs its employees to provide better service to targeted customers--those who account for a disproportionate share of Sprint profits--and who therefore should expect to receive the best possible treatment.

- **Sprint does not authorize overtime to ensure timely customer service.** In mid-October, 1999, just two weeks after the proposed merger was announced, Sprint's Local Telecommunications Division issued new overtime guidelines which drastically reduced the authority of local managers to use overtime to resolve customer service outages and troubles. As a result, Sprint will not authorize overtime even for out-of-service calls on lines affecting up to 89 customers, which means customers whose line goes down on a Friday must wait until Monday to get service restored. (A copy of the new overtime guidelines is in Appendix D.)

- **Contractors create costly service problems.** Because Sprint has imposed a company-wide hiring freeze in its local telephone operations, Sprint uses less-skilled, inadequately trained, poorly equipped and yet often more expensive contractors who create new problems. Sprint technicians then must come in and clean up the work.

2. Sprint Is Not Investing in Advanced Services in its Rural Local Exchanges

A key goal of the Telecommunications Act of 1996 is to encourage the deployment of advanced telecommunications and information services in all regions of the country.[118] Yet, Sprint is not deploying broadband technologies in the local loop in its non-urban local markets. In the Applicants' filing, they detail no concrete plans to change this and provide broadband technology to Sprint's non-urban markets.

Sprint does not offer DSL service in 15 of the 18 states in which it provides local service.[119] Sprint has announced plans to roll out DSL service in only three urban markets: Charlottesville,

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[118] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 254(b)(2) (1996 Act).

[119] Sprint Website (http://www.sprint.com/data/dsl).

Va.; Las Vegas, Nv.; and Orlando, Fl. As of August 1999, Sprint was offering DSL to residential customers in only one of those markets, Charlottesville, Va.[120] Sprint ION is being rolled out in three cities: Denver, Kansas City, and Seattle.[121] Absent conditions, Sprint's primarily rural local exchange customers are likely to wait years for access to high-speed Internet connectivity.

3. The Merger Will Not Result in Increased Investment in Sprint's Local Telephone Markets

Consumers in Sprint's local markets can expect continued deterioration of service after the merger. The Applicants have provided the Commission with no evidence of business plans to increase investment in Sprint's local telephone operations. Nor have the Applicants provided the Commission with evidence that the merged entity will invest in broadband serving Sprint's rural and suburban local markets.

The Commission should not be reassured by the Applicants claim that they do not "expect" to realize cost synergies in Sprint's local operations. In fact, it appears that since the merger announcement, Sprint's Local Telecommunications Division has accelerated its cost-cutting plans. In November 1999, just seven weeks after the merger agreement, a senior vice-president in Sprint's local telecommunications division announced a goal to reduce operating costs in Sprint's local operations by 10 percent across the board in the year 2001 (the year that the

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[120] Sprint Press Release, "Sprint Brings High Speed DSL Service and Earthlink Sprint Internet Access to Las Vegas" (Aug. 16, 1999) (available at http://www.sprint.com/Stemp/press/releases/199908/19908160847.htm).

[121] Sprint Press Release, "Sprint Begins Marketing Sprint ION Services in Denber, Kansas City, and Seattle" (Nov. 11, 1999) (available at http://www.sprint.com/Stemp/press/releasese/199911/199911110896.htm).

proposed merger would take effect if it receives all necessary regulatory approvals.)[122] (*See* Appendix D.)

Financial analysts predict that the merged new WorldCom will place less focus on the consumer business, including its local telephone operations. Jack Grubman, telecommunications analyst with Salmon Smith Barney and financial advisor to MCI WorldCom, recently wrote that MCI WorldCom will shift out of businesses that have minimal long-term growth potential, such as some consumer businesses or the wholesale voice business. Mr. Grubman noted that over time MCI WorldCom's mix of revenues will focus on more profitable, faster-growing businesses such as data, Internet, and international services.[123]

This is certainly consistent with MCI WorldCom's strategic focus on the business market. In a May 1999 interview, John Sidgmore, MCI WorldCom's vice chairman made clear that MCI WorldCom's focus is on the business customer:

> Reporter: "Will MCI WorldCom stick with its current business-to-business focus?"
>
> John Sidgmore: "Well, we have a consumer division that sells consumers long-distance like everyone else. And we're going to keep that up. But we are not going to build out the entire country in rural areas and so forth for local access to support consumer business, which is what AT&T seems to be doing with its cable force. We're going to put more of our capital in the center cities and the major suburban areas."[124]

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[122] A Message from Bill McDonald, Senior Vice President, CSO, LTD (Nov. 11, 1999).

[123] "MCI WorldCom Drops as Forecast Trimmed," Yahoo Business Headlines (Jan. 6, 2000) (available at http://dailynews.yahoo.com/h/nm/20000106/bs/telecoms_mciworldcom_1.html)

[124] *Tele.com.* (May 17, 1999).

4. Conditions

The Applicants have failed to demonstrate that the proposed merger would result in benefits to residential and small business consumers in Sprint's largely rural local telecommunications division. However, should the Applicants proffer specific, verifiable commitments to invest in infrastructure, hire more employees, adopt enhanced operating procedures, and accelerate deployment of advanced services to underserved communities in Sprint's local telecommunications markets, the Applicants would have made significant progress in demonstrating a verifiable and merger-related public interest benefit.

In the *SBC/AMT Order,* the Commission concluded that the Applicants' voluntary commitment to specific actions to improve residential phone service and to accelerate deployment of advanced services to underserved communities (among other things) constituted merger-related public interest benefits. The Commission noted that these commitments contribute to the goals that flow from the Commission's statutory objectives to promote rapid deployment of advanced services and to ensure that the public has access to efficient, high-quality telecommunications services.[125]

The Applicants would demonstrate merger-related public interest benefits were they to make specific commitments to increase infrastructure investment, hire more employees to improve service quality, and accelerate deployment of advanced services to Sprint's local telephone customers.

[125] *SBC/AMT Order* at ¶ 355.

B. The Merger Is Not Necessary to Accelerate MMDS Deployment as a Third Alternative for Consumers in the Local Exchange

The Applicants claim that the proposed merger will speed the deployment of MMDS (fixed wireless) technology as a "third wire" in the local exchange, thereby enhancing consumer choice in local markets.[126] But here, too, the Applicants fail to prove this is a demonstrable, verifiable, and merger-related benefit, especially for residential consumers.

First, most analysts see MMDS primarily as an unproven technology which, if successful, will primarily be deployed to connect small- and medium-sized businesses to the Internet. International Data Corp. forecasts that "over the next five years, small and medium-sized businesses will emerge as the primary market for services delivered via broadband wireless technologies," with business accounting for 70 percent of MMDS revenue by the year 2003.[127] Even if new technologies resolve current line-of-sight and weather problems,[128] most analysts do not see MMDS as a practical alternative for voice transmission.[129] MMDS technology, if and

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[126] *Application* at 89.

[127] International Data Corp., *US Broadband Fixed Wireless Market Assessment and Forecast, 1998-2003*, released December 1994 (IDC Report) *cited in* Sherman Friedman, "Market for Broadband Fixed Wireless to Grow," *Newsbytes* (Dec. 14, 1999) (citation available at http://www.newsbytes.com).

[128] "The problem with MMDS technology is that it's mostly untested and has serious line-of-sight and weather related problems." Karekin Jelalian, "Will WorldCom's Vorcious Appetite Eat Up Broadband?", *Intelligent Network News* (Nov. 24, 1999). ". . . MMDS and other spectrum tiers still have many issues to resolve before they succeed in challenging wireline competitors." *See also* Fred Dawson, "MMDS Systems Creep Forward," *Multichannel News* (Nov. 22, 1999), 35.

[129] "The early focus [of MMDS] is going to be high-speed Internet." Ian Stokell, "US Wireless Broadband to Soar - Strategis Report," *Newsbytes* (Dec. 6, 1999). "The service is being touted as an inexpensive way to connect computer systems for medium- and small businesses and an alternative high-speed connection for homes." Cliff Edwards, "Cisco Has News Wireless Strategy," *AP Online* (Dec. 1, 1999).

when it is commercially viable, will be limited to provision of Internet access. Thus, MMDS is not a full-service facilities-based alternative in the local market.

Second, MMDS at present is still far too expensive to provide a mass market alternative to wireline technologies for residential consumers. Cisco Systems, one of the leading developers of a new MMDS technology, predicts it will get the cost of a home transceiver for MMDS down to \$500 by June of this year. [130]

Third, the Applicants also fail to demonstrate that accelerated deployment of MMDS is a merger-related benefit. Prior to the merger announcement, both MCI WorldCom and Sprint had each invested heavily--\$2 billion total--to purchase companies with MMDS licenses. Separately and independently, MCI WorldCom and Sprint had determined that these MMDS investments were justified. There is no change in their investment plans as a result of the merger.

The merged entity does not plan to increase the relatively small \$200- \$300 million annual investment that each company had independently planned to make in MMDS prior to the merger announcement. According to a Paine Webber analysis, the new WorldCom's MMDS "investment will take place within the parameters of the companies' previous guidance of \$200-300 million per year each in investment for the MMDS opportunity." [131]

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[130] Cliff Edwards.

[131] Paine Webber, *MCI WorldCom Inc.*, Oct. 14, 1999 at 5.

The Applicants claim that the merger will provide the scale and scope economies necessary to deploy MMDS on a national scale.[132] However, at this stage of MMDS development, it is not clear that it is necessary to deploy a national MMDS network. MMDS is a technology that provides end-user customers Internet access. MCI WorldCom and Sprint separately could proceed to deploy MMDS networks local market by local market, much as data CLECs are doing. At this stage, they do not need nor will there be demonstrable benefits from a nationwide MMDS footprint.

Fifth, the Applicants also claim that the merger will spread the costs related to MMDS research and development, development of equipment, software development, and other related costs over a larger customer base, lowering unit costs.[133] However, MMDS providers, such as MCI WorldCom and Sprint, do not bear these R&D costs--the equipment vendors do. These vendors were already investing heavily in MMDS research and development prior to the merger announcement, anticipating return on this investment from multiple carriers (including AT&T which has also announced its intention to invest in MMDS where it does not have local cable networks).

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[132] *Application* at 90.

[133] *Id.*

The Applicants have not demonstrated that they need to merge to justify deployment of fixed wireless networks, which is as yet an unproven technology which is too costly to appeal to the mass market consumer.

C. There are No Merger-Related Public Interest Benefits

The Applicants fail to make their case that the merger will enhance choice of residential and small business consumers in the residential and small business market.

First, the Applicants' claim that fixed wireless MMDS will be a third alternative for consumers rings false. It is not a technology for voice transmission. It is unproven and currently too expensive for the mass market. The Applicants do not provide any evidence that they intend to increase investment in MMDS technology above the levels each Applicant had planned separately to make.

Second, the Applicants fail to provide the Commission with evidence of merger-related benefits in the one local market in which one of the Applicants currently provides local service--Sprint's local exchange markets.

The Commission is left with speculative commitments that the merger will benefit consumers with packages of bundled service offerings and enhanced ability to expand its competitive local service offerings. The Applicants have not demonstrated how this will benefit the one group of consumers for whom local competition has been slow to develop--residential and small business customers. The Applicants currently are serving that market in only one state, New York, even though other competitive carriers, including AT&T, are actively competing in many markets for residential and small business consumers.

Absent conditions, including conditions which would improve telephone service and accelerate deployment of advanced services in Sprint's local exchange markets, the Applicants have not demonstrated that there are public interest benefits from the proposed merger.

V. Conclusion

The Applicants fail to prove that the merger is in the public interest. It poses significant, irreversible, and immediate anti-competitive harm in the long distance and Internet backbone markets. It would reduce the quality of telecommunications service through employment cuts in local and long distance service. Absent extensive conditions and strong enforcement mechanisms, the Commission should deny the Applicants' merger request.

Respectfully Submitted,

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