because unbundled element prices are reduced to cost, it will have lost revenue in the interim. During the period before unbundled element prices are reduced to cost, Verizon will have been positioned in the marketplace as a firm that can provide local and long distance in a single package, while WorldCom cannot. As the FCC has previously found, this is the principal attraction of premature long distance entry for BOCs, for the "first mover" advantage that they obtain gives BOCs immense reputational advantages that will affect competition in the market for years to come and that will impose corresponding injuries to the reputations of competitors that are unable to mass market the same packages of services. *See AT&T Corp. v. Ameritech Corp.*, 13 F.C.C.R. 21438, at ¶¶ 39-40.[28] Courts have similarly uniformly held that these reputational injuries epitomize irreparable harm.[29]

Third, Verizon's premature entry into the long distance market will make it much more difficult for WorldCom and other competitors to enter and successfully compete in the local market – even if a regulatory or judicial body were eventually to require Verizon to reduce its unbundled element prices to cost. To begin with, WorldCom has found that marketing local service to its long distance customers is an effective method of promoting its local service. The reduction in WorldCom's long distance base which will result from Verizon's premature long distance entry therefore will make it more difficult for WorldCom to attract local customers. Harker Decl. ¶ 22. Moreover, Verizon's premature entry into the long distance market will make it more difficult for competitors to obtain quality service from Verizon if they do begin

[28]Here, the harms are greater than in *WorldCom v. Ameritech* because that case involved the question of whether a BOC could market another firm's long distance service, not whether it could offer its own long distance service to customers.

[29]*See Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 20 (1st Cir. 1996); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994); *Bergen Drug Co. v. Parke, Davis & Co.*, 307 F.2d 725, 728 (3d Cir. 1962).

leasing unbundled elements. Partly as a result of the complexity of the tasks that need to be performed, as competitors enter local markets, they inevitably face problems in obtaining quality service from the BOCs. It is important that these problems be addressed *before* the BOC is authorized to provide long distance service so that the BOC has a significant incentive to resolve them. Commercial experience prior to the BOC's long distance entry also enables competitors to gain a better understanding of the performance the BOC is capable of providing, which can then be used as a benchmark to assess the BOC's performance after long distance entry. Premature entry by Verizon will deprive WorldCom of these advantages. *Id.* ¶ 23.

In addition, as in *AT&T Corp. v. Ameritech Corp.*, a stay will prevent harm to consumers and protect the public interest, for, as the Commission held, the adverse effects of premature BOC long distance entry on consumers can never be adequately rectified after the fact. That is so, in part, because customers will switch to BOC long distance services if the *Order* takes effect, and it will be "virtually impossible to 'unscramble' the effects of the [*Order*] and return to the current status quo" if the *Order* is later vacated. Vacating the *Order* would lead to "widespread consumer uncertainty and confusion." *Id.* ¶¶ 25-26.

Here, the possibility of such widespread uncertainty exists not only because the D.C. Circuit might vacate the *Order*. In addition, the Commission has suggested that it might revoke the long distance authority it has given Verizon if the New York Commission reduces unbundled element rates but Verizon continues to rely on its tariffed rates in Massachusetts. *Order* ¶ 30.[30]

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[30]*See Order*, Separate Statement of Commissioner Ness at 2 ("If the New York Commission orders lower rates after determining that the present rates are not cost-based and Verizon does not revise its rates in Massachusetts, the FCC should use its section 271(d)(6) authority to suspend or revoke Verizon's long-distance authorization in Massachusetts until the DTE completes its cost proceeding."); *id.*, Separate Statement of Chairman Powell at 2 (if the New York Commission were to revise rates downward, the "Commission might determine that

But suspending Verizon' long distance authority after it has entered the market could cause consumer confusion and inconvenience – harms that could easily be avoided by granting a stay.

Nor will consumers be harmed by a stay of this *Order*. To the contrary, the principal effect of Verizon's premature entry into the long distance market is delay in local competition. At present, the long distance market is a competitive one in Massachusetts as in other states. In other states where the BOCs have entered that market, they have not provided long distance service any more inexpensively than present providers. Long distance rates are unlikely to fall in Massachusetts if Verizon enters the market.

Finally, if the *Order* is stayed Verizon will suffer nothing more than a brief continuation pending appeal of the status quo that has prevailed in Massachusetts since 1984 and that continues to exist in each of Verizon's other states with the exception of New York. Because the harm that will result to WorldCom, other carriers, and the public if a stay is denied is "substantially greater than any harm to [Verizon] caused by mere delay," *AT&T Corp. v. Ameritech Corp.*, 13 F.C.C.R. 21438, at ¶ 27, there is no question that the "balance of hardship tips sharply in favor" of granting a stay during the relatively brief period of time required for a court to determine if the prerequisites to long distance authority have in fact been met. *Id.* at ¶ 28.

CONCLUSION

For the foregoing reasons, WorldCom's motion for a stay should be granted. In the alternative, the Commission should amend the *Order* to delay the time Verizon may enter its in-region long distance market for one month, from April 26 until May 28, to allow the D.C. Circuit

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Verizon subsequently 'ceased to meet [one] of the conditions required for [section 271] approval,' thereby empowering us to take remedial action under section 271(d)(6)").

the opportunity to rule on WorldCom's motion for a stay.

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

In the Matter of Application by Verizon New England, Inc.(d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts	)	CC Docket No. 01-09

DECLARATION OF VICTORIA D. HARKER
ON BEHALF OF WORLDCOM, INC.

1. My name is Victoria D. Harker. I am a Senior Vice President and the Chief Financial Officer ("CFO") of the MCI Group, an operating division of WorldCom, Inc. The MCI Group includes our residential and small business voice segments, and as the CFO, I manage financial planning, analysis and financial operations. My organization is responsible for planning, forecasting, new business development, accounting, management reporting, pricing and investment analysis. I have Bachelor of Arts degrees in Economics and English from the University of Virginia and hold an M.B.A. from American University.

2. The purpose of this Declaration is to demonstrate that WorldCom will be harmed irreparably if the Commission's Order dated April 16, 2001 (the "Order") approving the section 271 application of Verizon New England, Inc. ("Verizon") for Massachusetts goes into effect. The Order has authorized Verizon to enter the long distance market on April 26, 2001 even though wire-line competitive local exchange carriers ("CLECs")

cannot compete effectively in the local market because Verizon's rates for leasing unbundled network elements ("UNEs") are far above cost.

3. During the Massachusetts section 271 proceeding, our representatives explained to the Commission that current UNE rates preclude CLECs from competing in Massachusetts. Massachusetts is a very important state to us. After 18 years of marketing and sales, we have established many long distance customers in Massachusetts and we would enter the local residential market promptly if network element prices were cost-based, focusing first on our long distance customer base. In entering the local market, we would also be able to leverage systems already developed to facilitate local entry in other Verizon states (New York and Pennsylvania).

4. If Verizon enters the long distance market before WorldCom is able to enter the local market, it quite clearly will penetrate and erode our customer base by marketing a bundled package of local and long distance products and services. This is by no means a hypothetical scenario. In states such as Kansas and Oklahoma in which incumbent local providers have been authorized to provide long distance service before we have been able to offer a bundled local and long distance product, WorldCom typically has lost a material share of its long distance customer base.

5. In addition, permitting the Order to remain in effect before judicial review has been completed will handicap WorldCom irreparably if local entry does, at some point, become viable. In my experience, the Bell Operating Companies ("BOCs"), including Verizon, often have fixed problems with the Operation Support Systems ("OSS") used by CLECs <u>before</u> their section 271 application is granted, but once a section 271 application

has been authorized, the BOCs become far less cooperative in resolving those barriers to local entry. Verizon therefore should not be allowed to provide long distance service until CLECs are in a position to submit a significant volume of orders and unearthed any existing problems with Verizon's OSS. To date, the established UNE rates have thwarted that critical level of order processing.

6. Moreover, the harm from denial of a stay would extend beyond Massachusetts. If the FCC does not enforce its cost-based pricing rules, WorldCom will have to reevaluate its future plans for local entry, as other CLECs have already done.

7. With this overview, I will address in some detail the current realities of the local residential and small business markets in Massachusetts.

I. WorldCom Will Not Enter the Local Residential Market In Massachusetts While UNE Rates Remain At Present Levels.

A. WorldCom's National Strategy Is To Provide Local Residential Service Through The "UNE Platform."

8. There are three basic methods by which competitors can offer service to local customers. They can use their own facilities; they can resell Verizon's local service; or they can lease UNEs from Verizon and use the leased elements, possibly in combination with some of their own facilities, to provide service. Our national strategy is founded on the third of these alternatives: providing service through a combination of leased network elements (UNE-Platform or "UNE-P").

9. UNE-P has significant advantages over either the so-called facilities or resale alternatives. In theory, we could deploy switches (which direct traffic from place to place), fiber rings (which carry large amounts of traffic), and lines from the customers' premises to the

rings. But that approach is not economically feasible for residential customers and it would take years to complete in any event.

10. Resale also is not a viable alternative. Several years ago, WorldCom did resell local residential service but it soon became clear that resale discounts were generally too small to sustain profitable entry. Equally important, we discovered that, by and large, resale is an inferior local entry vehicle because in that arrangement, the CLEC is limited to reselling services that are identical to those offered by the BOC. In sharp contrast, UNE-P provides CLECs a very real opportunity to offer innovative products by using leased elements to offer a unique combination of services.

11. For all these reasons, we concluded that UNE-P offered the most realistic avenue for local entry into residential markets. And we built our infrastructure, including complex OSS, based on that strategy. Consequently, if we were to attempt to resell service in a single state such as Massachusetts, we would incur prohibitive fixed costs. Furthermore, while the resale discounts are greater in Massachusetts than in most other states, they still do not allow WorldCom to make a profit after necessary operating costs are taken into account. That resale is a patently deficient vehicle for local entry is readily demonstrated by the fact that only 4.1% of the lines in Massachusetts are served via resale.

B. In Massachusetts, CLECs Presently Cannot Provide Service Through UNE-P Because Pricing Is Not Cost-Based.

12. WorldCom has entered local markets which have viable pricing and no other prohibitive barrier to entry (such as inadequate OSS). WorldCom is now providing local residential service via UNE-P in Illinois, Michigan, and Pennsylvania, as well as in New York and

Texas, and we intend to continue extending our reach where it is profitable to do so. Indeed, we have announced our plan to enter the local market in Georgia within the next few months.

13. WorldCom would very much like to quickly enter the Massachusetts residential local market. Two of the states we already have entered, New York and Pennsylvania, are Verizon states with marketing profiles similar to Massachusetts'. These similarities include WorldCom's substantial long distance presence in the states, the size of the markets, and the fact that WorldCom has already developed the OSS for other Verizon states, which would reduce WorldCom's fixed costs if it were to enter Massachusetts. In the Order, the FCC suggested that CLECs may have some "strategic" reasons other than the absolute certainty of losing money for declining to offer local service in Massachusetts. But, as we made clear on the record in this proceeding, WorldCom has been ready for some time, and remains ready, to enter the state aggressively if pricing is corrected.

14. WorldCom has not entered the local residential market in Massachusetts because Verizon's UNE prices are prohibitively high. Verizon has not sought to defend the original switching rates established by the Massachusetts DTE. Instead, it voluntarily reduced its switching rates to levels that approximate interim rates in New York, rates that undeniably are far above cost. The new switching rates would have to be reduced by at least <u>40%</u> to be reasonable under a TELRIC analysis undertaken today. This is supported by the FCC's own data developed in its Universal Service proceeding. In 1997, when the New York Public Service Commission (the "NYPSC") set the rates that

Verizon has now adopted in Massachusetts, it did so based on a survey of 33 switches. But in connection with the Universal Service Proceeding in 1999, the FCC undertook a much broader study of switch costs than was undertaken by the NYPSC - including a sample of 1,085 switches. When the NYPSC methodology is applied to the FCC's data, the resulting per-line switching cost is nearly 40% lower than the NYPSC rates.[1/]

15. Because of Verizon's above-cost UNE rates, WorldCom cannot make a profit by offering local service in Massachusetts.[2/] To the contrary, WorldCom would lose money on every customer to whom it sold service. WorldCom has calculated that if it charged local customers the same rate that Verizon charges, the amount of money it would pay for UNEs would almost equal the amount it collects from the customer, without even accounting for the significant internal costs associated with billing, customer service, sales/acquisition costs, and bad debt. The negligible "gross margin" (after accounting for high UNE costs and internal costs) would leave WorldCom (or any other CLEC) losing a substantial amount of money for each customer it served. WorldCom is not providing service in any location with gross margins as low as those in Massachusetts.

16. As demonstrated by the negligible level of UNE-P competition in Massachusetts, no rational company would market a broad-based residential service with gross margins as low as those available there. At the time of Verizon's first section 271 application in

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1/ As a component of UNE-P pricing, switching costs have increased dramatically over the years. CLECs pay switching costs on a per-minute basis every time a customer uses the switch on which capacity is leased. The growth of the Internet has resulted in much greater telephone usage, and hence switch usage, per customer than existed a few years ago.

2/ WorldCom can make a profit in parts of New York with UNE rates similar to those in Massachusetts, because New York retail rates are higher.

September 2000, competitors providing service using UNE-P served only 5,900 residential lines (0.2% of the residential lines in the state), and that number has not grown appreciably since.

17. Consistent with these considerations, WorldCom will not enter states such as Massachusetts where it would lose money on every customer it attracts. Indeed, we are not marketing in those parts of New York and Texas where profits cannot be realized – areas with twice as many customers as there are in all of Massachusetts, and often higher (but still inadequate) margins.

II. WorldCom Will Be Irreparably Harmed If A Stay Is Not Entered.

18. Because WorldCom cannot profitably enter the local residential market in Massachusetts using UNE-P, our business will be harmed if the FCC's decision granting Verizon section 271 authorization is allowed to remain effective while we are pursuing judicial review of the Order. Authorizing Verizon to provide long distance service will erode our long distance customer base substantially and irreparably. Verizon effectively will be given a unilateral, unfair marketing advantage. As noted repeatedly in the press and elsewhere, the long distance market is a fiercely competitive one. Verizon will be able to penetrate that market by purchasing wholesale long distance service at cost-based rates and reselling that service to a customer base that it already controls. Indeed, in New York, Verizon was able to offer long distance service within weeks of obtaining section 271 authorization. Similarly, in Texas, Oklahoma and Kansas, SBC was able to offer long distance service within weeks of section 271 authorization. Verizon has already

announced its intention to begin offering long distance service in Massachusetts on April 26, 2001, the day the Order will take effect. Communications Daily, April 18, 2001, at 4.

19. While Verizon attacks the long distance market, WorldCom will not be able to provide local service in Massachusetts and thus, unlike Verizon, we will not be able to offer customers "one stop shopping." As a result, I believe that WorldCom will lose to Verizon an appreciable number of our long distance customers.

20. Our market research has made clear that one-stop shopping is important to many of our customers. And our experience in local markets has borne this out. In the local residential markets we have entered, the majority of customers to whom we have sold service have chosen WorldCom for local, intraLATA toll, and long distance services. Indeed, when WorldCom sales representatives call potential customers to offer them local service, approximately 90% of the customers who order service choose a bundled product.

21. If Verizon can offer a bundled product and WorldCom cannot, it is likely that Verizon will be able to persuade a significant number of WorldCom long distance customers to switch to Verizon. As exemplified in Kansas and Oklahoma, where SBC has been authorized to provide long distance service since January 19, 2001, we have seen the rate at which customers drop WorldCom as their long distance carrier increase substantially. In the six weeks after SBC began providing long distance service, the "disconnect" rate for WorldCom long distance customers in Oklahoma increased by 127% as compared with the six weeks before SBC began providing long distance service. In Kansas, the disconnect rate increased by 65%. Moreover, in other areas of the country in which the

dominant local carrier is offering long distance service but WorldCom is not offering local service (areas controlled by non-BOC carriers such as GTE and SNET that are not subject to section 271), WorldCom's share of the long distance market is smaller than it is elsewhere. Nationwide, WorldCom's share of the long distance market is 16% smaller in these areas than WorldCom's national average.

22. Permitting Verizon to enter the long distance market before it establishes cost-based rates will eviscerate the possibility of meaningful competition in Massachusetts in the foreseeable future. Even if Verizon's UNE rates are ultimately reduced to cost, Verizon by then will have captured a significant portion of WorldCom's long distance base, further weakening our ability to enter the local market successfully.

23. Quite apart from this economic reality, in my experience, once competitors enter a market and begin placing a large number of orders, the true dimension of OSS problems become apparent. Prior to section 271 authorization, the BOCs typically attempt to address these problems. If Verizon is allowed to offer long distance service now, it will no longer have an incentive to do so. Moreover, processing a significant volume of orders also provides data on the BOC's performance at a time when it has a significant incentive to provide quality service. This data can be used as a benchmark to assess any deterioration in performance once it has won section 271 authorization.

24. Finally, denial of a stay will cause irreparable harm to WorldCom and to consumers outside of Massachusetts. Denial of a stay will suggest to Verizon, other BOCs, and state commissions that the FCC's decision on pricing is an acceptable one. To the extent it appears that the FCC is no longer willing to insist on cost-based pricing, it makes it

much more difficult for WorldCom to maintain its commitment to enter local markets. What ultimately is at stake in this and related proceedings is whether that competition will survive and expand into local markets, or disappear altogether.

CONCLUSION

25. In sum, WorldCom is irreparably harmed every day the Massachusetts section 271 Order remains in effect. Because the FCC has allowed Verizon to enter the long distance market even though its prices for unbundled network elements are far higher than its costs in providing those elements, WorldCom is not able to compete in the local market using leased unbundled network elements. The inevitable result will be that customers who prefer to receive a bundle of local and long distance services from a single provider will leave WorldCom and obtain service from Verizon. The Order also decreases the prospects for local competition even if Massachusetts ultimately corrects its prices.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed on April 25, 2001.

Victoria Harker

Victoria D. Harker

CERTIFICATE OF SERVICE

I, Mark D. Schneider, hereby certify that I have this 25th day of April, 2001, caused a true copy of Motion of WorldCom, Inc. for Stay Pending Judicial Review or, Alternatively, for a Delay of Implementation Date to be served on the parties listed below via first class mail postage pre-paid unless otherwise indicated:

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Mark D. Schneider

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WorldCom, Inc.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 01- 01-1198
	)	
Federal Communications Commission and United States of America,	)	
	)	
	)	
Respondents.	)	

NOTICE OF APPEAL

Notice is hereby given that pursuant to 47 U.S.C. § 402(a) and (b), 28 U.S.C. § 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, WorldCom, Inc. ("WorldCom") hereby appeals the Memorandum Opinion and Order of the Federal Communications Commission ("Commission") in *In re Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-09, Memorandum Opinion and Order, FCC 01-130 (Apr. 16, 2001) ("*Order*"). The *Order* grants the application of Verizon New England Inc. to provide in-region, interLATA service in Massachusetts. A copy of the Memorandum Opinion and Order is attached hereto. Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

WorldCom participated in the proceeding below and opposed the granting of this application.

WorldCom seeks relief on the following grounds:

1. The FCC's determination that Verizon satisfied the requirement of 47 U.S.C. § 271(d)(3)(A)(i) that Verizon have "fully implemented the competitive checklist"

of 47 U.S.C. § 271(c)(2)(B) is arbitrary, capricious, not supported by substantial evidence and otherwise contrary to law.

2. The FCC's determination that Verizon satisfied the requirement of 47 U.S.C. § 271(d)(3)(C) that Verizon demonstrate that the "requested authorization is consistent with the public interest, convenience, and necessity" is arbitrary, capricious, not supported by substantial evidence and otherwise contrary to law.

Appellant WorldCom therefore requests that the Court hold unlawful, vacate, enjoin and set aside the *Order*.

Respectfully submitted,

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April 25, 2001

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
APR 25 2001
RECEIVED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WorldCom, Inc., Petitioner, v. Federal Communications Commission and United States of America, Respondents.	)	No. 01-1198

CORPORATE DISCLOSURE STATEMENT

The above-captioned Petitioner ("WorldCom"), through its wholly-owned subsidiaries, provides local and long-distance telecommunications services both domestically and internationally. WorldCom is a publicly traded company on the Nasdaq National Market under the symbol "WCOM." WorldCom has no parent company, and no publicly held company owns 10 percent or more of WorldCom stock.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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