

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
)	
Application of WorldCom, Inc. and)	CC Docket No. 97-211
MCI Communications Corporation for)	
Transfer of Control of MCI Communications)	
Corporation to WorldCom, Inc.)	

MEMORANDUM OPINION AND ORDER

Adopted: September 14, 1998

Released: September 14, 1998

By the Commission: Chairman Kennard, Commissioners Ness, Powell, and Tristani with Commissioner Furchtgott-Roth concurring, Commissioner Tristani dissenting in part, and Commissioners Furchtgott-Roth, Powell, and Tristani issuing separate statements.

TABLE OF CONTENTS

	Paragraph
I. INTRODUCTION	1
II. BACKGROUND	2
A. The Applicants	2
B. The Merger Applications	4
III. PUBLIC INTEREST FRAMEWORK	8
A. Legal Standards	8
B. Analytical Framework for Assessing Competitive Effects	15
IV. ANALYSIS OF POTENTIAL PUBLIC INTEREST HARMS	23
A. Domestic Long Distance Services	23
1. Relevant Market	24
2. Market Participants	32
3. Analysis of Competitive Effects	36

Rainbow/PUSH argue that the cost of the merger will force MCI WorldCom to stop serving or cease pursuing residential long distance customers.⁵²⁷

190. Applicants respond that it would not be economically rational to abandon MCI's long distance residential customers. They contend that residential long distance service has been a cornerstone of both companies' business for years, and they point out that MCI has provided such service directly, and WorldCom indirectly, through the provision of capacity to resellers who serve residential consumers.⁵²⁸ Applicants maintain that, given the time and expense they invested in attracting residential customers, it would be illogical for them to abandon these customers after the merger.⁵²⁹ Moreover, the Applicants maintain that, to the extent MCI WorldCom seeks to provide a bundle of local with long distance and Internet services, it is advantageous to have an existing base of residential long distance customers to whom to market these bundled offerings.⁵³⁰ Further, they contend that residential customers utilize network capacity during off-peak hours and thus help spread costs over a wider base.⁵³¹

191. With respect to their commitment to providing local residential service, Applicants submitted two letters from WorldCom Chairman, President, and CEO Bernard J. Ebbers and MCI Chairman Bert C. Roberts. The first letter states MCI WorldCom's intention to be "the leading local service competitor for both residential and business customers of all sizes across the country."⁵³² The second letter cites Mr. Ebbers' testimony before the House

⁵²⁷ BellSouth Jan. 5 Petition at 17 (contending that, in order to fund the "premium" price WorldCom has offered for MCI, it will be necessary for the merged entity to improve long distance margins, either by jettisoning residential customers or by raising residential prices); Rainbow/PUSH Jan. 5 Petition at 19 (arguing that the merged entity might jettison long distance residential customers to fund the merger premium, and suggesting that, to achieve this, a merged MCI WorldCom might slow telemarketing efforts aimed at expanding the base of residential customers); Rainbow/PUSH May 21 Renewed Motion at 7-8 (stating that the merger would do little more than shrink the pool of potential competitors, creating a local phone system that would focus on serving large business customers while ignoring small business and residential customers).

⁵²⁸ WorldCom/MCI Jan. 26 Reply Comments at 46.

⁵²⁹ *Id.* at 46, Hall Decl. at 28 (stating that "[i]t would be economically irrational for the merged entity not to capture the value of that reputational capital by failing to continue the business").

⁵³⁰ *Id.* at 4, 19-20. The Applicants also note that, in a market where the ability to sell a total package of services will be a key to success, it "makes no sense to conclude that the merged company will abandon local service as one key element of that package, while expecting to expand its sale of the other elements." WorldCom/MCI Mar. 20 Reply Comments at 13.

⁵³¹ WorldCom/MCI Jan. 26 Reply Comments at 47.

⁵³² WorldCom/MCI Mar. 20 Reply Comments, Attach. A at 1.

Judiciary Committee where he stated that WorldCom and MCI "are absolutely committed to consumers and residential customers, both on a facilities basis and any other way [the companies] can do it." Messrs. Ebbers and Roberts further assert that there "is absolutely no intention by the companies to lessen their efforts in this regard or to divest any of their retail local services following the merger."⁵³³ In fact, Messrs. Ebbers and Roberts contend they intend "to use every viable means at [their] disposal to participate in the local residential market" and to offer consumers a "total package of services."⁵³⁴ Significantly, Applicants also contend that MCI WorldCom will use the fiber that it has deployed in city centers to provide residential service to multiple dwelling units (MDUs).⁵³⁵ This will be done on a "targeted basis", much as other telecommunications service providers, including wireless cable operators, and cable companies providing telephone currently deploy their services to MDUs.⁵³⁶

192. These letters from Messrs. Ebbers and Roberts represent a commitment from WorldCom and MCI not to abandon the residential long distance market, to augment their efforts in the residential local market, and to offer residential customers a total package of services including local, long distance, wireless, international, and Internet. We expect parties to be forthright in their communications with the Commission, and to take seriously commitments they make in proceedings before us. Accordingly, we will be monitoring MCI WorldCom's progress as it brings its considerable assets and capabilities to bear in bringing new choices to residential customers.⁵³⁷ Beyond this commitment, we find that MCI WorldCom's incentive to provide local service or long distance to mass market customers will not change with the merger, and that essential assets and capabilities for serving that market will not necessarily be shed or depleted as a consequence of the merger. To put it simply, we believe that if there was a good business case for WorldCom and MCI to serve mass market

⁵³³ Letter from Bernard J. Ebbers, Chairman, President, and CEO, WorldCom, and Bert C. Roberts, Jr., Chairman, MCI, to Magalie Roman Salas, Secretary, FCC at 1 (filed Aug. 14, 1998) (WorldCom/MCI Aug. 14 *Ex Parte*).

⁵³⁴ *Id.* at 1-3.

⁵³⁵ MCI Aug. 19 *Ex Parte* at 2.

⁵³⁶ *Id.*

⁵³⁷ The Commission has regularly been gathering, and will continue to gather, a wide range of information about the status of competition in telecommunications markets, including residential markets. *See, e.g., 1998 Long Distance Market Shares Report; 1998 Trends in Telephone Service Report.* Moreover, in this period of dynamic change and increasing competition, we will be increasing our efforts and buttressing our capability to understand fully the state of competition in these markets. These activities will allow the Commission to follow closely the progress being made by the Applicants, as well as by other firms, in telecommunications markets.

customers prior to the merger, then the combined entity would ensure that sufficient assets were in place and sufficient capabilities retained to serve this market going forward. There is no reason to predict that, as a result of this merger, the conditions confronting MCI or the merged MCI WorldCom in local exchange markets will be changed or that the merged entity will have any lesser incentive to pursue rational, profitable strategic opportunities. We agree with the Applicants that "[n]one of the commenters has shown that there is *any* reason why residential service that made economic sense for either of the companies to pursue separately should become uneconomic simply because the companies are combined."⁵³⁸ Indeed, as we find below, the merged entity is likely to enter or expand local markets more quickly than either could alone.⁵³⁹

193. We do not find persuasive BellSouth's claim that the combined MCI WorldCom would jettison residential long distance customers to fund the premium price that WorldCom has offered for MCI. The fact that both WorldCom and MCI are currently serving these customers, suggests that they are profitable. MCI WorldCom's best strategy for funding the "premium," therefore, would be to keep their residential customers, not to drop them. Nor are we persuaded by CWA's assertion that, in order to achieve the Applicants' purported cost savings, the combined entity will be forced to forgo residential market competition. Even assuming that CWA's extensive financial analysis is correct and the merged entity will be a financially weaker company than each company separately was before the merger, it does not necessarily follow that the merged entity will abandon the residential market. We therefore reject CWA's claim as speculative. Applicants maintain instead that these savings will occur because MCI will have use of WorldCom's existing local facilities and will avoid duplicative capital and operating expenditures. As a result, according to WorldCom and MCI, planned expansion into residential markets will not be diminished, but rather can proceed more efficiently.⁵⁴⁰ Finally, Applicants have clearly stated their intentions to maintain and expand their residential local and long distance service offerings. Although these statements of intent are inherently subjective and predictive, they are presumably made in accordance with the Commission's requirements of candor and truthfulness.⁵⁴¹ For this reason, we award them substantial weight given the absence of persuasive evidence to the contrary.

⁵³⁸ WorldCom/MCI Jan. 26 Reply Comments at 22, 46, & Hall Decl. at 28.

⁵³⁹ See *infra* section V.

⁵⁴⁰ WorldCom/MCI Jan. 26 Reply Comments at 11, 20-21.

⁵⁴¹ See 47 C.F.R. § 1.17.