

integrator channel partners and vendors to gain access to SMBs.”⁴⁴ Leading firms in this category include Cisco and Avaya.

47. Verizon data confirm the existence in Verizon’s region of many competitors not identified by the Staff. Through interviews with selected enterprise customers, Verizon has found that it has lost business to a wide variety of other companies that the Staff has not considered, including Abovenet, Broadwing, Cavalier, Equant, Fibertech, Global Crossing, McCloud, Qwest, Siemens and Time Warner.⁴⁵

B. HHIs overstate the risk of harm to competition in the provision of enterprise services resulting from the proposed transaction.

48. The use of market share and HHIs is a first step in analyzing the potential competitive impact of a merger. However, there are a variety of industry characteristics that indicate that analysis based on market shares and HHIs is likely to overstate the risk that the proposed transaction will result in higher prices for enterprise services. These factors include:

1. Customer heterogeneity.

49. Enterprise customers are highly heterogeneous with respect to size, geography, and services demanded as well as service quality requirements. Customers also differ with respect to their desired supplier mix, with some choosing a single provider for all services, others using different providers for different services, and others using multiple suppliers for the same service for redundancy purposes. These circumstances make it more difficult for firms to monitor each others’ behavior and succeed in elevating price as a result of a merger.

44. Yankee Group, “Level 3 Reaches SMBs Through a Systems Integrator Channel Partner,” September 2004, p. 1.

45. Verizon.

50. As noted above, customers differ with respect to purchasing practices, with some customers using formal bidding procedures while others negotiate informally. Problems in observing prices resulting from negotiated deals and/or non-public bids make it difficult to monitor rivals' prices and thus to succeed in elevating price as a result of a merger.

2. Large, infrequent contracts.

51. Sales to business customers often involve lumpy, multi-year contracts which can provide strong incentives to bid aggressively in order to obtain a large amount of business for many years. In such circumstances, a merger is less likely to lead to increased prices.

3. Highly sophisticated buyers.

52. As frequently recognized by the FCC, large enterprise customers are often highly sophisticated, and often have IT staffs with considerable telecommunications expertise.⁴⁶ In addition, there are a wide variety of consultants that advise business customers and may assist in both the design of requests for proposals (RFPs) and evaluation of bids for telecommunications services. These services are also provided to a wide range of businesses through VARs and others that offer a variety of technological "solutions" to buyers.

4. Complex procurement practices.

53. Enterprise customers often use procurement practices that make it unlikely that the proposed transaction will harm competition. As discussed above, enterprise customers often invite bids from suppliers. These bidding opportunities are idiosyncratic

46. See, for example, FCC, Bell Atlantic-GTE Order, FCC 00-221, January 16, 2000, ¶ 121.

and even the form of the outcome may not be known. For example, a contract award could be “winner take all,” or result in a split outcome, with portions of the contract awarded to multiple bidders. Overlapping awards for primary and secondary or backup service may be made. The range of these outcomes is not necessarily specified in advance. Such circumstances complicate the ability of firms to monitor each other’s activities and thus limit the risk that the proposed transaction will result in higher prices as a result of the merger. It is widely recognized that “market share” is a poor indicator of a firm’s potential market power in such bidding situations.⁴⁷

5. The importance of non-price elements of competition.

54. Additionally, the importance of non-price elements of competition further reduces the likelihood that the proposed transaction will facilitate the exercise of market power. Buyers often have specialized needs and bidders do not necessarily offer the same technological solutions. In addition, any type of coordination is further complicated by the fact that different buyers place different relative weights on price and quality characteristics of bids.

55. In sum, the Staff’s analysis of the impact of the proposed transaction on competition in the provision of business services ignores a wide variety of firms that serve business customers in New York. Its analysis also fails to account for a wide variety of factors that complicate the ability of firms to raise price as a result of a merger.

47. If all firms in a bid competition are equally likely to win, it is the number of firms that best measures the extent of competition, not bidders’ market shares. The Horizontal Merger Guidelines of the U.S. Department of Justice and Federal Trade Commission recognize that market shares may not be relevant in such situations, and note that “[w]here all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign firms equal shares.” See Section 1.41.

We conclude that the transaction is unlikely to create significant competitive problems for business customers.

V. THE PROPOSED TRANSACTION IS UNLIKELY TO RESULT IN HARM TO COMPETITION IN THE PROVISION OF SPECIAL ACCESS AND TRANSPORT SERVICES.⁴⁸

A. Staff's analysis of transport routes is flawed both methodologically and conceptually.

56. The Staff analyzed concentration on transport routes using confidential data on CLEC-reported data on the routes they serve linking Verizon wire centers in New York. The data were provided to the New York Department of Public Service in its Triennial Review Order (TRO) and Triennial Review on Remand Order (TRRO) proceedings in 2004. The Staff analyzed the effect of the merger on concentration based on alternative sets of routes: (i) routes between all wire centers in New York; (ii) routes served by two or more competitive providers in metropolitan New York (LATA 132); and (iii) routes where there is no impairment based on the standards set forth in the TRRO (the TRRO triggers).

57. We understand that Staff calculated HHIs by calculating the number of potential intraLATA routes between Verizon offices in categories defined above (assuming that Verizon provides direct transport between each pair), then using CLEC-reported data on wire center-to-wire center routes served by reporting CLECs. Shares

48. In our previous declarations, we have defined special access as being composed of three parts: (i) "channel termination" facilities, which reflect services provided over facilities between a customer's premises and the LEC end office; (ii) interoffice facilities between the LEC end office and the LEC serving wire center; and (iii) a second "channel termination" between the LEC serving wire center and the competitive carrier's point of interconnection with the LEC. Staff discusses interoffice facilities, or "transport," separately from the "channel termination" facilities, which they refer to as "special access," or "high capacity loops." We follow Staff's convention in this section.

were calculated based on each carrier's share of the number of route-specific connections. That is, if there are three wire centers, there are three possible routes: A/B, B/C, A/C. Verizon is assumed to serve all combinations. If there is only one CLEC, which serves only one route, then the CLEC's share would be 25 percent. We understand that all firm/route combinations receive equal weights in these calculations.

58. Staff's calculations will underreport CLEC "shares." Staff apparently used data for only a subset of all CLECs and those data are more than a year old. A total of 17 CLECs reported routes served in the 2004 proceeding and we understand that there are at least that many CLECs that did not report in that proceeding. Furthermore, we understand Staff assumes that Verizon had direct transport between all wire centers but did not make the same assumption for CLECs. For example, if a CLEC reported that it had transport between points A and B, and between B and C, but not between A and C, Staff assumes that the CLEC does not serve route A/C. This assumption will likely cause CLEC "shares" to be underreported. In many cases, CLECs (other than MCI) appear to have fiber collocations on both ends of the routes Staff includes in this analysis, although transport links between these routes may not have been reported. Presumably, CLECs either provide transport between these fiber collocations or could readily do so.

59. More generally, Staff presents no economic basis for calculating market shares in this way. Staff's calculations aggregate routes with potentially distinct competitive conditions. Staff presents no evidence that "shares" calculated in this manner have any relationship to price or other competitive conditions.

60. The Staff's "overlap" analysis is similar in principle to the HHI analysis. The analysis is based on 487 intraLATA routes on which, according the Staff, Verizon is not obligated to offer UNE transport under the TRRO triggers. Staff then analyzes the

extent to which MCI, Verizon, AT&T and SBC have overlapping transport facilities on these routes. Staff uses the same data and assumptions for its “overlap” analysis as it does for its HHI analysis, and therefore also underreports CLECs’ presence in the “overlap.”

61. Staff’s analysis of transport routes also does not account for the possibility of entry. In particular, Staff’s “overlap” analysis discusses transport routes which the FCC found to be “unimpaired” in the TRRO proceeding.⁴⁹ However, the FCC’s findings of a lack of impairment are “designed to capture both actual and potential competition, based on indicia of significant revenue opportunities at wire centers.”⁵⁰ That is, the FCC found that the potential of entry on these routes was sufficient to justify a finding of a lack of impairment with respect to transport facilities.⁵¹

B. Available evidence indicates that the proposed transaction will not adversely affect competition in the provision of special access services.

62. Although the Staff was “not able to measure the overlap analysis of high capacity loops in the same manner as Staff performed its transport overlap analysis,”⁵² the Staff nonetheless tentatively concludes that the proposed transaction will raise concentration and harm competition in the provision of special access services.⁵³

49. White Paper, Table 8.

50. FCC, Triennial Review Order on Remand, FCC 04-290, February 4, 2005, ¶ 88.

51. FCC, Triennial Review Order on Remand, FCC 04-290, February 4, 2005, ¶ 66. For example, competing carriers are impaired without access to DS-3 transports on all routes for which at least one end-point of the route is a wire center containing fewer than 24,000 business lines and fewer than three fiber-based collocators. If both end-point wire centers contain 24,000 or more business lines and three or more fiber-based collocators, then competing carriers are not considered impaired with respect to such interoffice transport.

52. White Paper, p. 42.

53. We remind the reader that we use special access here in the manner that the Staff has defined it, which is a narrower definition than we use in our prior declarations to the FCC.

63. Available data, however, are inconsistent with the Staff's conclusion that the proposed transaction will harm special access competition. In order to investigate this issue, we have obtained data from MCI that identify the location of its fiber-lit buildings in New York. We have also attempted to obtain data on CLEC service offerings, but we have had great difficulty in doing so. MCI has provided data on the location of fiber-lit buildings served by certain CLECs (henceforth "MCI-reported CLECs") that provide this information to MCI with the goal of selling access services to MCI. We understand that the AT&T data may not be accurate, so we exclude them from our analysis. Our results significantly understate the number of CLEC-lit buildings because they do not include AT&T, Level 3, Sprint, Qwest and other carriers. Attachment D [PROPRIETARY] contains maps for New York, New York City, and Manhattan that identify buildings lit by MCI and MCI-reported CLECs (excluding AT&T).

64. Verizon has also provided data on which serving wire centers are considered "impaired" by the FCC with respect to high capacity (DS-3) loops. The FCC's rules determine whether CLECs are "impaired" in providing special access services (and thus where ILECs are obligated to provide high capacity loops on an unbundled basis).⁵⁴ In the FCC's view, a CLEC is not "impaired" if it faces no barriers to providing service in an area at current prices without relying on the ILEC's facilities.⁵⁵ The FCC obligates ILECs to offer high capacity circuits (at TELRIC rates) only in areas

54. Impairment is defined on a wire-center specific basis based on the number of CLECs with fiber-based collocations and the number of business lines served by the wire center. Separate triggers are used to define impairment with respect to DS-1 and DS-3 circuits. The data available do not include the capacities used by MCI or the CLECs in each building. For our analysis, we look at impairment based on DS-3 loops.

55. See FCC, Triennial Review Order on Remand, FCC 04-290, February 4, 2005, ¶ 10.

that fail to meet FCC-specified triggers based on the number of business lines in the wire center and the number of fiber-based collocations in the area.

65. Given the FCC's view that the presence of fiber-based collocation equipment in an ILEC central office service area is significant in evaluating competitive conditions, this additional information on the presence of local fiber in the central office service area also is likely to be of value in assessing the likelihood that the merger results in the risk of harm to competition. If MCI and other CLECs operate local fiber facilities in an area served by a given ILEC central office, then it is likely that those firms also could serve buildings in that area economically if prices rose from current levels.⁵⁶

66. Table 2 shows that, as of December 2004, MCI serves only a few hundred buildings of the total number of commercial buildings in New York State. Furthermore, of those MCI-lit buildings, many are: (i) already served by the few CLECs for which we have been able to obtain data; and/or (ii) have multiple competitive suppliers available, as defined by the FCC's no impairment criteria. That is, only a small share of MCI-lit buildings are in areas in which CLECs are "impaired" according to the FCC's measures. More specifically:

- Of the [BEGIN PROPRIETARY] [END PROPRIETARY] fiber-lit buildings served by MCI and MCI-reported CLECs (not including AT&T) in New York State, [BEGIN PROPRIETARY] [END PROPRIETARY]

56. The ability of another CLEC to serve a particular building depends on the distance and other geographic factors that affect the cost of a building interconnection. The costs faced by a new CLEC deploying service to a building can depend in part on the physical proximity of its fiber to a building. The new CLEC's costs of entry may also be lower than those that had been faced by an existing CLEC serving the building if the new CLEC can utilize building-specific conduit or other facilities established by other CLECs.

are served by MCI. Of those, [BEGIN PROPRIETARY] [END PROPRIETARY] are also served by other MCI-reported CLECs.

- An additional [BEGIN PROPRIETARY] [END PROPRIETARY] are in areas that the FCC has found to be subject to multiple competitive supply under the no impairment test.
- Thus, this leaves only [BEGIN PROPRIETARY] [END PROPRIETARY] buildings in New York State served by MCI alone and not subject to multiple competitive supply under the no impairment test (or less than three percent of buildings served by MCI and MCI-reported CLECs). The comparable figure for New York City is only [BEGIN PROPRIETARY] . [END PROPRIETARY]

Assuming that Verizon also provides fiber to each of these buildings, these would be the only buildings for which there would be a decline from two to one in the number of current fiber-based local carriers as a result of the proposed transaction.⁵⁷ Moreover, as we have discussed, the numbers reported above are likely to overstate MCI's importance because we lack data on fiber-lit buildings from a variety of CLECs, including AT&T, Level 3, Sprint and Qwest.

57. As we discuss next, most MCI-lit buildings are close to fiber networks owned by other CLECs that may be able to serve these buildings profitably.

[BEGIN PROPRIETARY]

Table 2

[END PROPRIETARY]

C. Most MCI lit buildings are close to other competitive fiber routes.

67. Staff has noted that it lacks the data to fully analyze competitive alternatives for special access. Nonetheless, Staff has expressed the concern that “unless customers are located in close proximity to the fiber rings of remaining competitive high capacity special access providers in the market (e.g., Fibertech, Level 3), it may be difficult to get access to high capacity loops at competitive terms...”⁵⁸

58. White Paper, p. 44.

68. Altman, Vilandrie & Company on behalf of Verizon has analyzed the distance from MCI-lit buildings to competitive fiber using data on fiber routes from GeoTel.⁵⁹ Their results are summarized in Tables 3 and 4. They find that roughly 73 percent of all buildings served by MCI fiber in New York are located within 1/20 of a mile from existing competitive fiber routes, and that there are, on average, 3.8 competitive fiber routes within 1/20 of a mile of MCI-lit buildings in New York.

69. The data thus show that the majority of MCI-lit buildings in New York are, in fact, “located in close proximity to the fiber rings of remaining competitive special access providers.”

Table 3

Average Number of Non-MCI CLECs Within Given Radius of MCI-Lit Buildings

City	Miles			
	1/20	1/10	1/4	1/2
New York State	3.8	5.3	6.7	7.6
New York - Newark - Edison	4.6	6.4	8	8.9

Table 4

Percent of MCI-Lit Buildings With At Least One Non-MCI CLEC Within Given Radius

City	Miles			
	1/20	1/10	1/4	1/2
New York State	73%	84%	88%	92%
New York - Newark - Edison	79%	86%	89%	92%

59. GeoTel maintains data on the routes of various CLEC fiber networks. The GeoTel data do not report all CLEC networks in certain areas and do not identify all CLECs that offer service using fiber acquired or leased from network providers. Thus, the analysis is likely conservative.

VI. CONCLUSION.

70. Based on our analysis, we conclude that it is unlikely that the proposed transaction will harm competition and instead find that the proposed transaction is likely to benefit New York consumers by enabling the merged firm to realize efficiencies. The Staff White Paper does not lead us to alter our prior conclusions contained in our declarations to the FCC.

Attachment A

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Direct, Supplemental and Cross-Examination Testimony of Gustavo E. Bamberger in Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a Petition for In-region InterLATA Authority With the FCC Pursuant to §271 of the Telecommunications Act of 1996: Before the Alabama Public Service Commission, Docket No. 25835, May 16, 2001 (Direct); June 19, 2001 (Supplemental); and June 27, 2001 (Cross-Examination).

Affidavit of Robert H. Gertner and Gustavo E. Bamberger In the matter of: BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant To Section 271 of the Telecommunications Act of 1996: Before the Georgia Public Service Commission, Docket No. 6863-U, May 31, 2001.

Direct Testimony of Gustavo E. Bamberger In the matter of: Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996: Before the North Carolina Utilities Commission, Docket No. P-55, Sub 1022, June 11, 2001.

Direct Testimony of Gustavo E. Bamberger in Re: Consideration of the Provision of In-Region InterLATA Services By BellSouth Telecommunications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996: Before the Mississippi Public Service Commission, Docket No. 97-AD-0321, June 15, 2001.

Direct, Rebuttal and Cross-Examination Testimony of Gustavo E. Bamberger in Re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996: Before the Public Service Commission of South Carolina, Docket No. 2001-209-C, June 18, 2001 (Direct); July 16, 2001 (Rebuttal); and July 26-27, 2001 (Cross-Examination).

Affidavit of Robert H. Gertner and Gustavo E. Bamberger in Re: Consideration and review of BellSouth Telecommunication, Inc.'s pre-application compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to, the fourteen requirements set forth in Section 271(c)(2)(B) in order to verify compliance with Section 271 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region: Before the Louisiana Public Service Commission, Docket No. U-22252-E, June 21, 2001.

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Direct Testimony of Gustavo E. Bamberger in Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance (interLATA Service) in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996: Before the Tennessee Regulatory Authority, Docket No. 97-00309, July 30, 2001.

Expert Report and Testimony of Gustavo E. Bamberger in Re: In the Arbitration of Legend Healthcare, Inc. v. United Healthcare Services, Inc., et al., American Arbitration Association, Commercial Arbitration No. 65 Y 193 00194 00, August 1, 2001 (Report); and September 27, 2001 (Testimony).

Reply Declaration of Dennis W. Carlton, Hal S. Sider and Gustavo E. Bamberger In the Matter of: Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services: Before the Federal Communications Commission, CC Docket No. 01-337, April 22, 2002.

Expert Preliminary Report, Supplemental Expert Report, Rebuttal Expert Report, Deposition, Declaration, Supplemental Declaration and Declaration of Gustavo E. Bamberger in Re: Nobody in Particular Presents, Inc., v. Clear Channel Communications, Inc., Clear Channel Entertainment, Inc., Clear Channel Radio, Inc., Clear Channel Broadcasting Inc., KBCO-FM, KBPI-FM, KFMD-FM, KRFX-FM, and KTCL-FM, In the U.S. District Court for the District of Colorado, Civil Action No. 01-N-1523, May 3, 2002 (Preliminary Report); July 26, 2002 (Supplemental Report); August 20, 2002 (Rebuttal Report); September 17, 2002 (Deposition); October 31, 2002 (Declaration); January 24, 2003 (Supplemental Declaration); and July 21, 2003 (Declaration).

Comments Regarding Regulation of Broadband Internet Access Services In the Matter of Inquiry Concerning High-Speed Access to Internet Over Cable and other Facilities, GN Docket No. 00-185; In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147; In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20; and In the Matter of 1998 Biennial Regulatory Review: Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10 (with Kenneth Arrow, Gary Becker, Dennis Carlton, Daniel Fischel, Robert Gertner, Joseph Kalt and Hal Sider), May 3, 2002.

Expert Report, Reply Expert Report and Declaration of William Landes, Hal Sider and Gustavo Bamberger, and Declaration, Deposition and Supplemental Declaration of Gustavo E. Bamberger in Re: Vitamin Antitrust Litigation: In the United States District Court for the District of Columbia, M.D.L. No. 1285, May 23, 2002 (Report); July 17, 2002 (Reply Report); August 1, 2002 (Declaration with Landes and Sider); August 5, 2002 (Declaration); August 9, 2002 (Deposition); and September 27, 2002 (Supplemental Declaration).

Deposition of Gustavo E. Bamberger in Re: Devin Daniels, et al v. Philip Morris Companies, Inc., et al.: In San Diego Superior Court, Case No. 719446, June 10, 2002.

- Declaration of Gustavo E. Bamberger and Michael P. Bandow in Re: EB-01-1H-0352, Supplemental Response to Questions Posed by the Commission in its May 21, 2002 Letter re Verizon's Provisioning of Special Access Services, submitted to the Federal Communications Commission, July 31, 2002.
- Affidavit, Expert Report and Deposition of Gustavo E. Bamberger in Re: National Association for the Advancement of Colored People (NAACP) and National Spinal Cord Injury Association (NSCIA) v. Acusport Corporation; Ellet Brothers, Inc., RSR Management Company, and RSR Group, Inc., individually and on behalf of similarly situated entities; and National Association for the Advancement of Colored People (NAACP) et al., v. American Arms, Inc., et al.: In the U.S. District Court for the Eastern District of New York, CV 99-7037 and CV 99-3999, August 20, 2002 (Affidavit); February 19, 2003 (Report); and March 6, 2003 (Deposition).
- Report of Gustavo E. Bamberger in Re: Nevada Power Company v. Lexington Insurance Company et al.: In the U.S. District Court for the Southern District of Nevada, CV-S-01-0045-PMP-PAL, October 23, 2002.
- Deposition of Gustavo E. Bamberger in Re: Firearm Cases: In Superior Court of the State of California, County of San Diego, Judicial Council Coordination Proceeding No. 4095, November 6, 2002.
- Expert Rebuttal Report, Expert Report and Deposition of Gustavo E. Bamberger in Re: Baum Research and Development, Inc. and Steve Baum v. Hillerich & Bradsby Co., Inc.; Easton Sports, Inc.; Worth, Inc.; National Collegiate Athletic Association; and Sporting Goods Manufacturers Association: In the U.S. District Court for the Eastern District of Michigan, 98-72946, January 13, 2003 (Expert Rebuttal Report and Expert Report); and May 28-29, 2003 (Deposition).
- Declaration of Gustavo E. Bamberger and Michael P. Bandow in Re: EB-01-1H-0352, Supplemental Response to Questions Posed by the Commission in its January 24, 2003 Letter re: Verizon's Provisioning of Special Access Services, submitted to the Federal Communications Commission, March 14, 2003.
- Dennis W. Carlton, Janice H. Halpern and Gustavo E. Bamberger, "Economic Analysis of the News Corporation/DIRECTV Transaction," and "Response to William P. Rogerson and Daniel L. Rubinfeld and Duncan Cameron," submitted to the Federal Communications Commission, MB Docket No. 03-124, July 1, 2003; and September 8, 2003.
- Expert Report, Deposition, Declaration and Testimony of Gustavo Bamberger in Re: Western Asbestos Company; Western MacArthur Company; and Mac Arthur Company, Debtors: In United States Bankruptcy Court, Northern District of California, Oakland Division, Nos. 02-46284, 02-46285, 02-46286, September 15, 2003 (Expert Report); October 21, 2003 (Deposition); November 17, 2003 (Declaration); and November 21, 2003 (Testimony).
- Expert Report, Deposition and Testimony of Gustavo E. Bamberger in Re: In the Matter of the Arbitration Between: Rangemark Insurance Services, Inc., Petitioner vs. Claremont Liability Insurance Company, Respondent, October 24, 2003 (Expert Report); November 14, 2003 (Deposition); and February 12, 2004 (Testimony).

Joint Declaration of Gustavo E. Bamberger and Bradley N. Reiff, Joint Reply Declaration of Gustavo E. Bamberger and Bradley N. Reiff, Deposition of Gustavo E. Bamberger, Joint Expert Report of Gustavo E. Bamberger and Bradley N. Reiff, Joint Expert Rebuttal Report of Gustavo E. Bamberger and Bradley N. Reiff and Deposition of Gustavo E. Bamberger in Re: Currency Conversion Fee Antitrust Litigation: In the U.S. District Court for the Southern District of New York, MDL Docket No. 1409, November 11, 2003 (Joint Declaration); December 18, 2003 (Deposition); April 2, 2004 (Joint Reply Declaration); December 22, 2004 (Joint Expert Report); April 15, 2005 (Joint Expert Rebuttal Report); and May 20, 2005 (Deposition).

Expert Report, Deposition and Reply Expert Report of Gustavo E. Bamberger in Re: Marketing and Management Information, Inc. v. The United States: In the U.S. Court of Federal Claims, No. 99-194C, March 16, 2004 (Expert Report); April 20-21, 2004 (Deposition); and May 6, 2004 (Reply Expert Report).

Joint Expert Witness Statement of Gustavo Bamberger, David Gillen, Margaret Guerin-Calvert, Andrew Hanssen, Jerry Hausman, Timothy Hazledine, Janusz Ordover, Robert Willig and Kieran Murray; Affidavit of Gustavo Ernesto Bamberger and Dennis William Carlton in Reply; Second Affidavit of Gustavo Ernesto Bamberger and Dennis William Carlton; Affidavit of Gustavo Ernesto Bamberger; and Testimony of Gustavo Bamberger: In the Matter of an appeal from determinations of the Commerce Commission between Air New Zealand Limited, Qantas Airways Limited, Appellants and Commerce Commission, Respondents: In the High Court of New Zealand Auckland Registry, CIV 2003-404-6590, May 21, 2004 (Joint Expert Witness Statement); June 4, 2004 (Reply Affidavit); July 2, 2004 (Second Affidavit); July 12, 2004 (Affidavit of Gustavo Bamberger); and July 13-16, 2004 (Testimony).

Expert Report, Supplemental Expert Report, Deposition and Rebuttal Expert Report of Gustavo Bamberger in Re: Congoleum Corporation et al.: In United States Bankruptcy Court, District of New Jersey, Case 03-51524 (KCS), July 9, 2004 (Expert Report); January 26, 2005 (Supplemental Expert Report); February 9, 2005 and March 18, 2005 (Deposition); and February 23, 2005 (Rebuttal Expert Report).

Statement and Letter of Gustavo Bamberger In the matter of: A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems: Before the Federal Communications Commission, MB Docket No. 04-207, July 15, 2004 (Statement); and November 4, 2004 (Letter with Michael G. Baumann, John M. Gale, Thomas W. Hazlett, Michael L. Katz, Kent W. Mikkelsen and Bruce M. Owen).

Expert Report, Supplemental Expert Report and Deposition of Gustavo Bamberger in Re: Braid Electric Company, Claimant vs. Square D Company / Schneider Electric, Respondent: Before the American Arbitration Association, Case No. 51 Y 181 01712 03, August 16, 2004 (Expert Report); October 8, 2004 (Supplemental Expert Report); and October 29, 2004 (Deposition).

Declaration and Deposition of Gustavo Bamberger in Re: Issuer Plaintiff Initial Public Offering Antitrust Litigation and Public Offering Fee Antitrust Litigation: In the U.S. District Court for the Southern District of New York, 00 Civ. 7804 (LMM) (DFE) and 98 Civ. 7890 (LMM), September 16, 2004 (Declaration); and January 27, 2005 (Deposition).

Expert Report and Deposition of Gustavo Bamberger in Re: Congoleum Corporation v. Ace American Insurance Company, et al.: In the Superior Court of New Jersey, Law Division: Middlesex County, Docket No. MID-L-8908-01, December 17, 2004 (Expert Report); and Deposition (March 18, 2005).

Declaration of Gustavo Bamberger in Re: Gas Plus, a California Corporation; and Gas Plus San Marcos, Inc., a California Corporation vs. Exxon Mobil Corporation, a Corporation; Mark McEnomy, an individual; Anthony Moss, an individual; and Does 1-50, inclusive: In the Superior Court of the State of California in and for the County of San Diego, North County Division, Case No. GIN 032455, February 14, 2005.

Declaration of Gustavo E. Bamberger in Re: Robert Ross and Randal Wachsmuth, on behalf of themselves and all others similarly situated vs. American Express Company, American Express Travel Related Services, Inc., and American Express Centurion Bank: In the U.S. District Court for the Southern District of New York, 04 CV 05723, February 18, 2005.

Expert Report of Gustavo E. Bamberger and Dennis W. Carlton, Testimony of Gustavo E. Bamberger and Rebuttal Report of Gustavo E. Bamberger in Re: In the Matter of EchoStar Satellite, L.L.C v. Fox Television Holdings, Inc., Fox/UTV Holdings, Inc. and News Corporation Limited: American Arbitration Association, Case No. 71 472 E 00690 04, March 2, 2005 (Expert Report); March 12, 2005 (Testimony); and April 5, 2005 (Rebuttal Report).

Declaration and Reply Declaration of Gustavo E. Bamberger, Dennis W. Carlton and Alan L. Shampine in Re: Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control: Before the Federal Communications Commission, WC Docket No. 05-75, March 11, 2005 (Declaration); and May 24, 2005 (Reply Declaration).

Statement of Gustavo Bamberger and Lynette Neumann in Re: Applications of Adelphia Communications Corporation, Comcast Corporation, and Time Warner Cable Inc., For Authority to Assign and/or Transfer Control of Various Licenses: Before the Federal Communications Commission, MB Docket No. 05-192, July 21, 2005.

Attachment B

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Ph.D., MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts: Economics, 1975.

M.S., MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts: Operations Research, 1974.

A.B., HARVARD UNIVERSITY (Summa cum laude): Applied Math and Economics, 1972.

EMPLOYMENT

LEXECON INC., Chicago, Illinois (1977 - present): President, 1997 – 2001, Senior Managing Director, 2003 - present.

UNIVERSITY OF CHICAGO, Graduate School of Business (1984 - present): Professor of Economics.

UNIVERSITY OF CHICAGO, Law School (1980 - 1984): Professor of Economics.

UNIVERSITY OF CHICAGO, Department of Economics: Assistant Professor (1976 - 1979): Associate Professor (1979 - 1980).

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts, Department of Economics (1975 - 1976): Instructor in Economics.

OTHER PROFESSIONAL EXPERIENCE

HARVARD UNIVERSITY, Public Policy Summer Course in Economics (1977): Professor.

BELL TELEPHONE LABORATORIES (Summers 1976, 1977).

JOINT CENTER FOR URBAN STUDIES OF M.I.T. AND HARVARD UNIVERSITY, Cambridge, Massachusetts (1974 - 1975).

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