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Marcell Morrell**
Area Vice President & Associate General Counsel-
Regional Operations (East)

Anthony P. Gillman**
Assistant General Counsel

Attorneys*
Kimberly Caswell
M. Eric Edgington
Ernesto Mayor, Jr.

* Licensed in Florida
** Certified in Florida as Authorized House Counsel

GTE SERVICE CORPORATION

One Tampa City Center
201 North Franklin Street (33602)
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
813-483-2606
813-204-8870 (Facsimile)

February 12, 1998

Ms. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No. 971604-TI**
Request for approval of transfer of control of MCI Communications Corporation
(parent corporation of MCI Metro Access Transmission Services, Inc., holder of
AAV/ALEC Certificate 2986, and MCI Telecommunications Corporation, holder
of IXC Certificate 61, PATS Certificate 3080, and AAV/ALEC Certificate 3996) to
TC Investments Corp., a wholly-owned subsidiary of WorldCom, Inc. d/b/a LDDS
WorldCom

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of GTE Corporation's and GTE
Communications Corporation's Petition on Proposed Agency Action and Request for
Section 120.57 Hearing for filing in the above matter. Service has been made as
indicated on the Certificate of Service.

- DK _____
- FA _____
- BP _____
- AE _____
- MAU Williams
- CTR _____
- EAG _____
- LEG 7
- LIN 5
- QPC _____
- REH _____
- SEC 1
- WAS _____
- OTH _____

A part of GTE Corporation

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Blanca S. Bayo
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If there are any questions regarding this matter, please contact me at (813) 483-2617.

Very truly yours,



Kim Kimberly Caswell

KC:tas
Enclosures

- c: Chairman Julia L. Johnson (w/e)
Commissioner Susan F. Clark (w/e)
Commissioner J. Terry Dession (w/e)
Commissioner E. Leon Jacobs, Jr. (w/e)
Commissioner Joe A. Garcia (w/e)
Walter D'Haeseleer, Director of Communications (w/e)

A
B
C
D
E

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of transfer of control)
of MCI Communications Corporation (parent)
corporation of MCI Metro Access Transmission)
Services, Inc., holder of AAV/ALEC Certificate)
2986, and MCI Telecommunications Corporation,)
holder of IXC Certificate 61, PATS Certificate)
3080, and AAV/ALEC Certificate 3996) to)
TC Investments Corp., a wholly-owned subsidiary)
of WorldCom, Inc. d/b/a LDDS WorldCom)

Docket No. 971604-TI
Filed: February 12, 1998

**GTE CORPORATION'S AND GTE COMMUNICATIONS CORPORATION'S
PETITION ON PROPOSED AGENCY ACTION
AND REQUEST FOR SECTION 120.57 HEARING**

Pursuant to Commission Order number PSC-98-0125-FOF-TI, issued January 22, 1998, and Commission Rules 25-22.029 and 25-22.036, GTE Corporation and GTE Communications Corporation (collectively, GTE) protest the Commission's Notice of Proposed Agency Action (PAA) to approve the request of MCI Communications Corporation (MCI) and WorldCom Inc. (WorldCom) (collectively, Applicants) for a transfer of control of MCI to WorldCom. GTE requests a hearing under section 120.57, Florida Statutes, so that the Commission can substantively evaluate the transaction to determine whether it is in the public interest.

I. Procedural Requirements

In accordance with the PAA and Commission Rule 25-22.036(7)(a) and (f), GTE states:

1. This Petition is filed in the Florida Public Service Commission's Docket number 971604-TI, as captioned above.
2. The Petitioners are GTE Corporation and GTE Communications Corporation.

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Their address is One Stamford Forum, Stamford, Connecticut 06904. Service of all documents in this proceeding should be made on GTE counsel, Kimberly Caswell, One Tampa City Center, 201 N. Franklin Street, FLTC0007, Tampa, Florida 33601. As explained more fully below, GTE has a substantial interest in this proceeding as both a customer and competitor of the planned MCI/WorldCom combination. GTE resells WorldCom services obtained at wholesale. Approval of the requested transfer of control will alter WorldCom's practices and incentives in the wholesale market, including expected discontinuation of innovative wholesale features and less favorable pricing. This outcome will undermine competition in the wholesale market (and, in turn, the retail market) and hinder GTE's and other resellers' long distance business. The merger will, moreover, harm competition by reducing the number of major interexchange carriers (IXCs) from four to three, and by removing an actual competitor for local exchange service in several Florida markets. The likely impacts in Florida of the proposed merger are discussed below and detailed further in the attached affidavit of Dr. Robert G. Harris (Harris Affidavit), a Principal in the Law and Economics Consulting Group and Professor Emeritus of Business and Public Policy in the Haas School of Business, University of California, Berkeley.

3. WorldCom and MCI have stated that "the general public will realize significant benefits from a merger between MCI and WorldCom." They assert that the proposed combination will increase competition in the interexchange sector and "especially in local markets."¹ GTE disputes the Applicants' allegations that the merger will

¹ Letter from T. Bond and R. D. Melson, counsel for MCI, and J. L. Kiddoo, K. L. Cooper, and F. R. Self, counsel for WorldCom, to B. Bayo, Director, Records and Reporting, Florida Public Service Commission, dated Nov. 25, 1997 (Nov. 25 Letter), at

increase competition and that it will benefit the public. Applicants have made no factual demonstration whatsoever to support these conclusions.

4. As discussed below, once the Commission has the data it needs to substantively evaluate the proposed transaction, it will find that the merger will decrease competition in local and interexchange markets in Florida. The merger would compromise the supply of bulk capacity and advanced features in the resale input market, to the ultimate detriment of the consumer. The merger is likely to increase long distance prices and reduce variety and choice in the long distance services market. See Harris Aff. at 3-4. These effects are contrary to the requirement that the Commission must find the transfer of control to be in the public interest before it can be approved. GTE is entitled to a hearing under section 120.57, Florida Statutes, and denial or appropriate conditioning of the merger is warranted under Florida Statutes sections 364.33, 364.335, Commission Rules 25-24.473 and 25-24.730, and Commission precedent under those provisions.

5. Although the Applicants have the burden of proving that their requested transfer of control is in the public interest, they have given the Commission no facts or evidence that would allow the Commission to make its mandatory public interest evaluation. The Application should be denied on these grounds alone. In the alternative, GTE asks the Commission to undertake a full hearing proceeding under section 120.57(1), Florida Statutes, to allow all interested parties to participate in the process of gathering

3. WorldCom and MCI refer to this letter as their "Joint Application of WorldCom, Inc. and MCI Communications Corporation Regarding the Merger of MCI Communications Corporation and WorldCom, Inc." To GTE's knowledge, WorldCom and MCI never filed a formal application for transfer of control under Commission Rules 25-24.473 and 25-24.730.

evidence that will either prove or disprove Applicants' claims about the merger's effect on the public interest.

6. GTE received notice of the PAA by mail on January 26, 1998.
7. Additional, material information supporting GTE's Protest is set forth below.

II. GTE's Substantial Interests as Both Customer and Competitor Will Be Affected if the Commission Grants the Transfer of Control Application.

In its Reply to the Applicants' Joint Opposition to GTE's Petition to Intervene in this proceeding, GTE discussed at length its substantial interest as both customer and competitor to the merged entity. (Reply of GTE Corp. and GTE Comm. Corp. to Opposition of WorldCom, Inc. and MCI Communications Corp. to Motion to Intervene, filed Jan. 26, 1998 (Reply), at 1-18.)² As explained there, GTE buys most of its long-distance minutes (i.e., bundled transmission, switching and signaling capacity as an integrated service) from WorldCom. WorldCom has not provided any information on its activities in the wholesale market, but publicly available data shows WorldCom to be the largest provider of wholesale capacity. (See Harris Exs. 2 and 28, citing Atlantic-ACM, Wholesale Carrier Report Card, Feb. 1998.) Whatever its share of that market, WorldCom has aggressively pursued wholesale supply arrangements as a means of indirectly serving residential and small business customers. GTE's experience as a long-distance consumer has been that WorldCom has been far more price-competitive than its three rivals, AT&T, MCI and Sprint. Moreover, WorldCom has committed to providing advanced features and

² Because the same standard governs entitlement to intervene and to protest a PAA (see below), many of GTE's arguments here track those of its Reply, and GTE refers the Commission to its Reply for additional insight into the standing issue.

capabilities to its wholesale customers that other IXCs refuse to provide to resellers. These advanced capabilities are essential elements of the services that GTE and other carriers resale to business and residential customers. Without access to them, GTE (and other resellers) would be seriously hampered in the marketplace.

The attached declaration of Debra R. Covey, Vice President-Operations Support for GTE Communications Corporation, is a firsthand account of GTE's interest and experiences in the wholesale market. Ms. Covey is responsible for the negotiation and administration of contracts and relationships with suppliers of long-distance services to GTE Long Distance for resale as well as for GTE's own company-wide internal use.

The merger, if it is consummated, would predictably alter WorldCom's incentives and practices in the wholesale market. Rather than welcoming resellers as a distribution channel, a post-merger WorldCom would see increased sales through resellers diminish its profits by cannibalizing MCI's lucrative retail customer base. This provides a powerful incentive for WorldCom to increase its wholesale rates, limit the range of advanced capabilities offered to resellers and discontinue commitments to develop additional wholesale capabilities. See Harris Aff. at 18-20. GTE certainly has a substantial interest in preventing these unfavorable consequences for the wholesale market in which it operates.

"Substantial interest" (the standard for entitlement to both intervene and to protest proposed agency actions) is not defined by statute, leaving the Commission to develop the meaning of the term through its own decisions. See Investigation of the Rates and Charges of Southern Bell Tel. & Tel. Co., 7 FPSC 749 (1979). The Commission has

sometimes cited Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981) as a guide for substantial interest evaluations. Under Agrico, an individual must show 1) an injury of sufficient immediacy to warrant a formal hearing; and 2) that the proceeding be of the type intended to address the concerns raised. Application for Certificate to Operate Wastewater Util. in Franklin County by Resort Village Util., Inc., 94 FPSC 9:278 (1994), citing Agrico.

Although the Commission sometimes refers to the Florida courts' Agrico standing test as an analytical baseline, the agency does not mechanically apply the Agrico criteria. Rather, the Commission has used a deliberately "broad interpretation of the term 'substantial interest.'" Bell Tel., 7 FPSC 749, supra. The Commission's standing decisions are adapted to the exigencies of administrative practice and informed by public interest considerations with which courts need not concern themselves. As such, the parameters of the Commission's standing test can be best understood by their practical application in the situations that have come before it. In this regard, there is ample precedent supporting GTE's standing here.

The Commission has, time and again, confirmed that resellers and other purchasers (even just potential purchasers) of inputs used to provide retail service have a patently substantial interest in proceedings that might affect the market for the service at issue.³

³ See, e.g., Consideration of BellSouth Telecomm. Inc.'s Entry into InterLATA Service Pursuant to Section 271 of the Fed. Telecomm. Act of 1996, 97 FPSC 7:581 (1997) (granting intervention of American Communications Services of Jacksonville, Inc. (ACSI) as purchaser of BellSouth service elements ACSI uses to provide service to its end users); Application of AT&T Comm. of the Southern States, Inc. for a Certificate of Public Convenience and Necessity, 85 FPSC 241 (1985) (granting intervention to Southland Systems, Inc. based on its substantial interest as a reseller of toll service); AT&T Comm.

These reseller cases are just a subset of the innumerable instances in which customer status was an unquestioned basis for finding substantial interest in all manner of Commission proceedings, whether that customer was an individual consumer, private corporation, or governmental entity.⁴ Moreover, the Commission has just as routinely

Application for Public Convenience and Necessity-WATS: Southern Bell Tel. & Tel. Post-Divestiture WATS Service, 85 FPSC 197 (1985) (granting GTE Sprint Communications Corporation's intervention based on its interest as a "resale provider of telecommunications services"); Southern Bell Tel. and Tel. Co.'s Proposal for Provision of Post-Divestiture WATS Service, 85 FPSC 208 (1985) (granting Microtel intervention as WATS reseller); AT&T Comm. Application for Public Convenience and Necessity-WATS: Southern Bell Tel. & Tel. Post-Divestiture WATS Service, 85 FPSC 141 (1985) (granting intervention to U.S. Dial Corporation on the basis that its substantial interests as a WATS reseller "will be affected by the ultimate resolution of how intrastate WATS service will be provided"); Southern Bell Tel. and Tel. Co. Petition to Initiate Rulemaking re: Shared Tenant Services, 85 FPSC 201 (1985) (allowing intervention of two possible future providers of shared tenant services); Impact of AT&T/DOJ Antitrust Settlement Upon Intrastate Tel. Service in Florida, 84 FPSC 18 (1984) (granting MCI intervention as an IXC obtaining "a variety of services and facilities from Southern Bell"); Application of AT&T Comm. of the Southern States, Inc. for Certificate of Public Convenience, 84 FPSC 97 (1984) (granting intervention to Florida Association of Concerned Telephone Companies, Inc. (FACT) as WATS resellers whose "substantial interests may be affected by a change or restructure of prices for WATS services" which might result from granting AT&T's application); Intrastate Tel. Access Charges for Toll Use of Local Exchange Service, 83 FPSC 60 (1983) (granting intervention to Teltec as WATS reseller); General Investigation into Local Exchange Tel. Pricing, 83 FPSC 26 (1983) (granting intervention to FACT as resellers); Application of GTE Sprint Comm. Corp. for a Certificate of Public Convenience and Necessity, 83 FPSC 182 (1983) (granting AT&T's intervention as "a future provider of interexchange telecommunications services and a subscriber in Florida to access services"); Intrastate Tel. Charges for Toll Use of Local Exchange Services, 83 FPSC 96 (1983) (granting intervention to Combined Network, Inc. as a potential future provider of intrastate toll and consumer of access services in Florida).

⁴ See, e.g., Review of Nuclear Output at Florida Power Corp.'s Crystal River Unit 3, 97 FPSC 27 (1987) (granting Florida Attorney General's intervention on behalf of State of Florida as significant purchaser of electricity from Florida Power Corp.); Investigation of Possible Overconsumption in Manatee County by Keith & Clara Starkey, d/b/a Heather Hills Estates, 96 FPSC 12:226 (1986) (granting intervention of individual customers of the utility); Application for a Limited Proceeding to Include Groundwater Dev. and Protection Costs in Rates in Martin County by Hobe Sound Water Co., 96 FPSC 6:215 (1986)

granted standing to competitors as to customers, even in cases that do not present nearly the depth and breadth of issues that this merger application does.⁵ The Commission

(granting intervention to Town of Jupiter Island as a customer of the water utility); Application for Rate Increase in Flagler County by Palm Coast Util. Corp., 96 FPSC 5:561 (1996) (granting intervention to the Dunes Community Development District as a customer of the utility); Application for Rate Increase by Southern States Util., Inc., 96 FPSC 4:291 (1996) (granting intervention to Citrus County as utility customer); Request for Exemption from Florida Public Service Comm'n Regulation for Provision of Water Service in Palm Beach County by Royal Manor Estates Community Water, 94 FPSC 8:465 (1994) (finding mobile home owners association, utility customers in the affected service area had satisfied the Acrico standing test); Application of Southern States Util., Inc. for Increased Water and Wastewater Rates, 93 FPSC 2:885 (1993) (granting intervention to individual representing a condominium association); Application for Rate Increase in Brevard, Charlotte/Lee, etc., 92 FPSC 10:244 (1992) (granting intervention to Board of County Commissioners of Nassau County); Joint Petition for Supplemental Certification of Construction and Operation by Orlando Util. Comm'n et al., 91 FPSC 8:533 (1991) (granting intervention of Sierra Club, some of whose members were customers of the petitioning utilities); Application for Approval of Transfer of Certificates from Twin County Util. Co. to Southern States Util., Inc., 89-2 FPSC 89 (1989) (granting intervention to neighborhood association as customers whose service would be transferred to proposed new certificate holder); Southern Bell ESSX and Digital ESSX Tariff Filing, 88 FPSC 292 (1988) (granting AT&T's intervention); Petition of Gainesville Gas Co. for Increased Rates, 87-10 FPSC 234 (1987) (granting intervention of Gainesville Regional Utilities); Investigation into Earnings of Southern Bell Tel. and Tel. Co., 86 FPSC 236 (1986) (granting AT&T's intervention as a customer of Southern Bell's access services); Investigation into NTS Cost Recovery, 86 FPSC 287 (1986) (granting intervention of Florida Ad Hoc Telecommunications User Committee (Ad Hoc) as a group of major users of private line services); Implementation of Local Exchange Co. Toll Bill and Keep, 86 FPSC 241 (1986) (granting Ad Hoc's intervention as large users of interLATA toll FX and private line services); Intrastate Tel. Access Charges for Toll Use of Local Exchange Services, 85 FPSC 55 (1985) (granting Florida Attorney General's intervention on behalf of State of Florida as large telecommunications consumer); Impact of ATT/DOJ Antitrust Settlement Upon Intrastate Tel. Service in Florida, 84 FPSC 115 (1984) (granting intervention to the U.S. Department of Defense and all other Executive Agencies as a large user of telecommunications services).

⁵ See, e.g. Petition by Subscribers of the Groveland Exchange for Extended Area Service (EAS) to Orlando, Winter Garden, and Windermere Exchange, 96 FPSC 9:59 (1996) (granting intervention to Florida Interexchange Carriers Association on the basis that its members' substantial interests as providers of interLATA service would be affected); Request for Approval of Special Service Availability Contract with Lake Heron

cannot, consistent with this wealth of precedent, deny GTE's substantial interest in this case as either a customer or a competitor. The fact that GTE is both makes its substantial interest showing that much stronger.

Indeed, based on MCI's own standing arguments in other cases, the Applicants cannot in good faith dispute GTE's right to participate in this case. For instance, in Application of Centel Network Comm., Inc., d/b/a Centel Net for Authority to Provide Interexchange Telecommunications Services, 89-9 FPSC 284 (1989), MCI successfully

in Pasco County by Mad Hatter Utility, Inc., 95 FPSC 478 (1995) (granting Pasco County's intervention because its substantial interests as utility provider would be adversely affected by Mad Hatter's proposed system duplication); Application of United Tel. Long Distance, Inc. for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida, 87-8 FPSC 94 (1987) (granting Metromedia Long Distance, Inc. leave to intervene based on its status as an interexchange carrier); Forbearance from Earnings Regulation of AT&T, 1987 PUC Leds 109, Order No. 18507 (1987) (granting intervention of FACT "in that it appears that the substantial interests of the members of this association, who are minor interexchange carriers, may be affected and may be subject to determination in this proceeding"); Application of AT&T Comm. of the Southern States, Inc. for a Certificate of Public Convenience and Necessity, 86 FPSC 24 (1986) (Microtel intervention granted because of its substantial interest on "the impact of [AT&T's] proposal on firms competing in the intrastate toll market and the pricing of [AT&T's] services"); Application of AT&T Comm. of the Southern States, Inc. for a Certificate of Public Convenience and Necessity, 85 FPSC 56 (1985) (GTE's substantial interests affected because of potential impact of AT&T's proposal "on firms competing in the intrastate toll market and on competition in general" and because "issues regarding the pricing of AT&T Communications' services might have an effect on GTE"); Petition of MCI Telecomm. Corp. for a Certificate of Public Convenience and Necessity, 84 FPSC 78 (1984) (granting AT&T's intervention because of its IXC status); Application of United States Trans. Systems, Inc. for a Certificate of Public Convenience and Necessity, 83 FPSC 195 (1983) (granting Microtel Inc.'s intervention because applicant's system would be "in competition with" the services provided by Microtel, an IXC); Application of Satellite Business Systems for a Certificate of Public Convenience and Necessity, 83 FPSC 40 (1983) (granting Microtel's intervention because proposed certificate holder would duplicate Microtel's services); Petition of Continental Tel. Co. of the South-Florida for Waiver of Florida Admin. Code Rule 25-4.345 (4), 83 FPSC 184 (1983) (granting intervention of IXCs NATA and Telcom Plus on the basis of their status as competitors to the petitioner).

argued that its substantial interests would be affected because granting Centel Network Communications, Inc. a certificate would "have an adverse impact on the competitive interexchange market as well as having an effect on MCI's ability to offer telecommunications services in the future." In this case—an event much more significant than certification of a competitor—GTE claims the same interest. That is, the merger will have an adverse effect on the interexchange market as well as having an effect on GTE's ability to offer telecommunications services in the future.

In other cases, MCI's interests were more narrowly asserted, but no less acceptable to the Commission as a basis for conferring standing on MCI. See, e.g., Application of United Tel. Long Distance, Inc. for a Certificate of Public Convenience and Necessity as a Reseller, 87 FPSC 124 (1987) (granting MCI intervention in proceeding to certificate toll reseller, on the basis of MCI's status as an IXC); US Sprint Comm. Co.'s Petition for Hearing on Bi-Directional WATS Access Line Policy, 87-11 FPSC 345 (1987); Southern Bell Tel. and Tel. Petition to Initiate Rulemaking Re: Shared Tenant Services, 85 FPSC 309 (1985) (granting MCI's intervention on the basis of its argument that "since 'smart buildings' ordinarily operate to concentrate the interexchange traffic of unrelated customers, such action could affect the number and size of potential customers for MCI's interexchange services").

In any case, if the Commission grants the transfer of control, it is certain that GTE's interests "may or will" be immediately and adversely affected.⁶ As soon as the merger

⁶ Despite the nominal injury criterion of Amico, the Commission has clarified that a showing of adverse effect is not required for a party to gain standing in an administrative proceeding. Demonstration of a substantially affected interest will suffice. Application of

occurs, it will definitely remove a major competitor in the wholesale market where GTE buys access to a network upon which its long distance business depends. By necessity, there will definitely be less competition in that market (as well as the retail long-distance market) if a major competitor is removed. The decrease in the number of competitors in this case will cause particular harm because of the established patterns of behavior of WorldCom, on the one hand, and the other interexchange carriers, on the other. Wholesale capacity is essentially controlled by the four nationwide IXCs—AT&T, MCI, Sprint, and WorldCom. Of these, only WorldCom has shown a willingness to offer the advanced features that are so important to resale competition, as GTE and others have observed in their FCC filings. Moreover, as noted above, WorldCom has offered GTE better prices than the other large IXCs.

WorldCom's aggressive courting of resellers thus distinguishes it from AT&T, MCI, and Sprint. Unlike the other large IXCs, which have strong brands from an end user perspective, WorldCom has preferred to rely on the brands of others, such as GTE, to distribute its service. In this way, WorldCom saves significant marketing and promotions costs—savings which can be passed on to resellers.

The other IXCs' tepid attitude toward resellers is predictable. Absent stimulation from WorldCom, other IXCs lack the incentive to offer the innovative products and favorable prices that could well enable those resellers to take away the IXC/wholesaler's

East Central Fla. Services, Inc. for an Original Certificate in Brevard, Orange and Osceola Counties, 92 FPSC 3:374 (1992). Nevertheless, GTE here demonstrates that it meets even the higher standard of adverse effect.

own customers.⁷ If the merger is consummated, WorldCom will also, predictably, be much less eager to meet resellers' needs. As a rational company, the combined MCI/WorldCom will wish to protect its lucrative retail base by avoiding WorldCom activities that might cannibalize that customer base. See Harris Aff. at 19.

The loss of WorldCom as a stimulating force in the wholesale market will, of course, affect GTE's keen interest in the development and maintenance of an effectively competitive wholesale long-distance market. Thus, GTE's interest is not just a competitive or economic interest. GTE is not seeking to be protected from competition; at present, it is not even a competitor in the wholesale market. Rather, GTE's interest is in assuring the kind of conditions that are necessary to give all market participants a fighting chance of success in the long term, so that long-distance competition can flourish in Florida. The Commission should share this objective, since without a vigorous resale market, there is little hope for real competition in the end user long-distance market. See Harris Aff. at 12. In addition, the past history of demonstrated, coordinated behavior of the large IXCs in the retail long-distance market (discussed in more detail below) proves GTE's concern to be more than just speculative.

Dr. Harris confirms that, "If approved, the proposed merger would have a disproportionate effect on the resale segment of the interexchange market." Harris Aff. at 19. He explains that GTE and Florida consumers would be harmed by the post-merger, adverse changes in the supply of resale. Id. at 22-23. The injury that GTE (and other

⁷ Because WorldCom lacks the brand-name recognition of other IXCs, it has pursued a wholesale strategy that has spurred the growth of this important market segment. See Harris Aff. at 7.

resellers and consumers) will suffer as a result of an unconditioned transfer of control is exactly the type of injury this proceeding is designed to address. In order to approve this merger, the Commission must find that it is in the public interest (see discussion below). In determining public interest, the Commission must necessarily consider the effect of the transaction on competition and on consumers. GTE has raised serious concerns that the merger will impede competition at various levels— long-distance, as well as local. GTE's interest in fair and effective competition in the markets in which it operates is consonant with the Commission's duty to actively promote such fair and effective competition. The Commission cannot, consistent with its mission of fostering competition, deny GTE's protest and thus overlook the anticompetitive consequences GTE has raised.

As explained below, the Applicants have provided the Commission no facts that would allow the Commission to assess the public interest effects of the proposed merger. This factual detail would, of course, be useful in verifying GTE's showing of substantial interest and, in particular, injury flowing from the transaction. GTE, however, should not be penalized for the Applicants' lapses and omissions. If the Commission has any doubts about GTE's demonstration of substantial interest, they should be resolved in favor of GTE's right to challenge the PAA. This case is too important to the future of Florida's telecommunications markets to do anything other than that.

Indeed, among the factors the Commission has elaborated in its standing disputes is whether a putative party raises complex or particularly weighty matters. Even where an individual cannot prove adverse impact, the Commission may still allow a protestant to go forward if he can demonstrate "some overwhelming harm to the public interest." Tariff

Filing by GTE Florida Inc. to Introduce IntraLATA Toll Optional Calling Service, 88-6 FPSC 297 (1988). Likewise, the Commission will grant standing where a protest raises fundamental questions about the effect of another party's plans on competition in particular markets. For example, in Tariff Filing by GTE Florida Inc. to Introduce Toll Optional Calling Services, 88-11 FPSC 287 (1988), Telus Communications, an IXC, asked the Commission to suspend and set for hearing a GTE tariff proposing an experimental intraLATA toll optional service. Telus argued that its complaint about the tariff raised "significant questions of policy pertaining to intraLATA/intramarket toll competition." GTE Florida countered that Telus had shown nothing more than mere competitive injury insufficient to ground standing. The Commission rejected GTE's position, finding Telus' general allegations about the tariff's anticompetitive effects sufficient to warrant a hearing.

The Commission used the same broad policy rationale to rebuff another GTE standing challenge, this time with regard to Intermedia Communications of Florida. In Proposed Tariff Filing to Establish Rates and Charges for Digital Channel Services by GTE Florida Incorporated, 91 FPSC 5:520 (1991), Intermedia protested an order approving a tariff filing that treated intraservice digital channel services (DCS) as common line (rather than private line) services for accounting purposes. Intermedia asserted that it was a substantially affected party because it was a customer of GTEFL's common line services and a possible future private line customer. In addition, Intermedia stated that the Commission's decision was anticompetitive and that it substantially affected Intermedia as an IXC because the decision to permit GTEFL to book DCS as common line "alters the basic policy framework within which competition in private line and special access services

are allowed or prohibited." The Commission found that "Intermedia's protest raise[d] significant policy issues that need to be addressed" and confirmed ICI's standing as a customer of GTEL, an IXC "operating within the current regulatory framework," and as a potential competitor in intrastate private line services. In fact, the Commission found the potentially far-reaching implications of Intermedia's protest important enough to initiate a generic docket, rather than to try to address them in the context of a dispute between two parties.

The need for a thorough exposition of important issues has been a key consideration in the Commission's rejection of standing challenges. The Commission thus found the Florida Rural Electric Cooperative Association had standing in a proceeding involving a territorial dispute between two other parties, despite the objections of one of those parties. The prehearing officer emphasized the complexity of the proceeding and stated: "We have repeatedly indicated that one of the parties' goals in Commission proceedings should be to educate the Commissioners concerning the matters at issue. I believe that FRECA's input could assist in that goal and I therefore uphold the decision to allow FRECA to intervene." Petition of Talquin Elec. Coop., Inc. to Resolve Territorial Disputes with City of Tallahassee, 89-5 FPSC 439 (1989).

Education of the Commission was again the touchstone for granting a disputed intervention request in Petition to Establish Amortization Schedule for Nuclear Generating Units to Address Potential for Stranded Investment by Florida Power & Light, 95 FPSC 367 (1995). There, Florida Steel argued that a change in the depreciation practices of Florida Power & Light Company (FPL) might raise Florida Steel's electric costs and thus harm its

ability to compete. The Commission rejected FPL's arguments that Florida Steel's ability to compete was just an economic harm and that any prospective rate impacts were too speculative to justify intervention. In doing so, the agency observed that it "would benefit from full exploration of the policy issues to be addressed in this docket....Florida Steel's participation will provide a balance to the concerns of FPL. Having this information will permit the Commission to better assess how the public interest will be served in this docket." *Id.* at 367.

Even more recently, another large Florida Power & Light customer, AmeriSteel Corporation, was deemed to have standing to protest the Commission's PAA concerning the company's proposed nuclear amortization schedule. Proposal to Extend Plan for Recording of Certain Expenses for Years 1988 and 1989 for Florida Power & Light Company, 97 FPSC 9:124 (1997). AmeriSteel argued that FPL's plan would affect AmeriSteel's and other customers' chances of receiving a refund in the event of FPL overearnings. The Commission rejected FPL's Ad Hoc arguments that AmeriSteel's interests were too speculative and indirect to confer standing and that the proceeding was not designed to protect AmeriSteel's "competitive interests." The Commission instead emphasized its own criteria, holding that two factors demonstrated AmeriSteel's substantial interest: the need for regulatory approval of FPL's proposal; and the materiality of the amount at issue in the proceeding (in excess of 200 million dollars per year). *Id.* at

130.

Finally, in Petition of Continental Tel. Co. of the South for Writ of Habeas Corpus, 83 FPSC 141 (1993), the Commission rejected

Continental's argument that the status of intervenors North American Telephone Company and Telecom Plus of Florida, Inc. as competitors was an insufficient basis upon which to grant intervention. The Commission emphasized that it was at the "threshold" of establishing the conditions under which structural separation would be required to protect against cross-subsidization. It found that: "NATA and Telecom as competitors could be substantially affected by the manner in which we require a regulated utility to organize its competitive operations. We believe that NATA and Telecom, as competitors, may be able to assist us in our determination of the issues in this case by their participation in this docket as a party."

All of these cases appropriately underscore the Commission's fact-finding and policy-making functions and all of them have particular resonance for the dispute at hand. Here, GTE has raised basic issues about the future of telecommunications markets in Florida—long-distance as well as local. And the billions of dollars at stake in local and long-distance telecommunications markets in Florida certainly meets the Commission's materiality criterion. As detailed below, it is certain that the proposed transaction—the largest merger ever—will affect telecommunications markets in Florida; this \$38 billion transaction certainly presents the potential for "overwhelming harm to the public interest."

GTE has already proved it can help educate the Commission about the effects of the merger. Chairman Johnson observed that GTE's comments at the agenda had prompted her to consider more closely the potential effects of the proposed merger. (Jan. 7, 1998, Agenda Conf. Tr., Item 10 (Agenda Conf. Tr.), at 35-36, 49.) Indeed, it is impossible for the Commission to understand the merger's effects from the "application"

alone. That application—not really an application at all, but a less than three-and-a-half page letter—is devoid of any facts about the applicants' markets, geographical scope of operation, or any facts specific to Florida (or anywhere else for that matter). To GTE's knowledge, Staff did not attempt discovery or other investigation of the Applicants' claims that the merger would increase competition and generally benefit the public. The only critical examination of the Applicants' claims has been from GTE. Based on just the limited proceedings thus far, GTE has amply demonstrated that, without its voice, the Commission will not obtain the balanced presentation that the Commission has deemed critical to assessing the public interest consequences of important proposals that come before it.

As the Commission recognized at the January 7 agenda, when it raised the possibility of the Florida Attorney General's participation in this proceeding, a merger examination is a complex matter. But this fact—rather than prompting the Commission to abandon its public interest mandate—should motivate the Commission to solicit educational input and varying perspectives from interested third parties, as it has done in the past when confronted with complicated issues. In this regard, GTE's reseller-customer perspective is particularly valuable. There are numerous small resellers in this State, but GTE is probably unique for its size as a reseller and the resources and Commission experience it can bring to this proceeding. Thus, although the resale angle is critical to evaluating the transaction's effect on consumers, the Commission is not likely to get this perspective without GTE's participation.

If the Commission is interested in obtaining an answer to the question of whether

the merger will be, on the whole, good or bad for consumers, it will allow GTE to fully participate in developing a complete record in this case. It will, as it has done in other cases, recognize that fundamental market development policy issues—such as those GTE has raised here—demand input from a competitor as well as a customer perspective.

III. WorldCom and MCI Must Prove that the Merger is in the Public Interest.

This merger was approved, at least provisionally, on the basis of a brief letter that did not include any facts about the applicants' operations in Florida or elsewhere. As noted, there was no Commission investigation of the transaction. The PAA Order's entire public interest discussion of this largest-ever merger consisted of just two conclusory sentences: "We determine that MCI and WorldCom have met the requirements of Section 364.33, Florida Statutes. Accordingly, we find that the transfer is in the public interest, and we approve it pursuant to Section 364.33, Florida Statutes." (PAA at 2.)

Based on the proceedings so far, the Applicants have effectively been given a presumption that the proposed transfer of control is in the public interest. But no such presumption is permissible under the law. On the contrary, Applicants must affirmatively prove that the transaction is in the public interest. Under section 364.33 of the Florida Statutes, the contemplated merger cannot occur unless the Commission approves it. The standard for approval of a transfer of control is whether it will be in the public interest, as reflected in Florida Statutes, section 364.335(2) and (4), Commission Rules 25-24.473 (governing transfer of IXC certificates) and 25-24.730 (governing transfer of alternative

access vendor certificates), and Commission actions under these statutes and rules.

Despite these requirements, the Applicants have provided no information that would permit any assessment of the public interest consequences of the transaction. There are no facts about the location or scope of the respective companies' operations in Florida, their intrastate revenues or market shares, their competitive overlaps, or anything else that might help support Applicant's allegations about the merger's effect on competition and on the public interest in general. Their summary conclusions have been presented in a relatively standard manner across the states; there was certainly no effort to tailor the "application" to help this Commission better understand the effects of the merger with particular regard to Florida. In fact, the serious market concentration concerns that have been raised at the national level may be even more acute in Florida. But the Commission will remain in the dark about these concerns if it is content to approve the merger based solely on the Applicant's conclusory platitudes, rather than on actual facts.

The Commission will likewise remain clueless as to the merger's possible effect on local service consumers. Here, as well, the Applicants assure the Commission that the merger will increase competition, especially at the local level. What they don't tell the Commission is that it will remove one of the few actual facilities-based competitors in several local markets in Florida.

These anticompetitive effects are discussed in more detail below, but the point to be made from these examples is that the Applicants have utterly failed in their statutory duty to provide the Commission with the information it needs to make an informed decision about the effect of the proposed transaction on the public. Only through its own research

has GTE been able to identify potential problems posed by the transaction.

Neither the Commission nor interested parties can or should be put in the position of guessing about facts relevant to the Applicants' operations in Florida. The Commission has made very clear that the Applicants in transfer of control cases have the burden of proof, and that they must provide the Commission with the information it needs to determine whether the proposed transaction is in the public interest. Application of Metro Comm. Network, Inc. for Transfer of IXC Certificate to Profit Concept Systems of Lake County d/b/a Metro Long Distance, 89-6 FPSC 385 (1989) ("Rule 25-24.473, Florida Administrative Code, requires all applicants for the sale, assignment or transfer of an interexchange (IXC) certificate to provide this Commission with the information we need to make our determination of whether it is in the public interest to approve the sale, assignment or transfer of the certificate. This burden is a joint one carried by both the transferor and the transferee.")⁸

GTE cannot respond to, and the Commission cannot credibly act upon, vague generalizations and unsubstantiated claims. Only the Applicants have the ability and the duty to supply information that will prove or disprove their assertions about the merger's likely effects on competition. If the Applicants will not volunteer the information necessary to put forward a prima facie case for the transfer, then the Commission should either dismiss the Application or require the information to be filed. There is no reason, and no requirement, to place the burden on other parties to ask for it. Then, and only then, will

⁸ Rule 25-24.730, governing transfers of AAV certificates, also includes the language referred to here in association with Rule 25-24.473.

interested parties have the ability to present their own cases for or against the transaction. Only then will the Commission be able to assess the evidence and decide whether it shows benefit or detriment to the public.

If the Applicants are permitted to disregard their responsibility to prove the merits of the merger, the Commission will be forced into the position of taking impermissibly arbitrary action. A public interest inquiry is necessarily fact-based. But since the Applicants have provided no facts, any final decision based solely on that Application will also be unsupported by any facts or meaningful analysis. The PAA merely recites that the transfer is in the public interest, but gives no hint as to why or how the Commission reached this conclusion. If the PAA becomes final, then, the decision would be a textbook example of impermissibly arbitrary and capricious action.

It is true that, in the past, the Commission has generally drawn its public interest conclusions about proposed mergers without much evidence or analysis—probably because the vast majority have not been seriously challenged. This does not mean, however, that the Commission cannot or should not do a more thorough analysis in this case (which is being challenged) or that GTE is advocating a change in standards. GTE only asks the Commission to use the existing public interest criteria to more closely evaluate the merger before it. To this end, past Commission decisions confirm that the issues GTE has raised are, in fact, relevant to the agency's merger assessments. For instance, the Commission last year found that a merger under review would, if approved, provide "improved services and lower rates, thereby promoting competition in Florida." Request for Approval of Merger of Shared Technologies Fairchild, 97 FPSC 10:320, 321

(1997) [emphasis added]. Similarly, in Petition for Expedited Approval of Indirect Change in Control of NYNEX Long Distance Co., 97 FPSC 1:55, 56 (1997), the Commission approved the proposed merger because the merged entity would provide "quality service at a reasonable price in a competitive environment and would therefore be in the public interest." [Emphasis added.] Even MCI has correctly observed that the standard the Commission has applied in the past "is what will be the impact on customers." (Agenda Conf. Tr. 11.) The Commission cannot, of course, evaluate the impact of the merger on consumers if the Applicants fail to supply the facts necessary to corroborate their claims of increased competition.

Because GTE is not advocating any change in standards for merger review, there is no issue of lack of notice of a change in standards. Applicants will be asked only to support the benefits they have claimed in association with the merger. Certainly, they have no right to complain about that.⁹ As noted, Applicants are not entitled to any presumption that the assertions in their application are true. And there is nothing in Chapter 384 or elsewhere that constrains the Commission's scope of review of the

⁹ Indeed, WorldCom's complete disregard for the rules and statutes governing its requested transfer precludes any claim that it relied on any particular standards. For instance, WorldCom did not even intend to seek Commission approval of the merger, despite the clear language of section 384.33 requiring such prior approval. Instead, it sent a letter to the Commission "for informational purposes" and gave a Commission a 30-day deadline to furnish WorldCom "written notification" if the Commission believed approval would be required. Letter from J. L. Kddoo, K. L. Cooper, and F.R. Self, counsel for WorldCom, to B.S. Bayo, Commission Division of Records and Reporting, dated Oct. 16, 1997, at 5. Only at Staff's request did WorldCom seek approval of the transaction and, even then, WorldCom never cited the applicable Florida statutes or Rules governing the request. Letter from F.R. Self to B.S. Bayo, dated Oct. 23, 1997. As noted earlier, the Joint Applicants never filed any formal application for approval of the transfer of control.

transaction, as Applicants might have the Commission believe. To the contrary, the "public interest" standard set forth by the Legislature confers upon the Commission the broadest possible discretion to inquire into any aspect of the transaction that it believes may affect competition and consumers. Assuring the development and maintenance of fair and efficient competitive markets—and attainment of the associated consumer benefits—is at the heart of the Commission's mission. See, e.g., Fla. Stat., sec. 364.01. It defies logic to suggest that the Commission should ignore this objective in the context of this merger review.

There are many reasons why the Commission should demand information from the Applicants sufficient to do a thorough public interest analysis in this case. Most obviously, this merger is not likely to be matched in size and scope anytime soon. This \$38 billion transaction has been described as the largest merger in U.S. history—not just the largest telecommunications merger. Further, it is a combination of direct, actual competitors. It will remove a competitor in both the long-distance and local markets. As explained above (and in consumer filings before the FCC), this aspect has more urgent public interest implications than transactions involving just potential competitors.

Moreover, this is the first major merger to come before the Commission since adoption of the Telecommunications Act of 1996 (Act). That Act, like the 1995 revisions to Chapter 364 in Florida, casts the Commission in the role of facilitator of competition, rather than direct regulator. As FCC Chairman Kennard has aptly recognized, both federal and state regulators have "reached the end of the beginning of our journey from monopoly regulation to competition." (Kennard remarks at Nov. 1997 NARUC meeting, cited in

Warren's Cable Regulation Monitor, Nov. 17, 1997.) In this new era, the Commission is charged with ensuring that market conditions encourage competition and greater consumer welfare. This mandate is made explicit in Florida law:

The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition....

Fla. Stat., sec. 364.01(3).

The Commission has taken concrete actions to fulfill this new role. It has, for example, initiated industry workshops as a first step toward addressing the perceived lack of competition in local markets. But the pro-active actions the Commission has thus far taken will be just empty gestures if the Commission does not require the Applicants to support their assertions about the merger's impact on the public. GTE and the Applicants agree that the transaction is sure to affect the development of competition in local and long distance markets. But they disagree about whether these effects will be good or bad. The Commission is required, by statute, to resolve this question of public interest impact, and if the merger will harm Florida consumers, condition it appropriately.

In this regard, the Commission need not be concerned that its own review will conflict with those of the FCC or the Justice Department. As Commissioner Clark explained at the agenda conference, the Justice Department does not approve mergers, it only reviews them for potential problems that may become subject to action if they are not remedied. (Agenda Conf. Tr. 20.) And both the recent past and present FCC Chairmen have, for their part, invited the States to become more active in merger

assessment. Indeed, former Chairman Hundt observed that the commitments and conditions imposed in the Bell Atlantic-NYNEX merger last year had been "drawn from the best practices of all the states in the region, that are not incompatible as I see it with the bulk of the actual decisions by these states, and that can be enforced either at the FCC or in the states." Chairman Hundt emphasized the urgent need for states to perform their own public interest analyses: "It is critically important that the states join us in promoting competition policies in connection with mergers." (Remarks by Chairman Reed Hundt to State Commissioners on the Bell Atlantic/NYNEX Merger, delivered at Philadelphia, PA on Oct. 3, 1997.) As Chairman Johnson noted, current FCC Chairman Kennard has reiterated former Chairman Hundt's views about the need for active state involvement in substantive merger reviews. (Agenda Conf. Tr. 21-22, 25. ("Chairman Hundt was begging for help....these things are coming fast and furious and we need more input from the states.")) While these federal agencies are reviewing the merger, only this Commission is in a position to assess the merger's particular impact on Florida consumers. See Harris Aff. at 9-11, 24. This Commission's duty should not be relegated to the federal agencies.

In any event, this Commission has never been bashful about taking the lead on difficult or complicated issues—issues on which other states have deferred to the FCC. So it is difficult to understand how the Commission could credibly rely on federal agencies to protect Florida's interests in this case, especially when other (in some cases, less proactive) state commissions are forging ahead with their own merger review proceedings. Director of Communications D'Hasseler's concern about the Commission's "national

image' in this case is, GTE believes, well-founded. (D'Haeseleer, Agenda Conf. Tr. 48.)¹⁰

**IV. An Investigation Will Show that the
Merger Will Decrease Competition,
to the Public's Detriment.**

A PAA protest does not require any discussion of the merits of a matter beyond a brief statement of the disputed fact issues and the ultimate facts to be proved (set forth above, in section I). GTE need not prove anything at this point and indeed, cannot and need not present its own case until the Applicants have supplied the requisite facts purporting to support their claims of public interest benefits. The section 120.57 hearing GTE has requested is the designated means of fully investigating a disputed matter.

Nevertheless, because of the merger's definite and substantial impact on the public, and because of the Applicants' complete disregard for informing the Commission about the nature and magnitude of this impact, GTE believes a fuller than usual exposition of the substance of the issues in this case is warranted at this point.

The consumer benefits of fair and open competition in telecommunications are by now beyond question. The identification of competition with the public interest is explicitly recognized in the Florida Statutes:

The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.

¹⁰ Noting the magnitude of the merger, Mr. D'Haeseleer would have preferred the Commission defer action on the merger and to review the matter further to "see if there is another alternative to these simple little tests we made." (Agenda Conf. Tr. 48.)

Fla. Stat., sec. 384.01(3).

The framework for the Commission's analysis of the merger is thus straightforward: Will the merger increase competition in telecommunications markets? If so, it is in the public interest. If not, it is contrary to the public interest.

GTE believes that, after all the evidence is in, the Commission will be compelled to conclude that the merger as proposed is not in the public interest. The proof will show that the WorldCom/MCI combination will undermine each of the Legislature's public interest tenets: it will decrease competitive provision of telecommunications services, "including local exchange telecommunications service"; it will decrease customer choice; it will discourage introduction of new telecommunications services; it will discourage technological innovation; and it will discourage investment in telecommunications infrastructure. The merger will pose these competitive dangers in markets for wholesale long distance inputs, retail long distance, and local services, and will "result[] in a permanent loss of consumer welfare." Harris Aff. at 24, 3-4.

A. The Merger Would Compromise the Supply of Bulk Capacity and Advanced Features in the Resale Input Market.

As explained here, in GTE's Reply, and at the January 7 agenda, GTE is a substantial customer of WorldCom's wholesale services and has a patent interest in the maintenance of effective competition in the wholesale long distance market. That market consists of the supply of bulk capacity (either minutes of use or leased facilities) and advanced features (such as enhanced 800 service and Virtual Private Network) to

resellers. The most significant market participants in the supply of wholesale capacity to long distance resellers are the same as in the domestic retail market—AT&T, MCI, Sprint, and WorldCom. As noted, GTE believes WorldCom has a far greater share of the wholesale market than of the retail market, and it is the largest provider of such capacity. In fact, the transaction would combine the top two wholesale suppliers to switched resellers, and the first and third largest wholesale suppliers to switchless resellers. See Harris Aff. at 19 and Exs. 27 and 28.

WorldCom has aggressively pursued wholesale supply arrangements as its means of serving residential and small business customers. That is, recognizing that its own brand name is largely unrecognized in the retail mass market, WorldCom has followed a strategy of distributing its services through resellers with known brands, such as GTE. See Harris Aff. at 7, 19.

In contrast, the other IXCs have brands with more appeal in the mass market, and they generate substantial profit margins by directly serving residential and small business customers. Their profit margins from wholesale services are far lower, making the wholesale market a much less attractive distribution mechanism for them than for WorldCom. Put another way, AT&T, MCI, and Sprint incur an opportunity cost when they sell wholesale service or capacity to a reseller. If resellers aggregate traffic from residential and small business customers, from whom retail toll margins are significant, then the opportunity cost associated with resale is quite large. Consequently, existing competition among AT&T, MCI, and Sprint in the wholesale market, limited though it may be, almost certainly is due to the presence of a competitor (WorldCom) that does not

directly serve mass market customers. See Harris Aff. at 7, 19. Without WorldCom, the other IXCs rationally would pursue an even less vigorous wholesale marketing strategy.

The belief that WorldCom is the leading supplier of wholesale long distance capacity and advanced features to resellers is bolstered by the experience of GTE and others. GTE has found WorldCom to be more willing than the other large facilities-based IXCs to offer attractive rates and terms to resellers. In addition, although WorldCom traditionally was once a "plain vanilla" provider of wholesale capacity, it has recently committed to provide advanced features and capabilities to its wholesale customers—features that the three largest IXCs have been reluctant to provide to resellers. WorldCom has also shown a commitment to the resale platform in other terms as well. For example, WorldCom allows resellers to inform their customers that WorldCom is the underlying provider of network services. See Harris Aff. at 20.

These observations have been corroborated in filings made by other parties before the FCC. Bell Atlantic, for instance, has pointed to the large long distance incumbents' refusal to provide Bell Atlantic Long Distance with "the features and facilities necessary to provide service to large and medium-sized business customers" and noted that the merger would make resale problems worse, as "WorldCom apparently was in the process of beginning to develop these high-end business features." (Bell Atlantic's Petition to Deny the Application of WorldCom or, in the Alternative, to Impose Conditions, WorldCom, Inc. and MCI Comm. Corp., CC Dkt. Nos. 97-2494 and 97-211 (FCC Merger Review), Jan. 5, 1998 at 14 and App. B, Affidavit of Steven Au Buchon.) In its Petition to Deny the merger application, TMB, another reseller, complained about MCI's "treacherous and

duplicious business practices" and that MCI had "held back the competitive products from TMB that the reseller needed to preserve its customer base." TMB notes that its experience "is that of many resellers and other small businesses that have contracted with MCI." (TMB's Petition to Deny, FCC Merger Review, filed Jan. 5, 1998, at 2, 5.)

In contrast to WorldCom, the three other large facilities-based IXCs are far less accommodating of resellers. In GTE's experience, AT&T pursues a high-price strategy in the wholesale market that renders it a less competitive choice as a supplier. MCI and Sprint are somewhat more price-competitive than AT&T,¹¹ but none of these three carriers provides GTE the full range of advanced capabilities offered to their retail customers. See Covey Declaration.

No other feasible sources of supply exist. Only AT&T, MCI, Sprint and WorldCom can effectively compete to provide nationwide wholesale long distance capacity for resale. The remaining providers of wholesale capacity are generally regional suppliers that lack features desired by resellers, such as redundant or diverse routing and advanced network capabilities. Moreover, these smaller carriers have higher cost structures than the largest IXCs because they interconnect at relatively few tandems and at few or no end offices. These alternative networks also have fewer points of presence (POPs). Any resellers using their networks must therefore obtain additional long-haul transport and (directly or indirectly) pay higher access charges. See Harris Aff. at 8-11, 22.

With regard to competitive effects of the merger, WorldCom's combining with MCI will change WorldCom's incentives and practices in the wholesale market. Currently,

¹¹ MCI was the second choice for GTE in the competition won by WorldCom.

WorldCom is comparatively willing to offer resellers favorable rates and advanced features because retail is just a small proportion of its total business. In the pre-merger market, WorldCom often acts as a carrier's carrier, deriving a substantial percentage of its long distance revenues from the wholesale supply of bulk transport than from retail services. After the merger, in contrast, rather than welcoming resellers as a distribution channel, increased sales through resellers would diminish the Applicants' profit margins by cannibalizing MCI's lucrative retail customer base. See Harris Aff. at 19. That is, the opportunity costs of resale for WorldCom will increase to the point where resale is no longer a favored distribution strategy—and WorldCom will increase its wholesale rates, limit the range of advanced capabilities that it offers to resellers, and discontinue commitments to develop additional wholesale capabilities.

In short, the result of the merger will be the elimination of the "maverick" supplier and the promotion of cooperative rather than competitive pricing. Residential and small business customers will suffer because resellers will pay higher prices for wholesale capacity, which they will be forced to pass on through higher end user rates. In other words, any reduction in the ability of GTE and other resellers to compete in the long distance market will likely mean higher rates for Floridians. If the merger causes interexchange prices to rise by as little as a penny a minute, Florida consumers would be worse off by over \$170 million per year, or about \$30 per household per year. See Harris Aff. at 11. They will also be hurt because resellers will be denied access to the advanced capabilities they need to compete. So Florida consumers certainly have a tangible stake in the continued ability of GTE (and other resellers) to compete in the interexchange

market. The anti-consumer effects of hindering resale—higher prices and a reduced range of competitive service options—are plainly at odds with the Florida Legislature's objective of promoting competition in the public interest.

B. The Merger Would Diminish Competition in the Long Distance and Local Markets.

GTE has focussed on the merger's harm to the wholesale long distance market, but the Commission cannot overlook its effects in the retail market. As noted, less vigorous wholesale competition will inevitably redound to the detriment of the reseller's customer, the retail end user. An even more direct and obvious anticonsumer effect will be the removal of a major competitor in the retail market. In just one conclusory paragraph, WorldCom and MCI cavalierly dismiss any concerns that the combination of the second and fourth largest DDCs carriers could adversely affect long distance competition in Florida. Rather, the Petitioners merely assert that they possess no bottlenecks or market power and that the interexchange market has "the fewest entry barriers." (Nov. 25 Letter at 4.) In reality, the merger of WorldCom and MCI would substantially diminish competition in retail, as well as wholesale, long distance markets, which do, in fact, have high entry barriers. See Harris Aff. at 11-12.

Today, the domestic long distance market is classified as "highly concentrated" under the U.S. Justice Department's Merger Guidelines. See United States Dept. of Justice-Federal Trade Comm'n, 1992 Horizontal Merger Guidelines, 57 Fed. Reg. 41552 (1992). See also Harris Aff. at 17 and Ex. 25. The merger would cause the market

concentration measure to jump by an amount well over the level sufficient to trigger a presumptive challenge by the Justice Department. The market is effectively dominated by four facilities-based, nationwide carriers, which together account for more than 80 percent of total revenues and almost 90 percent of pre-subscribed lines. If the merger takes place, two firms—AT&T and the combined MCI/WorldCom—would control at least 74% of the national long distance market.

Dividing the retail market into customer segments would likely reveal even greater cause for concern. Market share data by class of customer were not provided by the Applicants, but GTE believes WorldCom and MCI have especially high market shares among medium and large business. Indeed, when combined, MCI's and WorldCom's shares for this customer segment may well exceed that of AT&T and may give the merged company market power. Once again, the Petitioners must provide more data for the Commission to make an accurate assessment of the effects of the merger.

Commissioner Clark recognized that a Florida-specific inquiry into market concentration and related, Florida-specific issues might be worthwhile: "I could foresee a situation where the FCC and Justice have no problem with [the merger], but it extremely concentrates a market in Florida, and it would be a concern to us." (Clark, Agenda Conf. Tr. 26.) WorldCom and MCI, of course, would rather never explore this concern. Instead of having to prove—with facts and documentation—that the competitive benefits of the proposed merger will outweigh its detriments, the Applicants would prefer that this Commission merely accept their vague assurance that the "dynamic reality of competition" will forestall any anticompetitive effects. (Opposition to Intervention at 2.) In fact, the

reality of long-distance market is cooperative, rather than competitive, pricing, and the elimination of WorldCom as a stimulating force will only exacerbate the situation. See Harris Aff. at 12-13, 15-17. The FCC acknowledged more than two years ago that AT&T, MCI, and Sprint may have been engaging in tacit price collusion, (Motion of AT&T to Be Reclassified as a Non-Dominant Carrier, 11 FCC Red 3271, 3314-15 (1995)), and economic theory confirms that the long-distance market is characterized by conditions supporting coordinated interaction. For example, Robert Crandall and Leonard Waverman have concluded that "[t]he evidence presented established the existence of conditions under which firms, even in the absence of a single firm with 'market power,' or overt collusion, and even in the absence of any conscious desire to coordinate prices, may discover that they are able to maintain prices above the competitive level."¹² Likewise, Professor Paul MacAvoy of Yale University has concluded that "[t]he dynamic behavior of [price-cost] margins in the early 1990s provides evidence that the three major carriers were able to establish coordinated strategies over that period in place of competition" and "[t]heir coordination takes levels of price-cost margins toward higher levels than would result from independent price setting."¹³ Further confirmation of this point comes from Professor Jerry Hausman, who has found that AT&T, MCI, and Sprint have engaged in

¹² Affidavit of Robert Crandall and Leonard Waverman in Support of Ameritech's Section 271 Application for Michigan (filed May 21, 1997) at para. 85. Crandall is a Senior Fellow in Economic Studies at the Brookings Institution, and Waverman is a Professor of Economics at the University of Toronto.

¹³ P. MacAvoy, THE FAILURE OF ANTITRUST 172.

"lock step price increases in long distance."¹⁴

WorldCom traditionally has undercut the AT&T/MCI/Sprint coordinated price through its wholesale strategy. GTE's observations in this regard are shared by many customers: "Over the years, the long-distance companies say WorldCom's aggressive tactics have forced them to cut prices—especially with business customers, an MCI niche. But the merger knocks WorldCom out as a competitor."¹⁵ The proposed merger of direct competitors with substantial market shares would further facilitate this coordinated interaction between the few dominant players in the long distance market. Cooperation would be significantly easier with only three, rather than four market participants, and the remaining participants will be far better able to police non-cooperative pricing.

The effects of the merger on local markets are at least as troublesome. The Applicants contention that the merger will most especially increase local competition is plainly at odds with the fact (also undisclosed in the Application) that WorldCom and MCI today compete head-to-head in providing facilities-based local exchange service in a number of major urban areas in Florida, including Orlando and Miami. The merger would thus eliminate an actual local competitor. This outcome is directly contrary to this Commission's avowed priority of increasing local entry.

Assuring market conditions that will enhance local competition is, predictably, a goal

¹⁴ Declaration of Professor Jerry A. Hausman in Support of BellSouth's Section 271 Application for South Carolina, filed Sept. 30, 1997, at para. 30. Hausman is the MacDonald Professor of Economics at MIT.

¹⁵ Gleesman, "Dial M for Megamerger: the MCI-WorldCom Deal May Not Be So Good for Consumers," U.S. News and WorldReport, Nov. 24, 1997, at 68.

shared by consumer interests. The merger's potential to diminish competition in both the local and long distance markets has, therefore, prompted fierce opposition from these sectors in the context of the FCC's Merger Review. These consumer groups' comments emphasize merger effects—reduced consumer choices, decreased infrastructure investment and fewer jobs—that are exactly the opposite of what the Florida Legislature intended to promote in the new competitive era. For instance:

- **The Alliance for Public Technology (APT), a consumer coalition of 84 public interest organizations and over 180 individuals, confirmed that the merger would "eliminate the strongest potential competitor likely to invest in the local loop to serve residential and small business customers." APT believes that the merger poses particular harm for low income, rural and insular communities; APT has, like many others, focussed on WorldCom's stated intentions to withdraw from the residential market. (Response of the APT at 3-4, Jan. 26, 1998.)**
- **The Washington, D.C. office of the Consumers Union has, by letter, informed FCC Chairman Kennard and the U.S. Justice Department that it has serious concerns about the merger and has asked the companies themselves (so far, unsuccessfully) for a written commitment that would protect consumers from "monopoly abuses." (Letter cited in Communications Today, Nov. 13, 1997.)**
- **The Communications Workers of America (CWA) have asked the FCC to deny the merger application, which they believe will "significantly delay the development of competition in the local exchange residential and small business market" and "hurt universal service." (CWA Comments, Jan. 5, 1998, at ii.) Based on MCI/WorldCom's business plan and statements by company officials, CWA has shown that the merged entity would slash local loop investments by a total of \$5.3 billion over the next four years—investment that would otherwise have served residential customers. (Id. at 20.) CWA pointed to public statements by WorldCom's Vice-Chairman and Chief Operating Officer John Sidgmore that MCI would retreat from the residential market and adopt a "religious focus on the business customer." (Id. at 19-20, quoting John Sidgmore in "WorldCom Clarifies MCI Plans," Washington Post, Oct. 4, 1997.) CWA has calculated that the merged entity's reduced spending on networks and operating expenses "harm the public interest by reducing job growth by 75,000 jobs over the next four years." CWA also observed that MCI announced 1500 layoffs within weeks of the merger announcement. (Reply Comments of CWA, Jan. 26, 1998, at 16).**

- **The Consumer Project on Technology stressed that WorldCom and MCI "are competitors in nearly every aspect of their operations," and urged the FCC to "reject the proposed WorldCom/MCI merger on the grounds that it is anticompetitive." (Reply Comments of Consumer Project on Technology at 1.)**
- **The Utility Reform Network has urged regulators to "kill" the merger because it would "pull the plug on residential customers' best hope for real competition for local service." (Communications Today, Nov. 13, 1997.)**
- **Inner City Press/Community on the Move (ICP), a consumers' organization headquartered in New York, petitioned the FCC to deny the merger application because of its "substantial anticompetitive effects." (ICP Petition to Deny, Jan. 5, 1998, at 1.) ICP reiterated the announced MCI/WorldCom strategy of focussing on business, rather than residential, customers and concluded that the merger "(1) would bring few benefits to any residential consumers, and (2) would bring NO benefits to the lower income residents or lower income consumers that are a major focus of the universal service provisions of the 1996 Act." (Id. at 3, 12.)**
- **The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) focussed on the merger's harm for "working families," who will be particularly hard hit by a retreat of the merged entity from the residential service markets. (AFL-CIO Comments, dated Jan. 5, 1998.)**
- **Reverend Jesse Jackson's Rainbow/PUSH Coalition has also asked the FCC to deny the merger application, noting the "[t]he merger has been presented to the Commission without any credible showing of how it will promote competition in the long distance market." (Rainbow/PUSH Coalition Petition to Deny, Jan. 5, 1998, at 16.) The Coalition concludes that the merger will have serious anticompetitive effects in both the local and long distance markets. Citing MCI/WorldCom's likely withdrawal from the residential consumer market, the Coalition expects the impact of the merger to be particularly negative for middle and low income customers. (Id. at 18-19.)**

Without a comprehensive investigation of the merger—one that includes the voices of all interested parties, including GTE—the Commission will never be apprised of the merger's likely consequences for competition and for consumers.¹⁶

¹⁶ Like the commentators before the FCC, this Commission should be very interested in the merging parties' indications that they might retreat from the residential market segment. See Harris Aff. at 23.

MCI cannot in good faith object to this request to develop a complete record in this case. In a recent merger proceeding before the New York Public Service Commission, MCI contended that the Commission had the duty to take a "hard look" at all aspects of such a proposed transaction. (The NYNEX/Bell Atlantic Merger Proceeding, Cases 96-C-0603 et al., Comments of MCI Telecomm. Corp., Aug. 23, 1996, at 2.) In particular, MCI urged the Commission to initiate an evidentiary hearing, after full and fair opportunity for discovery. Id. at 9-10. MCI asserted that "[a]nything less than a full evidentiary hearing" would result in an inadequate record to evaluate the public interest ramifications of the transaction. Id. at 10. It is disingenuous of MCI to now suggest that its own transaction should proceed without the benefits of discovery, an evidentiary hearing, or the participation of customer-competitors such as GTE. If a regulator considering a combination of potential competitors should, in MCI's view, be granted the opportunity for a full hearing, then certainly the same applies to this even larger merger of actual competitors.

V. Conclusion and Request for Relief

GTE urges this Commission to join other state Commissions—including those in California, North Carolina, Nebraska, Louisiana, Oklahoma, Montana, West Virginia, Pennsylvania, Colorado, and New York—that have held GTE has standing to participate in their merger review proceedings. The Colorado Public Utilities Commission held, for instance, that its proceeding "shall be focussed on whether the transfer of control of MCI to WorldCom is in the public interest and whether GTE's allegations that there are

significant anti-competitive consequences to an approval of the transfer are meritorious." In the Matter of the Application of WorldCom, Inc. for Approval to Transfer Control of MCI Comm. Corp. to WorldCom, Inc., Decision No. C97-1398, Docket No. 97A-494T (Dec. 17, 1997).

If it is to fulfill its mandate to protect the public interest, this Commission should, likewise, investigate the issues GTE has raised with regard to the proposed transfer of control. As Commissioner Denson observed, the merger "could be a win/win, who knows." (Agenda Conf. Tr. 37 [emphasis added].) That is precisely the point. The Commission cannot know whether the merger will further the public interest if it declines any substantive review of the transaction. It should not be comfortable with a "who knows" outcome. Certainly, the Commission can do no meaningful public interest analysis on the basis of the "application" alone, which is devoid of any data that would enable even the most superficial evaluation of the transaction. GTE can provide—and, indeed, already has provided—valuable input in directing the Commission toward areas of potential concern.

GTE believes the "application" is so deficient that outright denial is warranted. If, however, the Commission is inclined to allow the Applicants to go forward with their case, GTE requests a section 120.57 hearing and all attendant procedures. This hearing process is the best means of gathering information about the merger's impacts from all interested parties. The Florida Legislature apparently agrees; section 384.335 of the Florida Statutes explicitly allows the Commission, even without a request for a hearing, to institute a section 120.57 proceeding to determine whether action on a certificate—whether a grant, revocation, transfer, suspension or amendment—is "in the public interest." (Fla.

Stat., sec. 364.335(2) & (4).¹⁷

The Commission should not feel pressured by the Applicants to forego a thorough merger review. The merger is sure to receive close scrutiny from the FCC and the Department of Justice, as well as the various states. MCI and WorldCom have acknowledged that even they do not expect federal review of the merger to conclude before May of 1998. (Transcript of Staff conference, North Carolina Utilities Comm'n, Dec. 22, 1997, at 12.) A later date would not be surprising, particularly given the prominence of the Internet-related concerns that have been raised in the FCC's proceeding (after the merger, the MCI/WorldCom entity would be the largest provider of Internet backbone capacity); the Internet aspect of the transaction raises heretofore unexplored public interest questions for the FCC, as well as the States.¹⁸ Moreover, it is unlikely that WorldCom and MCI will receive all of the necessary state approvals before the federal inquiries conclude.¹⁹ While the potential delay associated with the regulatory process in

¹⁷ If the Commission initiates a generic docket, GTE expects its standing dispute with the Applicants to be rendered moot. A generic proceeding should, by Commission order, allow all interested parties to participate without the need for a showing of standing.

¹⁸ Although states do not have jurisdiction to regulate the Internet itself, they do regulate the telecommunications facilities that are used to provide Internet services. They may, therefore, consider the merger's effects on the Internet marketplace as part of their public interest analyses.

¹⁹ In North Carolina, for instance, the Attorney General has asked the Commission to delay initiation of its own review of the merger until the FCC and Justice Department have concluded their respective investigations. The Attorney General believes that a later review will be more efficient because the proposed transaction may be revised or even denied as a result of the federal inquiries. Application of WorldCom, Inc., for Approval to Transfer Control of MCI Comm. Corp. to WorldCom, Inc., Position of the Attorney General, NCUC Dkt. Nos. P-141, Sub 34 et al., Jan. 30, 1998.

merger situations is always a proper concern for this Commission, this concern has been shown to be unjustified in this situation.

Respectfully submitted on February 12, 1998.

WILLIAM P. BARR
Executive Vice President and
General Counsel

WARD W. WUESTE
Vice President-Deputy General Counsel

GTE Corporation
One Stamford Forum
Stamford, CT 06904
(203) 965-3422
(203) 965-3746 (fax)

GTE Corporation
GTE Communications Corporation

By: *Kimberly Caswell* /dm
ANTHONY P. GILMAN
KIMBERLY CASWELL

One Tampa City Center
201 N. Franklin Street, FLTC0007
Tampa, FL 33602
(813) 483-2817
(813) 204-8870 (fax)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of sale of
outstanding stock and merger of MCI
Comm. Corp. (Holder of AAV/ALEC
Certificate 2986 in the name MCI Metro
Access Transmission Services, Inc.; and
IXC Certificate 61, PATS Certificate
3080, and AAV/ALEC Certificate 3996 in
the name MCI Telecommunications Corp.)
with WorldCom, Inc. d/b/w LDDS
WorldCom

Docket No. 971375-TP

**Affidavit of Robert G. Harris
on behalf of GTE Corporation**

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A. INTRODUCTION AND EXECUTIVE SUMMARY

1. NAME AND QUALIFICATIONS

My name is Robert G. Harris. I am a Principal in the Law and Economics Consulting Group and Professor Emeritus of Business and Public Policy in the Haas School of Business, University of California, Berkeley. My business address is 2000 Powell Street, Suite 600, Emeryville, CA 94608. I earned Bachelor of Arts and Master of Arts degrees in Social Science from Michigan State University and Master of Arts and Doctor of Philosophy degrees in Economics from the University of California, Berkeley. I currently teach a graduate course in "Telecommunications Economics, Policies and Strategies," and have taught courses at the undergraduate, MBA and Ph.D. levels, in Antitrust and Economic Regulation, Managerial Economics, Business and Public Policy, Competitive Strategy, Transportation and Corporate Governance. For several years, I taught a course on telecommunications economics and public policy to the staff of the California Public Utilities Commission. I have also taught competitive strategy and telecommunications in Executive Education programs for business managers and public officials from the United States and abroad at UC Berkeley and the University of Southern California.

My academic research has analyzed the effects of economic regulation and antitrust policy on industry performance, and the implication of changing economics and technology for public policies in transportation and telecommunications. I have published dozens of academic articles on antitrust policy, regulatory policy, telecommunications policy, technological innovation, the economics of telecommunications and transportation, and the development of competition and interconnection policies in local access and exchange services.

As an advisor to the U. S. Department of Transportation from 1976-79, I assisted in the drafting of legislation that was passed by Congress in 1980, reforming regulation of the motor carrier and railroad industries. While on leave from the University of California in 1980-81, I served as a Deputy Director for Cost, Economic and Financial Analysis at the Interstate Commerce Commission. At the I.C.C., I was centrally involved in the major rule makings implementing the motor carrier and railroad regulatory reform acts of 1980 and directed the development of the Uniform Rail Costing System. I have also served as a consultant to the U.S. General Accounting Office, the U.S. Office of Technology Assessment, the U.S. Department of Justice, the California Attorney General and the California Department of Consumer Affairs. I recently advised the Economic Planning Agency of Japan on the reform of Japanese telecommunications policies.

I have testified on costing methods and principles, pricing principles and rate design, competition policy, interconnection policy and spectrum policy before Federal and numerous state regulatory commissions. Specifically, I have testified on price cap or incentive regulation plans before the Federal Communications Commission and the state commissions of California, Colorado, the District of Columbia, Illinois, Indiana, Kansas, Nevada, Ohio, Pennsylvania, Tennessee, Virginia and Wisconsin. I have also testified before the national telecommunications

regulatory authorities in Canada and Mexico and before the United States Senate, the United States House of Representatives and the Joint Economic Committee of Congress on transportation, antitrust and telecommunications policy issues. My academic articles on antitrust market definition served as the basis for the market definition approach in the Merger Guidelines of the National Association of Attorneys General.

I also testified on behalf of the California Attorney General regarding the likely anticompetitive effects of the proposed Lucky/Alpha Beta and Safeway/Vons retail grocery mergers. Although approved by the Federal Trade Commission, the California Attorney General opposed these mergers in Federal District Court because they would have harmed California consumers. The Attorney General succeeded in obtaining preliminary injunctions to prevent consummation of the mergers. Subsequently, one merger was terminated, while the other proceeded only after the divestiture of a significant number of retail outlets.

My professional qualifications are detailed in my curriculum vitae, which is attached as Exhibit 1.

2. PURPOSE OF THIS TESTIMONY AND SUMMARY

I have been asked by counsel for GTE Corporation ("GTE") to summarize my evaluation of the likely impacts in Florida of the proposed merger between MCI Telecommunications Corporation ("MCI") and WorldCom Inc. ("WorldCom"). On the basis of the publicly available data on the merging parties, which is limited, I conclude that the merger is likely to harm both GTE and Florida consumers, in the broadest sense that Florida consumers and businesses are likely to pay more for their long distance services. More specifically, the proposed merger would occur in an already highly concentrated industry marked by limited competition and significant barriers to entry. Furthermore, the merger would adversely affect one of the industry's primary forms of competition, the wholesale/retail segment. The quality of service enjoyed by the merging parties' consumers in Florida is likely to decline, and consumers as a whole will suffer, as the merger will reduce variety and choice in the long distance services market.

I have reached this conclusion by examining the breadth and depth of coverage of the various facilities-based interexchange networks, including new carriers such as IXC Communications and regional carriers such as Frontier and LCI, both in Florida and in the nation as a whole. My analysis shows that these networks do not have sufficient coverage to ensure workable competition in the supply of interexchange transport. It is unfortunate that many policymakers take at face value the pronouncements that there are many new interexchange carriers which can act as effective competitors, when in fact there are not.

In addition, I find that there are substantial barriers to entry to provide interexchange service. For example, WorldCom has taken over 5 years to grow from the \$1 billion (revenue) company it was in 1991 to the point where it can begin to act as an effective competitor to AT&T, MCI and Sprint. While WorldCom was in its growth phase, the interexchange market was highly concentrated and was characterized by prices above cost and non-price competition. I show that there has been substantial price discrimination and that prices net of access charges have risen for a considerable consumer segment. Basic rates have in fact moved relentlessly

upwards in a lockstep fashion, and at the very least the large three interexchange carriers have engaged in conscious parallelism, keeping prices substantially above cost. Many former executives of AT&T, Sprint, and others have stated on the record that interexchange prices are considerably above any measure of cost. I show that the number of competitors in the interexchange services market does matter, and that the addition of one competitor can lead to a substantial reduction in prices. The interexchange market is therefore neither workably competitive nor contestable.

Finally, I show that this merger is likely to raise prices, both by reducing retail competition among the reduced number of firms, but also by stanching the growth of the resale channel. Simply put, WorldCom, who has been the most active provider of wholesale interexchange service to resellers, will no longer have a clear incentive to supply resellers once it acquires MCI's customer base. As resellers have been one of the sources of true price competition in the interexchange market, this will hurt both consumers and resellers. In particular, GTE (which has the most active and successful joint marketing program among the incumbent local exchange carriers) and its nearly 1.5 million long distance customers will be disproportionately affected. I show that from GTE's point of view there is no good alternative to WorldCom as a provider of network service for resale.

I therefore conclude that the merger is likely to harm both GTE's interexchange resale operation, the consumers that subscribe to that service, and the potential customers who will be denied additional choices in the marketplace.

3. THE PROPOSED MERGER IS LIKELY TO HARM FLORIDA CONSUMERS

a) Analytical framework

I have reached my conclusion that this merger is likely to harm Florida consumers by reviewing the available information on the structure of interexchange industry, the conduct of its participants, and the observed outcomes of such conduct. While I do not believe that there is an automatic link from industry structure to firm conduct, and in turn from conduct to outcomes, I do believe that characterizing industry structure, conduct and performance represents a useful way of classifying the relevant information. My analysis is careful to consider entry barriers, speed of entry, and oligopolistic interactions between participants.

In the light of the requirement to carry out a public interest analysis of the effects of this merger and of the *prima facie* evidence of the likely anticompetitive effects I present below, I believe that this Commission should undertake a full review of this merger. The data that MCI and WorldCom would produce in the course of this review will likely demonstrate that substantial segments of Florida consumers pay rates well above cost for interexchange services, and that they are likely to pay even more if this merger were allowed to be consummated.

b) Substitution of antitrust for regulation

Interexchange regulation has been significantly scaled back with AT&T's non-dominance reclassification and the detariffing of interstate rates. On their own these deregulatory actions would be in the public interest if the industry were to remain subject to active antitrust scrutiny.

The example of other deregulated network industries should serve as caution. Lax antitrust enforcement after rail deregulation led to mergers and excessive concentration on a route-specific basis. Analogous mergers in the long distance industry are likely to lead to similar results.

Similarly, passive antitrust enforcement of the airline industry allowed larger carriers to dominate certain city-pairs and certain "hubs," with documented anticonsumer effects. Fares from hubs where a carrier has a dominant share can be as much as 12% higher than those in the remainder of its system.¹ In many senses, the airline industry behaves in ways similar to that of the long distance industry.

In a deregulated environment, organic growth is quite different from growth through mergers of the largest firms. The former is often associated with the welfare gains from the expansion of a more efficient firm, while the latter is instead often associated with the welfare losses from reduced competition.

B. THE STRUCTURE OF THE INTEREXCHANGE INDUSTRY

1. VARIETY OF SERVICES

Interexchange telecommunications is not a simple, homogenous service, but a group of differentiated services that are commonly provided over shared facilities. The simplest product which we think of as basic long distance (or "1-plus") service is just one element of an expanding array of interexchange options. As a broad categorization, I distinguish among the following interexchange telecommunications services:

- switched voice (basic interexchange, known as Message Telecommunications Service)
- private line circuits
- toll-free calling
- enhanced voice services provided by advanced intelligent networks (AIN) (virtual private networks, enhanced toll free, dynamic routing)
- data or packet-switched services (frame relay, ATM, Internet transport)

¹ Severin Borenstein, "Hubs and high fares: dominance and market power in the U.S. airline industry," *RAND Journal of Economics*, Autumn 1989, p. 357.

2. PHYSICAL PROVISION OF INTEREXCHANGE SERVICE

a) Required inputs to provide interexchange service

It takes more than just optical fibers to provide interexchange service. Those who offer that line of reasoning by simply counting fiber-miles might also argue – incorrectly – that an ample supply of wheat grain is all that is necessary to make bread. In fact, a functioning interexchange network consists of many layers, of which optical fiber is only the most basic.

Fiber optic cables need to be “lit,” by installing transmission equipment at approximately 50 mile intervals. Carriers also must install multiplexers and cross-connects to carve the huge capacity (bandwidth) available through fiber optics into usable slices for voice and other services. Additionally, switches are deployed to route calls and assign circuits at various points in the network, and signaling systems and control centers are installed to manage and monitor the network.

Points-of-presence (POPs) are required to hand off the calls to the relevant local exchange carrier (LEC) at both the origin and the destination of the call. These are rather like medium-sized airports where small commuter planes feed traffic to the larger commercial jets. A carrier cannot service a particular area without access to a suitably close POP.

Finally, customized software is required to act as a glue between all these pieces of equipment and to provide the functionality sophisticated users demand. While switch vendors provide basic applications, all of the “Big Three” carriers (AT&T, MCI, and Sprint), as well as most of the other facilities-based carriers, customize and enhance their own applications far beyond this basic level.

It must be understood that an interexchange network is essentially a large web of specialized computers. The fiber connecting them is nothing more than a transmission medium, just as silicon is in computers. The quality and features of the network mostly lie in the application software engineered by carrier technicians.

b) Impossibility to store

In most cases, interexchange services are supplied instantaneously on demand and are not storable. They are difficult to trade without the underlying producer's permission. Interexchange services cannot be shipped like a traditional product. To be able to offer interexchange service to or from Gainesville, for example, a carrier must either have a network serving Gainesville or have interconnection arrangements in place with another network already serving Gainesville. As a practical consequence, the presence of many competitive interexchange suppliers in high density regions such as Broward County or Hillsborough County is of little help to consumers in outlying areas of Florida such as Spring Hill or even Ocala.

c) Information asymmetry

Suppliers are typically much better informed than end-users. There are very few suppliers relative to users, which means that suppliers have much better information on market conditions

than users. This allows suppliers to leverage marketplace inefficiencies to their advantage, often to the detriment of the consumers.

3. SUPPLIERS OF INTEREXCHANGE SERVICE

a) The "Big Three"

The largest three carriers in the interexchange industry are AT&T, MCI, and Sprint, each having nationwide facilities-based networks. They all provide branded interexchange services primarily supported by extensive advertising and marketing campaigns. They typically supply interexchange services directly to end-users, both in business and residential segments.

b) The "Maverick"

WorldCom is considered to be the fourth national facilities-based provider, although it still leases capacity from any of the Big Three to reach some of the more remote locations in the U.S. Given its initial limited brand name recognition, WorldCom has chosen to avoid the substantial expense of building a mass market brand. Instead, it has pursued a strategy of direct sales mostly to businesses, and wholesale supply of leased capacity to other facilities-based carriers, and of switched services to resellers. Acting as the industry "maverick," WorldCom has helped spur the growth of the interexchange resale segment and its concomitant check on anticompetitive behavior by the Big Three.

c) Other facilities-based providers

Smaller facilities-based providers such as Qwest, Cable & Wireless, LCI, IXC Communications and Frontier serve only limited portions of the United States with their own switching and transport facilities. These "second-tier" providers rely on resale of the top four carriers' facilities to provide service to areas where their networks do not reach. (Indeed, WorldCom's network does not reach the entire country, a fact I address later.) Each of these second-tier networks covers only fractions of the U.S. population with its own facilities. See Exhibit 2.

Regional carriers such as Cable & Wireless and LCI have their facilities concentrated in particular regions and only offer out-of-region services by leasing capacity and services from other facilities-based suppliers.

"Sparse" carriers such as IXC and Qwest focus on hauling traffic on dense routes between major urban areas. For example, Qwest's own network reaches from San Francisco to Columbus, Ohio. These networks do not reach many parts of the country, and they have relatively few points-of-presence. They therefore need to supplement their networks by leasing capacity and switched transport to reach leased POPs in the many areas which their networks cannot reach directly.

d) Resellers

There are more than 800 firms that are classified as resellers because they tend to own relatively few or no facilities. Switched resellers own few switches and little fiber and typically purchase leased capacity from facilities-based providers. The distinction between switched resellers and small facilities-based providers is minor and often unclear. Switchless resellers own no facilities and depend entirely on reselling services provided by the facilities-based carriers.

4. GEOGRAPHIC COVERAGE CONSIDERATIONS**a) Understanding coverage**

Interexchange carriers provide bulk transport for calls that typically originate and/or terminate on the networks of local service providers. Typically the interexchange carrier is distinct from the local network where the call originates. In this case the interexchange calls from end-users are aggregated and transported by the local service provider to the interexchange carrier's point-of-presence (POP). The reverse process occurs when the interexchange carrier is separate from the terminating local exchange provider.

To serve a particular area, an interexchange carrier must either have a POP in that area or arrange to use another carrier's POP and then transport the call to its own network. In Bell company territories, the interexchange carrier must have at least one POP available to it in each local access transport area (LATA), as Bell companies are currently prohibited from providing originating interLATA transport.

If a POP is not available in the LATA, a carrier must incur additional costs to access another provider's POP and its leased transport capacity. Or, the carrier must purchase the transport service to connect to its own network. Thus, the fewer the POPs, the worse the coverage, as higher transport charges are incurred. The economics of POP coverage are reflected in commercially available transport rates for interexchange traffic. These transport rates are differentiated between (a) LATAs where the POP is "on" the carrier's own network ("on-net"), (b) LATAs where the POP is reachable through facilities leased from another carrier, and (c) LATAs where the carrier has no POP at all, and the provider must lease both transport facilities and POP usage from another carrier.

In many cases, however, it is not possible to determine whether a carrier's POP is owned, operated, and directly connected to the carrier network (thus fully "on-net"), or whether it is simply leased from another carrier and connected via leased or switched facilities to its home network (thus being "off-net"). To be conservative, I have assumed all POPs reported by interexchange carriers to be "on-net." This is an upper bound, because in many cases, the POPs are clearly "off-net." For example, IXC Communications claims 3 POPs in Florida, which are probably all "off-net" leased POPs; IXC does not own a fiber route linking Florida to the rest of the nation. I then define coverage as the population that resides within LATAs which contain at least one POP. Again, this definition is conservative, as it assumes that one POP is both sufficient and economical to serve a given LATA. Nevertheless, I show that, despite these conservative assumptions, networks other than the Big Three's and WorldCom's are not capable

of providing adequate, workable competition, as they simply do not have sufficient coverage in Florida or the rest of the nation.

b) Smaller facilities-based carriers do not provide adequate competition

Only the four largest interexchange carriers operate networks with national coverage in the continental United States. The Big Three have ubiquitous coverage, with at least a POP in every LATA (a minor exception is Sprint, lacking just a handful in highly rural areas), as shown in Exhibit 2. These companies' respective coverage in the state of Florida is shown in Exhibits 3A, 3B and 3C. While it provides national service, WorldCom has not yet developed its network to the point that it offers the same degree of coverage, relying to some extent on the facilities of other carriers to handle a small proportion of its traffic. WorldCom's coverage now reaches approximately 82% of the national population (as shown in Exhibits 2 and 4A), with substantially higher coverage in Florida. WorldCom has POPs in all but one LATA, affording it coverage of 97% of the state's population. See Exhibits 4A and 4B. However, the fact that WorldCom's network still does not have a POP in approximately 90 out of the nearly 200 national LATAs underscores the difficulty of building a new national network. See Exhibit 5. In these 90 sparsely populated LATAs WorldCom relies on POPs and transport supplied by other carriers. In these cases, WorldCom must incur substantial additional cost for "off-net" transport, on the order of 10% or more of the retail value of a call. See Exhibit 6. However, as I show below, WorldCom's interexchange facilities have substantially superior coverage relative to the newer networks, in the U.S. as a whole - and especially in Florida. See Exhibits 2 and 7.

Regional carriers such as LCI and Cable & Wireless, and "sparse" carriers, such as IXC and Qwest, cannot match the coverage of the largest four interexchange carriers. As shown in Exhibit 2, they have far fewer POPs than the Big Three or WorldCom. Moreover, these alternative networks have significantly less coverage in Florida, as summarized in Exhibit 7. For example, neither Frontier nor LCI have any POPs at all in Florida. See Exhibits 8 and 9. Cable & Wireless and IXC Communications have a few POPs in Florida, but again they do not come close to providing anywhere near WorldCom's breadth of coverage. See Exhibits 10A-B and 11A-B.

New entrants such as IXC Communications and Qwest are not operating or building full national networks comparable to those of the Big Three or WorldCom. First, these networks are quite far from being fully built. For example, IXC's declared points of presence in Florida and elsewhere appear to be "off-net;" that is, they are not served by fiber lines it owns and operates itself. See Exhibits 12 and 13. Qwest appears to have lit (made operational) only a fraction of its planned "national" network. See Exhibits 14 and 15. Neither has yet built an operational fiber link connecting Florida to the rest of the nation. Second, these new networks are "sparse," in the sense that they are designed to provide bulk transport between large metropolitan areas, with only limited capacity to serve other areas of the country. This can be easily seen in Exhibits 12-15. These new networks will therefore need to rely to a considerable extent on the POPs of the Big Three, both to connect to Florida consumers, and to carry their calls to and from consumers in other states. In other words, the coverage structure of the industry is not likely to change appreciably in the near future.

In summary, the interexchange carriers' coverage of Florida is simply a more extreme form of the national pattern. As shown in Exhibit 7, AT&T and MCI have the most POPs in Florida. WorldCom has the fourth highest POP coverage, while most smaller carriers have only a few. Clearly, to provide service within a given state, a carrier must have adequate in-state POP coverage. However, it is also crucial for a carrier to provide quality interstate service to ensure that it is competitive within the state. Most customers choose one interexchange provider regardless of whether their calls terminate inside or outside of the state. While this Commission is necessarily focused on Florida, it should also consider how external markets affect those within the state. The competition that can be offered by Frontier, the fifth largest facilities-based carrier by revenues, is limited by both its lack of presence in Florida (as well as lack of coverage of the U.S. as a whole) and its relative inferior network quality, which I discuss below. LCI also suffers from a similar lack of both Florida coverage and national coverage. As stated above, Qwest and IXC have not yet built out their links to Florida. The competitive effect of other carriers in Florida is hampered by similar considerations.

The importance of network coverage for assessing competition can be understood by comparing interexchange service to rail shipping or airline service. For example, if CSX Transportation were the only rail line serving Tallahassee, then other "national" carriers connecting the rest of the country via Jacksonville would provide little relief to rail shippers in Tallahassee. Similarly, if US Airways were the only airline serving Fort Myers, it would be of little practical consequence that United Airlines operates a "national" airline service out of Miami. Thus, carriers such as LCI, Frontier, IXC and Qwest do not currently provide a viable alternative to those resellers (such as GTE) that are marketing interexchange services in almost all states. In the ultimate analysis, all of these smaller networks rely to some extent on the Big Three and WorldCom to provide "national" service. To summarize using the airline analogy, Frontier Communications has about the same odds of competing effectively against AT&T as America West Airlines has against United Airlines.

Carriers with regional or limited networks cannot provide adequate competition to check the anticompetitive effects of the proposed merger. The potential coverage of "new" networks is overstated, as even the most aggressive entrant will take several years to deploy coverage, through "on-net" POPs, comparable to that of a Big Three supplier or WorldCom. The competitive impact of the "new" networks is further limited, as they often consist of carriers sharing fibers in the same very long-haul cables of other new or existing carriers. For example, Frontier, WorldCom, Qwest, and GTE will share at least 24 fibers each in the new Qwest network. They can hardly be counted as equivalent to four independent suppliers, as all of this competition will be focused on the same very specific and very limited geographical areas. Finally, most new long-haul fiber routes run along existing rights-of-way, typically those of gas pipelines and railways, which can often be quite distant from population centers.

c) Implication of route structure for reliability

Fiber networks are typically constructed as bi-directional rings to maintain connectivity in the event of a fiber break. Networks with spurs, such as Qwest's and IXC's, are vulnerable to outages, as all customers on the spur would be cut off in case of a fiber break. Other carriers, such as Williams, are of limited competitive value as they utilize only one fiber strand. This

arrangement provides for very limited capacity and minimal network stability in case of a fiber break or other outage.

d) Importance of regional effects on Florida consumers

The anticompetitive effects of this merger in Florida may easily be overlooked when analysis is carried out at the national level. Florida-specific effects could be overlooked when examining the industry at the national level, as Florida represents just a fraction (approximately 7%) of originating national interexchange traffic. However, given that this is a multi-billion dollar industry, this regional effect is still substantial to Florida consumers. If the merger causes interexchange prices to rise by as little as a cent per minute (10% on a rate of a dime per minute), Florida consumers would be worse off by over \$170 million per year, or approximately \$30 per household per year. See Exhibit 16.

5. BARRIERS TO ENTRY

The supply of interexchange services is characterized by substantial barriers to entry. The first significant barrier to entry is the need for substantial capital and human resources outlay to provide the services and features that customers demand. Carriers must deploy transmission and switching equipment, instead of simply installing fiber optic cable. They must also establish sufficient POPs to obtain national coverage.

In addition to the investment in physical facilities, substantial employee-hour investment is also needed to write and refine the software required to provide the enhanced features that represent a key source of competitive advantage in the industry. Such software includes signaling systems, operational support systems, enhanced product platforms, and billing systems. It also takes a substantial length of time to "get to market" with a viable wholesale offering. Ordering platforms, POPs, switches, and Operational Support Systems are the key elements of such an offering. For example, deployment of POPs to achieve a national footprint is time-consuming. WorldCom is a case-in-point, as it took nearly four years to double its POP count, and it still does not provide fully ubiquitous coverage in the U.S. as a whole. See Exhibits 5 and 17. Nevertheless, WorldCom still stands considerably ahead of the second tier interexchange networks in terms of coverage, network deployment, and product platform engineering.

The substantial economies of scale, scope and density in interexchange networks form additional formidable barriers. Even 5 years after becoming a \$1 billion company, WorldCom is only now beginning to surmount these economies. It has just made operational its own signaling system 7 (SS7) network and has committed to develop various enhanced services for its resellers (including GTE) by 1998 and subsequent years. Although WorldCom increased its points-of-presence by 47% in 1997, it still does not have a POP in every LATA. It is in the process of building out the "capillaries" of its network and is now large enough to achieve economies of density on thin routes comparable to those of the Big Three. And with its purchase of Metropolitan Fiber Systems and Brooks Fiber Properties, it is about to reap economies of scope between the production of interexchange services and local services. This transaction has particularly worrisome antitrust implications: WorldCom, a recent entrant which has just begun

to approach an efficient scale of operation where average incremental costs are bottoming out, is proposing to merge with one of the established oligopolists.

There is little reason to believe that "new" interexchange carriers will take less time to achieve the same network economies as WorldCom. Consider that companies such as Frontier, LCI and Excel only passed the \$1 billion revenue mark in 1996; they are just now where WorldCom was approximately 5 years ago.² Alternate networks do not have the same reach as the larger carriers - nor is it easy for them to develop it, considering the economics of route density. Technology is making the scale of operation more important; for example, the efficient choice of transmission speed has just recently quadrupled, from OC-48 to OC-192. This may explain why Qwest needed to bring three other companies (GTE, Frontier, WorldCom) together to share some of the investment burden for its new interexchange network.

6. IMPORTANCE OF RESELL FOR ENTRY

Resale is a staging point for facilities-based entry. When MCI and Sprint first entered, they supplemented their own facilities with resold AT&T service in order to offer national coverage. Similarly, WorldCom was first a reseller (then known as LDDS) and gradually built up a network presence, both organically and through acquisition, such as through its purchase of WilTel. This pattern continues: Excel, the largest reseller, is in the process of installing its own switching capacity, although it will remain dependent for some time on transmission capacity provided by others. Regional carriers such as Frontier are slowly expanding to provide national service by first reselling or leasing transport to supplement their existing network, and then building facilities. In sum, almost all entry into the interexchange industry has been regional and/or dependent on resale, only later to be followed by facilities-based expansion to move towards national coverage.

C. DYNAMICS OF COMPETITION IN INTEREXCHANGE SERVICES

1. CURRENT ECONOMIC ENVIRONMENT OF THE DOMESTIC INTEREXCHANGE INDUSTRY

The interexchange industry exhibits classic characteristics of oligopolistic competition. In oligopolistic markets there are a few large firms, and there may be a competitive fringe of much smaller firms. Firms in an oligopolistically competitive market tend to compete on a basis other than price, through product differentiation, advertising, service, and other non-price inducements. Pricing is primarily determined by the strategic interaction between the few large firms, and between the large firms and the fringe. Generally, though, an oligopolistically competitive structure is characterized by lockstep pricing, price dispersion, non-price competition, price discrimination, widening price-cost margins and failure by suppliers to pass through to consumers input price reductions. Other indicators include increasingly complicated

² Federal Communications Commission, *Statistics of Communications Common Carriers*, Table I.4, 1996/1997 Edition, p. 7.

pricing structures, difficulties in obtaining wholesale supplies, and excess returns to new entrants, often in the form of inflated acquisition prices.

The interexchange telecommunications marketplace has all the hallmarks of an oligopolistic industry with limited competition. In such cases, mergers between the leading players are likely to exacerbate existing oligopolistic effects.

2. LOCKSTEP PRICING

Lockstep pricing occurs when "followers" adopt the same price for a good or service immediately following the actions of the industry leader. Both MCI and Sprint appear to have followed AT&T's pricing lead in a manner that is consistent with cartelized or tacitly collusive behavior. There is substantial anecdotal evidence to support this contention. Exhibits 18-20 show real daytime interstate rates for representative city pairs between 1987 and 1996. It is clear that in recent years the prices charged by all Big Three carriers have moved upward in a lockstep pattern. Furthermore, it appears that each time AT&T implemented or announced a price increase, MCI and Sprint followed suit.

Even if regulatory accounting changes can be used to explain most of AT&T's price increases during this period, this reasoning suggests that AT&T possessed market power, as otherwise it may have not been able to raise prices following price cap changes. However, the regulatory changes that affected AT&T did not impact MCI and Sprint. They found it profitable to raise their prices along with AT&T instead of seeking additional share with lower prices. Furthermore, note that basic rates net of access charges (shown in Exhibits 18-20) increased after 1991, despite the fact that WorldCom had by then surpassed the \$1 billion revenue mark. This suggests that competitors in this industry need to be much larger than Frontier, IXC or LCI to produce a workably competitive market.

3. PRICE DISCRIMINATION

Interexchange markets are characterized by substantial asymmetries of information in favor of suppliers vis-à-vis consumers. Interexchange rate structures and discount calling plans and options are notoriously complicated. Unless a consumer is willing to change carriers (which can be a cumbersome, time consuming process) the interexchange carriers are often unwilling to offer the consumer their lowest cost calling plan.

As a result, interexchange providers have been able to practice price discrimination, where some classes of consumers are charged more than others without cost-based justification. One particular form of price discrimination occurs when buyers are segmented into different groups and are charged different prices for the same good or service based on differences in their price elasticity of demand for the good or service. This is known as third degree price discrimination.

With a normal good, such as bread, attempts to price discriminate fail as price differences are arbitrated away. Consumers who receive low prices will resell the product or service to the consumers who are charged the higher prices. This is not the case for interexchange service.

Resale or arbitrage without the cooperation of the provider is nearly impossible. The difficulty of arbitrage for interexchange services has allowed for widely varying prices for almost identical services across a spectrum of consumers.

Facilities-based carriers have exploited these asymmetries by constantly hiking their basic tariffs. I note that there has been a substantial increase in the prices net of access charges of the Big Three. See Exhibits 18-20. As most residential consumers purchase from a tariff, they are not notified in advance of these price changes. Their first opportunity to notice higher prices is when they're billed – that is, if they notice at all.

Following this pattern, AT&T has recently restructured its time-of-day bands, moving a substantial portion of off-peak hours into the full price band (7-8 A.M. weekdays). Consumers, especially senior citizens, accustomed to lower prices in this time band, were therefore required to adjust to these higher rates after the fact, often after receiving sharply higher bills. Typically, these rate increases come with little or no notification. Only a complaint could spur possible action, and yet the interexchange carriers can still “hide” behind their filed tariffs if they choose.

4. NON-PRICE COMPETITION

These asymmetries of information are reinforced by the heavy advertising and marketing expenses (including frequent-caller reward plans) employed by AT&T, MCI, and Sprint. These tactics are designed to build brand loyalty, increase switching costs, and develop product differentiation. The importance of branding in the mass market is another form of non-price competition that also constitutes a significant barrier to entry. The Big Three carriers created, respectively, the nation's 1st, 12th and 16th highest ad expenditure-supported brands in 1996. See Exhibit 21. AT&T alone spent over \$2 billion on advertising and promotion in 1996, more than WorldCom's entire capital expenditure for that year. See Exhibit 22. These huge outlays to maintain brands are essentially devices to deter entry.

Furthermore, long distance companies have long been recognized in advertising circles for their aggressive and confusing advertisements. Often, they are attacking their competitors' rate plans or introducing a new plan of their own. According to *USA Today*, which has conducted consumer polls measuring the popularity and effectiveness of more than 90 national ad campaigns, many of the ads by the Big Three long distance carriers “ranked among the least popular and most disliked campaigns across several industries.”³ Additionally, consumers “have complained that most ads for the long distance carriers have been confusing, mean-spirited and too aggressive.”⁴ This result is not surprising, given that two major motivations for these ad expenditures are to deter entry by potential competitors and to perpetuate the impression of true price competition.

³ Donnie Enrico, “AT&T Makes Connection with Ad Campaign,” *USA Today*, May 19, 1997, p. 6B.

⁴ *Id.*

D. PERFORMANCE OF THE INTEREXCHANGE INDUSTRY

1. PRICE-COST MARGINS

The Big Three claim that interexchange prices net of access charges have fallen steadily over the last decade, and that these net prices are just above incremental costs. These claims, by themselves, however, are meaningless. The first effect of increased competition is that inefficient incumbents are pressured into squeezing costs from their operations. Instead, the fact that entrants can offer better priced deals despite their scale disadvantage indicates that either prices are probably above cost, or that the limited competition has allowed incumbents to let their costs drift – or some combination of both. Further, most claims by the Big Three of declining net prices are supported by flawed revenue per minute calculations and improperly constructed price indices. When prices for different user segments move in opposite directions (for example, business rates going down and residential rates going up), such average measures will be biased downwards. That is, these measures will overstate the decline in prices by construction. The customers who benefit will consume more (therefore increasing their representation in the measure), and those who lose out tend to consume less (thus decreasing their representation in the average). Taking an extreme example as an illustration, if MCI were to set an impossibly high price to only residential customers, such as \$1 per minute, its revenues per minute would probably decrease, as it would be left with only business customers, who generally pay lower per minute rates.

Additionally, most long distance customers are not on special rate plans – those plans upon which the long distance companies rest their declining price claims. According to the Yankee Group, 63% of consumers are not members of a calling plan. Only 36% of AT&T's customers and 43% of Sprint's customers are on special calling plans. MCI, despite its heavy marketing of special rate plans such as "Friends and Family" and MCI One, counts only 66% of its customers on special rate plans. See Exhibit 23.

2. CONSCIOUS PARALLELISM AND NEW ENTRY

In certain oligopolistic markets, competitors often engage in a form of interdependent behavior that occurs from no apparent agreement or even contact among the competing firms. Such behavior is known as *conscious parallelism*, where no firm communicates with another, but each firm expects that each of its competitors is following the same unstated, yet common, policy. This behavior is often made possible through the analysis of past prices. When each competitor examines relevant historical data (say, in the form of old tariffs or past price change announcements), it becomes clear what the rational course of action should be. Price changes tend to be mirrored by other firms (giving rise to the "lockstep pattern"), and as long as participants believe that such mirroring will continue, their individual courses of action remain apparent. Prices can be raised; rivals will raise their prices in response, rather than hold them steady to gain market share. Conversely, there is a strong disincentive for lowering prices, as that would be expected to lead to a net loss; rivals would simply lower their prices, too, in order to maintain share. In other words, this does not suggest that intentional collusion or conspiracy is occurring; rather, the market environment is so defined that each player, acting rationally given its experience with rivals' reactions, chooses the same course of action. The end result is

supracompetitive prices. In this kind of environment, prices tend to change slowly or only in response to new entry, as the sudden presence of a new firm of unknown aggressiveness disturbs this cozy equilibrium.

Executives with experience in both local and long distance markets lend practical support to the existence of this type of behavior. One insider noted publicly that "Sprint and MCI seldom failed to follow an AT&T-led retail long distance price increase. The benefits in terms of increased revenues... were simply too great to pass up."⁵ He added that "[p]rice discrimination is increasing in the interLATA market. Under a tactic called 'price up, promote back' the interexchange carriers have gradually increased their retail prices over the last few years, while allowing certain customers to receive discounts.... The result is that the carriers discriminate in favor of certain customers and against many others,... [disguising] the lack of any real price competition among the interexchange carriers."⁶ More recently, Qwest Chief Executive (and former AT&T senior executive) Joseph Nacchio exclaimed, "long distance is still the most profitable business in America, next to importing illegal cocaine."⁷

Although many argue that the interexchange services industry is already characterized by conscious parallelism, it is undeniable that it would become worse should this merger be approved. An illustrative – although opposite – example has occurred in Connecticut. Entry by the incumbent local exchange carrier, Southern New England Telephone (SNET), quickly disrupted the parallelism that had hitherto characterized Connecticut's interstate interexchange market. SNET entered the market through the resale of Sprint's interstate service. As Robert Crandall and Leonard Waverman showed in a recent affidavit to the FCC,⁸ SNET's entrance into Connecticut's interstate long distance market had a profound positive effect on that state's toll rates and competitive landscape, with particular effect on intrastate rates. SNET captured about 20 percent of Connecticut's interstate calls, reducing AT&T's long distance market share from 60 percent before SNET's entry to less than 50 percent by October 1996.⁹ Crandall and Waverman noted that "AT&T offered Connecticut residents a flat 5 cents a minute rate for in-

⁵ *Affidavit of David Dorman In Support of Pacific Telesis Group's Request for a Waiver to Permit It to Provide Interexchange Services to Customers in California*, United States of America v. Western Electric Co., Inc. and American Telephone and Telegraph Company, Civil Action 82-0192, January 26, 1995, para. 13. Witness held senior executive positions at both Pacific Bell and Sprint Corporation.

⁶ *Id.*, para. 14.

⁷ Joseph Nacchio, quoted in "At 7 *vs* a Minute, Who Cares if You Can't Hear a Pin Drop?" *BusinessWeek*, December 29, 1997, p. 46.

⁸ *Joint Affidavit of Robert Crandall and Leonard Waverman on behalf of Ameritech Michigan*, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of The Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, FCC Docket No. 97-137, May 21, 1997.

⁹ *Id.*, para. 56.

state calls made any time of day," reflecting that SNET's entry had stripped AT&T and the rest of the Big Three of their parallel pricing abilities.¹⁰ In practical application, they found that SNET's entrance into Connecticut's long distance market reduced intrastate toll rates by at least 10% per year.¹¹

The SNET experience is of particular importance when examining the role of GTE in Florida. Like SNET, GTE is an incumbent local exchange carrier which has entered the interstate market through a resale agreement with a large facilities-based carrier. And like SNET in Connecticut, GTE has made considerable inroads in Florida by offering interexchange service conveniently combined with either local or wireless service. GTE has approximately 1.5 million long distance customers nationwide, making it the most successful joint marketer of long distance service in the country. According to J.D. Power and Associates, "GTE represents almost half of all [of the nation's] bundled customers."¹² In Florida, however, should the merger be approved, GTE will be particularly harmed, given its dependence on resale for all of its lines of business. Furthermore, the lack of Florida-specific coverage by the second-tier interexchange carriers presents GTE with the real threat of losing the underlying source of its competitive one-stop shopping package.

E. IMPACT OF THE MERGER ON INTEREXCHANGE SERVICES

1. THE MERGER WILL AFFECT FACILITIES SUPPLY OF INTEREXCHANGE SERVICES

a) Merger would greatly increase horizontal concentration

Both MCI and WorldCom are vertically integrated providers of interexchange and local services, as well as being providers of important value-added services that use both interexchange and local networks. The merger would greatly increase the concentration of control of the facilities necessary to supply interexchange services, such as fiber optic transmission capacity, interexchange switching capacity, and points-of-presence.

The merger would also substantially reduce the number of entities that can supply value-added interexchange services such as virtual private networks and enhanced 800 services, and more generally, the enhanced features based on common channel system 7 signaling. As smaller carriers cannot yet provide many of the value-added or enhanced services which businesses

¹⁰ *Id.*

¹¹ *Id.*

¹² J.D. Power and Associates Press Release, *J.D. Power and Associates Analysis Finds Dramatic Increase in Number of Residential Customers Interested in Purchasing Long Distance Service From Their Local Company*, January 6, 1998, <http://www.jdpower.com/releases/80106tel.html>.

demand, the result is an even further concentrated industry for those segments. Although there are three "major" interexchange carriers, in some segments there are only two providers, and in others, just one – especially when it comes to wholesale supply of enhanced services.

Finally, the merger would also substantially concentrate the entities providing data-based value-added interexchange services, including asynchronous transfer mode (ATM) and Internet backbone transport and exchange.

If approved, the proposed merger would return industry concentration to pre-1996 levels, as shown in Exhibit 24. Given the barriers to entry in this industry, it seems likely that new entry would not be sufficient to offset this loss in the medium term. Therefore, the welfare loss would persist over time, as the industry's continuing downward path towards lesser concentration would be delayed by two or more years.

b) Measuring concentration

The domestic interexchange services market is highly concentrated, as shown by "national" Herfindahl-Hirschman Index (HHI) figures. See Exhibit 25. It is important to note that the correct HHI measure is actually higher than the FCC's measure, which includes all interexchange revenues of reporting carriers. Often, minutes of use are sold many times before they are sold to the end-user. For example, when GTE sells a minute of use to an end-user in Florida, it is purchasing that minute from WorldCom, which itself may be purchasing it from MCI or AT&T if the POP in question is "off-net". Ideally, the computation should exclude either resellers or wholesale sales to resellers – including both is double counting.

While a cursory analysis of presubscribed lines in Florida may suggest that WorldCom has only a small share, an analysis based on lines alone is incomplete. For example, one must take into account that WorldCom and MCI respectively have the highest and second-highest revenues per line in the industry. See Exhibit 26.

A better measure of supply is network coverage, which has two dimensions: breadth and depth. Breadth is the number of LATAs served by a company's own POPs. Depth is the number of POPs per LATA (as more POPs permit more flexible routing and more redundancy). For the purpose of this Commission's evaluation, an appropriate measure of capacity is a points-of-presence count. Exhibit 7 clearly illustrates that, by this measure, the merger will greatly increase concentration in this market.

2. THE MERGER WILL AFFECT WHOLESALE SUPPLY OF INTEREXCHANGE SERVICES TO RESELLERS

Resale is an important mechanism in keeping the large facilities-based carriers in check, although resellers' ability to do so is limited by the Big Three's tariff and provisioning strategies. Resellers perform an arbitrage function by buying interexchange services in bulk at the best available rates and then reselling them to end-users at a price less than the standard retail rate. Of course, this function works only when adequate wholesale supplies are available; for example, the Big Three carriers do not offer wholesale access to their Virtual Private Network platforms, a

service that is readily available to their own retail customers. Despite this and other hurdles, resellers do provide their own customer care, execute their own bills, and generally appear (to end-users) as a true alternative to the major facilities-based providers.

If approved, the proposed merger would have a disproportionate effect on the resale segment of the interexchange market. Importantly, AT&T does not compete to a great extent in resale segments, which reduces effective supply for resellers from three carriers to two. Exhibits 27 and 28 demonstrate the potential of this effect. In fact, this transaction would combine the top two wholesale suppliers to switched resellers, and the first and third largest wholesale suppliers to switchless resellers.

3. THE PROPOSED MERGER WOULD UNDERMINE BOTH THE FUTURE DYNAMICS OF INTEREXCHANGE COMPETITION AND THE ROLE OF RESALE.

WorldCom is disrupting the cozy interexchange industry through its strategy of focusing on the wholesale segment without using a mass market brand. The merger would curtail WorldCom's incentive to supply low-price service and enhanced features to resellers.

Historically, WorldCom did not have the resources to build a brand like the Big Three carriers. Thus, its chosen strategy was to focus instead on wholesale supply to resellers. WorldCom can currently pursue a wholesale strategy because it has different margins and a different cost structure than its larger brethren. For example, while AT&T, MCI and Sprint have invested money to create the country's #1, #12 and #16 brands, WorldCom's brand name doesn't crack the Top 100. See Exhibit 21.

WorldCom could not pursue the same low-price resale strategy if it had a substantial amount of high-margin end-users – a resale strategy under that scenario would cannibalize its most profitable customers. Consequently, WorldCom offers resellers some of the best (*i.e.* lowest) prices, while pricing from the Big Three is consistently poor (*i.e.* high). The more end-users each of the Big Three serves, the poorer the wholesale pricing. The merger of WorldCom and MCI would undercut this pricing incentive. WorldCom would have little incentive to provide wholesale supply at favorable terms, knowing that this strategy would only undermine the profitability of its newly acquired end-users. In the end, the wholesale price to resellers would likely increase, thus harming GTE and the subscribers who purchase its resold service.

a) WorldCom provides better service to its resellers

In a very real sense, an interexchange reseller is a large customer of the facilities-based carrier. Thus, there are several dimensions of service quality to resellers:

- provisioning (speed by which customers are added)
- billing
- availability of enhanced features
- service pricing and access charge passthrough
- ability to advertise the underlying provider to convey service quality

As shown in Exhibit 29, WorldCom's level of provisioning is superior to that of the Big Three. AT&T and MCI have often used slow and unreliable provisioning to disrupt the competitiveness of resellers. Both of these carriers have been party to numerous lawsuits filed by resellers, many of whom claimed to have been put out of business by the facilities-based carriers' practices.¹³

WorldCom's billing service also appears superior to that of the Big Three. On a scale of one to ten from a recent study, WITel (a WorldCom subsidiary) scored more than a full point higher than AT&T, MCI and Sprint. Survey respondents criticized AT&T and Sprint's billing services mainly for their inflexibility.¹⁴ I understand that WorldCom also offers resellers free PIC processing, and has committed to offer dual-PIC processing shortly (allowing different providers for interLATA and intraLATA toll). The Big Three apparently charge for each individual PIC change and have not offered to implement dual-PIC processing for resellers.

It appears that only the Big Three are currently capable of providing enhanced services such as virtual private networks and traffic-routable 800 service, and they do not make these available for resale. I understand WorldCom had committed to a specific schedule for developing platforms to offer enhanced services for resale, but it is unclear how this schedule might be pushed back if the merger is consummated.

WorldCom also takes a different approach to pricing. It is the only carrier to offer access charge passthrough: access charges billed by the LEC are shown as a line item and are charged at cost, plus an administrative fee. Conversely, the Big Three carriers provide service generally at fixed rates under long term contracts and pocket any access charge reductions.

Resellers often bill in much smaller increments than the Big Three, some down to the exact second. Because the rounding of billed time typically moves to the next minute (or at least to the next increment), per-second or six-second billing can greatly reduce an end-user's final bill. In combination with their lower basic rates, resellers can provide substantial savings to Florida consumers.

WorldCom also allows resellers of GTE to inform their customers that WorldCom is the underlying provider of the network service, allaying consumers' fears of inferior quality from a reseller. Again, this practice is not matched by the Big Three.

In conclusion, the Big Three fall far short of WorldCom in providing quality service to resellers, and they often withhold from the wholesale segment the more lucrative or strategically important enhanced services – such as virtual private networks – that they offer only at retail.

¹³ See, e.g., *Central Office Telephone, Inc. v. American Telephone and Telegraph Company*, Nos. 94-36116, 94-36156, 108 F.3d 981, 1997 U.S. App. LEXIS 3395, *International Telecommunications Exchange Corporation v. MCI Telecommunications Corporation*, Civil Action No. 1:92-CV-1751-FMH, 892 F.Supp. 1520, U.S. Dist. LEXIS 9964, and *National Communications Association, Inc. v. American Telephone and Telegraph Company*, 92 Civ. 1735 (LAP), U.S. F.Supp. 1131, 1992 U.S. Dist. LEXIS 19504.

¹⁴ Atlantic-ACM, "Wholesale Long Distance: Carrier Report Card," p. 9-2, 1996.

b) One-stop shopping, bundling, and the importance of enhanced services

The modern communications user prefers all services from a sole provider, a practice known as *one-stop shopping*. The Yankee Group recently found that 66 percent of U.S. households would prefer one company to serve their local and long distance needs.¹⁵ In GTE's regions (including parts of Florida), 55.4% of those preferring one-stop shopping would select from one of the Big Three long distance carriers as their primary provider.¹⁶

It is likely that these preferences for bundled services extend to business customers. And because of these consumer preferences, resellers need access to enhanced services such as virtual private networks and traffic-routable 800 service to win over sophisticated telecommunications users. The preference for one-stop shopping means that the suppliers which cannot offer basic and enhanced services as a bundle will be at a disadvantage in the marketplace. The merger might thus deprive resellers of the "maverick" WorldCom, a company that stood ready to make the investment and commitment to develop a wholesale platform for enhanced services resale. Consequently, if this merger is consummated and WorldCom halts development of its wholesale platform, resellers would be a much diminished competitive force than they otherwise could have been.

There are strong economies of scope between serving business and residential users, as their distinct demands peak at different times of the day. Business usage peaks during daytime hours, while residential demand is more distributed through off-peak morning and (particularly) evening periods. Because these different peaks tend to balance each other out, suppliers serving both business and residential segments will have higher network utilization. Thus, suppliers that cannot readily attract business users, due to a lack of enhanced features, will be at a further disadvantage when competing for residential customers. A less balanced traffic load has a greater impact on network costs. As a state known for its telecommuting potential (particularly around the Tampa-St. Petersburg area), Florida must consider the connection between this business/residential mesh and a carrier's ability to provide enhanced services.

c) Network quality and coverage

Interexchange networks which are only partially facilities-based (*i.e.*, rely on leased transport and resale of other interexchange networks) appear to suffer from quality problems. For example, Excel Communications, the fifth largest interexchange firm in terms of presubscribed lines, migrated the bulk of its traffic away from Frontier because of "the failure of

¹⁵ Yankee Group Press Release, *Yankee Group Survey Finds AT&T Is Top Choice for Consumers Interested in Single Communications Provider*, January 20, 1998, http://www.yankeegroup.com/press_releases/at&t.html.

¹⁶ *Id.*

Frontier to add the network capacity needed to handle the company's growth."¹⁷ The primary beneficiary of this migration was WorldCom, with portions of traffic also being awarded to MCI and IXC Communications.

WorldCom's superior quality vis-à-vis Tier II carriers (for example, Frontier or LCI) is due to its larger coverage of the country through more POPs, more switches, more owned fiber, and simply more experience in running an interexchange network.

WorldCom's better POP coverage vis-à-vis Tier II carriers also results in lower transport charges. To terminate a call in a LATA where the carrier does not have a POP, the carrier must route the call to another carrier's POP via leased lines or switched transport. See Exhibit 7. More often than not, this means that the POP and the transport capacity must be leased from AT&T, MCI or Sprint. Therefore, if the merger were consummated, switched resellers and regional carriers looking to fill in remote-area gaps in their coverage would only be able to turn to the Big Three.

4. GTE AND FLORIDA CONSUMERS WOULD BE HARMED BY THESE ADVERSE CHANGES IN THE SUPPLY OF RESALE.

Currently, GTE's principal Florida activities are providing local service and wireless service in select markets. GTE also offers interexchange services on a resale basis, primarily to residential and small business consumers. GTE and other resellers are still largely dependent on WorldCom for wholesale supply, because of the smaller carriers' poor quality and lack of nationwide coverage, as I have addressed above. The adverse impact on GTE and its Florida consumers generalizes to other resellers, and GTE serves as a convenient illustrative example.

A major source of GTE's growth and competitive advantage in Florida comes from the joint marketing of resold long distance service with either its basic local or wireless services. This arrangement has been quite successful for GTE. To effectively compete in all aspects of Florida's interexchange telecommunications segments, GTE must be able to maintain a strong relationship with a national facilities-based interexchange carrier. WorldCom is exactly that carrier. WorldCom will soon provide a full range of services – both basic and enhanced – to GTE, while other smaller facilities-based carriers fall short on options. Additionally, the smaller, regional networks are not viable for GTE's national plans, and a multi-vendor solution is not operationally efficient for GTE. GTE needs to purchase wholesale service from a carrier with an extensive network of POPs. Carriers such as Frontier, Qwest, or Williams cannot currently provide GTE with the network capabilities it needs as a reseller.

GTE's objection to the proposed merger has its basis in GTE's current relationship with WorldCom and how the merger would damage that relationship. GTE is a reseller of interexchange service in Florida, with WorldCom as its primary wholesale supplier. This

¹⁷ Excel Communications Inc., "Management's Discussion and Analysis of Financial Condition and Results of Operations," 1996 Annual Report on Form 10-K, February 13, 1997.

arrangement has allowed GTE to continue growing its commercial presence in Florida. Beyond local and wireless service, GTE is able to offer branded long distance service; in other words, it has become the kind of one-stop shopping provider that Floridians demand.

Stunting the growth of this initial resale business will hinder GTE and other resellers in their expansion efforts. Without a strong resale business, GTE cannot develop the brand awareness, sales networks and operational arrangements needed to ease the transition to facilities-based service. Even significant capital investment by GTE could do little to overcome the barriers to entry in a concentrated industry such as interexchange.

5. SERVICE QUALITY

WorldCom has chosen not to consolidate the two networks of its adoptees, those of LDDS and of WITel, primarily due to the difficulty of integrating different switching platforms. This reality makes it even less likely that the WorldCom's two networks will be seamlessly integrated with that of MCI. Of course, the companies could preserve the networks in their current and separate state; however, in doing so, they lose any savings they sought from merging in the first place.

The merging parties initially indicated that they might withdraw from the residential segment altogether, reducing choice to the already worst-served segment of the interexchange industry. Bernard Ebbens, WorldCom's CEO, told *BusinessWeek* that a merged WorldCom "will look at the residential market as long as it doesn't hurt our stock price."¹⁸ Wall Street has corroborated these inclinations; after the merger announcement, one analyst noted, "The (one drawback to the deal) is MCI's residential part of the business, that WorldCom has never wanted and has never been involved in."¹⁹ In total, there is little prospect that the anticompetitive effects of the mergers will be offset by the efficiencies.

F. THE MERGING PARTIES, COMPETITORS AND STOCK MARKET ANALYSTS HAVE ALREADY ANTICIPATED THE ANTICOMPETITIVE EFFECTS OF THE MERGER

In a conference call with stock analysts, WorldCom management opined that the merger would produce "revenue synergies," which were then built into the projected financial gains of the transaction. This "enhancement of revenue per customer" is a thinly disguised

¹⁸ Peter Elstrom, "The New World Order: With his daring bid for MCI, Bernie Ebbens seeks to build WorldCom into a new kind of telecom empire," *BusinessWeek*, October 13, 1997, at <http://www.businessweek.com/1997/41/a3548001.htm>.

¹⁹ Cynthia Houston, Utendahl Capital Partners, quoted in "Merger is no deal for consumers," David Browerman, *MSNBC*, <http://www.msnbc.com/news/114314.asp#BODY>.

anticompetitive effect of the transaction.²⁰ Stock market analysts agree that this transaction will ease the pressure on margins on the merging parties. The stock market valuations of both the merging parties and their facilities-based competitors have rocketed between the time of the announcement and the present date, while the broad stock market has remained essentially flat. See Exhibit 30. This skew reflects the expectation that the merger is good for all facilities-based carriers, suggesting that it is highly anticompetitive.

This evidence provided by this stock surge is reinforced by the fact that the large facilities-based interexchange competitors have not protested this merger, which is highly unusual in cases of this kind. Indeed, AT&T has already declined to pass through access charge reductions in late 1997, instead restructuring its rates to substantially raise off-peak prices to a large number of customers, especially senior citizens.

G. SUMMARY EVALUATION OF THE MERGER

The proposed merger, if approved, will adversely affect Florida consumers and businesses. There will be a marked reduction in the number of active competitors, which will have an attendant effect on prices. As I indicated earlier, even an increase of as little as a penny a minute would raise the interexchange costs to Florida consumers by over \$170 million. The public interest will not be served by this horizontal combination of industry leaders. Any "efficiencies" or "synergies" realized would likely be offset by the loss of one viable competitor. What MCI and WorldCom euphemistically refer to as "revenue synergy" is probably just the expectation of higher prices. While GTE will be harmed directly by this merger, other fringe firms operating through resale will be similarly affected. Those providers with a larger competitive presence in Florida than GTE (e.g. Excel) will be harmed to a greater extent, and many potential entrants will find themselves precluded altogether from entering an industry with such increased concentration.

The barriers to entry, combined with the trend in horizontal integration of interexchange services onto the same facilities, make it unlikely that new entry could check the adverse effects of this merger in the medium term. Given that the interexchange industry is oligopolistic now, the merger will further forestall competition, resulting in a permanent loss of consumer welfare. I therefore urge the Commission to examine in more detail the implications of this merger for Florida consumers, and to obtain relevant information from the merging parties which may permit a more careful and thorough analysis of these issues.

²⁰ Transcript of Analyst Conference Call, *MCI-WorldCom Merger Announcement*, November 10, 1997.

AFFIDAVIT OF ROBERT G. HARRIS

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.



Robert G. Harris

State of California)

County of Alameda)

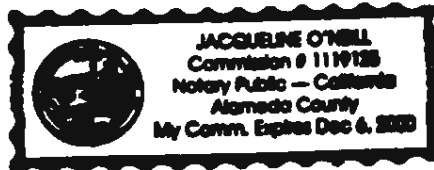
Subscribed and sworn to before me this 10th day of February 1998.



Notary Public

My Commission Expires

Dec. 6, 2000



ROBERT G. HARRIS

LECG, INC.
2000 Powell Street, Suite 600
Emeryville, CA 94608
Tel. (510) 653-9800
Fax (510) 653-9898

University of California
Haas School of Business
Berkeley, CA 94720
Tel. (510) 642-0961
Fax (510) 642-2826

EDUCATION

Ph.D., M.A., Economics, UNIVERSITY OF CALIFORNIA, BERKELEY, 1973-77.
Fields of Emphasis: Industrial Organization, Antitrust, Regulation, Public Finance.

M.A., Social Science, MICHIGAN STATE UNIVERSITY 1972-73.

B.A., Social Science, MICHIGAN STATE UNIVERSITY, 1961-65

PRESENT POSITION

HAAS SCHOOL OF BUSINESS, UNIVERSITY OF CALIFORNIA, BERKELEY, 1977 -
present
Professor Emeritus, Business & Public Policy Group
Co-Director, Consortium for Research in Telecommunications Policy and Strategy

LECG, INC., 1993 - present
Principal-in-Charge, Regulation Practice Group

PROFESSIONAL EXPERIENCE

INTERSTATE COMMERCE COMMISSION, Bureau of Accounts, Washington, DC, 1980-
1981
Deputy Director, Cost, Economic and Financial Analysis

ARTRAIN, MICHIGAN COUNCIL FOR THE ARTS, Detroit, 1971-1972
Director

YOUNG AMERICA CORPORATION, St. Louis, 1969-1971
President

TIME, INC; ROCKEFELLER FOR PRESIDENT COMMITTEE; YOUNG CITIZENS FOR
HUMPHREY; STUDENT COALITION FOR CONGRESSIONAL ACTION, New York and
Washington, DC, 1967-1969
Public Relations Consultant

NATIONAL STUDENT MARKETING CORPORATION, Washington, DC, 1966-1967
Vice President

OFFICE OF THE GOVERNOR STATE OF OREGON, Salem, 1966
Staff Assistant

GENERAL MOTORS CORPORATION, Warren, MI, 1965
Public Relations Field Representative

ACADEMIC HONORS AND AWARDS

Industry Expert Panel, Center for Telecommunications Management, University of Southern California

Charles C. Slater Award (outstanding contribution to the Journal of Macromarketing, 1983 - 1986)

Schwabacher Prize (outstanding University service), 1983.

Phi Beta Kappa, 1977.

Alfred P. Sloan Dissertation Fellowship, 1975 - 1977.

Blue Key and Excalibur Honorary Fraternities, 1964 - 1965.

President, All-University Student Government, 1964 - 1965.

TEACHING

***Graduate Courses:* Business and Public Policy (MBA Core Course), Competitive Strategies & Public Policies in Telecommunications, Microeconomic Analysis for Managerial Decisions, Industry Analysis and Competitive Strategy, Doctoral Research in Business & Public Policy, Antitrust Law (School of Law, with L. Sullivan), Antitrust Economics (Department of Economics).**

***Undergraduate Courses:* Social and Political Environment of Business (Core Course), Economics of Regulated Industries, The Corporation and the Global Economy.**

***Executive Education:* Competitive Strategy, Telecommunications Policy and Strategy, Public Policy Strategy, Managing Business-Government Relations.**

PUBLICATIONS

- 1) "The Emergence of Competition in Local Exchange Service," with Lori S. Lent, invited paper, International Engineering Consortium, *Annual Review of Communications*, 1995-96 edition.
- 2) "Competition and Public Policies in Telecommunications: A Survey of U.S. Developments," presented to Conference on Privatization and Deregulation in the US, UK and Japan, Economic Research Institute of the Economic Planning Agency of Japan, Tokyo, 1995; forthcoming in *Conference Proceedings*.
- 3) "ISDN in the United States: Strategies for Success: Part II - The Deployment and Adoption of ISDN," with Luis A. Enriquez, *New Telecom Quarterly*, 1995. Reprinted in *Blue Sky: New Horizons in Telecommunications*.
- 4) "ISDN in the United States: Strategies for Success: Part I - The Diffusion of ISDN," with Luis A. Enriquez, *New Telecom Quarterly*, 1994. Reprinted in *Blue Sky: New Horizons in Telecommunications*.
- 5) "Competition and Unbundling in Local Telecommunications: Implications for Antitrust Policy," with Gregory L. Roaston and David J. Teece, presented to Telecommunications Policy Research Conference, Solomons, Maryland, October 1994; forthcoming in *Conference Proceedings*, EAL Press.
- 6) "Principles of Imputation, Costing and Pricing of Interconnection and Essential Facilities," joint memorandum with Dr. Richard Emmerson, August 22, 1995.
- 7) "State Regulatory Policies and the Telecommunications/Information Infrastructure," presented to Workshop of the National Research Council, Washington D.C., October 1993; *The Changing Nature of Telecommunications/Information Infrastructure*, National Academy Press, 1995.
- 8) "Access and Competition Policy in the Deregulated Rail Freight Industry, with Comparisons to Competitive Access Issues in Telecommunications," with Curtis M. Grimm, presented to Columbia Institute for Telecommunications and Informatics, New York, November 1993; forthcoming in *Conference Proceedings*, Oxford University Press.
- 9) "R&D Expenditures by the Bell Operating Companies: A Comparative Assessment," invited paper, Twenty-Third Annual Conference, Michigan State University Institute of Public Utilities, Williamsburg, Virginia, December 9, 1991; *MSU Public Utility Conference Proceedings*, 1993.
- 10) "Strategic Uses of Regulation: The Case of Line-of-Business Restrictions in Communications," with Robert A. Blau, presented to Academy of Management, Miami, FL, August 14, 1991; *Research in Corporate Social Performance and Policy*, James E. Post (ed.), JAI Press, 1992.

- 11) "Structural Adjustment through Industry Deregulation: The U.S. Experience in Telecommunications and Transportation," invited paper, Pacific Economic Cooperation Conference on Structural Adjustment, Kyoto, Japan, October 11, 1990; *PECC Conference Proceedings*, 1991.
- 12) "Gaining Competitive Advantage through Strategic Public Policies: The Case of Japanese Telecommunications," invited lecture, National Economists Club, Washington, D.C., June 1988; *Economics and the Public Interest*, Richard T. Gill (ed.), Mayfield Publishing: Mountain View, CA, 1991.
- 13) "The Political Economy of Regulation: Analysis of Market Failures and Regulatory Responses," with James A. Carman, *Scaling the Corporate Wall: Readings in Social Issues of the Nineties*, S. Prakash Sethi, Paul Steidlmeier and Cecilia M. Falbe (eds.); Prentice-Hall: Englewood Cliffs, 1991.
- 14) "Telecommunications Services as a Strategic Industry: Implications for United States Policy," *Competition and the Regulation of Utilities*, Michael A. Crew (ed.), Kluwer Academic Publishers: Boston, 1990.
- 15) "Telecommunications as a Strategic Industry: Is There a Threat?" *Powernomics: Economics and Strategy After the Cold War*, Clyde V. Prestowitz, Jr., Ronald Morse and Alan Tonelson (eds.), University Press of America, 11. Reprinted from *Vital Speeches of the Day* LV(12), April 1989. Invited lecture, New York University Symposium on Telecommunications and Economic Development, December 1988.
- 16) "New Plans for Joint Ventures," with David C. Mowery, *The American Enterprise*, Sept/Oct 1990.
- 17) "Strategies for Innovation: An Overview," with David C. Mowery, *California Management Review* 32(3), Spring 1990, Co-Editor of Special Issue, "Strategies for Innovation."
- 18) "The Implications of Divestiture and Regulatory Policies for Research, Development and Innovation in the U.S. Telecommunications Industry," presented to Telecommunications Policy Research Conference, September 1988; *Telecommunications Policy*, April 1990.
- 19) "Telecommunications Policies in Japan: Lessons for the U.S.," presented to Advanced Workshop in Regulation and Public Utility Economics, Monterey, CA, July 1988; presented to Telecommunications Policy Research Conference, October 1988; *California Management Review* 31(3), Spring 1989.
- 20) "California Telecommunications Policy for the Twenty-First Century," *Report to the California Economic Development Corporation*, Sacramento, June 1988.
- 21) "A Qualitative Choice Analysis of Rail Routings: Implications for Vertical Foreclosure and Competition Policy," with Curtis A. Grimm, *The Logistics & Transportation Review*, March 1988.
- 22) "Horizontal Merger Policy: Promoting Competition and American Competitiveness," with Lawrence A. Sullivan, *Antitrust Bulletin*, January 1987.

- 23) "The Political Economy of Regulation," with James M. Carman, *Business & Society*, S.P. Sethi and C. Falbe (eds.), Lexington Books: Lexington, 1987.
- 24) "Public Regulation of Market Activity: Regulatory Failures," with James M. Carman, *Journal of Macromarketing*, Spring 1985.
- 25) "The Effects of Railroad Mergers on Industry Productivity and Performance," with Curtis M. Grimm, invited paper, Transportation Research Board, National Academy of Engineering, January 1986; *Transportation Research Record* 1029, 1986.
- 26) "Revitalization of the U.S. Freight Industry: An Organizational Perspective," with Curtis M. Grimm, *International Railway Economics*, K. Button & D. Pitfield (eds.); Crower: London, 1985.
- 27) "The Values of Economic Theory in Management Education," *The American Economic Association Papers & Proceedings* 74(2), May 1984.
- 28) "Public Regulation of Market Activity: Regulatory Responses," with James M. Carman, *Journal of Macromarketing*, Spring 1984.
- 29) "Antitrust Market Definition: An Integrated Approach," with Thomas M. Jorde, *California Law Review* 72(1), January 1984. Reprinted in *Corporate Counsel's Annual*, Matthew Bender, 1985. Reprinted in *Antitrust Anthology*, A.I. Gavil (ed.), Anderson Publishing, 1995.
- 30) "Structural Economics of the U.S. Rail Freight Industry: Concepts, Evidence and Merger Policy Implications," with Curtis M. Grimm, *Transportation Research* 17A(4), July 1983.
- 31) "Vertical Foreclosure in the Rail Freight Industry: Economic Analysis and Public Policy Prescriptions," with Curtis M. Grimm, *ICC Practitioners' Journal*, July 1983.
- 32) "Market Definition in the Merger Guidelines: Implications for Antitrust Enforcement," with Thomas M. Jorde, *California Law Review* 71(3), March 1983. Reprinted in *Antitrust Policy in Transition: The Convergence in Law and Economics*, Fox and Halverson (eds.), American Bar Association, 1984.
- 33) "Public Regulation of Market Activity: Institutional Typologies of Market Failures," with James M. Carman, *Journal of Macromarketing*, Spring 1983.
- 34) "Potential Benefits of Rail Mergers: An Econometric Analysis of Network Effects on Service Quality," with Clifford Winston, *Review of Economics and Statistics* 65(1), February 1983.
- 35) "Regulation: A Long Term Perspective," *Business Environment/Public Policy: The Field and Its Future*, Edwin M. Epstein and Lee E. Preston (eds.), St. Louis, 1982.
- 36) "The Financial Performance and Prospects of Railroads in the South and Southwest," with Curtis M. Grimm, *Texas Business Review*, November/December 1982.
- 37) "More on Passing On: A Reply to Cooter and to Viton and Winston," with Lawrence A. Sullivan, *Pennsylvania Law Review* 129(6), June 1981.

- 38) *Rationalizing the Rail Freight System: Costs and Benefits of Branch Line Abandonments*, U.S. Department of Transportation, Washington, D.C., 1981.
- 39) "Determinants of Railroad Profitability: An Econometric Study," with Theodore E. Keeler, *Economic Regulation: Essays in Honor of James R. Nelson*, William G. Shepherd and Kenneth D. Boyer (eds.), Michigan State University Press, 1981.
- 40) "Passing on the Monopoly Overcharge: A Response to Landes and Posner," with Lawrence A. Sullivan, *Pennsylvania Law Review* 128(5), May 1980.
- 41) "Suppliers of Last Resort: Economics of Self-Supply in Common Carrier Industries," with Robert A. Meyer, *Quarterly Review of Economics and Business* 19(4), Winter 1980.
- 42) "Economic Analysis of Light Density Rail Lines," *The Logistics and Transportation Review* 16(1), Winter 1980.
- 43) "Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis," with Lawrence A. Sullivan, *Pennsylvania Law Review* 128(2), December 1979.
- 44) "Rationalizing the Physical Structure of the U.S. Rail Freight Industry," *National Railroad Policy*, Joint Economic Committee, U.S. Congress, Washington, D.C., Government Printing Office, 1979.
- 45) "Simple Analytics of Rail Costs and Disinvestment Criteria," *Transportation Research Record* 687, 1978.
- 46) "Economics of Traffic Density in the Rail Freight Industry," *Bell Journal of Economics* 8(2), Autumn 1977.

PAPERS, REPORTS, PRESENTATIONS & PROFESSIONAL PROCEEDINGS

- 1) "Telecommunications Trade and Investment Opportunities in China and India," presented to the Massachusetts Telecommunications Council, Boston, February 1995.
- 2) "The Strategic Implications of Interactive Broadband Telecommunications Networks for Competition and Public Policy," presented to the National Communications Forum, Chicago, September 1994.
- 3) "Competitive Implications of Vertical Relations between Equipment Vendors and Telecommunications Services: Lessons from the French Experience," with Joanne Oxley, presented to European Regional Conference of the International Telecommunications Society, Stenungsbaden, Sweden, June 21, 1993.
- 4) "Obtaining Competitive Intelligence and Creating Competitive Advantage through the Public Policy Process," with Steven Harris, invited paper, Annual Conference of the Society for Competitive Intelligence Professionals, Los Angeles, April 2, 1993.

- 5) "Deployment and Adoption of Integrated Services Digital Network in the U.S.: Progress and Public Policy Obstacles," with Luis Enriquez, invited paper, Twenty-Fourth Annual Conference, Michigan State University Institute of Public Utilities, Williamsburg, Virginia, December 8, 1992.
- 6) "Market Definition and Market Power in the Sports and Entertainment Industry," invited presentation, Antitrust Section, American Bar Association Annual Proceedings, San Francisco, August 1992.
- 7) "The Design of Incentive Regulation for Telecommunications," invited presentation, Conference on Alternative Regulation, Illinois Commerce Commission, Chicago, July 1992.
- 8) "The Effects of Public Policies on ISDN Deployment and Adoption in the U.S.," presented to International Telecommunications Society, Cannes, France, June 1992.
- 9) "Removing the MFJ Restriction on InterLATA Services," invited testimony, Subcommittee on Telecommunications & Finance, U.S. House of Representatives, Washington D.C., May 1992.
- 10) "The Implications of Telecommunications Infrastructure Investment for R&D, Innovation and Competitiveness," invited testimony, Subcommittee on Communications, U.S. Senate, Washington D.C., February 1992.
- 11) "Principles of Costing and Pricing for Telecommunications Regulatory Policy," invited testimony, Colorado Public Utilities Commission En Banc Hearing, Denver, February 1992.
- 12) "Deregulation and Interstate Bank Entry in California," with Lee Burke, Research Report of the California Policy Seminar, UC Berkeley, April 1991.
- 13) "Assessing the Future of Telecommunications in the Global Economy," invited address, California Telephone Association, Monterey, CA, February 1991.
- 14) "Economic Rationale for a National Fiber Optic Infrastructure," invited address, Congressional Staff Forum on Telecommunications (sponsored by Ameritech), Washington D.C., February 1991.
- 15) "Applications of Incentive Regulation: An International Comparison," invited presentation, Conference of California Public Utilities Council, Long Beach, CA, October 1990.
- 16) "The Role of Telecommunications in Regional Economic Development," invited address, Rocky Mountain State Leaders Conference, Billings, Montana, October 1990.
- 17) "Telecommunications and Public Policies in the Global Market," invited address, Carnegie Council, New York, NY, October 1990.
- 18) "Why We Need a National Telecommunications Policy: A Comparative Perspective," invited address, Policy Issues Management Conference, Bell Communications Research, Murray Hill, NJ, October 1990.

- 19) "Incentive Regulation for Telephone Utilities," invited presentation, Workshop of the Colorado Public Utilities Commission, Denver, September 1990.
- 20) "The Role of Telecommunications Policy," invited lecture, Conference on Economic Development in the Pacific Northwest, Portland, Oregon, September 1990.
- 21) "The Changing Economics of Telecommunications: Implications for U.S. Policy and Competitiveness," invited briefing of U.S. Congressional staff on telecommunications (sponsored by Pacific Telesis), San Francisco, August 1990.
- 22) "Communications Competitiveness and Infrastructure Modernization Act of 1990," invited testimony, Communications Subcommittee, U. S. Senate, Washington D.C., July 1990.
- 23) "Investing in America's Future," invited essay, 1989 Annual Report of Southwestern Bell Corporation, St. Louis, 1990.
- 24) "The Public Switched Telephone Network and Rural Economic Development," invited lecture, Montana State Leaders' Conference, Helena, April 1990.
- 25) "Is Public Policy Meeting the Needs of Consumers?" invited panelist, Conference on Telecommunications Technologies and Policies, Center for Communications and Information Science & Policy, University of Pennsylvania, March 1990.
- 26) "Telecommunications as a Strategic Industry," invited address, New England Council, Boston, February 1990.
- 27) "Fiber to the Customer: A Public Policy Perspective," invited paper, Western Communications Forum, San Diego, February 1990.
- 28) Session Chair and Moderator, "State Regulatory Reform: Recent and Future Trends," Fifth Conference on State Telecommunications Regulation, University of Utah, Salt Lake City, January 1990.
- 29) Invited Panelist, "Crossroads of Information Technology," Board on Telecommunications and Computer Applications, National Academy of Engineering, Washington D.C., October 1989.
- 30) Invited Panelist, "Industry Forum," Annual Meeting of the U.S. Telephone Association, San Francisco, October 1989.
- 31) "Strategic Lessons from Deregulated Industries," paper presented to Strategic Management Society, San Francisco, October 1989.
- 32) "Deregulation in the Transportation Industries: Lessons for Telecommunications Managers," invited paper, Center for Telecommunications Management, University of Southern California, October 1989.
- 33) "Price Cap Regulation and Economic Forecasting," invited presentation to 1989 National Forecasting Conference, Bell Communications Research, San Francisco, May 1989.

- 34) "The Strategic Implications of Telecommunications Deregulation in Europe," invited presentation, Strategic Management Society, Amsterdam, October 1988.
- 35) "Telecommunications Deregulation: Implications for the California Economy," invited presentation, California Foundation for the Environment and the Economy, Carmel, June 1988.
- 36) "A Comparison of U.S. and Japanese Policies toward Information Technologies," invited presentation, International Public Economics Association, Tokyo, May 1988.
- 37) "Information Technologies, Public Policy, and Regional Economic Development," invited address, Conference on Regional Development in Japan, Hokkaido University, Sapporo, Japan, May 1988.
- 38) "The Implications of Line-of-Business Regulation for Diversification Strategy & Enterprise Structure," presented to Strategic Management Society, Boston, October 1987.
- 39) "Alternative Regulatory Frameworks for Local Exchange Carriers," invited presentation, En Banc Hearing of the California Public Utility Commission, September 1987.
- 40) "Emerging Telecommunications Policies in Europe," Briefing of California Legislative Leaders, Los Angeles, September 1987.
- 41) "Japanese Corporate Philanthropy in the United States," presented to Academy of Management, New Orleans, August 1987; Center for Research in Management Working Paper BPP-23; published in summary form in *Strategic Directions*, with Barbara Lombardo and David Vogel, April 1989.
- 42) "The Effects of Deregulation on Competition and Competition Policy in Banking: A Review of the Literature," Working Paper No. 4, National Center for Financial Services, Berkeley, August 1987.
- 43) "Competitive Strategies under Regulatory Constraint: Implications of the AT&T Divestiture on Vertical Relations in Telecommunications," with David J. Teece, paper presented to Strategic Management Society, Singapore, 1986.
- 44) "The Economic Consequences of Deregulation," invited address, Emerging Issues Program, Conference of National State Legislative Leaders, Los Angeles, September 1986.
- 45) "Public Policies toward Utility Diversification: An Overview," invited presentation, California Policy Seminar/California Senate Office of Research, Berkeley, April 1986.
- 46) "New Technologies for Local Loop Access: An Economic and Regulatory Analysis," with Gary Pisano, Office of Technology Assessment, United States Congress, June 1985.
- 47) "Corporate Community Involvement in the Greater San Francisco Bay Area," with D. Vogel and J. Logsdon, Center for Research in Management, working paper, Berkeley, May 1985.
- 48) "The Future of Telecommunications Regulation," invited presentation, En Banc Hearing of the California Public Utilities Commission, San Francisco, November 1984.

- 49) "Testimony in Support of the Taxpayer Antitrust Enforcement Act," Judiciary Committee, U.S. Senate, May 1984.

ADMINISTRATIVE POSITIONS, UNIVERSITY OF CALIFORNIA

WALTER A. HAAS SCHOOL OF BUSINESS

- Chair, Business and Public Policy Group (1983-84, 1986-93).
- Policy and Planning Committee (1986-88; 1991-93); Chair (1987-88; 1992-93).
- Chair, Program in Business and Social Policy (1986-90).
- Business School Building Program Committee (1986-91).
- Ph.D. Field Advisor, Business and Public Policy (1981-87; 1989-91).
- Policy and Planning Committee (1991-3; Chair, 1992-93).
- Member, Board of Directors, Washington Campus Program (1990-93).
- Director, The Executive Program (1983-85).
- Director, Executive Programs in Telecommunications (1989-92)
- Chair, Executive Education Task Force (1991-93).
- Member, Board of Directors, Berkeley Center for Executive Development.

UNIVERSITY OF CALIFORNIA, BERKELEY

- Executive Committee, Center for Research in Management (1989-).
- Advisory Board, Lester Center for Innovation and Entrepreneurship (1992-).
- Chancellor's Advisory Committee on Parking (1988-89).
- Executive Committee, National Financial Services Center (1986-88).
- Executive Committee, Institute of Transportation Studies (1981-83).
- Director, Center for Transportation Policy Research (1980-82).

UNIVERSITY OF CALIFORNIA, SYSTEMWIDE

- Working Group on Technology Transfer (1988-90).
- Task Force on Telecommunications and Information Policy Research (1984-85).

PROFESSIONAL AFFILIATIONS

- American Economic Association
- Academy of Management
- Strategic Management Society
- International Telecommunications Society
- Association of Public Policy Analysis and Management

SERVICE TO PROFESSIONAL JOURNALS, SOCIETIES & PUBLIC AGENCIES

Governor's Ad Hoc Committee, Golden State Quality Awards (1991-92)
Chair, Ninth Annual International Conference of the Strategic Management Society, San Francisco (1989)
Associate Editor, California Management Review
Associate Editor, Logistics and Transportation Review
Editorial Advisory Board, Transportation Research
Session Organizer, Telecommunications Policy Research Conference (1988, 1989)
Session Organizer, Academy of Management (1991)
Reviewer/Referee: Bell/RAND Journal of Economics; Industrial and Corporate Change; Journal of Asian Economics; Journal of Economics and Business; Journal of Public Policy Analysis & Management; Journal of Regulatory Economics; National Science Foundation; Quarterly Review of Economics and Business; Review of Economics and Statistics; Telecommunications Policy.

CONSULTING & TESTIMONY

Economic Consulting to Public Agencies

California Department of Consumer Affairs (industry analysis; telecommunications policy); California Office of Attorney General (antitrust analysis in tire industry, merger analysis in food retailing industry, resale price maintenance in consumer electronics, infant formula pricing); California Public Utilities Commission (teach regulatory economics & policy to Commission staff); Interstate Commerce Commission (rate regulatory policy, merger policy, costing methodology); Office of Technology Assessment (telecommunications policy); U.S. Department of Transportation (railroad industry rationalization, merger policy); U.S. General Accounting Office (transportation policy).

Regulatory Expert Testimony

Pacific Bell (product pricing, competitive strategy, regulatory policy, broadband deployment, MFJ interLATA relief); US WEST (regulatory policy, costing and pricing principles, local competition and interconnection); Ameritech (price regulation; local competition policy); General Telephone (pricing, regulatory policy); Western Coal Traffic League (railroad pricing); Consolidated Freightways (motor carrier pricing); Southern Pacific Transportation Co. (route rationalization analysis; rail merger analysis; pricing of trackage rights); American Presidents Intermodal Co. (competition policy, merger analysis); Bell Communications Research (R&D policy analysis); Bell Atlantic (price regulation, cable rate regulation; cellular telephone joint venture); Southwestern Bell (price regulation, local competition policy); BellSouth (price regulation, local competition policy); NYNEX (FCC spectrum auction rules); United States Telephone Association (FCC price regulation); MFJ Task Force (MFJ

manufacturing relief); AGT and Stentor Companies (Canadian interconnection and local competition policy); Iusacell (Mexican interconnection and local competition policy).

Business Litigation Expert Witness Testimony

Electrical contracting; biotechnology manufacturing equipment; corrugated steel pipe products; pipe fabrication; vision care services; electronic lighting ballasts; motion picture production, distribution and exhibition; regional shopping center development; semiconductor manufacturing equipment; digital-analog converters; workmen's compensation insurance; semiconductor manufacturing; resale of telecommunications equipment and services; after-market servicing of telecommunications equipment; on-line information and transaction services.

July 1997

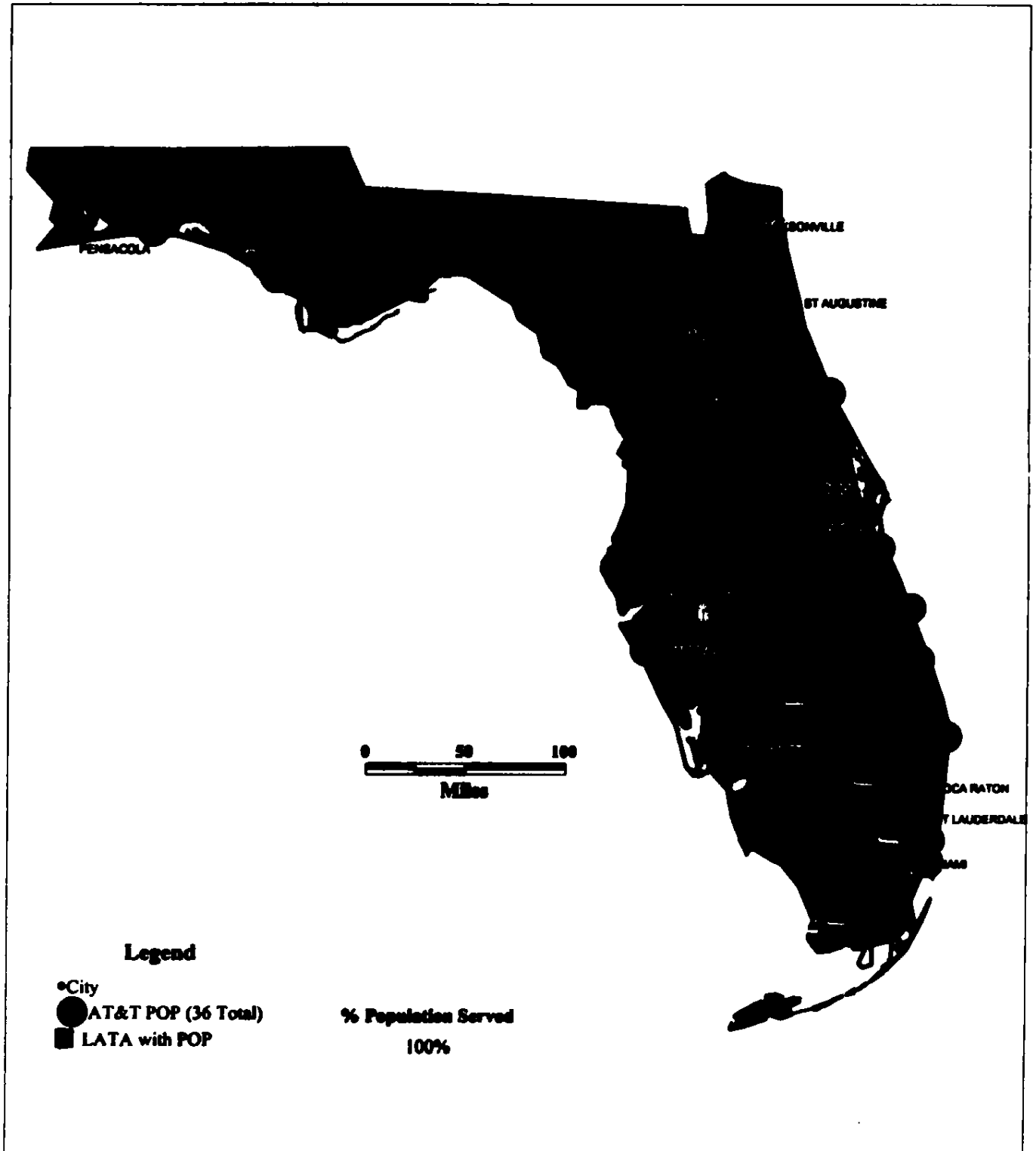
**Interexchange Carriers' National Coverage
All U.S., January 1998**

<u>Interexchange Carrier</u>	<u>Points of Presence</u>	<u>Population Covered</u>
AT&T	715	100%
MCI	582	100%
Sprint	399	99%
WorldCom	162	82%
Qwest	>100 *	n/a
Frontier	90 **	68%
IXC	>75 ***	63%
Cable & Wireless	35	45%
LCI	15	11%

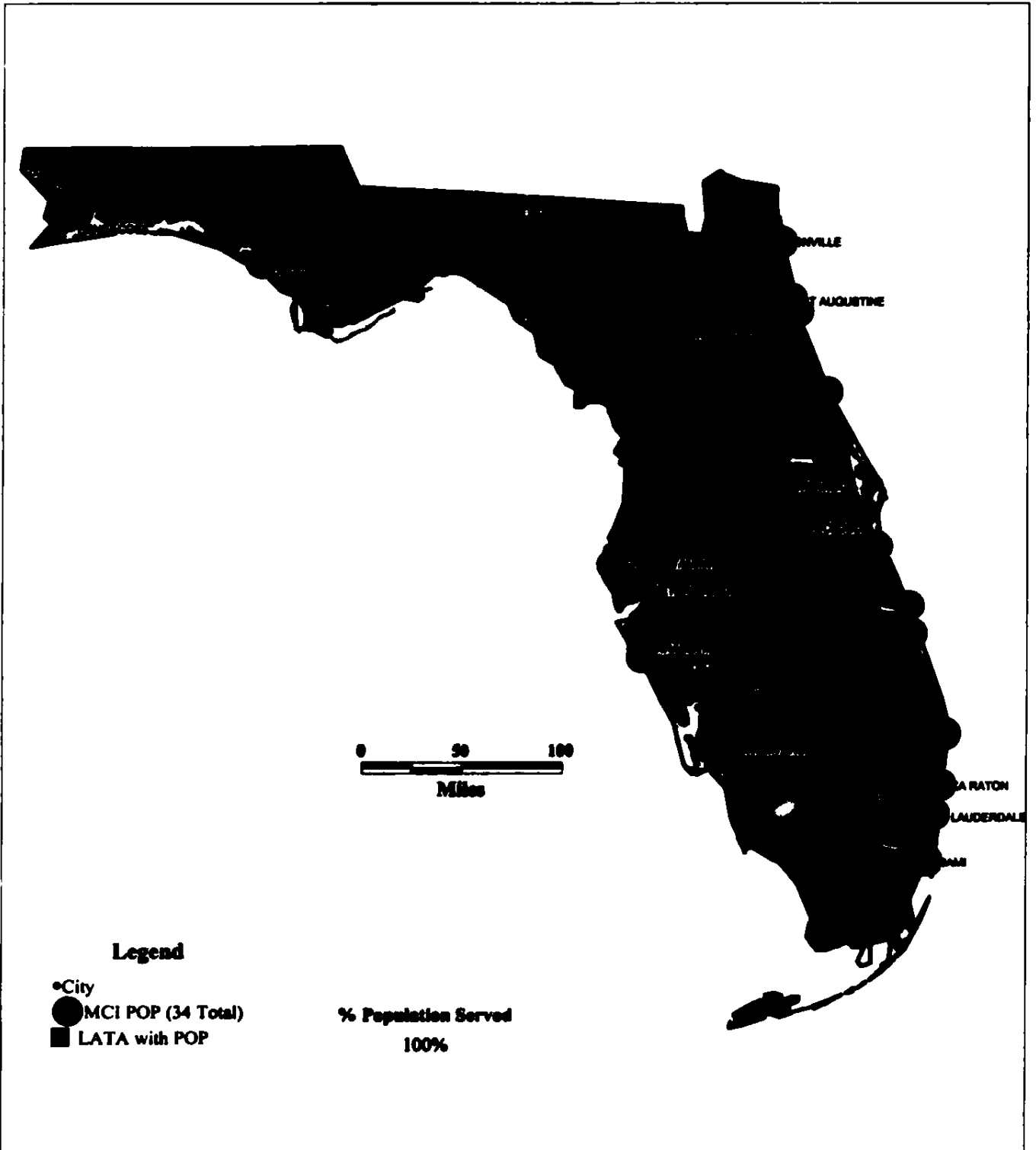
Sources: AT&T, MCI, Sprint, WorldCom, C&W: QTEL 9000 Master Rate Center File, CCMI, released Jan. 30, 1998. Other: Frontier: company marketing information. LCI: FCC Tariff #2 (Spec. Comm. Car.) IXC: <http://www.ixc-comm.com>, U.S. Census

Notes: * Approximate count from oral interview with company
 ** From oral interview with company, company marketing documents
 *** Minimum count from company marketing documents at www.ixc-comm.com

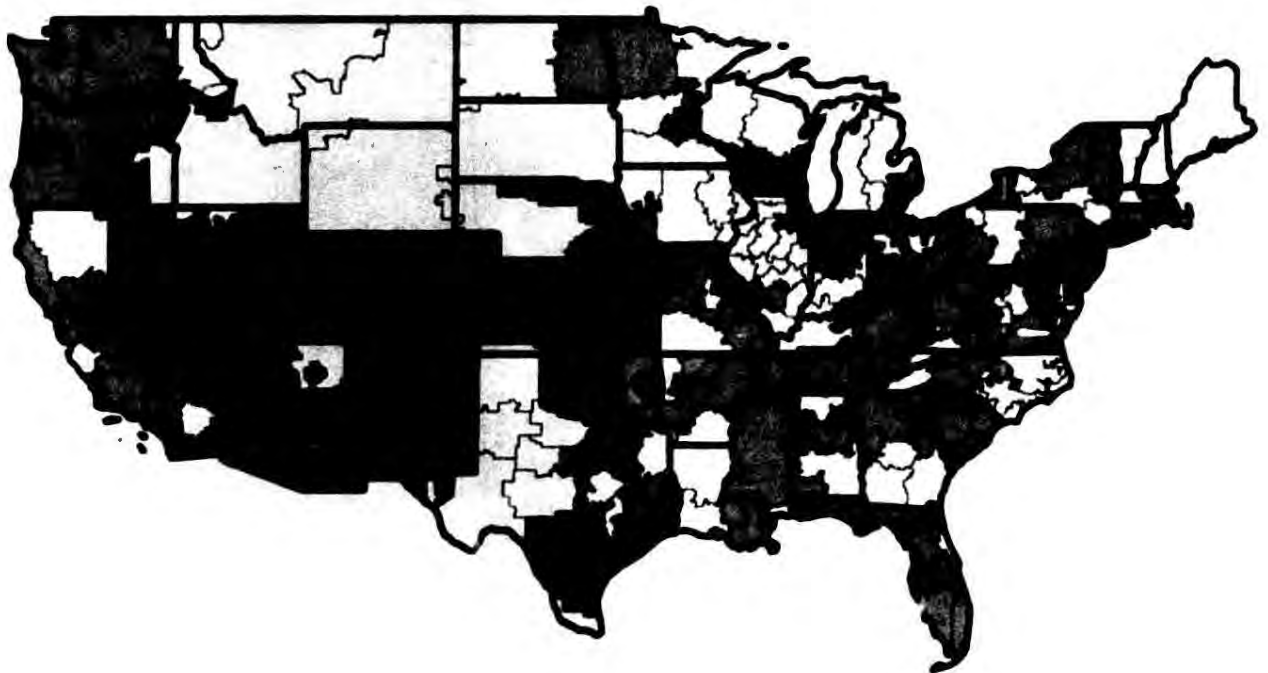
AT&T Network Coverage in Florida



MCI Network Coverage in Florida



Worldcom Network Coverage in the U.S.



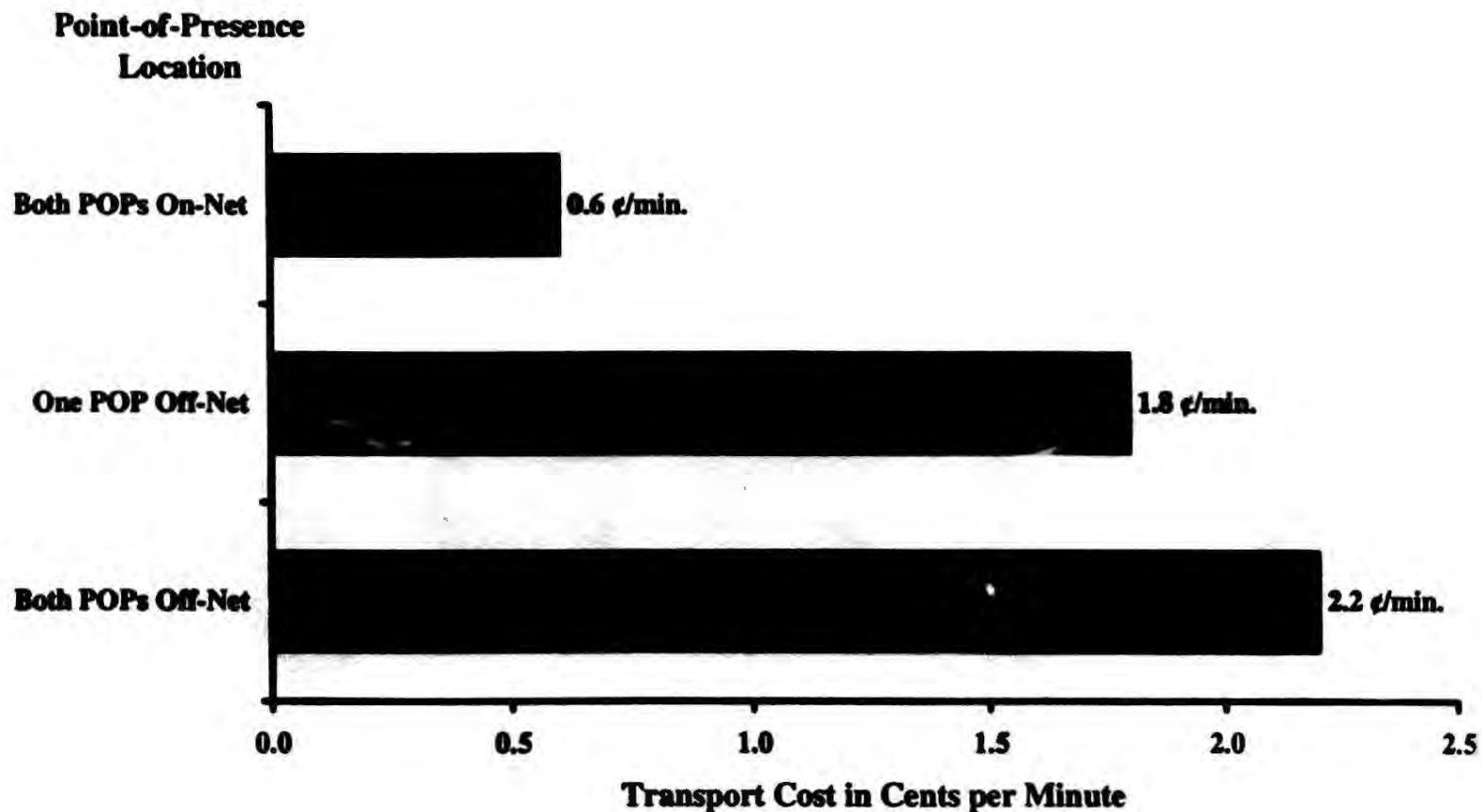
Legend		% Population Served
■	LATA with POP	82%
□	LATA without POP	18%

Coverage of WorldCom's Network (January 1998)

	<u>Florida</u>	<u>U.S.</u>
Points of Presence	16	162
LATA Coverage		
LATAs with POP	9	105
<u>LATAs without POP</u>	<u>1</u>	<u>89</u>
Total	10	194
Population Coverage		
LATAs with POP	97%	82%
LATAs without POP	3%	18%

Source: QTEL 9000 Master Rate Center File, CCMI, released Jan. 30, 1998, Census information.

Network Coverage And Interexchange Transport Pricing Typical Transport Prices by Point-of-Presence (POP) Location

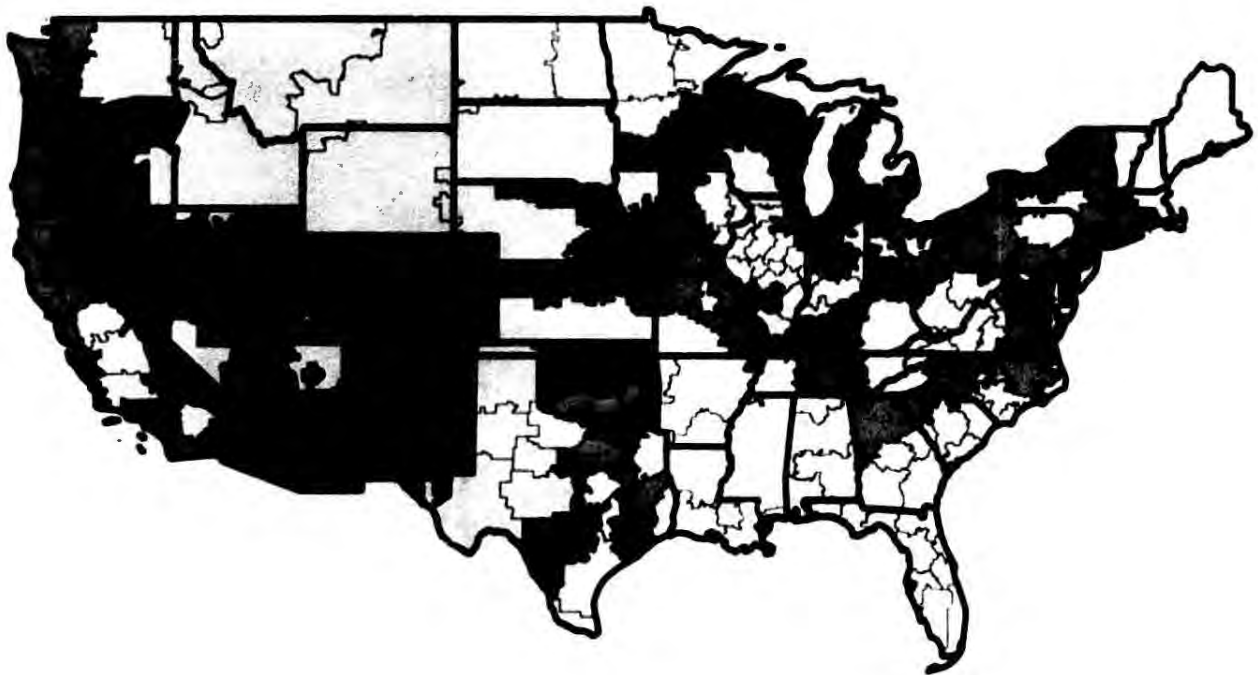


Florida Coverage of Interexchange Networks (January 1998)

	<u>AT&T</u>	<u>MCI</u>	<u>Sprint</u>	<u>WorldCom</u>	<u>Frontier</u>	<u>IXC Comm.</u>	<u>Cable & Wireless</u>	<u>LCI</u>
Total Florida POPs	36	34	32	16	0	3	4	0
LATA Coverage								
LATAs with POPs	10	10	10	9	0	3	3	0
LATAs w/o POPs	0	0	0	1	10	7	7	10
Population Coverage								
LATAs with POPs	100%	100%	100%	97%	0%	43%	68%	0%
LATAs w/o POPs	0%	0%	0%	3%	100%	57%	32%	100%

Sources: QTEL 9000 Master Rate Center File, CCMI, released Jan. 30, 1998, (AT&T, MCI, Sprint, WorldCom, C&W).
 Frontier: company marketing information. LCI: FCC Tariff #2 (Spec. Comm. Carr.) IXC: <http://www.ixc-comm>. U.S. Census information.

Frontier SONET Network Coverage in the U.S.



Legend		% Population Served
<input checked="" type="checkbox"/>	LATA with POP	68%
<input type="checkbox"/>	LATA without POP	32%

HARRIS EXHIBIT 9

LCI International Telecom Network Coverage in the U.S.



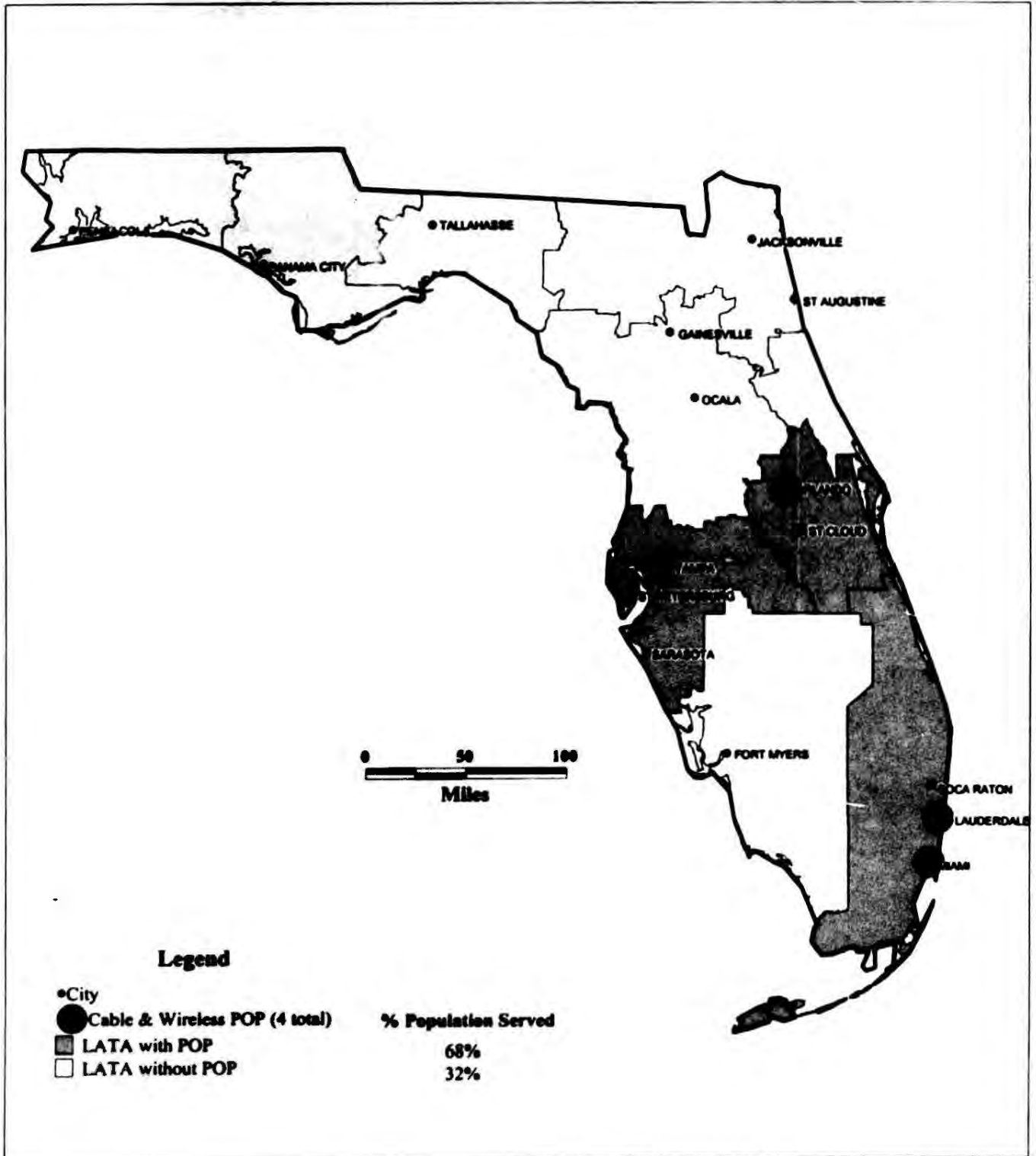
Legend		% Population Served
■	LATA with POP	11%
□	LATA without POP	89%

Cable & Wireless Network Coverage in the U.S.

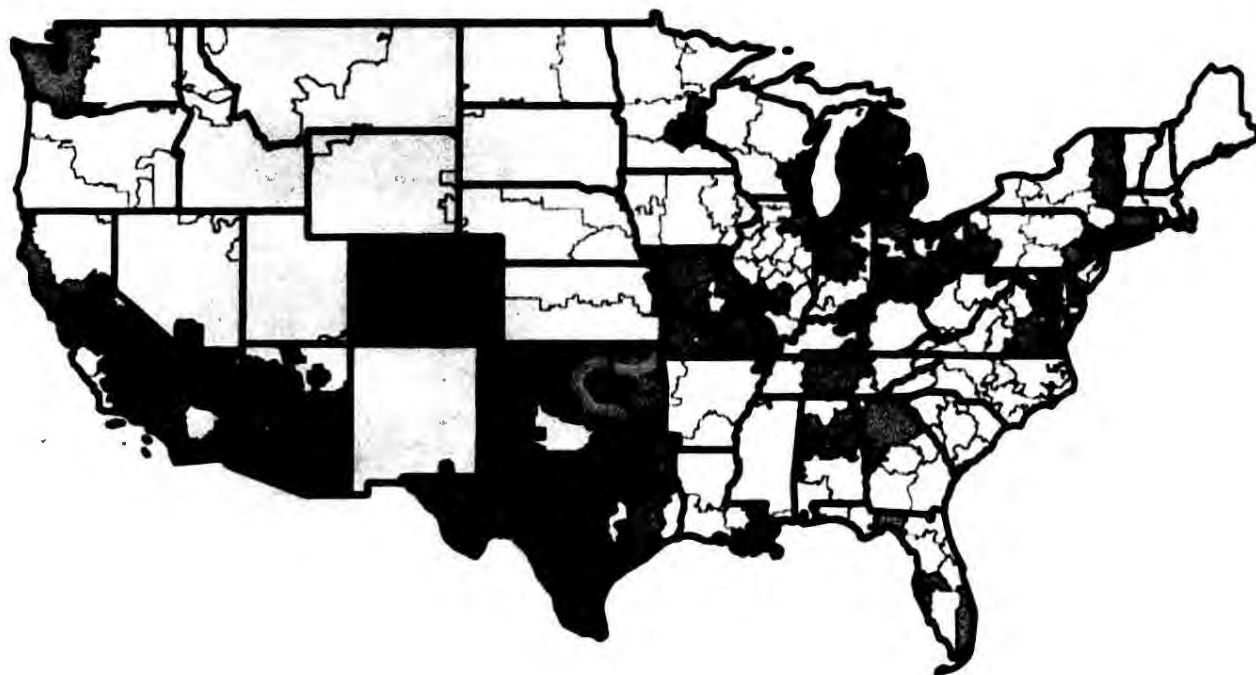


Legend		% Population Served
■	LATA with POP	45%
□	LATA without POP	55%

Cable & Wireless Network Coverage in Florida



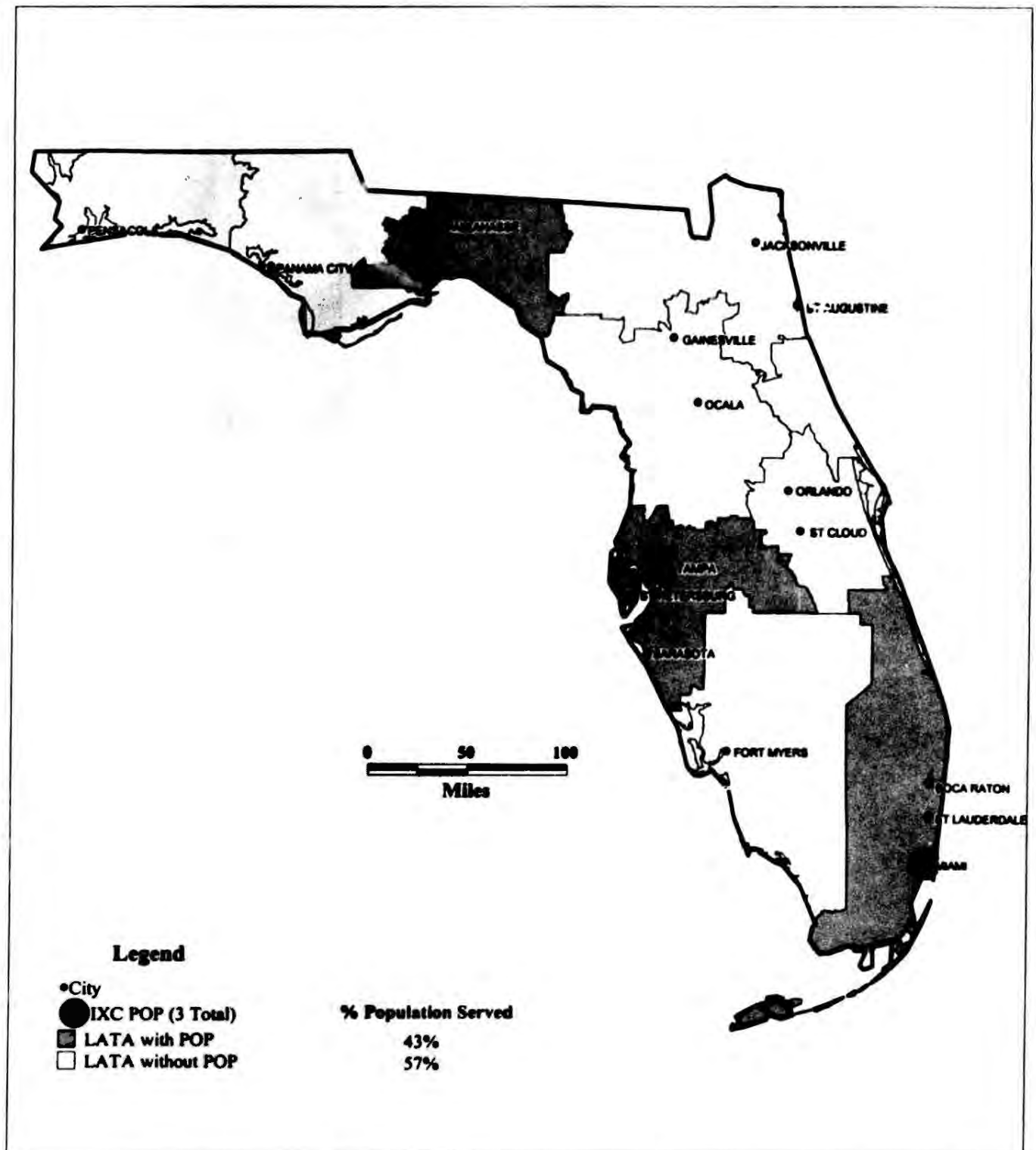
IXC Communications Network Coverage in the U.S.



Legend
■ LATA with POP
□ LATA without POP

% Population Served
63%
37%

IXC Communications Network Coverage in Florida



IXC Communications: Fiber Optic Routes Planned or In Service January 1998



Source: Company information available at <http://www.ixc-comm.com>

**IXC Communications: Fiber Optic Routes Currently In Service
January 1998**



Source: Company information available at <http://www.ixc-comm.com>

**Qwest Communications: Fiber Optic Routes Planned or In Service
January 1998**



Source: Company information available at <http://www.qwest.com>

**Qwest Communications: Fiber Optic Routes Currently In Service
January 1998**



Source: Company information available at <http://www.qwest.com>

Even a Small Rate Hike by IXC's Would Substantially Hurt Florida Consumers

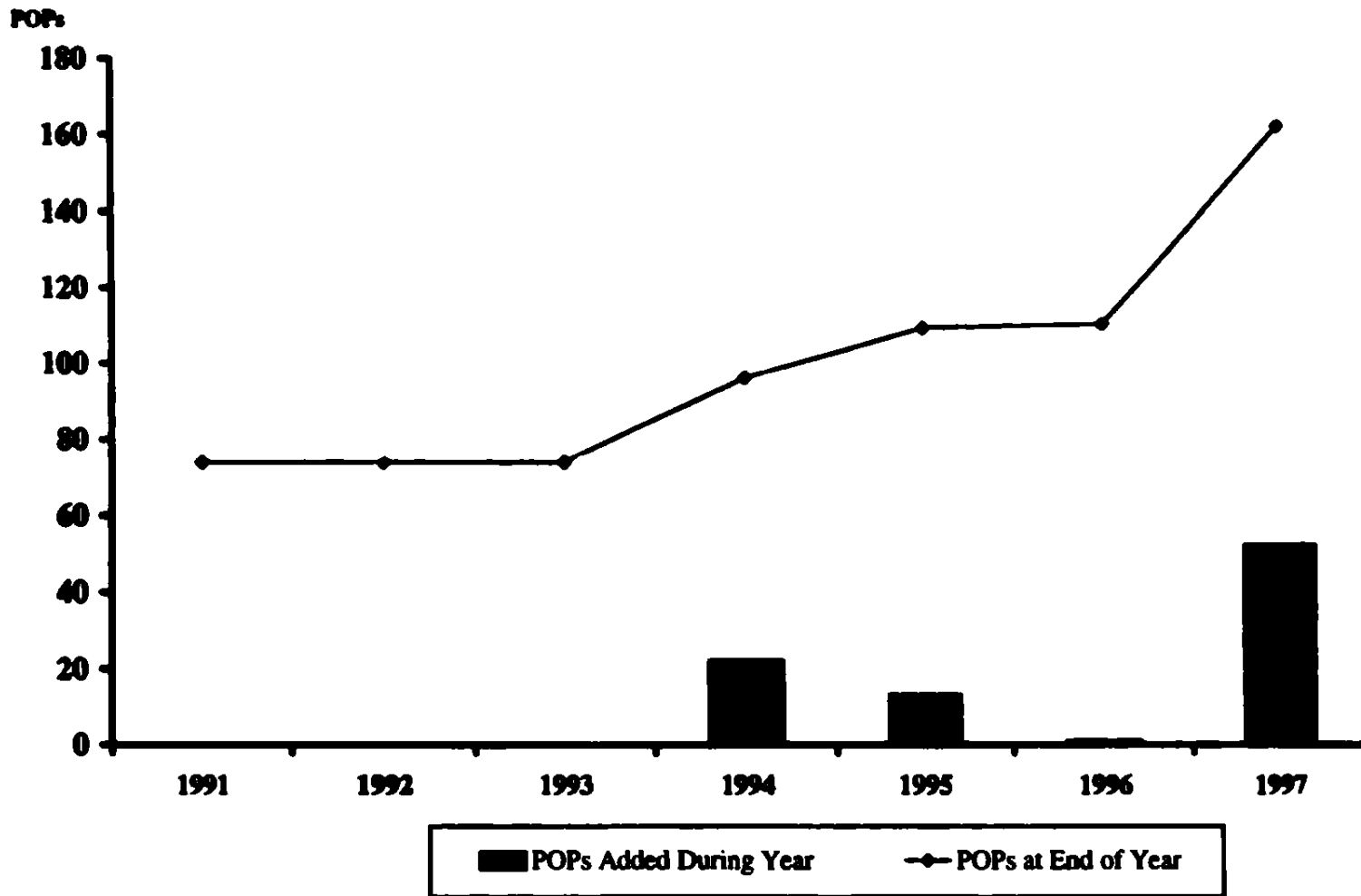
	<u>Interstate</u>	<u>Intrastate</u>	<u>Total</u>
Florida Originating Billed Access Minutes ¹	12,460,138,829	4,769,079,950	17,229,218,780
Price Increase	<u>\$0.01</u>	<u>\$0.01</u>	
Total Increase to Consumers	\$124,601,388	\$47,690,800	\$172,292,188
Florida Number of Households ²	<u>5,648,000</u>	<u>5,648,000</u>	
Impact per Household per Year	\$22	\$8	<u>\$30</u>

Sources:

¹ Calculations based on information in the FCC 1996 *Statistics of Communications Common Carriers*

² U.S. Bureau of the Census, 1996 Household Estimates

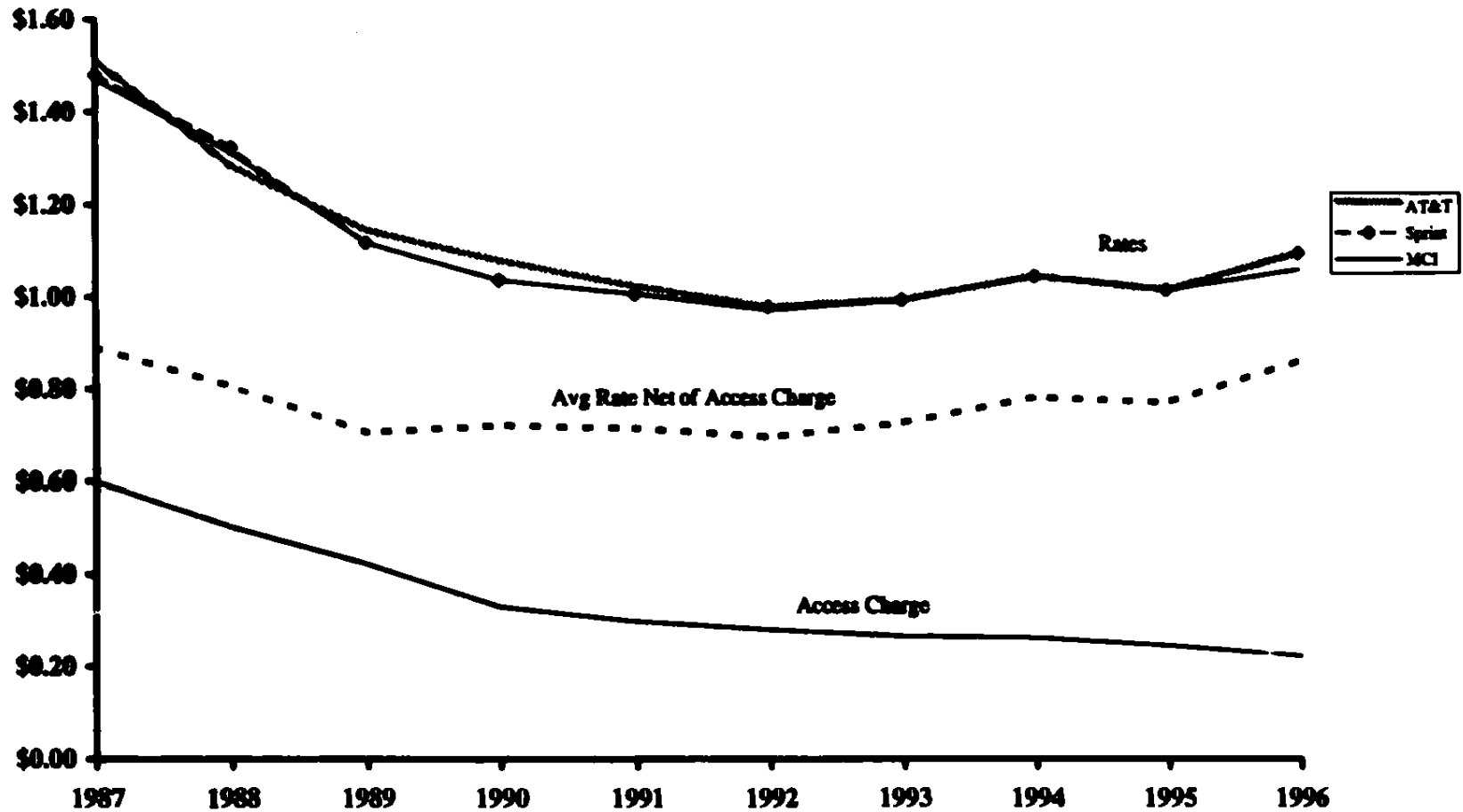
WorldCom Points of Presence (POPs)



Source: Fiber Deployment Update (1991-1996); Q-TEL 9000 as of 1/30/98 (1997)

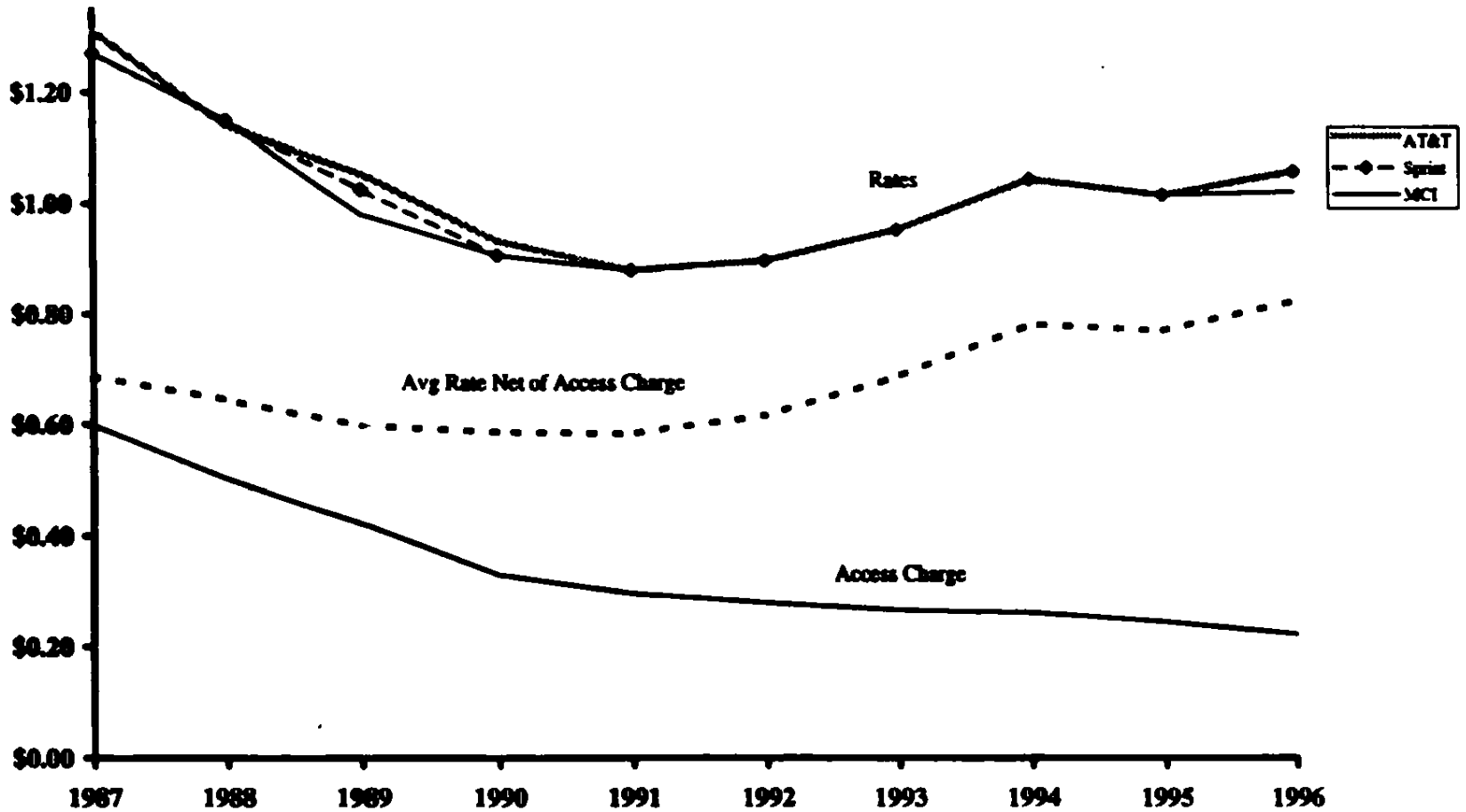
Real Daytime Interstate Rates CHICAGO - SAN FRANCISCO 1987 Dollars, 5 Minute Call

\$/5 min call



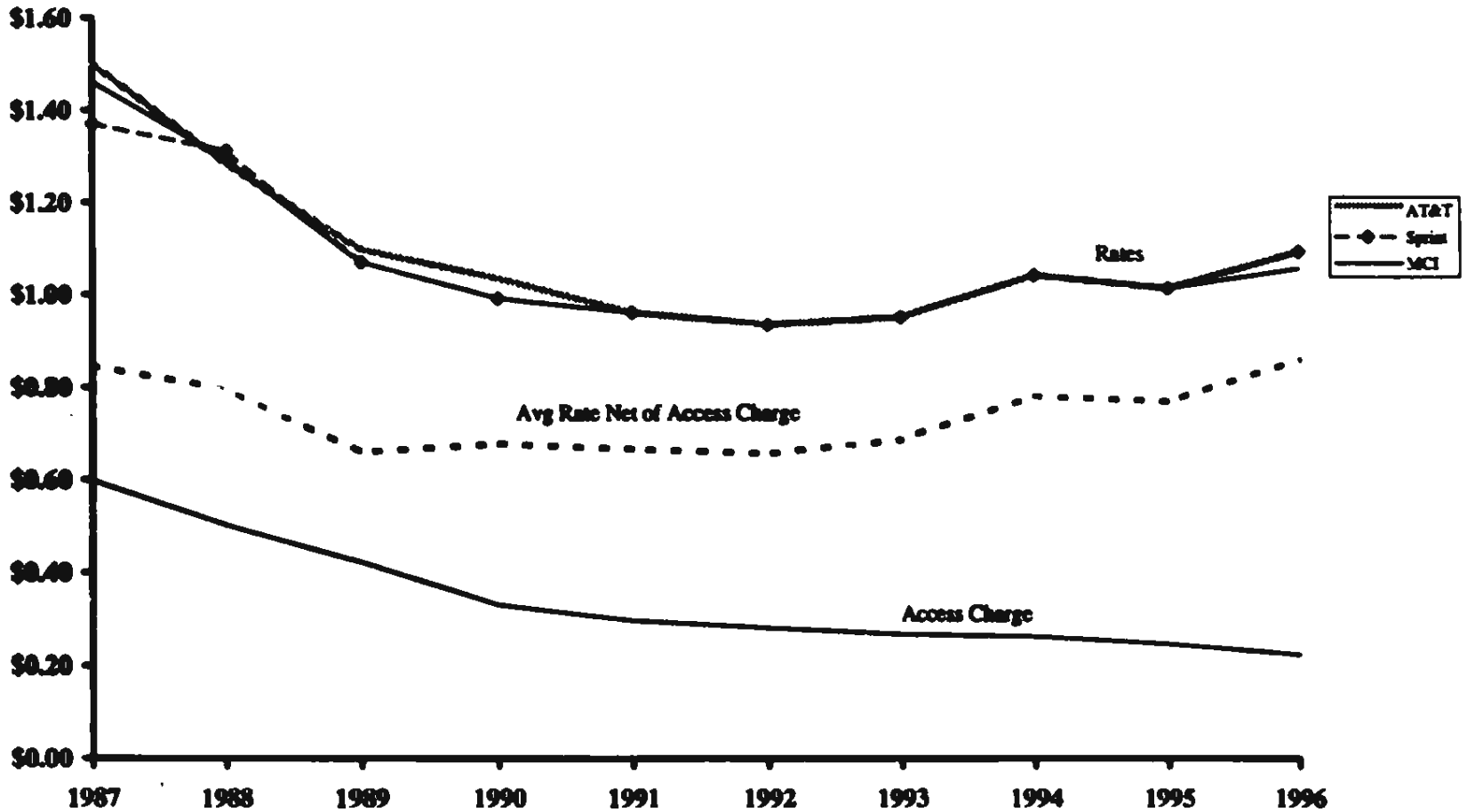
Real Daytime Interstate Rates DETROIT - CHICAGO 1987 Dollars, 5 Minute Call

\$/5 min call



Real Daytime Interstate Rates CHICAGO - PHILADELPHIA 1987 Dollars, 5 Minute Call

\$/5 min call

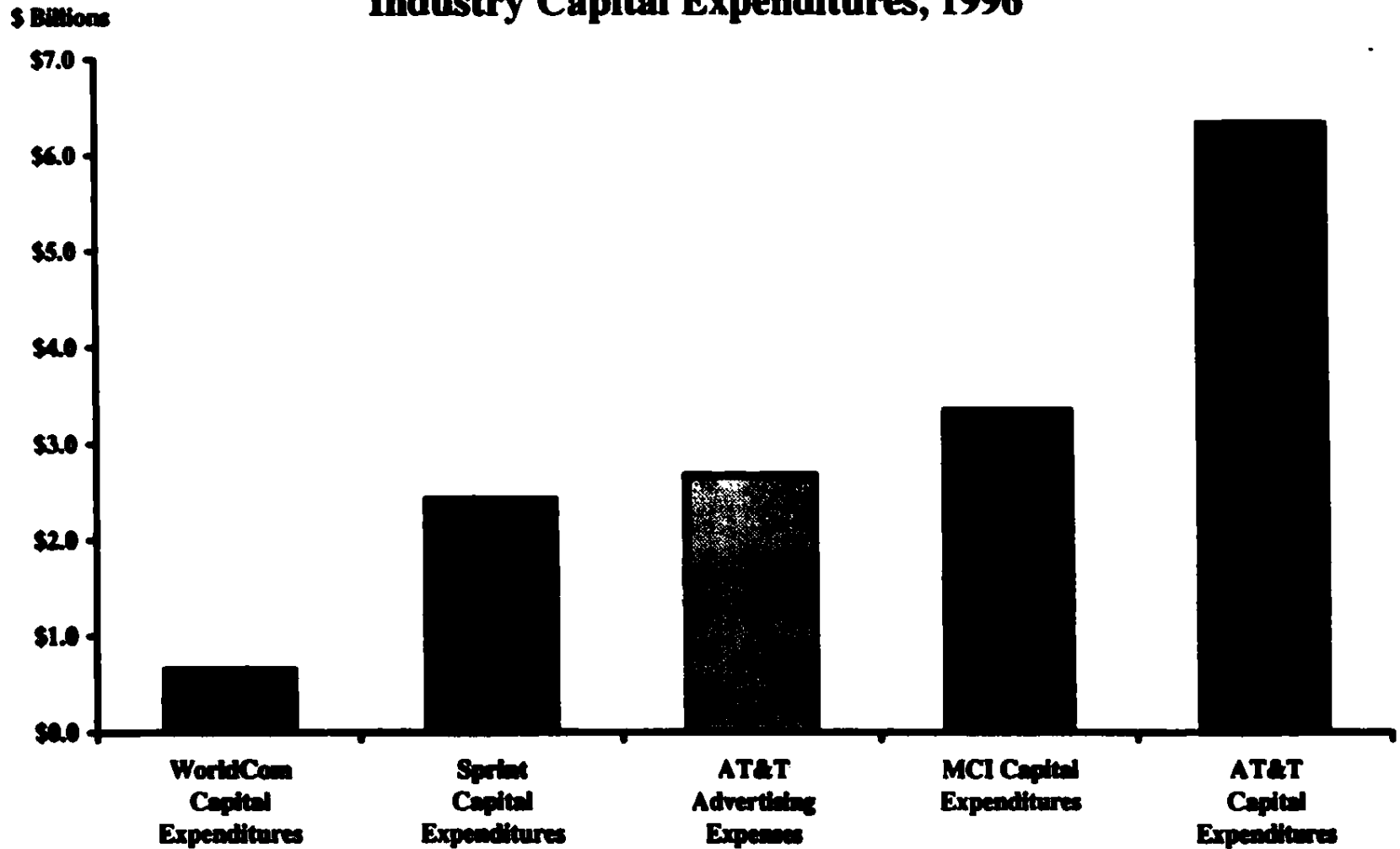


The 1996 Top Ranked Companies Measured in Advertising Expenditures*

Rank	Company	Expenditures (\$ Millions)
1	AT&T	\$654
2	McDonald's	\$599
3	Sears	\$557
.	.	.
.	.	.
.	.	.
.	.	.

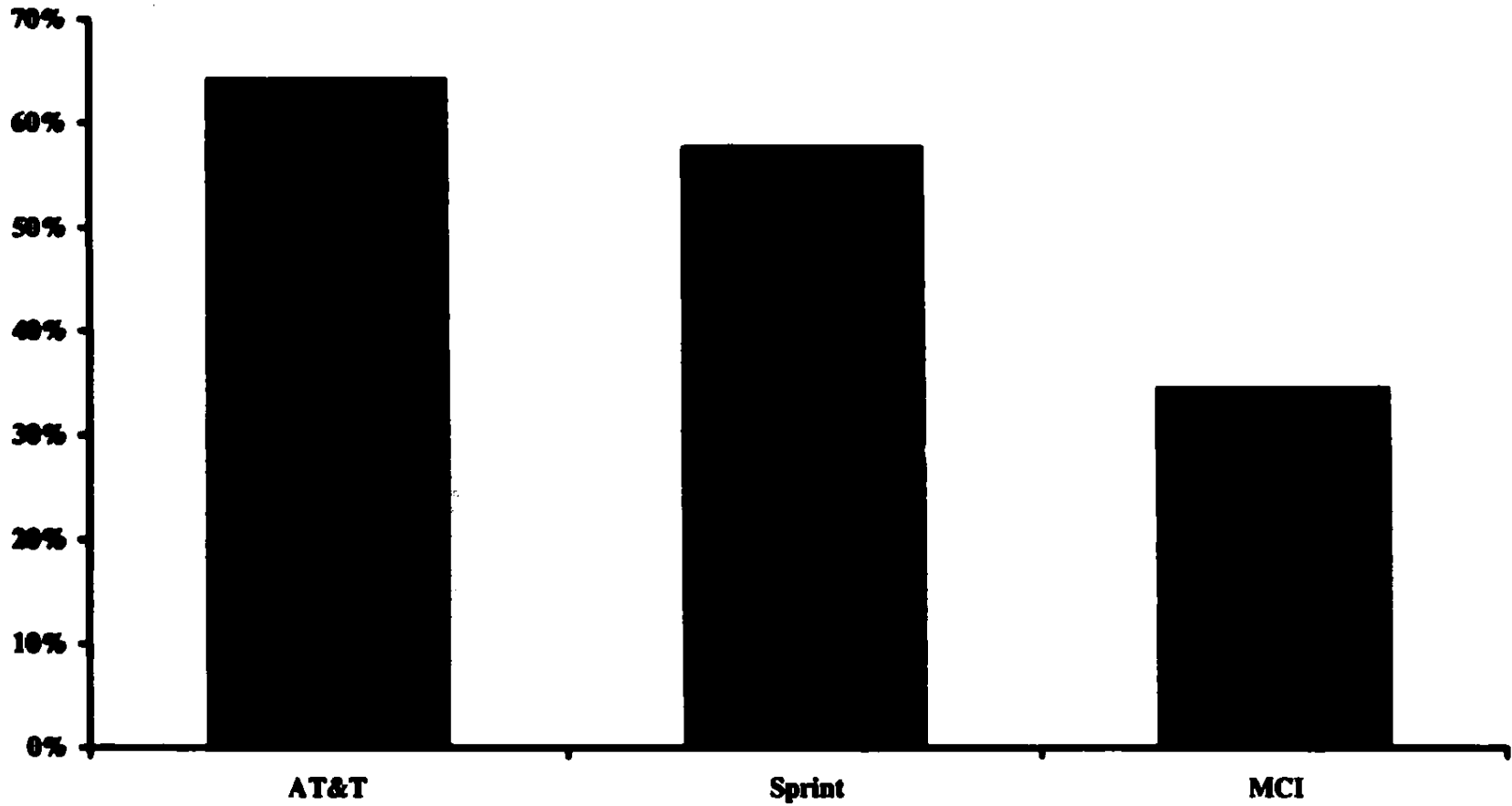
* Measured expenditure refers to estimated advertising expenditures in national consumer measured media such as newspaper, magazines, network TV, syndicated TV, cable TV and radio.

AT&T Advertising Expenses Relative to Industry Capital Expenditures, 1996



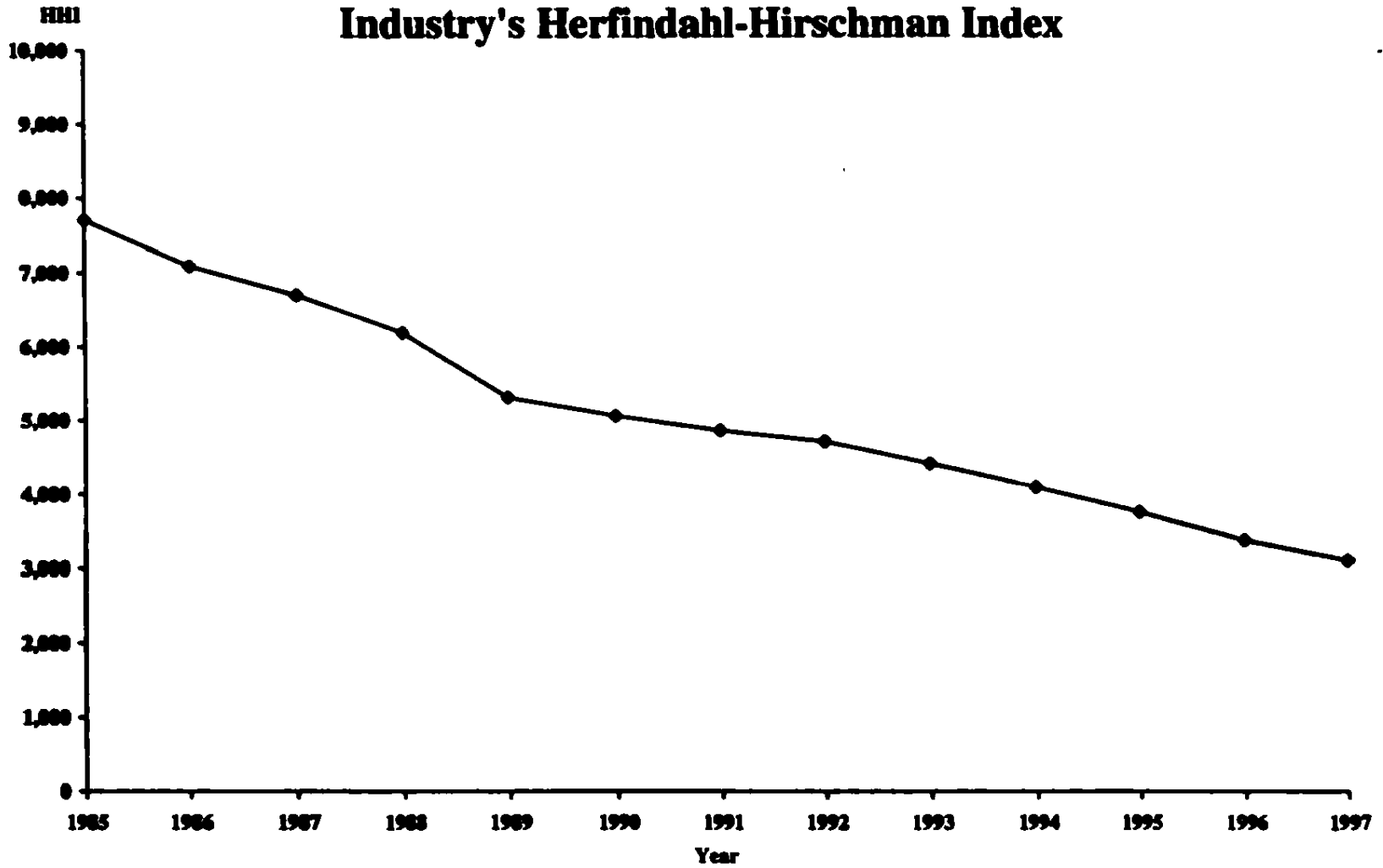
Sources: AT&T 1996 Annual Report, p. 33; WorldCom 1996 Annual Report, p. 38; MCI 1996 Annual Report, p. 2; and Sprint 1996 Annual Report, p. 40

Percentage of Long Distance Customers on Basic Standard Rates



Source: "Long distance deals abound, if customers looks," *Newsday*, January 11, 1998, p. F-8. Quoting the Yankee Group Report.

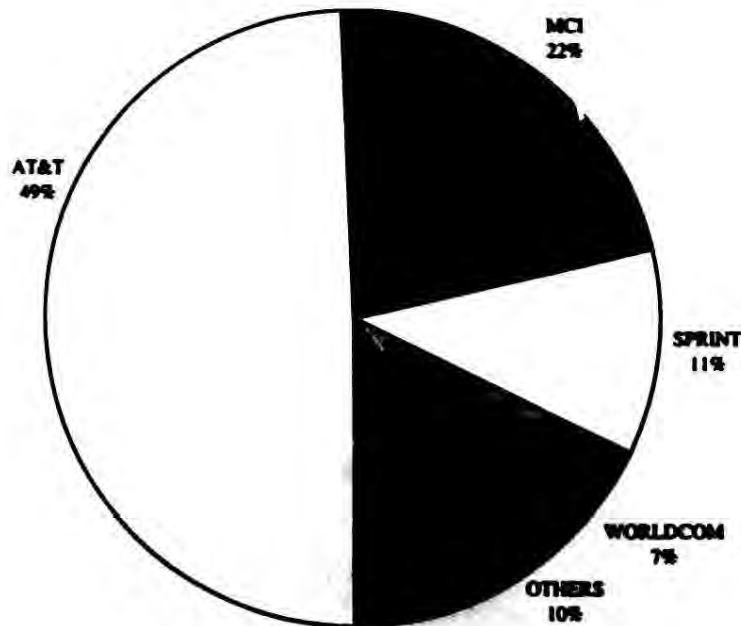
The Merger Would Halt the Decline in the Interexchange Industry's Herfindahl-Hirschman Index



Source:
Calculations based on 1996 Statistics of
Communications Common Carriers:
Interexchange Carrier SEC Filings

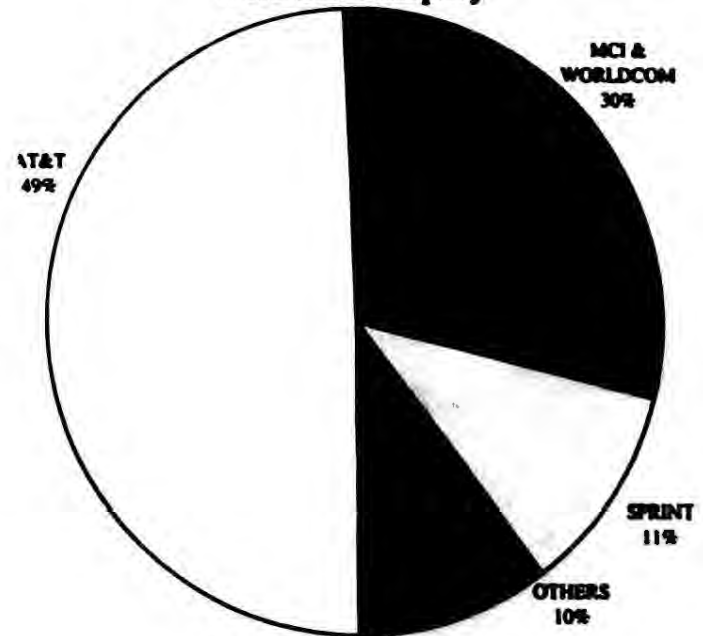
Interexchange Herfindahl-Hirschman Index Before and After Merger

1997 Market Shares



HHI Before Merger
3,103

1997 Market Shares if MCI and Worldcom
Were One Company



HHI After Merger
3,430

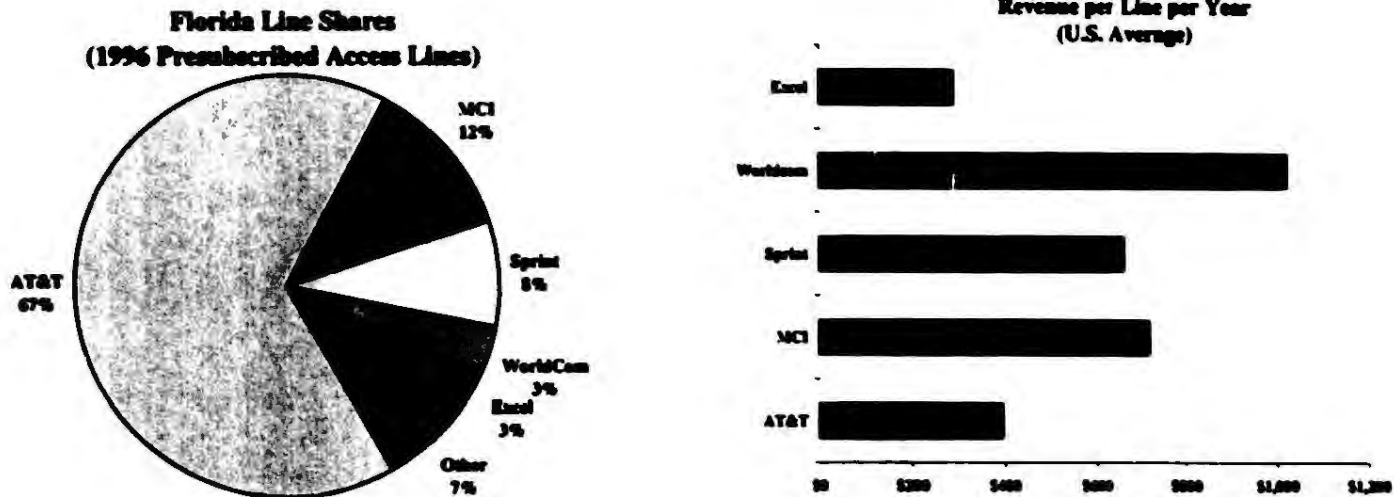
Source:

HHI based on estimated 1997 revenues of facilities-based interexchange carriers, estimated from 1997 revenue growth information from SEC filings, and toll revenue data from the *F.C.C. 1996 Statistics of Communications Common Carriers*

Note:

HHI based on toll revenues. Does not include interexchange carriers that are exclusively resellers. Percentages may not add up to 100% due to rounding.

Line Shares Underestimate Merger Impact in Florida



- **Merger Parties Have Higher Average Revenue per Line Than Other Interexchange Carriers**
- **Florida Revenue-corrected Impact Would Be Much Higher**
- **Excel and Part of “Others” Dependent on MCI-WorldCom**

Source: 1996 Statistics of Communications Common Carriers, Various Tables.

Facilities-Based Carriers: Resale Supply Concentration
ERB Survey Estimated Shares, February 1996

<u>Supplier</u>	<u>Share</u>
AT&T	8%
MCI	11%
Sprint	2%
WorldCom	23%
LCI	7%
Frontier	5%
DXC	3%
Qwest	8%
Capacity Swap/Self Supply	25%
<u>Other</u>	<u>8%</u>
Total	100%

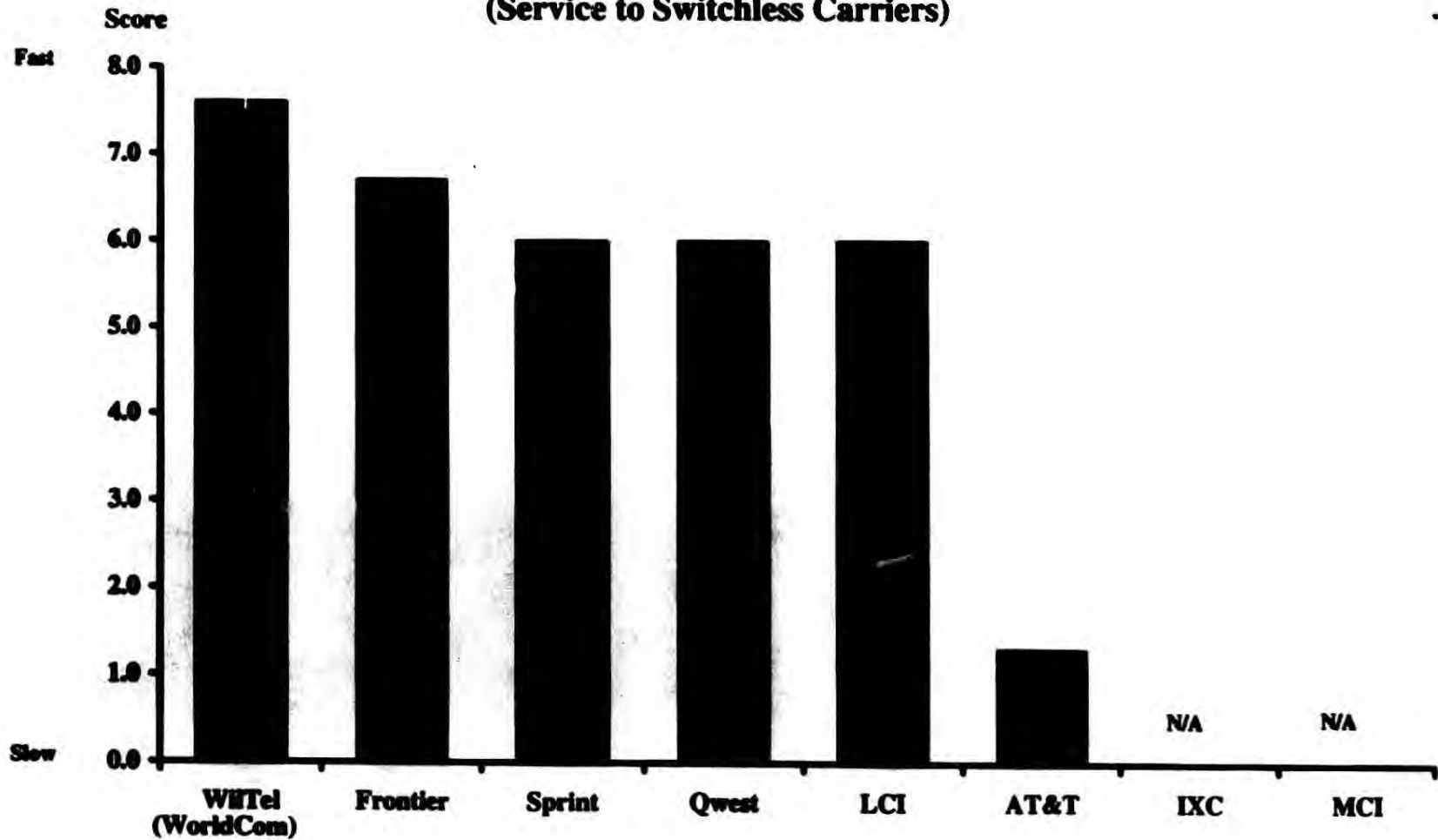
Source: Atlantic-ACM, Wholesale Carrier Report Card, February 1996

Switchless Resellers: Resale Supply Concentration
ERB Survey Estimated Shares, February 1996

Supplier	Share
AT&T	12%
MCI	6%
Sprint	13%
WorldCom	42%
LCI	5%
Frontier	13%
IXC	4%
Qwest	0%
Other	5%
Total	100%

Source: Atlantic-ACM, Wholesale Carrier Report Card, February 1996

Carriers' Comparative Provisioning Performance (Service to Switchless Carriers)



Source:
"Wholesale Long Distance: Carrier Report Card,"
ATLANTIC-ACM 1996, p. 28.

Interexchange Carriers' Stock Market Performance Before and After WorldCom-MCI Merger Announcement

	Beta	Market Cap. (Bn.) as of 2/4/98	Pre Merger ¹		Post Merger ²	
			Total Stock Return	Return Relative to S&P 500	Total Stock Return	Return Relative to S&P 500
Market Index						
S&P 500 Index	1.00	--	12.3%	--	4.0%	--
Interexchange Carriers						
AT&T	0.80	\$104.0	22.4%	9.0%	42.3%	36.8%
MCI	0.82	\$26.6	-23.4%	-31.8%	58.2%	52.1%
Sprint	0.79	\$20.6	3.3%	-8.0%	19.6%	15.0%
WorldCom	1.06	\$37.0	19.4%	6.3%	1.2%	-2.7%
Frontier	0.61	\$4.3	26.5%	12.6%	15.4%	11.0%
LCI	0.64	\$2.8	9.8%	-2.2%	7.7%	3.6%
IXC	N/A	\$1.2	24.5%	10.9%	21.4%	16.8%
Qwest ³	N/A	\$7.6	69.3%	50.7%	53.7%	47.7%
Weighted Average⁴			3.0%		28.7%	

SOURCE:

Bloomberg Financial Markets, Commodities and News.

Notes:

- 1 Pre merger is defined as the period between 5/30/97 and 9/30/97.
- 2 Post merger is defined as the period between 9/30/97 and 1/30/98.
- 3 Qwest common stock first became publicly traded on 6/30/97.
- 4 Weighted by market capitalization.

interoperability, functionality, and other features desired by resellers such as GTE LD.

3. WorldCom won the competition against MCI, Sprint and AT&T in 1996 for GTE LD's first, and to date only, major multi-year wholesale long distance voice contract. Under this contract, WorldCom is supplying a significant portion of GTE LD's long distance needs. WorldCom also has proven itself to be a responsive supplier.

4. As evidenced by its contract with GTE LD, WorldCom has been a driving force behind competition among the nationwide facilities-based IXCs to offer long distance service to resellers. In winning its contract with GTE LD, for example, WorldCom offered substantially lower rates and better terms than the competition on the transport segment of basic 1+ service (which is far and away the most sought-after long distance service). (The terms of GTE LD's contract with WorldCom are confidential.)

5. In addition, WorldCom has committed to provide advanced features and capabilities to wholesale customers such as GTE LD for resale. WorldCom has offered to make available, for example, various enhanced 800 features for resale. WorldCom has also offered to provide frame relay and private line services for resale although GTE LD has not yet chosen to purchase such service from WorldCom. Moreover, WorldCom has regular procedures in place to develop additional advanced features for resale in the future, and has expressed a willingness to review and develop any advanced features requested by GTE LD for resale. These advanced capabilities are essential elements of the services that GTE LD resells or plans to resell.

6. In contrast, the other nationwide IXCs generally have offered less attractive rates and have been reluctant to provide GTE LD with advanced features and capabilities

that would be used to compete against their own retail service offerings. AT&T has generally pursued a high-price strategy that has frequently rendered it a less competitive choice as a wholesale supplier of long distance services. MCI and Sprint are somewhat more price competitive than AT&T, but none of these three provides for resale the range of advanced capabilities that they offer to their own retail customers. MCI was the runner-up to WorldCom in the original competition for GTE's long distance voice contract.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on February 10, 1998.


Debra R. Covey

AFFIDAVIT OF ROBERT G. HARRIS

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.


Robert G. Harris

State of California)

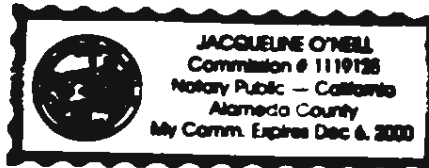
County of Alameda)

Subscribed and sworn to before me this 10th day of February 1998.


Notary Public


My Commission Expires

Dec. 6, 2000



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Corporation's and GTE Communications Corporation's Petition on Proposed Agency Action and Request for Section 120.57 Hearing in Docket No. 971604-TI were sent via overnight delivery on February 12, 1998, to the parties on the attached list.


On Kimberly Caswell

**Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850**

**Floyd R. Self
Messer, Caparello & Self
215 S. Monroe Street, Suite 701
Tallahassee, FL 32302**

**Jean L. Kiddoo
Kathy L. Cooper
Swidler & Berlin
3000 K Street N.W., Suite 300
Washington, DC 20007**

**Charles J. Beck
Office of Public Counsel
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400**

**Richard J. Heitmann
WorldCom, Inc.
515 East Amite Street
Jackson, MS 39201**

**Richard D. Melson
Hopping Green Sams & Smith
123 South Calhoun Street
Tallahassee, FL 32314**

**Thomas K. Bond
MCI Metro Access Trans. Services
780 Johnson Ferry Road, Suite 700
Atlanta, GA 30342**

**Brian Sulmonetti
WorldCom Technologies Inc.
1515 South Federal Highway
Suite 400
Boca Raton, FL 33432-7404**