BELLSOUTH COMMUNICATIONS, INC.

DIRECT TESTIMONY OF ROBERT PITOFSKY

BEFORE THE FLORIDA PUBIC SERVICE COMMISSION

DOCKET NO. 040353-TP

OCTOBER 14, 2004

Q: PLEASE STATE YOUR NAME, ADDRESS, AND OCCUPATION

A: My name is Robert Pitofsky and I am Professor of Law at Georgetown University Law Center, 600 New Jersey Ave., NW, Washington, DC 20001, and Counsel to Arnold & Porter LLP, 555 12th St., NW, Washington, DC 20004.

Q: PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I graduated from New York University in 1951 and from Columbia Law School in 1954. After military service and a year in an appellate section of the United States Department of Justice, I joined the New York law firm of Dewey, Ballentine, Bushby, Palmer and Wood as an associate. In 1964 I was appointed Professor of Law at New York University Law School and in 1974 was appointed Professor of Law at Georgetown University Law Center. Also, in 1974 I initiated an Of Counsel relationship with the Washington, D.C. law firm of Arnold & Porter. From the period 1983 until 1989, I was Dean of the Law School at Georgetown. I have also taught as a Visiting Professor at Harvard Law School.

Q: PLEASE DISCUSS YOUR PROFESSIONAL EXPERIENCE IN THE ANTITRUST AND CONSUMER PROTECTION FIELD

A: I have served in the United States government four times, most recently as a Commissioner (1979-1982) and then as Chairman (1995-2001) of the Federal Trade Commission. In that capacity I was involved in and supervised a wide range of government antitrust and consumer protection enforcement efforts and policy decisions. In the early 1970s, I served as Director of the Federal Trade Commission's Bureau of Consumer Protection.

During my years as a lawyer at Dewey Ballentine in New York and at Arnold & Porter in Washington, my practice has been devoted primarily to matters relating to antitrust enforcement. I have represented scores of clients in private litigation and before United States regulatory agencies, and counseled companies on many issues, including telecommunications. I have testified before committees of the United States Senate and the House of Representatives on many occasions on a wide variety of matters relating to competition policy and consumer protection. I have appeared before the Florida Public Service Commission on one occasion, relating to a challenge to BellSouth Telecommunications, Inc.'s ("BellSouth") Key Customer promotional offerings (Docket Nos. 020119-TP, 020578-TP and 021252-TP). I am co-author of a leading set of antitrust teaching materials in American law schools (Pitofsky, Goldschmid and Wood, "Cases and Materials on Trade Regulation" (5th Ed. 2003)) and have authored over 50 articles and speeches on antitrust subjects, mostly published in American law journals. A copy of my most recent biography is attached as Exhibit A.

Q: WHAT MATERIALS DID YOU REVIEW IN ORDER TO PREPARE YOUR EXPERT OPINION?

A: I reviewed a range of written materials including the various submissions and certain discovery responses in this proceeding, the Florida Public Service Commission's 2003 Annual Report on Competition: Telecommunications Markets in Florida ("2003 Report"), the Commission's 2002 Annual Report on Competition ("2002 Report"), and the Recommendation of the Antitrust Division of the Department of Justice concerning BellSouth's Request for Section 271 authority in Florida ("DOJ 271 Recommendation").

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: In its Order of September 22, 2004 in this matter, the Commission identified the issues to be addressed in this proceeding: the criteria that should be used to evaluate whether certain BellSouth tariffs violate certain Florida statutes, and whether, based on those criteria, the challenged BellSouth tariffs violate those statutes. The purpose of my testimony is to provide the Commission with certain policy considerations and criteria as well as general antitrust concepts that the Commission should take into account in evaluating the legality of BellSouth's promotional offerings. By way of summary, I believe BellSouth's promotional offerings are both pro-competitive and pro-consumer, and that Supra Telecommunications and Information Systems, Inc.'s ("Supra") arguments to the contrary are invalid. I do not believe that the Commission should cancel or

impose restrictions upon BellSouth's promotions. Such action would be unwarranted and result in higher prices for Florida consumers.

In my discussion of these issues, I will refer at times to analogous questions that have arisen under the antitrust laws. I recognize of course that the Florida Public Service Commission is not bound by the technical limits or requirements of the antitrust laws. I provide my perspective on antitrust issues because I believe that, at their core, both the antitrust laws and sensible regulatory policy share a common goal: to promote consumer welfare by protecting the free market and preserving vigorous competition from unjustified conduct – a goal that Chapter 364, Florida Statutes recognizes.

Q: DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE APPROPRIATENESS OF BELLSOUTH COMPETING WITH REACQUISITION PROMOTIONS?

A: As I understand the circumstances of this proceeding, BellSouth is offering certain tariffed promotional offerings to Florida residential consumers. These promotional offers are made for the purpose of obtaining customers for its PreferredPack Plan service, a bundle of both a flat-rated access line with certain vertical features plus its Privacy Director service, by inducing customers of competitive LECs ("CLECs") to switch to BellSouth. Upon switching to BellSouth, a customer is eligible to receive certain promotions including a $100 Cash Back offer, a $25 Gift Card (this promotion has been discontinued), and a waiver of line connection charges ("Reacquisition Promotions"). Promotions of

this sort are dubbed "winback" or "reacquisition" promotions because an incumbent LEC ("ILEC") like BellSouth is offering them to win back the business of customers that presumably left BellSouth for a CLEC.

Supra has filed a petition to cancel BellSouth's Reacquisition Promotions, arguing that they amount to, alternatively, either (1) below-cost, non-compensatory or predatory pricing, or (2) the provision of "free service" in violation of certain Florida statutes. Supra further alleges in its Motion for Summary Final Order, but not in its Complaint, that, because the promotions are targeted only to CLEC customers – rather than to all customers, including BellSouth's current customers – they unfairly discriminate between similarly situated consumers.

As a general matter, reacquisition or winback promotions of the sort that BellSouth is offering are pro-competitive and pro-consumer. The FCC in its CPNI Reconsideration Order[1] and this Commission in its Key Customer Order[2] have both spoken to the substantial benefits accruing to consumers from permitting ILECs to offer reacquisition promotions. These promotions really, in my judgment, are among the purest forms of competition: where a firm offers a discount to a rival's customer for the purpose of inducing that customer to switch his or her patronage. The rival of course is induced to offer its own counter-

[1] Federal Communications Commission, *In the Matter of Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, and *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999) (*"CPNI Reconsideration Order"*).

[2] Florida Public Service Commission, *Final Order on BellSouth's Key Customer Tariffs ("Key Customer Order")*, Docket Nos. 020119-TP, 020578-TP, 021252-TP (consolidated); Order No. PSC-03-0726-FOF-TP (June 19, 2003).

promotion and the consumer benefits from a choice of competitive alternatives and lower prices.

I therefore believe the Commission should be especially cautious about imposing regulatory rules that come between a firm and its rivals' customers with the effect that the firm is denied the ability to compete aggressively for those customers by offering lower prices. Such rules only have the end result of shielding inefficient companies from competition, leading to higher prices for Florida consumers. The rules of competition are designed to protect competition, not to protect competitors from each other.

Of course, the Commission should step in if it finds that BellSouth (or any ILEC) is offering reacquisition promotions of such a magnitude that they amount to a form of predatory conduct. That, however, is not the case here, as I explain elsewhere in this submission. Instead, it appears that Supra wants nothing more than to stop BellSouth from offering prices to Supra's customers that are lower than Supra's prices. In essence, Supra asks the Commission to place an "umbrella" over Supra to protect it from the slings and arrows of competition, while at the same time, Supra would remain free to offer its own aggressive promotions targeted at BellSouth. Indeed, as I understand it, Supra is currently offering a promotion involving one month of "free service." Meanwhile, consumers would pay the bill, literally and metaphorically, in terms of higher prices.

Q: IN YOUR OPINION, DOES BELLSOUTH HAVE MONOPOLY POWER IN THE MARKETS WHERE IT HAS OFFERED ITS REACQUISITION PROMOTIONS?

A: While BellSouth is undoubtedly a significant player in the residential service market and has a high market share, it is also abundantly clear that BellSouth is operating in a highly competitive environment in a state of flux.[3] BellSouth's residential market share has steadily been eroding over the past several years as CLEC market penetration has grown apace. As the Commission's 2002 and 2003 Reports indicate, overall CLEC residential market share more than doubled from 2001 to 2003. (2002 Report, at 19; 2003 Report, at 7.) BellSouth's territory, in particular, has the highest rate of CLEC market penetration, and in certain major urban exchanges where competition has been more robust, CLECs have quite significant market presence today. As the 2003 Report notes, "BellSouth has experienced much greater CLEC market penetration... than all the other ILECs combined." (2003 Report, at 13.) This absence of impediments to entry by CLECs is a major factor that led the Antitrust Division of the Department of Justice to conclude that the local telephone market in Florida is "fully and irreversibly opened to competition." (DOJ 271 Recommendation, at 1-6.)

Recent Commission Reports also disclose a market in flux, noting that "less traditional providers such as wireless and broadband communications providers

[3] High market share, standing alone, is a somewhat misleading indicator of monopoly power in a heavily regulated environment like the telecommunications market. Therefore, the focus of "market power" analysis in this context should properly aim at determining whether in fact the company can abuse its position by controlling prices or excluding competitors.

have also entered [the local] market using their own technologies to their advantage to compete against traditional wireline providers for a share of the market." (2003 Report, at 4.) Indeed, traditional ILECs face a variety of new and evolving competitive pressures from an array of new technologies, including wireless, cable, and VoIP providers. For instance, Vonage – a VoIP provider – recently lowered its local and long distance bundle to $24.99 a month. *See* www.vonage.com.

BellSouth must be able to maintain the flexibility to respond to these competitive pressures by offering promotions to win business. CLECs have been offering various aggressive promotions to respond to these pressures and to compete with BellSouth, often incorporating the very same elements found in BellSouth's Reacquisition Promotions, including almost invariably a waiver of line connection charges and in many instances, an offer of "free" service for some period of time. The Commission should not play "referee" and impose restrictions on BellSouth's ability to compete and to use the same tools used by its rivals.

Even if BellSouth were a monopolist, which I do not concede, I will explain at a later point in this submission why I believe Supra's charges should still be rejected.

Q: DO YOU BELIEVE THAT BELLSOUTH'S REACQUISITION PROMOTIONS ARE "PREDATORY," BELOW-COST, OR OTHERWISE NON-COMPENSATORY?

A: Nothing I have seen in any of the submissions filed in this proceeding would lead me to conclude that BellSouth's Reacquisition Promotions are predatory. Rather, BellSouth's filings indicate that its average customer ends up staying with BellSouth for a period of at least **begin proprietary** [redacted] **end proprietary** (and even longer for its average reacquisition customer), and that only **begin proprietary** [redacted] **end proprietary** percent of BellSouth's customers actually redeem a cash-back promotion of this nature. When these two important facts are taken into account, as Dr. Taylor ably demonstrates, by properly amortizing BellSouth's reacquisition costs over the average duration of a customer's stay, BellSouth's Reacquisition Promotions are not priced below cost. (Taylor Aff. at ¶ 27-28, 45-47, 53-54.)

It is also well-established in the antitrust area that a *two*-stage inquiry is necessary to determine whether certain prices are in fact "predatory" under the antitrust laws. A party seeking to show predatory pricing must demonstrate not only that the prices are below some appropriate measure of incremental cost but also that there is a dangerous probability that the alleged predator could in fact recoup its below-cost investment with supra-competitive pricing later. This recoupment inquiry really comes down to an assessment of market structure: whether in fact the relevant market is truly susceptible to the future extraction of supra-competitive prices by the would-be predator. Some courts have placed this market structure analysis at the beginning of a predatory pricing case as a preliminary threshold the plaintiff must meet since, if recoupment is impossible, it obviates the need for the court to look into the more complex issues of cost (which the filings in this proceedings have largely focused on thus far).

While this Commission is obviously not bound by the nation's antitrust precedents, I still believe that it would be worthwhile for the Commission to carefully examine issues of market structure. If the Commission finds that BellSouth had no meaningful way of recoupment by raising prices later, then consumers could not be harmed and BellSouth cannot be engaging in pricing that can be deemed "predatory." Rather, consumers would continue to receive low prices offered by BellSouth in the form of promotions aimed at winning business from its competitors – the very essence of fair competition.

It must be noted that it is almost always economically irrational for a firm to price its services below cost or at a non-compensatory level. If a firm does so with a long-term predatory strategy in mind, it must believe that it can, at some future point, recoup its investment in below-cost pricing by raising its prices sufficiently in the future once its competitors have been driven from the market. This is no simple task. The alleged predator must not only raise its prices in the future to a supra-competitive level, but must maintain them at that level for a period of time sufficiently long to recover its below-cost investment. All the while, the predator would need to thwart entry by competitors that would naturally view the predator's high prices as an opportunity to enter the market and offer lower prices. If market structure indicates that new entry is easy, the possibility of recoupment is nonexistent.

The Florida residential LEC market, as I discussed previously and as confirmed by the 2003 Report, is characterized by growing market penetration by CLECs (particularly in BellSouth's region) and entry by non-traditional service providers

who are not generally regulated by the Commission (e.g. cable telephony, VoIP, wireless). The Commission itself noted in its 2003 Report that "the most favorable conditions for market entry exist in BellSouth's territory." (2003 Report, at 12.) It seems highly dubious at best that BellSouth could drive enough competitors from the market with its current promotion to enable BellSouth to impose supra-competitive prices. If BellSouth did attempt to raise its future prices in a recoupment bid, one would expect new entry and share growth by the non-traditional competitors as well as CLECs to increase at an even faster pace than at present. Indeed, the only "harm" that would follow from an ill-conceived recoupment attempt by BellSouth would be to BellSouth, as its customers would gravitate to lower prices offered by new entrants. In the presence of easy entry and numerous (and growing) competitive alternatives, I conclude that the possibility of recoupment in the Florida residential LEC market is a truly implausible one.

As a general comment, I also note that the consensus that has emerged among the nation's antitrust practitioners is that predatory pricing is something that occurs rarely. In my view, the greater danger lies in "false positives": finding predatory pricing where none has occurred. Because in essence every predatory pricing claim involves an allegation that certain prices offered to consumers were *too low*, the consequence of a predation finding is to deny low prices to consumers. Therefore, this Commission or any regulatory body should be extremely cautious in evaluating allegations that a promotion such as BellSouth's is "predatory."

Q: DO YOU BELIEVE THAT BELLSOUTH'S REACQUISITION PROMOTIONS ARE "PREDATORY," BELOW-COST, OR OTHERWISE NON-COMPENSATORY WITH RESPECT TO THOSE REACQUISITION CUSTOMERS THAT LEAVE BELLSOUTH AFTER A BRIEF DURATION?

A: No. As I understand it, Supra would have the Commission focus on a narrow subset of BellSouth's reacquisition customers – those customers that switch to BellSouth, wait just long enough to obtain their cash-back promotion, and then switch back to another carrier. Supra essentially argues that because these "quick-switcher" customers stay with BellSouth only for a relatively brief period of time,[4] BellSouth does not fully recover its reacquisition costs as to these particular customers, and hence, BellSouth's Reacquisition Promotions in general are "non-compensatory" and impermissible.

I believe that this position, which would have the Commission focus on a subset of costs for certain customers, is entirely inconsistent with current antitrust thinking and sensible policy. There is no requirement in antitrust law that a firm, in offering a promotion, recover its cost vis-à-vis every individual customer. What matters for purposes of a below-cost pricing inquiry is not whether price is below cost as to a single customer or small subset of customers, but rather whether price is below cost *on a market-wide basis*. As one court concluded, in

[4] It is also worth noting that because a reacquisition customer must still have BellSouth's PreferredPack service when BellSouth approves the customer's redeemed coupon, the average customer will not actually receive his or her cash back check for two or three months even if he or she promptly mails in the cashback coupon.

determining that Northwest Airlines was not engaging in predatory pricing by offering passengers low-price seats on certain city-pairs, the only way to fairly evaluate the price-cost relationship is by looking at the *overall* pricing structure, not just low prices charged to a few customers.[5] While the low-price seats were priced below average cost as to specific flights, the test was to look at *all fares in the relevant market* (e.g., the airline routes involved), not just the low-price fares offered to the subset of passengers.

Similarly, the most widely adopted formulation of the below-cost pricing test focuses the inquiry on a comparison between price and *reasonably anticipated* or *expected future* average variable cost.[6] A firm structuring a promotional offering makes its plans based on the average customer's behavior in the marketplace. BellSouth, in creating its Reacquisition Promotions, does not reasonably anticipate that a large percentage of its reacquired customers will "take the money and run," so to speak, by switching back to a competitor immediately after receiving their cash-back check from BellSouth. Instead, BellSouth's reasonable expectation is that the average reacquisition customer would stay for a certain knowable duration – thirty-one months – and that, therefore, BellSouth would be able to fully recover the cost of the promotion on a market-wide basis.

This rule makes sense as a matter of policy and sound judgment. Economically rational telecommunications carriers do not structure their promotions to fully

[5] See *International Travel Arrangers v. NWA, Inc.*, 991 F.2d 1389, 1395-96 (8th Cir.), cert. denied, 510 U.S. 932 (1993).

[6] *See* P. Areeda & D. Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697, 716-17 (1975).

recover their costs for each and every customer, including "quick-switchers" that leave after an extremely brief period. The Commission should be very wary of grafting such a requirement upon Florida ILECs by adopting Supra's argument here. To force ILECs to account for their reacquisition promotional costs in such an irrational way would force all carriers to dramatically curtail both the number and the extent of their reacquisition promotions. The result, of course, would be higher prices for Florida consumers and less competition for their business. If the Commission continues to believe, as stated in its Key Customer Order, in the value of reacquisition promotions to Florida consumers, I believe that there is really only one sensible way for the Commission to proceed: by analyzing BellSouth's Reacquisition Promotions on a market-wide basis based on the duration of stay of the average BellSouth customer.

Q: ASSUMING FOR THE SAKE OF ARGUMENT BELLSOUTH WERE CHARACTERIZED AS A MONOPOLIST, WOULD YOUR VIEWS ABOUT BELLSOUTH'S REACQUISITION PROMOTIONS CHANGE?

No. I believe that, even if we all agreed that BellSouth could be characterized as a monopolist, which we do not, Supra's arguments with respect to BellSouth's Reacquisition Promotions are still invalid. It is a fundamental principle of modern competition law that even a monopolist is allowed to compete so long as it does not abuse its position in an effort to impermissibly maintain or extend its monopoly status or exclude its competitors. BellSouth's offering of promotions – or in other words, discounts to consumers – is not an illegitimate form of

competition for a firm with market power; instead, it represents exactly the sort of competitive vigor permitted of monopolists.

Also, even if we were to assume that BellSouth is a monopolist, this would not alter the underlying facts of this proceeding, as I understand them. As Dr. Taylor demonstrates, BellSouth is not offering "non-compensatory" service, and that is the only test the Commission need apply, *regardless* of BellSouth's market share. Despite Supra's wishes to the contrary, there is no separate, higher "umbrella" price that only those firms with high market shares cannot breach, and the Commission would do well to not establish one. BellSouth is doing nothing more than offering low prices to consumers. The Commission's policy should be to protect the ability of firms to offer low prices, not to protect inefficient firms *from* low prices.

Finally, as I noted above, the Florida telecommunications market is marked by the appearance of numerous new entrants, relying on new technologies to gain market share. Even if we were to assume that BellSouth has monopoly power and was pricing below cost, there is no conceivable way in which BellSouth could *maintain* its monopoly status long enough for recoupment to occur. To believe otherwise, one must think that BellSouth would be able somehow to block the cable, VoIP and wireless providers from entering the Florida local residential market, when in reality, they have all been gaining competitive beachheads at the expense of LECs.

Q: SHOULD BELLSOUTH BE REQUIRED TO OFFER REACQUISITION PROMOTIONS ONLY TO CUSTOMERS THAT SIGN LONG-TERM CONTRACTS WITH BELLSOUTH?

A: No. Supra implies that BellSouth's Reacquisition Promotions would be less objectionable if those customers that take the promotions were required to enter into long-term binding contracts with BellSouth of a sufficient duration so that BellSouth would fully recover its costs as to every customer. (Supra's Petition, at ¶ 24.) I believe such a "solution" is unnecessary because, as I described above, BellSouth's Reacquisition Promotions are not below cost when measured against a market-wide standard, i.e., based on the length of stay of the average BellSouth customer or reacquisition customer. Further, it is prudent to allow businesses to structure their promotional offerings as they deem best unless there is a clearly identifiable problem with the structure.

Q: SHOULD BELLSOUTH BE REQUIRED TO MAKE ITS REACQUISITION PROMOTIONAL OFFERS AVAILABLE TO ALL CUSTOMERS INSTEAD OF ONLY CLEC CUSTOMERS?

A: No. As I understand it, Supra would have the Commission require BellSouth to offer its reacquisition promotions to all customers, including its current customers, rather than only CLEC customers. Supra argues that BellSouth, by offering its promotion only to CLEC customers, is impermissibly discriminating between similarly situated customers, in violation of Florida statutes.

Preliminarily, I believe this argument fails on its own terms under Florida law, as the Commission has interpreted it in the Key Customer Order. Presumably, former BellSouth customers – who have already opted to leave BellSouth for a CLEC – are characterized by having different price elasticities of demand than current customers who elected to remain with BellSouth. Therefore, I believe that the CLEC customers targeted by BellSouth's Reacquisition Promotions are not similarly situated with BellSouth's existing customers (or ILEC customers, generally). This view also comports with current antitrust thinking, which supports the ability of firms to offer selective discounts or promotions in order to obtain new customers.

On policy grounds, I would also urge the Commission to be extremely cautious about adopting Supra's argument. As I have noted, it is the core of competition for a company to be able to present its rivals' customers with special discounts or promotions in an attempt to induce them to switch their patronage away from the rival. But if Supra's argument were followed to its logical conclusion, the ability of ILECs to carry out such reacquisition promotions would be vitiated entirely by prohibiting ILECs from targeting CLEC customers. By definition, how could a reacquisition promotion, aimed at winning back customers that have gone to a rival, be implemented if the promotion could not be targeted to those same customers?

If an ILEC is required – in order to offer a promotion to *any* customer – to offer an identical promotion to *all* of its customers, including its *current* customers, it would not in many instances make economic or business sense for the ILEC to

offer the promotion *at all.* Alternatively, if the ILEC ran the promotion regardless, it would have to offer significantly less favorable terms in order for the promotion to be cost-effective across all its existing customers and potential customers. The end result would be fewer promotions and higher prices for consumers. In sum, Supra's price discrimination argument amounts to a "back-door" method of achieving the same end it would hope to accomplish through its below-cost pricing claim: to make it impossible for Florida ILECs to compete vigorously for CLEC customers.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes.

EXHIBIT A

BIOGRAPHICAL INFORMATION

ROBERT PITOFSKY

2001 – Present	Professor of Law, Georgetown University Law Center; Of Counsel, Arnold & Porter
1995 – 2001	Chairman, Federal Trade Commission
May 1981 – June 1983, and July 1989 – 1995	Professor of Law, Georgetown University Law Center; Of Counsel, Arnold & Porter
July 1983 – June 1989	Dean and Executive Vice President for Law Center Affairs, Georgetown University Law Center
July 1978 – April 1981	Commissioner, Federal Trade Commission
1973 – 1978	Professor of Law, Georgetown University Law Center; Of Counsel, Arnold & Porter
1970 – 1973	Director, Bureau of Consumer Protection, Federal Trade Commission
1963 – 1970	Professor Law, New York University School of Law
1957 – 1963	Attorney, Dewey, Ballantine, Bushby, Palmer and Wood,

New York City

1956 – 1957 Attorney, Department of Justice, Washington, D.C.

EDUCATION

New York University, B.A., 1951; Phi Beta Kappa, Honors in English and History.

Columbia Law School, LL. B., 1954; Columbia Law Review.

OTHER ACADEMIC EXPERIENCE

Guest Scholar, Brookings Institution, 1989 - 1990.

Resident Scholar, Rockefeller Study and Conference Center, Bellagio, Italy, 1990.

Visiting Professor of Law, Harvard Law School, 1975 – 1976.

Faculty Member, Salzburg Seminar in American Studies, Salzburg, Austria, 1975.

HONORS

Lifetime Achievement in Antitrust Award from the American Antitrust Institute (2001).

Consumer Federation of America Public Service Award (2001).

Doctor of Laws (Honorary), Georgetown University, 1989.

Selected by Time Magazine as one of ten outstanding mid-career law professors, 1977.

Distinguished Service Award, Federal Trade Commission, 1972.

PUBLICATIONS

Co-author of Cases and Materials on Trade Regulation (with Harvey Goldschmid, Diane Wood), Foundation Press (5th ed. 2003).

Co-author of Cases and Materials on Antitrust (with Harlan M. Blake), Foundation Press 1967 (Supplement 1969).

Co-author of Antitrust Division and Federal Trade Commission Antitrust Policy, Chapter 3 in Changing America: Blue Prints for the New Administration (with Eleanor Fox), New Market Press (1992).

Co-editor of Revitalizing Antitrust in its Second Century (with Eleanor Fox and Harry First), Quorum Press (1992).

Federal Trade Commission Investigations, Chapter 48 in Antitrust Counseling and Litigation Techniques (with Merrick Garland) (vonKalinowski, ed., 1984).

Antitrust at the Turn of the 21st Century: A Matter of Remedies, 91 Georgetown Law Journal, 169 (2002).

Antitrust at the Turn of the 21st Century: A View from the Middle, 76 St. Johns Law Review, 583 (2002).

The Essential Facilities Doctrine Under U.S. Antitrust Law, 70 Antitrust Law Journal, 443 (2002) (with Donna Patterson, Jonathan Hooks).

Antitrust and Intellectual Property, Unresolved Issues at the Heart of the New Economy, 16 Berkley Tech L.J. 535 (2001).

Proposals for Revised United States Merger Enforcement in a Global Economy, 81 Geo. L.J. 195 (1992).

New Definitions of Relevant Market and the Assault on Antitrust, 90 Colum. L.Rev. 1805 (1990).

The Renaissance of Antitrust, 45 The Record of the Association of the Bar of the City of New York, 851 (1990).

Co-author of Antitrust Merger Policy and the Reagan Administration, (with Thomas G. Krattenmaker) 33 Antitrust Bulletin 211 (1988).

Introduction to the Antitrust Alternative (with Eleanor M. Fox), 62 N.Y.U. Law Review 931 (1987).

Antitrust in the Next 100 Years, 75 California L. Rev. 817 (1987).

Change in Administration, Change in Antitrust, Antitrust Magazine 24 (Winter, 1987).

A Framework for Antitrust Analyses of Join Ventures, 74 Geo. L.J. 1605 (1986), also published in 54 Antitrust L.J. 893 (1985).

Too Many Lawyers, Proceedings of the 45th Judicial Conference of the D.C. Circuit 305 (1984).

Why Dr. Miles Was Right, Regulation Magazine 27 (Jan./Feb. 1984).

In Defense of Discounters: The No-Frills Case for a Per Se Rule Against Vertical Price Fixing, 71 Geo. L.J. 1487 (1983).

Antitrust at Justice, 5 Justice Watch 7 (1982).

Giving the Giants More Leash, 3 Speaking of Japan 37 (1982).

Competition and Regulation, 77 Conference Bd. Bulletin 7 (1980).

Experience Curve Strategies and Antitrust, 90 Conference Bd. Bulletin 10 (1980).

The Political Content of Antitrust, 127 U. Pa. L. Rev. 1051 (1979).

The Sylvania Case: Antitrust Analysis of Non-Price Vertical Restrictions, 78 Colum. L. Rev. 1 (1978).

Beyond Nader: Consumer Protection and the Regulation of Advertising, 90 Harv. L. Rev. 1 (1978).

The FTC Improvements Act, 45 Antitrust Law Journal 117 (1976).

Advertising Regulation and the Consumer Movement, Part One of Issues in Advertising (AEI Publication, Tuerck ed., 1975)

Changing Focus in the Regulation of Advertising, Chapter 7 in Brozen, Advertising and Society, University Press, 1974.

Regulation Under Fire; Consumers, the Environment, the Economy, and the Impact of Change: A Panel, 8 Columbia Journal of Law & Policy Problems 33 (1971).

Arbitration and Antitrust Enforcement, 25 Arbitration Journal 40 (1970).

Marketing and Franchising: Antitrust Prognosis for the 70's: A Panel, 39 A.B.A. Antitrust Law Journal 502 (1969-1970).

Joint Ventures Under the Antitrust Laws: Some Reflections on the Significance of Penn-Olin, 82 Harv. L. Rev. 1007 (1969).

Is the Colgate Doctrine Dead? Affirmative of the Debate, 37 A.B.A. Antitrust Law Journal 772 (1968).

Co-author of Antitrust Consequences of Using Corporate Subsidiaries (with Everett I. Willis), 43 N.Y.U. L. Rev. 20 (1968).

Book Review: Regulatory Bureaucracy by R.A. Katzman, 90 Yale L. Reb. 726 (1981).

Book Review: Invitation to an Inquest by Walter and Miriam Schneir, 65 Colum. L. Rev. 608 (1966).

Book Review: In A Few Hands: Monopoly Power in America by Estes Kefauver, 40 N.Y.U. L. Rev. 816 (1965).

PROFESSIONAL ACTIVITIES

Commission Counsel to the American Bar Association, Commission to Study the FTC (Report issued Sept. 15, 1969).

Chairman, Committee on Consumer Protection, Antitrust Section of the American Bar Association (1970 – 1972).

Chairman of the Board of Directors, Institute for Public Interest Representation, Georgetown University Law Center (1973 – 1978).

Member of the Board of Directors, Society of American Law Teachers (1973 – 1977).

Member of the Task Force on Regulatory Reform, U.S. Senate Government Operations Committee (1975 – 1977).

Member of the Council, Administrative Conference (Presidential Appointment) (1980 – 1981).

Chairman of the Antitrust Section, AALS (1971 – 1972 and 1982 – 1983).

Member of the Board of Advisers, Columbia University Center for Law and Economic Studies (1975 – 1995).

Chairman of the National Institutes, Antitrust Section of the ABA (1982 – 1983).

Member of the Board of Governors, District of Columbia Bar Association (1981 – 1984).

Chairman of the Advisory Board, Georgetown Study of Private Antitrust Litigation (1984 – 1985).

Member of the Council, Antitrust Section of the ABA (1986 - 1989).

Member of the Board of Directors, Craig Corporation (1986 – 1992).

Member of the Special Committee on Gender Bias in the Courts, District of Columbia Bar Association (1987 – 1990).

Member of the Committee on the FTC, Antitrust Section of the ABA (1988 – 1989).

Chair, Clinton Administration Transition Team Reporting on Antitrust Division of the Department of Justice, Jan. 1993.

Chair, Defense Science Board Task Force on Antitrust Aspects of Defense Industry Downsizing, March 1994.

Member, Washington Advisory Committee to Lawyers Committee on International Human Rights (1992 – 1995).

Member, American Law Institute (1983 - Present).

Fellow, American Academy of Arts and Sciences (2000 – Present).