EFFECTS OF CONSOLIDATION ON THE STATE OF COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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CONTENTS

HEARING DATE

OPENING STATEMENT

WITNESSES

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

APPENDIX

EFFECTS OF CONSOLIDATION ON THE STATE OF COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY

WEDNESDAY, JUNE 24, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 10:08 a.m., in Room 2141, Rayburn House Office Building, Hon. Henry J. Hyde (chairman of the committee) presiding.

Present: Representatives Henry J. Hyde, Bill McCollum, George W. Gekas, Howard Coble, Lamar S. Smith, Charles T. Canady, Ed Bryant, William L. Jenkins, Asa Hutchinson, John Conyers, Jr., Howard L. Berman, Robert C. Scott, Melvin L. Watt, Zoe Lofgren, Sheila Jackson Lee, Maxine Waters, William D. Delahunt, and Steven R. Rothman.

Staff Present: Joseph Gibson, Chief Antitrust Counsel; and Maria Tamburri, Professional Staff.

OPENING STATEMENT OF CHAIRMAN HYDE

Mr. HYDE. The committee will come to order. Today the committee conducts the third in a series of oversight hearings on recent mergers. Our focus today will be on the effects of consolidation on the state of competition in the telecommunications industry. We began the series with a hearing on airline alliance agreements on May 19, and we continued it with a hearing on financial services mergers on June 3.

I would like to begin by saying almost exactly the same thing I said at the other two hearings. Not all telecommunications mergers are the same. Each one has different traits and each one should be judged on its own merits. That said, I will also say that each one deserves a careful review by the agencies that are before us, and I hope each of the agencies will conduct that careful review with respect to all the aspects of their differing approaches, which I will describe in a moment.

At any rate, I do not have any preconceived opinion as to whether these mergers are pro-competitive or anti-competitive. But I wanted to hold this hearing to learn what both the proponents and the critics have to say. These mergers are big and their effects on the economy are widespread. For that reason, we should have a public debate about their pluses and minuses and I am hopeful today's hearing will contribute to that debate.

Our being here today reminds me of the hours we spent in the Telecommunications Act conference in late 1995 and early 1996. At the time no one had give much thought to telephone company mergers. During the conference we discovered, to our dismay that, an anachronistic provision of the law exempted such mergers from the normal Hart-Scott-Rodino Act antitrust review that covers most large mergers.

My friend John Conyers and I and other members of this committee who sat on the conference committee thought that in the new competitive world telephone mergers would require scrutiny by an antitrust enforcement agency. We fought a difficult battle to have these mergers reviewed by the Department of Justice under the normal Hart-Scott-Rodino process, and in the end we were successful.

At the time, many critics scoffed at our efforts arguing that there was no possibility that any of the major telephone companies would want to merge. As today's hearing will demonstrate, events have proved us right many times over. Indeed, just this morning we see in the paper that the largest long distance company, AT&T, may merge with one of the largest cable companies, TCI.

Given all of this activity, these provisions are one of this committee's greatest contributions to the Act, and I am pleased that Mr. Conyers and I have and the other conference committee members succeeded in our efforts. So after the passage of the Act, mergers of telephone companies are reviewed by the Department of Justice under the normal Hart-Scott-Rodino process.

However, in that review, the Department of Justice is limited to determining whether the merger would violate the antitrust laws. To protect competition and consumers, the Department of Justice necessarily must make a predictive judgment about the effects of the merger on competition and then ability on that judgment.

Once a merger is consummated, there is no realistic way to take the companies apart. The FCC also plays an important and indeed broader role. It reviews mergers between telephone companies to determine whether the public interest, necessity, and convenience will be served by the merger. In conducting its public interest review, the FCC is not limited to a competitive analysis but may also consider other regulatory goals in deciding whether to approve or disapprove the merger.

Finally, State regulators in the affected States must review mergers for compliance with applicable State law standards. The MCI-WorldCom merger has also drawn review by the regulators of the European Union. These regulators have played a very active role in this merger and I expect they will play an increasing role in the coming years in reviewing mergers of what we tend to think of as American companies.

I have no preconceived opinion about this issue. However, I note that it is one that we have not delved into in any great detail before and I think the MCI-WorldCom merger will allow us to learn more about how that process works.

I understand that the mergers we are considering this morning are still under review by the various regulators and that may limit the comments of our witnesses in some respects. I would say to the witnesses to tell us as much as you can within the appropriate bounds, but let us know when you need to stop.

Also, I want to say to members that the scope of this hearing is not limited to MCI-WorldCom and SBC-Ameritech. You should feel free to ask questions about any telecommunications merger. Also, you should not feel limited to the telephone aspects of these mergers. If there are other aspects that are relevant, for example cable television or international aspects, you should feel free to ask about those as well.

With that I turn to Mr. Conyers for an opening statement if he chooses.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today the committee conducts the third in a series of oversight hearings on recent mergers. Our focus today will be on the effects of consolidation on the state of competition in the telecommunications industry. We began this series with a hearing on airline alliance agreements on May 19, and we continued it with a hearing on financial services mergers on June 3.

I want to begin by saying almost exactly the same thing that I said at the other two hearings. Not all telecommunications mergers are the same. Each one has different traits, and each one should be judged on its own merits. Having said that, I will also say that each one deserves a careful review by the agencies that are before us, and I hope each of the agencies will conduct that careful review with respect to all the aspects of their differing approaches which I will describe in a moment.

At any rate, I do not have any preconceived opinion as to whether these mergers are procompetitive or anticompetitive, but I wanted to hold this hearing to learn what both the proponents and the critics have to say. These mergers are big, and their effects on the economy are widespread. For that reason, we should have a public debate about their plusses and minuses, and I am hopeful that today's hearing will contribute to that debate.

Our being here today reminds me of the hours we spent in the Telecommunications Act conference in late 1995 and early 1996. At the time, no one had given much thought to telephone company mergers. During the conference, we discovered to our dismay that an anachronistic provision of the law exempted such mergers from the normal Hart-Scott-Rodino Act antitrust review that covers most large mergers.

My friend John Conyers and I, and other members of this committee who sat on the Conference Committee, thought that, in the new competitive world, telephone mergers would require scrutiny by an antitrust enforcement agency. We fought a difficult battle to have these mergers reviewed by the Department of Justice under the normal Hart-Scott-Rodino Act process. In the end, we succeeded.

At the time, many critics scoffed at our efforts arguing that there was no possibility that any of the major telephone companies would want to merge. As today's hearing will demonstrate, events have proved us right many times over. These provisions were one of this committee's greatest contributions to the Act, and I am pleased that Mr. Conyers and I and the other Conference Committee members succeeded in our efforts.

So, after the passage of the Act, mergers of telephone companies are reviewed by the Department of Justice under the normal H–S–R process. However, in that review, DOJ is limited to determining whether the merger would violate the antitrust laws. To protect competition and consumers, the DOJ necessarily must make a predictive judgment about the effect of the merger on competition and then act on that judgment. Once a merger is consummated, there is no realistic way to take the companies apart.

The FCC also plays an important, and indeed broader, role. It reviews mergers between telephone companies to determine whether "the public interest, necessity, and convenience" will be served by the merger. In conducting its public interest review, the FCC is not limited to a competitive analysis, but may also consider other regulatory goals in deciding whether to approve or disapprove the merger. Finally, state regulators in the affected states must review mergers for compliance with applicable state law standards.

The MCI-WorldCom merger has also drawn review by the regulators of the European Union. Those regulators have played a very active role in this merger, and I expect that they will play an increasing role in the coming years in reviewing mergers of what we tend to think of as "American" companies. I have no preconceived opinion about this issue. However, I note that it is one that we have not delved into in any great detail before, and I think the MCI-WorldCom merger will allow us to learn more about how that process works.

I understand that the mergers we are considering this morning are still under review by the various regulators I have described, and that may limit the comments of our witnesses in some respects. I would say to the witnesses to tell us as much as you can within the appropriate bounds, but let us know when you need to stop.

Also, I want to say to members that the scope of this hearing is not limited to MCI-WorldCom and SBC-Ameritech. You should feel free to ask questions about any telecommunications merger. Also, you should not feel limited to the telephone aspects of these mergers. If there are other aspects that are relevant, for example, cable television or Internet aspects, you should feel free to ask about those as well.

With that, I will turn to Mr. Conyers for an opening statement.

Mr. CONYERS. Thank you, Chairman Hyde, and good morning, committee. I am very pleased that this committee has for the second time in as many weeks chosen to look into the unprecedented wave of mergers that are going on in our economy. The Telecommunications Act was supposed to have ushered in a new era of vigorous competition to the telephone and cable industries. And 2 years later, the local Bell monopolies still control 98 percent of the local hold. The incumbent cable operators maintain relative monopolies in most of their markets, and consumers are experiencing price increases for both cable and local telephone service.

We are examining 3 of the 10 largest mergers in American history. We had a similar recitation of facts when we were looking at the mergers of a couple weeks ago, the biggest ones ever, and no letup in the rate and the size of this kind of economic activity.

Now the easiest one to criticize of course is the MCI-WorldCom merger, so easy I will not even talk about it today. But I suppose some of my labor friends would like me to be happy about Southwestern Bell. And I do not know why I am not. We have got some very big problems. And I am asking myself if we need to really go into antitrust legislation, Chairman Hyde. It may be now that the rules that we have played by for most of this century have now been overcome by the size and the strategies and the techniques that now exist.

So we can be reviewing these matters, but it may be that there is a deeper problem than whether two international corporations can craft a set of documents that get inside the regulations and the laws of the United States.

We may need something more than that. And so, I come here with a renewed concern that the regulations, and the regulators are not vigorous enough, that the industry promises are always seductive but we do not have enough antitrust enforcement. The FCC needs to be doing a lot more in terms of bringing down these current market prices. And I think the Congress too will have to act, not merely in furnishing our agencies with the resources that are needed for the kinds of ideas we have, but to again look at the basic laws and premises that have governed this part of the law for so long.

The telecommunications ability itself, after 2 years, needs to be rewritten, but that is not nearly as difficult as the suggestion that we began to reexamine some of the basic Sherman-Clayton antitrust laws that have governed us for most of this century.

So I am here, like the chairman and my other colleagues, happy to welcome all of the witnesses and continue the examination of perhaps the most important part of the Judiciary Committee's jurisdictional responsibility.

Thank you.

Mr. HYDE. Thank you, Mr. Conyers. To the rest of the committee, if you have an opening statement, I would appreciate your forbearance in offering it for the record because we have a very long schedule of witnesses and your cooperation would be helpful. So if nobody has a burning need to make an opening statement, I would appreciate it and if you have any we will see that they are made a part of the record.

Thank you very much.

Our first panel consists of two witnesses from government agencies that are involved very much in the issues we are considering today. On behalf of the Antitrust Division of the Department of Justice, we have the Assistant Attorney General for Antitrust Joel Klein.

Mr. Klein graduated from Columbia University and the inevitable Harvard Law School. After law school, he clerked for Supreme Court Justice Lewis Powell before going into private practice from 1976 to 1993. From 1993 to 1995, he served as deputy counsel to the President. In 1995, he moved to the Antitrust Division and became its head in July 1997.

On behalf of the Federal Communications Commission, we have Commissioner Susan Ness. Commissioner Ness is a graduate of Douglas College and Boston College Law School. She also has an MBA from the Wharton School at the University of Pennsylvania.

Commissioner Ness has served on the staff of the House Banking Committee and the National Women's Political Caucus. She has also been active in local politics in Montgomery County, Maryland. President Clinton appointed her to the Commission in 1994 and her term expires in June 1999.

We welcome both of you and look forward to your testimony, and request that you reduce your testimony to about 5 minutes. We won't be precise. And the full statement that you have prepared will be made a part of the record.

And so, shall we go with you, Mr. Klein.

STATEMENT OF JOEL KLEIN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. KLEIN. Thank you, Mr. Chairman. I am delighted to be here on what are certainly timely hearings on important issues for American consumers and the economy.

Mr. Chairman, Mr. Conyers, members of the committee, I think as we look at the issue of what is going on in the telecommunications industry—and particularly the issues with respect to mergers, acquisitions, consolidation, and restructuring—we ought to take a step backward and think a little bit about where we are in the history of this process. Today, in most countries, telephone services are a monopoly, and in the United States for most of our history, telephone services were a monopoly. It was only beginning really with the Department of Justice's efforts with respect to the AT&T litigation and the culmination of that litigation and the successful consent decree that we began to see market forces take hold.

The second major step in that deregulatory process was the 1996 Act. We are now in the process of a major deregulatory effort, one that is complex and important but is absolutely right in its goal and its focus.

In my view, competition is the solution to the problem. Regulation is easier than the deregulatory process—that is the unfortunate fact—because regulation has certainty and so forth. But there is no way to get from where we were to where we need to go without going through the rather numerous bumps on this road. But that process is working. It is not working as quickly as everyone would like, the benefits are not as obvious in the short term, but it is working.

If you look at the amount of money that is being invested today in response to the '96 Act, invested in infrastructure in terms of telephone delivery throughout this Nation, what you see is a very optimistic picture. People are betting on the success of competition in the future. And we are beginning to see some real signs that on the business end of the spectrum there is competition even for local telephony.

Now that is no answer to the residents and the consumers who are not getting the full benefits, but it is a sign of things that could come. We are beginning to see new technologies being converted so that there could be alternative means of access to the homes. There are some early and promising signs with respect to cable and with respect to wireless.

In addition, we are beginning to see at the same time global markets opening up, and so telephone service is no longer going to be simply a domestic issue. And indeed when you start to look at things like the Internet, we already are in a global market.

The point I want to emphasize as I say a few words about mergers is that this is a complex critical dynamic process, and it is not surprising. When you look at issues like the movement from regulation to deregulation, like the convergence of various technologies, like the opening of global markets, you will see significant industrial restructuring and that as a concept is neither good nor bad, it is inevitable.

Mr. Chairman, you mentioned the repeal of section 221 of the Communications Act. Let me thank you and Mr. Conyers because I agree you had the right view and the great foresight when you knocked down section 221 and shored up our role because I think this is the right role and the right process. What we need to do is separate the wheat from the chaff when it comes to these mergers, to decide which ones will be good for the economy, good for America's consumers, create more competition and more options. Some mergers will certainly do that. Most mergers I suspect are likely to do that. Some may not.

Our job is to do the hard work and there is no short answer. There is no formula. There is no philosophy. You have got to go in particularly in these dynamically changing markets and do the hard work to actually look at the documents of the players in the market, to look at what their anticipated competitive strategies are, to see where new entrants are going to come from, to see where the opportunities for new entrants are going to come from, to see how globalization is going to affect it.

That is what we have done, Mr. Chairman. That is what we are doing as we speak right now with respect to a merger such as MCI-WorldCom, and that is what we will do with respect to all of these mergers. It is significant. It is important. And you have my personal commitment that we will do the hard work to separate those that are good for consumers and good for America from those mergers that can undermine competition. And that is going to take time and the commitment of resources, and we need the support of this Congress.

Again, I thank the chairman and Mr. Conyers for your personal support in this regard. I also just want to mention in conclusion that when we do this process we do not do it in a vacuum. Not only do we work intermittently with the companies that are involved, and it is true that some of these people at one point may be concerned about one merger even if they themselves may propose an alternative, so it is a dynamic and multi-faceted process. We work very closely as well with our colleagues at the FCC. And I think it is fair to say that that relationship is excellent. I think it is an eye-to-eye professional relationship.

We have different statutory mandates. We respect the fact that we have different responsibilities. But we understand that we are part of one government and we work effectively together. I am pleased to be here with Commissioner Ness, and I have a very, very high regard for Chairman Kennard and the other members of the Commission. We also work with the States, who have an interest in this matter, and with their public service commissions, public utilities commissions and also with the State attorneys general. And finally, as you mentioned, Mr. Chairman, we now increasingly have to work with foreign competition authorities because in global markets the mergers that we are looking at may also have an impact on consumers in other countries.

I want to say two things in that regard. First of all, I think it is in everyone's interest, the interest of business, the interest of government, for us to work effectively and cooperatively. We don't need a multiplicity of different views and different remedies. On the other hand, despite what people may read in the newspaper—and I have read some strange things about other people suggesting that the European Commission was taking the lead with respect to MCI-WorldCom—we do our own work, we make our own decisions, and we stand behind them. We work in a cooperative way to understand each other's work. But I can assure you throughout that process and every other merger that we do, in the end the Department of Justice makes its decisions based on the antitrust laws of the United States. We believe in those laws.

Section 7 of the Clayton Act has served this country well and we think that is the right path as we work through the rather remarkable and unique circumstance of telephone restructuring in the United States.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Klein follows:]

PREPARED STATEMENT OF JOEL KLEIN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Good morning, Mr. Chairman and members of the Committee. I am pleased to appear before you today to share the Justice Department's perspective on the mergers taking place in the telecommunications industry. These hearings are timely, as there is a significant amount of merger activity taking place in this industry. These mergers are being fostered not only by changes in the law and regulatory framework—most notably the enactment of the Telecommunications Act of 1996—but also by the advent of new technologies and other dramatic changes taking place in the marketplace.

The last two years have witnessed mergers and alliances involving major players in the telephone, long-distance, media, and cable industries, including some of the largest and most prominent firms. These transactions, which affect consumers across the United States, often present novel and complex issues and need to be investigated carefully. As competition replaces regulation in the telecommunications industry, the merger and alliance activity is likely to continue, and vigorous antitrust enforcement is important if we want to continue to chart a path that will give rise to the important consumer benefits—including lower prices, greater choices, higher quality, and more innovative product offerings—that competition makes possible.

This is a challenging time for the Antitrust Division, and I want to talk about the Department's role in reviewing these mergers to ensure that they do not create or facilitate the exercise of market power and lead to increased prices, restricted consumer choice, or reduced innovation. As this Committee well knows, the Telecommunications Act not only preserved this important role, but also strengthened it by eliminating Section 221(a) of the Communications Act of 1934, which had immunized mergers between telephone companies from antitrust review if approved by the FCC. I want to thank this Committee once again for its instrumental help in securing that important change in the legislation.

I will also touch on how we interact with the FCC, the States, and increasingly, foreign antitrust authorities. We have benefitted greatly from interacting closely—to the extent permitted by confidentiality laws—with our colleagues at the FCC, with the State public utility commissions, with the State attorneys general, and with our foreign counterparts. The task of promoting and preserving competition in an industry that is emerging from regulation is an enormous undertaking, and active cooperation among governmental agencies at all levels that are involved in reviewing telecommunications mergers, within the limits of our confidentiality requirements, is of tremendous benefit to accomplishing this task.

ASSESSING THE TELECOMMUNICATIONS MERGER WAVE

A number of observers are questioning whether all this merger activity is good for the economy and for consumers. Some have remarked that the Telecom Act was passed in order to increase competition, but instead we are seeing a merger wave. To the extent that these statements reflect frustration with the fact that developments in the industry have not followed the sequence or the timetable that some of the Act's supporters predicted, they are understandable. As I have said previously before this committee, I believe the Act provides a workable framework that will bring competition to the local market and eventually benefit America's consumers. It will take time, some patience, and a lot of perseverance. We in the Antitrust Division are committed to working hard and going the distance to make the Act fulfill its competitive promise.

To the extent that statements contrasting competition with mergers and restructuring might be interpreted to suggest that the two are somehow inherently incompatible, I would take issue with that suggestion. Mergers can be a natural response by firms in an industry that is undergoing change. And the telecommunications industry is in the midst of not only profound technological change, but unprecedented regulatory change as well. So an increase in merger activity was to be expected in this industry, even in the absence of the larger merger wave taking place throughout the economy. Most mergers and other business alliances foster efficiency and thus bring increased benefits to consumers and businesses.

Sometimes, of course, a particular merger is incompatible with competition. And it is our job to identify anticompetitive mergers and take whatever remedial action is necessary. We do that by carefully examining each merger on its own particular facts.

We analyze mergers in the telecommunications industry using the same principles that we use in other industries. Essentially, we look to see if the proposed merger would eliminate current competition or future potential competition in a way that harms consumers. We investigate and analyze factors such as market concentration, potential adverse effects, ease of entry into the market at issue, and efficiencies likely to be created by the merger. We do this by a thorough analysis of the information contained from a wide range of sources, including the business plans of the merging parties and other players—their anticipated methods of entry, the products to be offered, market share projections, and likely impacts on the market.

Our analysis includes looking to see if the merger would lessen innovation in developing new technologies. From the Division's perspective, the ideal competitive environment should enable the development of as many different conduits or points of entry as possible—be it cable, telephone, wireless, as well as other emerging technologies—in order to link people with all kinds of content—voice, video, and audio, and so on.

Because we are a law enforcement agency, we do not take action to "improve" on a proposed merger, unless we first conclude that the merger as proposed would violate the antitrust laws. We do not have the kind of broad "public interest" standard that the FCC has as a regulatory body when it evaluates proposed mergers within its jurisdiction, which the FCC has interpreted to require that a merger enhance competition in order to be approved. Instead, as a law enforcement agency, we have the burden of proving that a merger is anticompetitive and illegal.

When we do identify an anticompetitive aspect to the merger, we are often able to address it through a focused divestiture or, in some cases, a focused injunctive decree that will remedy the problem while permitting the rest of the merger to go forward, so as not to interfere with activity that does not raise concerns. Sometimes, however, there is no workable remedy short of challenging the merger in its entirety.

Our general approach is reflected in the challenges we have brought to radio mergers over the last two years. There has been significant consolidation in radio station ownership since Congress, as part of the Telecommunications Act of 1996, lifted the regulatory cap on the number of radio stations that could be commonly owned in a single local market. Prior to that, radio station acquisitions invariably ran up against the regulatory cap before antitrust questions arose. As a result of the new latitude for radio station mergers that the Telecom Act opened up, it became possible for mergers to reach the threshold for antitrust concern before they began to approach the new regulatory cap. Since enactment of the Telecom Act, there have been literally hundreds of radio station mergers for us to review. We concluded that, while the vast majority of them did not raise any antitrust concern, a total of 15 of those mergers would be anticompetitive, and we took action to preserve competition in those matters.

In industries undergoing rapid change, such as the telecommunications industry, it is particularly important that antitrust enforcers be able to consider not only a merger's likely effects on competition now taking place, but also on competition likely to take place absent the merger. This is especially important where competition has been precluded by law in the past, and where technological change is making competition possible where it was not before.

A good recent example of a telecommunications merger challenge in which we are focusing on potential competition is the pending suit we filed last month to prevent Primestar from acquiring the direct broadcast satellite (DBS) assets of News Corp. and MCI. We concluded that the proposed acquisition would allow five of the largest cable companies in the U.S., who control Primestar, to protect their cable monopolies and keep out new competitors. As you know, DBS is an alternative method of providing multiple channels of television programming to consumers. Under the proposed acquisition, News Corp./MCI would transfer to Primestar authorization to operate 28 transponders at the 110 west longitude orbital slot and two high-power DBS satellites currently under construction. The 110 slot is one of only three orbital slots that can be used to provide high-power DBS service to the entire continental U.S., and is the last position available for independent DBS firms to use or expand into.

As we have alleged in our complaint, high-power DBS is the most serious competitive threat the cable industry has ever faced and, in many areas, is the only significant competitor to cable. Primestar would have no incentive to use the valuable 110 capacity to compete aggressively against cable companies because doing so would "cannibalize" its owners' existing cable subscribers. Thus, acquisition of these assets by Primestar's cable owners would prevent an independent firm from using the assets to compete directly and vigorously with their cable systems. In the end, the transaction would deny millions of American consumers the benefits of competition, including lower prices, higher quality, better service, greater choice, and increased innovation.

No one should presume that our decision not to challenge the Bell Atlantic/ NYNEX merger, or the SBC/ PacTel merger, or any other merger, or our decision to challenge a particular merger, such as the Primestar merger, indicates what our decision will necessarily be with respect to any future merger. We evaluate each merger on its own facts, including the current and likely future state of the affected markets. We believe the antitrust laws are adequate to the task of protecting competition with respect to all mergers, including telecommunications mergers. We believe they strike the right balance in allowing us to stay out of the way of pro-competitive or innocuous mergers, while giving us full authority to challenge anti-competitive mergers when we find them.

INTERACTION WITH OTHER AGENCIES

As I mentioned earlier, in reviewing mergers in the telecommunications industry, we interact closely—to the extent permitted by confidentiality laws—with our colleagues at the FCC, with the State attorneys general, with the State public utility commissions and, increasingly, with our foreign counterparts. We believe this kind of active cooperation is of tremendous benefit to our merger enforcement efforts.

Let me first say a few words about the interaction between the Department of Justice and the FCC. We have had a longstanding and close working relationship with the FCC. Where both the FCC and DOJ share jurisdiction over a transaction, we work together to learn the issues, consistent with applicable confidentiality requirements. We provide the FCC with our competitive analysis, and the FCC may, if it chooses, condition its license grants on the relief ordered by the Justice Department.

Even though both we and the FCC have a role in analyzing the competitive impact of proposed mergers, our distinct statutory responsibilities and missions are reflected in substantive and procedural differences in our merger reviews. The FCC applies the "public interest" test under the Communications Act, while the Justice Department applies the "may substantially lessen competition" test of section 7 of the Clayton Act. Parties seeking FCC approval of a merger have the burden to prove that their merger is in the public interest, which the FCC has interpreted to require proof that the merger will *enhance* competition, while the Justice Department, as one of the parties in an antitrust enforcement action, has the burden of proof that the merger will substantially *lessen* competition. And the FCC is an independent regulatory agency whose decisions are accorded substantial deference by reviewing courts, while the Justice Department's views are entitled to no special weight. As a result of these differences, although this has not often occurred, there may be proposed mergers that do not lead to antitrust challenge by the Justice Department but do lead to regulatory intervention by the FCC. Given our somewhat different responsibilities and authorities, both agencies have worked very hard to ensure predictability consistent with our respective roles.

We also work closely with the States, who have enormous responsibilities with respect to promoting competition in their telecommunications markets. The Antitrust Division has placed a very high priority in working closely with State public utility commissions, both in the section 271 long distance entry process and, when permitted by confidentiality constraints, in mergers. In acquisitions of telecommunications carriers with State licenses, in most States the regulators must approve the transfer of the license to the acquiring firm.

We also work closely with the State attorneys general. They not only have standing to enforce Section 7 of the Clayton Act, but many also have authority under State merger statutes. In recent years, we have worked very closely with the State attorneys general in merger matters, producing an unprecedented number of joint and coordinated resolutions. The collaboration with the States has the benefit not only of promoting consistent results and of sharing information, but also of reducing the burden and delay associated with merger reviews.

With increasing frequency, telecommunications mergers have implications for competition and consumers in more than one country or continent, and the Justice Department finds itself reviewing merger transactions and joint ventures that are also being considered by foreign competition authorities. We have endeavored to work constructively with our foreign counterparts—again, consistent with applicable confidentiality requirements. In the past, we have worked with foreign antitrust authorities in evaluating other telecommunications transactions, such as the Sprint/ France Telecom/Deutsche Telekom joint venture, in which we worked closely on that matter with the European Union and had discussions with the German and French competition authorities. And as press reports indicate, the Justice Department and the European Union are both currently reviewing the proposed MCI/WorldCom merger.

It is our expectation that this trend will continue and accelerate in the wake of the World Trade Organization basic telecommunications agreement concluded a little over a year ago. This historic pact between 68 countries plus the European Union, accounting for more than 90 percent of the world's telecommunications companies' revenues, will open their markets in varying degrees to foreign competition and foreign investment.

Some foreign antitrust authorities have enforcement standards that differ in some respects from ours. Because of these different standards, and because we make our own independent sovereign decisions, there is always the possibility of divergent decisions, such as arose last summer when the Federal Trade Commission and the DG IV of the Commission of the European Communities reached different conclusions with respect to the Boeing/McDonnell-Douglas merger. While that kind of divergence is unique in our experience, we should explore ways to temper any recurrence and, to that end, we and the FTC have been working closely with DG IV. Given concerns about national sovereignty, navigating these waters—along with other issues raised by multi-jurisdictional merger review—will not be easy.

On this point let me emphasize that, notwithstanding the great strides we have made in cooperative merger enforcement with the EC, the Department of Justice makes its own decisions, based on U.S. antitrust law, in all of its matters, independent of the enforcement decisions or interests of the EC or any other foreign competition authority. While cooperation can be very beneficial in cases where two different antitrust authorities are reviewing the same matter, we will not permit such cooperation to affect the independence of federal antitrust enforcement in the United States, with respect to any matter.

CONCLUSION

The challenges facing the Antitrust Division in staying on top of the enormous merger wave, in telecommunications and throughout our economy, are monumental. The technological complexity and rapid pace of innovation in the telecommunications industry in particular require careful attention to ensure that consumers receive the benefits of a competitive marketplace. Antitrust review of telecommunications mergers presents a multitude of challenging issues. We in the Antitrust Division are committed to meeting this challenge. We appreciate the bipartisan support of this Committee over the years, and look forward to maintaining our good working relationship to meet the challenges of the coming months and years.

Mr. HYDE. Thank you, Mr. Klein.

Commissioner Ness.

STATEMENT OF SUSAN NESS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, DC

Ms. NESS. Thank you, Mr. Chairman. Mr. Chairman, Mr. Conyers, members of the committee, thank you for this opportunity to appear before you today. I am pleased to join my friend Joel Klein in this morning's panel. He has very eloquently described the state of competition in the telecommunications marketplace. I am not sure I can add much more to his description other than to agree wholeheartedly that the Commission and the Justice Department, as well as the Commission and the Federal Trade Commission and the Commission and our State colleagues, are all working cooperatively to ensure that the goals and benefits of the Telecommunications Act are realized for the American consumer.

As you know, the FCC and Justice Department play complementary roles in reviewing communications industry mergers. We also work together on a variety of other matters that relate to the historic changes that were set in motion by the Telecommunications Act. I would underscore, and I appreciate your sensitivity to, the fact that the Commission makes its decisions on mergers only after we compile and review an entire record. And therefore, I am unable to comment on the merits of any pending merger, announced merger, rumored merger, merger du jour, whatever it might be, and nothing I say today should be construed as expressing my views as to the merits, if any, of any such transaction.

I commend the committee for holding this hearing today. As has been described, this is a very dynamic sector. It is one that leads in job growth and new products and services. Increasingly, communications is transforming how we live and learn and work.

The Telecommunications Act was intended to accelerate many of the changes by striking down barriers to entry by new competitors and generally paving the way toward more competition and less regulation, more innovation and consumer services and lower prices.

As Mr. Klein enumerated, there are significant signs of progress toward the goals embodied in the Telecommunications Act. It is a transition period of time. Many mergers that have occurred or have been proposed or are now being considered make this hearing particularly timely. We have to ask the question: does consolidation strengthen the prospects for competition and consumer benefits, or does it decrease them?

As the independent agency with primary responsibility for advancing Congress's goals in the communications markets, we have a statutory obligation to determine whether a merger between telecommunications firms is in the public interest. In carrying out this obligation, we examine how the proposed transaction will affect the development of competition in all communications markets. The public interest also requires the FCC to balance the potential procompetitive effects of a transaction with its anti-competitive effects and to consider other factors pertaining to the overall public interest.

Although the Justice Department and the Commission are of course concerned first and foremost with the goal of competition, the agencies have different responsibilities and different processes. The Department of Justice focuses solely on whether a potential merger violates the antitrust laws. The Commission's public interest directive permits the assessment of effects of a potential merger on other provisions and goals of the Communications Act.

I am mindful that having both the FCC and the Justice Department involved in a merger creates the potential for additional costs and delays in the consummation of business transactions. We are very sensitive to that issue. But my experience tells me that the FCC and the Justice Department (or in some cases the FCC and the Federal Trade Commission), can both play constructive roles. We can cooperate consistent with the need for confidentiality to avoid unnecessary duplication and delays to build public confidence and to produce better outcomes for the American consumer.

At this time of truly historic changes in communications technologies communications law, and the role of communications in our economy and our culture, the work of both agencies has never been more important. I want to thank you again for the opportunity to appear, and I would be delighted to answer any questions.

[The prepared statement of Ms. Ness follows:]

PREPARED STATEMENT OF SUSAN NESS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, DC.

INTRODUCTION

Mr. Chairman and Members of the Judiciary Committee. Thank you for this opportunity to appear before you today to discuss mergers and consolidation in the telecommunications industry. I commend the Committee for holding this timely and important hearing as part of your oversight on the state of competition in several key U.S. industries. I am pleased to join my friend, Assistant Attorney General Joel Klein, on this morning's panel. The FCC works in tandem with the Department of Justice on merger review and a variety of other matters related to the Commission's discharge of its statutory responsibilities under the Communications Act.

The communications and information sector of our economy leads all other sectors in job growth and the development of new products and services. Recent mergers between large carriers—the focus of this morning's hearing—illustrate the size of this industry. Assuming the approval and consummation of two pending deals, three of the ten most highly-valued U.S. corporate mergers of all time are last year's $22.7 billion merger of Bell Atlantic and NYNEX, WorldCom's pending takeover of MCI Communications Corp. for $37 billion, and SBC Communications Inc.'s proposed $62 billion merger with Ameritech.

Obviously, the scale of these firms is substantial. So, too, is their importance in the nation's economy. Communications and information processing represent a growing part of many corporate budgets—even as the unit prices for these capabilities declines. Communications and information are key strategic assets for many companies, and the quality, efficiency, abundance, and affordability of communications services all help to strengthen the position of U.S. companies in the global marketplace for many goods and services.

The Telecommunications Act of 1996 was intended to usher in an era of increased competition, and lessened regulation. There are signs of progress toward these goals. But the many mergers that have occurred, or have been proposed, or are now being considered make it timely to focus anew on the issue of mergers, as this Committee is doing today. Does consolidation strengthen the prospects for competition, or decrease them? As the independent agency charged with promoting competition in communications, the FCC has a statutory obligation under the Communications Act to determine whether a merger between telecommunications firms is in the public interest.

At the core of FCC merger policy is that merger review helps to promote the pro-competitive, deregulatory framework established by Congress in the Telecommunications Act of 1996. As the only member of the current Commission to have evaluated significant telecommunications mergers—such as last year's merger of Bell Atlantic and NYNEX—I appreciate this chance to discuss our merger review policy with you. At the same time, the Committee should note that the current Commission includes four members who have not yet had an opportunity to vote on merger issues. This will soon change, given the pendency of WorldCom's proposed acquisition of MCI and the anticipated merger application of SBC/Ameritech.

Needless to say, our decisions on mergers are made only after we compile and review a full record. Therefore, I am unable to comment on the merits of any pending merger application and nothing I say today should be construed as expressing my views as to the merits of such mergers.

THE FCC'S ROLE IN PROMOTING COMPETITION IN THE TELECOMMUNICATIONS MARKETPLACE

As the expert agency charged with the responsibility of ensuring that the pro-competitive goals of the Telecommunications Act of 1996 are achieved, one of the FCC's core responsibilities is to write fair rules of competition for all communications markets, and to forbear from regulation or deregulate where markets have become competitive. Almost two-and-one-half years after passage of the Act, we are seeing a communications marketplace in transition. Increasingly, business and other high-volume customers enjoy competitive choice in voice, video, and data from a variety of communications services providers, while the vast majority of residential and other low-volume customers continue to have no choice in the provision of either local voice or video service.

Signs of budding competition are emerging. We continue to see robust investment in competitive local telephone companies (CLECs), which today have approximately 1.9 million access lines in service, representing approximately 2% of all local lines. The CLECs have raised $20 billion in investment, since the 1996 Telecommunications Act, compared to the $2.4 billion they raised from 1992–95. In 1997, the top ten CLECs had switches in 132 cities in 33 states, and these numbers are continually growing.

The long distance marketplace continues to be substantially competitive. Today there are approximately 621 long distance service providers, and rates have fallen 6% since 1996. New bandwidth is coming on-line as network builders like Qwest, Level 3, and others sink miles of fiber-optic cable into the ground daily.

As a result of spectrum auctions authorized by Congress and market-based spectrum policies instituted by the Commission, we are finally seeing the advent of vigorous mobile telephone competition in most communities.

Video services competition is slowly but steadily eroding the monopoly position of cable systems. Direct broadcast satellites systems have almost tripled their customers to over 6 million in two years. Some local phone companies are overbuilding cable systems in their regions. In some markets, utility companies are teaming up with communications services providers to offer integrated packages of voice, video, and data.

More recently, with Regional Bell Operating Companies preparing to offer high bandwidth data delivery services like xDSL and cable operators preparing to deploy high-speed cable modems, there is reason to hope that the owners of the principal wires into the bulk of American households—local telcos and cable—are positioning themselves for a battle in the delivery of residential bandwidth. We hope to see this battle waged.

What all this means is that we are on our way to realizing the Act's goal of a "pro-competitive, deregulatory national policy framework. . . . and the opening of all telecommunications markets to competition." But we're far from there. To achieve true deregulation, all parts of all communications networks must become competitive. For this reason the Commission has worked hard to develop a dialogue with Regional Bell Operating Companies and their would-be competitors concerning compliance with the Act's market-opening conditions as required by Section 271. This will lead to increased competition where it is needed most—in local phone service—and also bring strong new participants to the long distance market.

THE FCC'S MERGER REVIEW AUTHORITY

The Commission evaluates mergers under the authority granted to it pursuant to Sections 214 and 310(d) of the Communications Act. These provisions place upon merger applicants the burden of demonstrating that the proposed transaction is in the public interest. The Commission also has authority under Section 7 of the Clayton Act to review mergers between common carriers.

Courts have ruled that the FCC's broad public interest directive is to be "so construed as to secure for the public the broad aims of the Communications Act."[1] In carrying out its statutory obligation, the FCC examines how the proposed transaction will affect the development of competition in all communications markets. The public interest also requires the FCC to balance the potential pro-competitive effects of a transaction with its anticompetitive effects. In evaluating wbether a proposed merger is in the public interest, the Commission considers whether the transaction will, on balance, enhance competition.

The ultimate goal of the competitive analysis of a merger is to determine how the merger will affect the development of competition as the transition to a deregulated environment envisioned by the Telecommunications Act evolves. Thus we must not look at the current significance of merging parties today, but rather their expected significance as the Act is implemented. This is especially important in telecommunications markets.

As you know, the 1996 Act removed both legal and economic barriers to entry in many markets. In such markets, which we call transitional markets, carriers that we expect to be significant competitors in the future have no presence today because entry barriers have kept them out. In the *Bell Atlantic-NYNEX Order*, we called such carriers "precluded competitors." In assessing a precluded competitor's likely future competitive significance, we must assess its incentives to enter the market in question as well as the assets and capabilities that would allow it to provide service should it enter. As the *Bell Atlantic-NYNEX Order* notes, these might include superior expertise in providing the services, access to sufficient capital for expansion, brand name recognition among customers, superior reputation for providing the service, and existing business relationships with customers. Firms with the

[1] *Western Union Division, Commercial Telegrapher's Union, A. F. of L.* v. *United States*, 87 F. Supp. 324, 325 (D.D.C. 1949), *aff'd*, 338 U.S. 864 (1949). See also, *Washington Utilities and Transportation Comm'n* v. *FCC*, 513 F.2d 1142, 1147 (9th Cir. 1975); *FCC* v. *RCA Communications, Inc.*, 346 U.S. 86, 93–95 (1953).

greatest incentives, assets, and capabilities will be deemed to be the most significant precluded competitors and, typically, we would expect that a merger that includes a large incumbent and a most significant precluded competitor in a market in which there are few other significant competitors would be likely to lead to the enhancement of market power (either unilateral or coordinated).

Our analysis also considers the effect of committed entry on the exercise of market power. That is, if we determine that a merger is likely to lead to the exercise of market power, we then ask if such market power would cause other firms to enter the market and eliminate the ability to exercise any market power arising from the merger.

In addition, we examine any efficiencies from the merger to see if such efficiencies enhance the merging parties' incentives to compete. For such efficiencies to be considered, they must be merger-specific (that is, they arise only if the merger takes place), they must be verifiable, and they must not arise as a result of anticompetitive reductions in output.

Because the effects of a merger can be different in different markets, the Commission's merger review policy also must be sufficiently dynamic to take account of marketplace trends and to permit a balancing of competitive benefits versus anticompetitive effects. Mergers and other consolidations can enhance competition to the extent they lead to greater efficiency and, consequently, better prices for consumers. Alternatively, mergers and other consolidations can be used by firms as a tactic for defending against new competition and creating a further concentration of monopoly power. Our responsibility is to sort out those that have beneficial effects from those that do not (or, in the latter case, to explore ways in which detrimental effects can be more than offset by procompetitive conditions).

In addition to considering the effects on competition, the Commission may also evaluate other public interest factors. For example, in a mass media merger, one such consideration might be the effect of the merger on diversity of voices. In a telecommunications merger, public interest considerations could possibly include: effects on universal service (affordability of telephone service), effects on network reliability (benefits of independent redundant networks versus benefits of consolidated operations), effects on viability of other market participants' strategies (will otherwise viable competitors need to redirect their energies from competing to consolidating, to defend against the power from the newly combined entity), or effects on the agency's ability to discharge its regulatory functions (e.g., through benchmarking), etc.

THE FCC'S MERGER REVIEW EXPERIENCE

The Commission's Order last year approving the merger of Bell Atlantic and NYNEX shows how the Commission employs its merger framework in reviewing potential mergers. There, the Commission found that the Bell Atlantic-NYNEX merger posed serious competitive concerns, arising from the fact that Bell Atlantic chose to merge rather than compete directly with NYNEX in the New York metropolitan area. The Commission concluded, however, that certain commitments by Bell Atlantic—designed to facilitate the opening of its markets throughout its entire thirteen-state region—offset the possible adverse effects on competition. Briefly, those conditions included: 1) performance monitoring reports, negotiated performance standards, and enforcement mechanisms; 2) carrier-to-carrier testing of uniform operations support systems, which enable resale and unbundled network elements; 3) prices (other than for resale) based on forward-looking economic costs; 4) shared transport facilities priced on a minutes-of-use basis; and 5) easy payment plans for non-recurring charges, so that even relatively thinly capitalized new entrants can establish a toehold in the marketplace.

The broad weighing of pro-competitive benefits versus anticompetitive effects that the Commission engaged in in the *Bell Atlantic-NYNEX Order* lies at the heart of the Commission's determination whether a proposed transaction is in the public interest. It also shows how the Commission's and the Justice Department's roles in merger review are complementary.

Although both agencies are of course concerned first and foremost with the goal of competition, the Justice Department and the Commission have different responsibilities and processes. The Department of Justice focuses solely on whether a potential merger violates antitrust laws; the Commission applies a broader public interest standard that permits assessment of the effects of a potential merger on other provisions and goals of the Communications Act. The Justice Department carries the burden of proof, should it decide to challenge a proposed merger; at the FCC, the burden of persuasion is on the proponent of the merger. The Justice Department functions more like a litigant, for a decision to challenge a merger is often brought to a district court for resolution; the FCC functions more like a judge deciding a contested proceeding. The Justice Department's processes involve greater use of investigatory tools than do those of the Commission, which is feasible largely because of confidentiality protections that the Commission cannot provide; the FCC's proceedings are generally open and based upon a highly public record.

I am mindful that having both the FCC and the Justice Department involved in merger review creates a potential for additional costs and delays in the consummation of business transactions. But my experience tells me that the FCC and the Justice Department can both play constructive roles, avoid unnecessary duplication and delays, build public confidence, and produce better outcomes. The work of both agencies has never been more important, given the historic changes that are now underway in this vital sector of the American economy.

CONCLUSION

I appreciate the opportunity to appear before you today. I would be pleased to answer any questions you may have.

Mr. HYDE. Thank you very much, Commissioner Ness. Normally I would yield to Mr. Conyers for questions, but he has suggested we go down to the end of the row because sometimes members who are situated down there do not get the opportunities or at least as promptly as they might. So Ms. Lofgren is recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. And I am perfectly happy to let my senior colleagues go ahead of me, but I am also glad to have a chance to compliment both you and Mr. Conyers for the leadership that you showed in making sure that we would have a Department of Justice review of antitrust issues and mergers.

When the telecommunications bill was before the House, I was a freshman member of the House and I followed the bill with a great deal of interest and attention. I believed at the time that you and Mr. Conyers were correct. I think events as they have unfolded prove that you and Mr. Conyers were correct, and I am glad you were.

I would like to note also to Mr. Klein that your predecessor Ann Bingaman played a key role in ensuring that we would not overlook the need for the Justice Department to review such matters that face us today. I realize that you probably may not be able to comment on specific issues. However, one of the goals or hopes that we had at the time the bill was passed was that competition would be unleashed and therefore consumers would be protected by competitive market forces. And obviously, that is ideal. We want the market to rule. However, the market can also be defeated by monopolies that are exerting an unhealthy influence.

I am wondering what the consumers get from this. Just last Friday there was an article in my hometown paper, the San Jose Mercury News, in which the California Public Utility Commission reported that missed appointment complaints since the merger of Pacific Telesis and SBC have risen 1600 percent, and that complaints about installation delays have risen 300 percent. As the representative for these consumers, I am concerned about how the marketplace of competition can prevent consumers from being victimized when there is no competition because all of the market participants have everything is merged. Where does that leave us? And is this something that you would look at, Mr. Klein, or the Commission?

Mr. KLEIN. Well, let me start, Ms. Lofgren. I think the point you make is so critical. The problem you identify, I don't know the merits of that problem and the people from the SBC group will be here and you can ask them about that, but from my point of view the real problem is consumers don't have an option. If they had a choice then they would know they could go to the alternative, and whatever inadequacies there were in price or service could be remedied. That is what is so critical about competition.

The problem is you said competition would just break out. It would be a nice thing if that would have happened, but unfortunately I think we are in the process of growing competition and it takes a lot of sunlight and a lot of watering to grow, and that is the process we are in right now and that causes, frankly, a certain amount of dislocation and discomfort.

Ms. LOFGREN. If I could just quickly follow up—and I don't know anything more than what I saw in the paper—regarding the proposed merger between AT&T and TCI, which again is of great interest to me because TCI is the major cable provider in the Silicon Valley, and in my district. There is also great interest because TCI is moving aggressively into Internet services and cable modems.

The basic competitor for Internet services is the phone system and, as we consider this merger, there is concern already being expressed that we might have too much concentration of providing access to the backbone of the Internet. Ultimately, with the convergence of technologies, it is the Internet that will provide the real competition to TV, to cable, to the phone, and to everything else.

Have you taken a look at the Internet backbone issue from a market competition point of view, either the Commission or the Department?

Mr. KLEIN. We absolutely have. And without saying anything beyond what has been publicly reported, there were issues regarding the Internet backbone that were very important, certainly to the European Commission, expressed publicly in terms of the MCI-WorldCom merger and we as well have scrutinized those issues very, very carefully. You are absolutely right, though, that where the new opportunities are going to come we want to make sure there are chances to grow and develop.

In fact, just a month ago we brought a suit against the major cable companies with respect to direct broadcast satellite where they wanted to buy one of the three critical slots and essentially, in our view, reduce the ability of that slot to compete with their cable monopoly, and we challenged that in Federal court under a theory of potential and actual competition. So you are exactly right to be looking for new opportunities and new openings.

The only thing I would caution as a general matter, it may well be, and I certainly don't know the specifics of a merger that was just announced in the paper, but as a general matter, it may well be that certain of these mergers will increase scope or size and bring more competition, not less. So you have got to look at both halves of the situation.

Mr. HYDE. The gentlelady's time has expired. Before I ask Mr. Gekas if he has any questions, I have a question. I am breaking protocol by injecting. But as we all read in this morning's press the merger between the telecommunications giants, AT&T and TCI, what a difference. I was not supposed to talk about that new merger that is coming out. I was not supposed to know about that. But seriously, the size and dimensions of what is happening against the background of the airline alliances, against the background of the bank mergers, all of which are staggering in their size and complexity, I just have one question. Have you got the resources to cope with all of these mergers? I do not mean to deconstruct them, but I mean to do the analysis that you really should do.

Mr. KLEIN. Let me say two things. We will do the analysis we need to do. The people at the Division, the career staff, are remarkable in terms of their commitment and they are working 7 days a week. We need significant increases in resources. There is no question about it, Chairman Hyde. I think probably the 5 or 6 largest mergers in American history have all occurred in the last 5 to 8 months and we are going to be required to review virtually all of those, and that is going to take a real commitment of resources to get it right. It is as important to let a pro-competitive merger go through as to block an anti-competitive merger. But we need that commitment. We need the help of this committee and the help of the Congress to get the requisite resources. It is too important for our economy not to have this job done absolutely properly, Mr. Chairman.

So I thank you for the opportunity to make those comments and thank you and Mr. Conyers for the support we have already had in that.

Mr. HYDE. Very well. Mr. Gekas.

Mr. GEKAS. I thank the Chair. Mr. Klein in his statement remarked about the fact that most of the nations with respect to their telephone or telecommunications services are nations that exercise monopolies or allow monopolies to handle the nationwide web of telecommunications. I am wondering when the Iron Curtain came down and the emerging new democracies began to look at those situations and consulted with American firms, telecommunications, to establish commercial relationships for the establishment of new ways to conduct telephone service, did the Department of Justice have to look into that kind of relationship with domestic telecommunications companies working with other countries and in their own telecommunications world? Did the Department of Justice have anything to do with that?

Mr. KLEIN. As a general rule, no. But on specific instances we did. For example, there were several relationships, one with MCI and British Telecom, this was not behind the Iron Curtain, one with Sprint and the French and Deutsch Telecom. But as a general matter, when American companies were consulting or working with these newly emerging economies in Eastern Europe we are were not involved in that.

Mr. GEKAS. Even if they actually establish a partnership? Maybe FTC knows more about that than the Department of Justice. Maybe Commissioner Ness could answer that.

Ms. NESS. The Federal Communications Commission participated vigorously in opening up possibilities globally by virtue of the World Trade Organization's general agreement on telecommunications services. This is an important agreement because most of the countries which subscribe to it also subscribe to very basic concepts that help to ensure competition and help to ensure that competition abroad does not harm U.S. consumers domestically, that we get the benefits of that competition but not harms. And thus these countries they agreed to having separate commissions, independent agencies to provide telecommunications oversight and to license competitors in the marketplace. All of these aspects benefit U.S. companies operating abroad, and we, as consumers, are the beneficiaries of these services when they compete in the United States.

Mr. GEKAS. Could you spank an American company for daring to enter into a business relationship with another company if you saw some anti-competitive forces working in that other country?

Ms. NESS. The Commission evaluates requests to provide service to the United States. And in that context, we would look at a combination—a joint venture or a merger—that would provide service using lines to the U.S. as to whether or not it has an anti-competitive effect in the U.S. market. So we take that into account. But we would not, for example, be concerned about a U.S. company solely providing services in another country. We would look at its impact on the U.S. market.

Mr. GEKAS. Somewhere in your written statement, Ms. Ness, and Mr. Klein in his statement, both of you mentioned that the Commission, the FCC, has the duty of determining whether or not a proposed merger transaction will in your words enhance competition. I think Mr. Klein also alluded to that, that that is the standard that must determine whether competition would be enhanced. That is maybe an oxymoron or a mutual elimination of ideas when you say that two companies merging who remove the competition that existed between those two have to now show that that will enhance competition.

How do you enhance competition by merging two people that were competing?

Ms. NESS. Often companies have not been competing in the past because they were precluded by law from competing. So we have a dynamic situation where folks who had been precluded are now potentially able to compete.

For example in the Bell Atlantic-NYNEX merger, we looked at the prospect of those two entities competing and weighed the loss of that potential competition against some of the benefits that we were able to achieve through agreements that Bell Atlantic made to enable the Commission to approve the deal; namely, opening up their operating systems throughout their entire region to ensure that the local marketplace was open to competition. We believed that, in weighing those benefits versus the detriment, it enhanced competition and we were therefore able to approve that merger.

Mr. HYDE. The gentleman's time has expired. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. Again, I want to echo the sentiments expressed by the chairman, and we have had this dialogue before, Mr. Klein, about resources. As Commissioner Ness indicates, there is a merger du jour. Tomorrow we know there will be another merger announced and I again just want to express my own concern about inadequate resources. You could work—and I would also direct this to the Commission, you could work 7 days a week but this would require an extra day. This is just beyond anyone's comprehension.

I just think it was also ironic today that there were two announcements. The EU has cleared the MCI-WorldCom merger and the AT&T merger was announced. Obviously there are relationships here so it is almost, I guess, a race to the merger store: you are there first, you get your ticket first, and you impact subsequent applications for mergers or acquisitions. Is that a fair statement?

Mr. KLEIN. Well, I think in markets that are going through a restructuring, such as telecommunications, there is no question that people are looking at what the other participants in the industry are doing.

Mr. DELAHUNT. You have to move quickly or you might find yourself in a situation where if you are late then you run into antitrust implications that might not have existed if you had initiated the acquisition or the merger at an earlier stage. It is crowding up the market.

Mr. KLEIN. This could occur. It is more and more concentrated.

Mr. DELAHUNT. In dealing with foreign countries is there any convention, is there an international treaty or agreement among nations in terms of these mergers and acquisitions?

Mr. KLEIN. There are two things. I think Commissioner Ness talked about the WTO agreement, which the FTC and the USTR and we were also involved in. But we have at least an informal cooperative relationships with the key nations, whether it is Canada, whether it is the European Union, when it comes to mergers. There is no formal agreement.

Mr. DELAHUNT. Do you think we are at that point, given the globalization of our economy, that it is an opportune time to sit down with foreign governments and examine this particular issue?

Mr. KLEIN. We have spent a lot of time with foreign governments and we have an informal cooperation agreement with our major——

Mr. DELAHUNT. I understand there are informal agreements. But has there been any discussion about an international convention?

Mr. KLEIN. There has been, very rudimentary, in terms of WTO. But at least from our point of view these issues are so critical to the U.S. economy that we think you have to maintain independent U.S. enforcement.

Mr. DELAHUNT. Let me express two more concerns because my time is running out. One is the impact in terms of the work force. For example, I have reviewed the MCI-WorldCom application and an intervention by the Communications Workers of America making the allegation that there is a potential job loss of some 75,000. Without being specific, how do the implications in terms of the workforce affect the decision of your respective agencies?

Mr. KLEIN. As a general matter, that is not part of the antitrust equation. Having said that, I think you put your finger on a very significant point, and that is I think it is entirely appropriate to be thinking about worker retraining, creating new alternatives for people who are dislocated. You don't want to put that labor problem on the back of merger enforcement, however, because I think that creates issues of efficiency.

Mr. DELAHUNT. I think there are many of us who are getting very concerned about that particular issue. In fact, I do not think it has been discussed here until my asking this question. But you know clearly at some point in time, whether we need legislation or simply reassurances as to what the policies are at the Commission as well as the Department of Justice, it is something that many of us want to let you know we are concerned about.

Mr. HYDE. The gentleman's time has expired. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. I thank the chairman.

Ms. Ness, good to have you and Mr. Klein with us. Mr. Klein, several people have voiced unhappiness with the undue amount of time that the Justice Department has taken in granting approval of the MCI-WorldCom merger given that the companies are clearly willing to resolve any legitimate antitrust problems.

Now, this is not me talking, I am just conveying to you what others have said to me. Some of these folks are experts. Some are self-appointed experts. But virtually all are well-versed in the issue of telecommunications.

How do you respond to that complaint?

Mr. KLEIN. I think in all candor that that is an unfounded complaint. I think any time people are willing to resolve the legitimate antitrust concerns, we are willing to clear a merger. Now what I suspect you are hearing, Mr. Coble, and it does not surprise me at all that you would be hearing this, is that there are people who have their own perception or view of what might be the legitimate antitrust concerns, and they are willing to do those things, but not do the things that the Department of Justice thinks are necessary to cure the competitive concerns.

And so, without going into the specifics, because there are some real specifics here that I know you are aware of having read some of the news accounts, without going into the specifics, I will assure you and every member of this committee that when our competitive concerns are met after we have done our analysis we are prepared to clear a merger.

Mr. COBLE. So it is your contention that the tenure of these complaints are not well-founded?

Mr. KLEIN. I believe that, sir.

Mr. COBLE. Commissioner, do you want to weigh in on this?

Ms. NESS. I would add that we were content with the Justice Department. If there is to be a change in the transaction, it makes sense for us to see how that is evolving. Once that has been completed, we are able to move very swiftly toward completion of our review. But our analysis is going on concurrent with that of the Justice Department.

Mr. COBLE. I thank you. I hope the chairman takes note the red light has not illuminated, and I yield back my time.

Mr. GEKAS [presiding]. The Chair thanks the gentleman. We now recognize the gentleman from California, Mr. Berman, for 5 minutes.

Mr. BERMAN. Thank you, Mr. Chairman.

Commissioner, you said in response to Mr. Gekas's question, in the Bell Atlantic-NYNEX merger, we looked at the loss of the potential that either of them might compete against each other for local phone service on one side, and on the other side we looked at some of the things we were able to get from each—from the merged company that would open up their local markets. I would like to pursue that a little bit more. First of all, is that a fair statement of the Justice Department or is it only the Commission that does that test?

Mr. KLEIN. That is the Commission's test. We have different statutory standards and different tests that are implemented.

Mr. BERMAN. What is it about a merger proposal that would allow you to require certain things that would open up the local phone market that you were not able to do or that a State regulatory agency is not able to do absent the merger?

Ms. NESS. One of the benefits of our analysis under our statutory authority is that a merger may only be approved if it is in the public interest. That provides us with the opportunity to look at a host of goals and objectives under the Telecommunications Act. They might be issues concerning universal service, maintenance of the integrity of the system or a number of other factors.

What we do is weigh the two. We are not prosecutors. Our burden of proof is different. In fact, for us, the burden is on the proponents of a merger to show that the merger is in the public interest, and so sometimes we are able to craft solutions that can address concerns that are raised by a merger.

Mr. BERMAN. So under the rubric of the term serving the public interest, a merger application gives you a handle that you do not otherwise have in the original statute of '96 to leverage certain concessions by the dominant local phone company in the area to allow competition?

Ms. NESS. This enables us to obtain specific commitments, which then we can enforce.

Mr. BERMAN. That confuses me, because I thought the original law was, in part, the balance. We will let local phone companies, RBOCs, into long distance. Markets if they do certain things to open up their local markets. Are you telling me—and it wasn't conditioned on some merger application coming in front of you, so you are saying that the law didn't give you the handles that you needed?

Ms. NESS. For example, in the Bell Atlantic-NYNEX situation, you have individual States—I think 13 States—that form part of the overall Bell Atlantic Company. In the 251 context and in the 271 application to provide long distance service, issues are addressed on a State-by-State basis. The problem is, the operating systems are regional, and it would be extremely beneficial for companies trying to compete in the marketplace to have regional solutions. The Bell Atlantic-NYNEX merger gave us the opportunity to focus regionally on what was necessary to provide open and predictable operating systems and measurements so that we could determine and competitors could determine whether or not they are being treated fairly.

Mr. BERMAN. I see.

One other question before the light goes on. In the announcement of the SBC-Ameritech merger, SBC said this gives us the resources to really be able to do what we want to do, which is to provide competition in other local markets. Do you consider the extent to which that merger makes them more competitive in other places or more likely to be willing to compete in other places? How do you balance that against—and I guess this maybe is more to Justice, but how do you balance that against now the absence of likelihood that Ameritech and SBC would compete against each other?

Mr. KLEIN. It is a factor we would certainly evaluate. We would see what the evidence was to support it and then we would look at that, but we would first look at the issue of what, if any, direct competition between the two would be eliminated.

As we sit here today, of course, there is very little direct competition between the two because they have——

Mr. BERMAN. There is an article that says something in St. Louis involving cellular phone customers.

Mr. KLEIN. Exactly. And we would look at that. We would look at future plans, what might have developed, and balance those. If we decided it was, on balance, anticompetitive, which is what we do in any merger analysis, we would take action. If we decided it wasn't, we wouldn't take action.

Mr. GEKAS. The time of the gentleman has expired.

We now recognize the gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. I thank the chairman.

Mr. Klein, I appreciate the hard work that you are doing and your testimony today; and I do believe that you need more resources and, hopefully, that can be accomplished down the road.

But let me go to these mergers. Do you agree that, right now, there is not any instance where any of the top 10 telephone companies compete with one another for local telephone service?

Mr. KLEIN. I wouldn't say there is not any instance. There are—certainly, in terms of business competition, there is some; and I think there is even a little bit of residential competition. There is certainly not any significant residential competition.

Mr. HUTCHINSON. In your words, there is very little competition. And is not the key question, you know, how to increase competition among the operating companies?

Mr. KLEIN. I think it is, ultimately, how you increase competition for the individual customer. It could be through the operating companies. It could be through a long distance operating company. It could be through some of the new technologies we are looking at.

The real solution will come not by trying to find a one-size-fits-all solution but by encouraging lots of new innovations and new technological opportunity, and then we will see which ways produce the best results.

Mr. HUTCHINSON. And I guess the companies that want to engage in the mergers take the argument that, by becoming larger, they have a greater potential for developing more technology and that they can be more competitive and enter more markets.

Mr. KLEIN. That is certainly an argument we often hear advanced, yes.

Mr. HUTCHINSON. Is there any experience to support that?

Mr. KLEIN. There can be, in general. There is no question that there are times when there are mergers that enable you to be a more efficient company. There are synergies that you can achieve that may make you a more effective competitor, so the concept is not by any means alien to antitrust enforcement. However, there is a big difference between the concept and the reality, and we have to do the work to make sure the concept is going to be implemented.

Mr. HUTCHINSON. From your perspective, what is the best potential in the short term, the next 5 years, for bringing more competition into the local telephone market?

Mr. KLEIN. Well, I think it is going to come in a variety of ways. There are a lot of new, what we call CLECs, that are now actually developing facilities within the market. I think we have some possible opportunities with respect to Bell Atlantic's undertakings in New York, where they reach an agreement with the New York Commission in terms of market-opening issues that Commissioner Ness has been talking about. I think there are other opportunities that we will see.

We are doing everything in our power to encourage new entrants into these local markets. Through the 271 process, we have worked diligently with the various RBOCs to ensure that they take the requisite steps to open up their markets. But I think it is hard to make an ironclad prediction at this point.

Mr. HUTCHINSON. Commissioner, do you want to comment on that?

Ms. NESS. I simply want to say that many of the Bell Operating Companies, in their 271 applications, have asserted that there is rampant competition in their markets from many smaller companies that have very low capitalizations as compared with some of the proposed merger partners. So I don't know that there is necessarily one formula as to how one can compete in the marketplace. Certainly that issue would be one that would be on the table in any proposed merger.

Mr. HUTCHINSON. The one merger that was approved was SBC and PacTel, and both signed off on that merger.

I think there were certain requirements that were in place—I don't know whether there was divestiture, but certain requirements that went into place that each company had to comply with. Is it sort of like venue shopping for lawyers, where it is the first at the courthouse? With larger companies being created, with markets being consolidated, there has to be, at some point, brakes put on. I mean, is that an accurate comparison, that it is the first to the courthouse, the first companies to conduct the mergers going to have the advantage? And is that not going to, in itself, have a snowball effect? Whenever you see this happening, is that not going to instill a greater desire to merge?

Mr. Klein.

Mr. KLEIN. I think that is a possibility, but I think you need to take to heart the words that Commissioner Ness said, and that is it is not necessarily the most effective way to compete, to be part of a large organization. I think people are going to be looking at their own strategies, but not everybody is going to decide to bulk up.

There are some very interesting statistics in this week's Economist magazine with respect to the banking industry and rate of returns in terms of the size of the various players. What it suggests is that finding the optimal size is what is key in terms of what your particular skill set, product set and abilities are, and I think you are going to see a variety of different-sized competitors in this market.

If the market were to get highly, highly concentrated—now mind you that is a funny thing to say in a market that starts in part as a monopoly, but if it were to move in that direction, obviously a first-come, first-served view of the world could lead to certain snowballing. I don't think we will see a lot of it.

Mr. GEKAS. The time of the gentleman has expired.

The Chair recognizes the lady from California, Ms. Waters.

Ms. WATERS. Thank you very much.

Mr. Chairman and members, as I understand it, the Department of Justice is interested in determining whether or not there is a violation of antitrust and whether or not competition exists. But, on the other hand, the FCC, in looking at these mergers, is concerned about the public interest, necessity, and convenience, whether or not that is served by the merger.

But there is some other language that I am looking at that talks about FCC not being limited at all to the competitive factor but would and could consider other regulatory goals in deciding whether or not to approve.

Does that include looking at agreements that were made by the companies that created the e-rate funding for schools and libraries?

Ms. NESS. Certainly when a merger is proposed we put it out for public comment, and we would be very interested in looking at all of the comments that come in from various parties with respect to the companies involved, and all of the comments must be addressed and resolved as part of our normal process. If there were comments with respect to the fulfillment of obligations or pledges or lack of fulfillment of obligations, that might be probative.

Ms. WATERS. Let me just pursue this a bit further.

Some of us have real strong consumer interests, and we are very much concerned about things like universal service and making sure that the customers are not disadvantaged in any way. And as we look toward the future and understand the role that new technology plays in communications, I think we understand very well why it is important that we leave no sector of our society behind in the utilization of new technology and computers, et cetera. And if we have an agreement from the companies when they came to Congress in order to get certain advantages or considerations, should that not be as central to your concerns as the very basic kinds of concerns we would expect you to have such as making sure that there is universal service or that there is convenience? And I think it fits quite nicely into this general description of convenience.

And what I am getting at is this. I appreciate your response in saying you put it out there for comment and if the comment comes back, well, it comes back. But, more than that, you would not leave certain aspects of your consideration to whether or not comments came back. You see it as your oversight responsibility. And I am trying to nudge you to give a little bit more thought to this as it relates to e-rate.

Ms. NESS. I appreciate the concept, and I would be glad to give that significant thought as we look at any pending mergers.

Ms. WATERS. I have a few other ideas I can give to you in writing that I hope will be helpful to you. Thank you.

Ms. NESS. Thank you.

Mr. GEKAS. The gentlelady yields back the balance of her time; and we now turn to the gentleman from Indiana, Mr. Pease, for 5 minutes.

Mr. PEASE. Thank you, Mr. Chairman.

Ms. Ness, as Ms. Lofgren was concluding her questioning, she posed a question to both of you. Mr. Klein was able to respond, and we ran out of time, and you looked as though you wanted to respond, so I wanted to give you that chance if, in fact, you did, before I went ahead.

Ms. NESS. That is very kind of you.

Simply, she was asking about some of the consumer benefits—and more particularly our ability to achieve and accomplish consumer benefits—in the context of mergers. And, yes, that is something that we very much take into account in our public interest evaluation. So we do have the opportunity to look at all of those pieces, including, as Congresswoman Waters was mentioning, the issue of whether or not universal service is being achieved. Our State colleagues also have the opportunity to look at many of these issues with respect to their respective States.

Mr. PEASE. Thank you.

Mr. Klein, I am one who believes that the Sherman Act has served the country well but that the scope of the marketplace has changed dramatically since its enactment, and I find myself troubled at times between wanting to ensure that things are done within the United States to ensure competition, but being concerned that, in the process of doing so, some American companies may be precluded from achieving the critical mass necessary to compete in a global market. And then, at other times, I find myself saying that doesn't really matter; as long as we are able to ensure that somebody here looks out for American consumers, I shouldn't be as concerned where the companies are located.

Can you help me straighten out the thinking on this and where we might be headed in terms of the larger picture of what we should be doing in an antitrust arena that now is a global arena?

Mr. KLEIN. I would say a couple of things.

One, we certainly do take into account the global economy when we analyze mergers; and where there is a global market, we look at global players, not just U.S. players.

Having said that, I ask you to think about one fact that I think is so critical and so telling about where we are in our economy and in terms of antitrust and competition. Our economy is no doubt the strongest in the world right now, and in large part I believe that is because it is the most competitive in the world.

You know, other nations have gone down a different path and they favored something called national champions: "Let's let our domestic companies bulk up to go compete on the international stage." And I think we found that the model of vigorous domestic competition is actually better preparation for the international arena. And if you look at the work of Michael Porter up at Harvard, he actually studied this in a book called *The Competitive Advantage of Nations* that lays out precisely this theory.

So I think the model is essentially the correct model; and I think the antitrust laws, when they have been properly applied, really do look to competition that will benefit consumers; and what that does is it enables companies to respond throughout the world to changing demands. Because, you know, if you run 100 yards by yourself, you just don't run it as fast as if somebody runs next to you. It is awfully good training for the big race, even when you are in preparation.

Mr. PEASE. I appreciate that, and I have a follow-up. I wanted to give Ms. Ness a chance, if she had thoughts on the subject as well.

Ms. NESS. We have certainly found that ensuring global competition and fair competition abroad has very tangible benefits for the American consumer at home, including the cost of international calls will go down as there is more competition abroad. We have worked toward those goals, working with the newly formed agencies abroad who are setting up a competitive environment in their respective nations.

Mr. PEASE. Thank you.

Mr. Klein, do you anticipate a need for amendatory language with the Sherman act at some point, in light of your experience over the last 6 to 8 months, that you alluded to earlier in your testimony?

Mr. KLEIN. I don't believe so. I really think the Act, both the Sherman Act and the Clayton Act, as developed by the American courts, they really have been evolved, I think are a very sensible guidepost with requisite flexibility. So, as a general proposition, we are not looking for change.

Mr. PEASE. Thank you very much.

Thank you, Mr. Chairman.

Mr. GEKAS. The gentleman yields back the balance of his time.

The Chair now, in acknowledging the gentleman from Michigan, wants to comment that his deciding to allow the bank ventures, so to speak, to speak first, is a precedent. This is the first time I have ever learned anything from you, John, since I have known you, and I will keep that in mind for future deliberations.

I recognize the gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman. Your attention span is getting longer, too, the longer you stay in Congress, so we are very optimistic about that progress.

Ms. Ness, please let the Chairman of the FCC know that we appreciate you being here. We miss him very much. We know he had a long-standing engagement that could not be broken.

But I want to talk about the public interest test, which I argue is not being used enough, is not being used effectively enough. Why not use that to apply to the section 251 requirements to open up the local loop and get beyond the Eighth Circuit Court of Appeals business?

Ms. NESS. Certainly we have used the merger process in the Bell Atlantic-NYNEX example to help open up, to spur competition in the local market, to address the competitive situation as it existed at the time of that merger. We would not wish to be perceived as trying to get around a court decision. We respect the law of the land as adjudicated by the courts, but we are working to use the tools at hand to introduce competition where we can, and we felt that we did that in a manner that was consistent with the law and pro-competition.

Mr. CONYERS. What about pricing of unbundled elements, you didn't use that?

Ms. NESS. Certainly we have the need to be responsive, both to the state of the law, as it is determined by the courts, but also to use the tools at hand, and are trying to do so working with our State colleagues to open up the unbundled network elements. I am sympathetic to the issues you raise. We are trying to grapple with those issues, again consistent with the 8th Circuit ruling.

Mr. CONYERS. Didn't the Supreme Court take that up?

Ms. NESS. The case, I believe, will be heard this coming fall.

Mr. CONYERS. Mr. Klein, we welcome you again. Here we are faced with a 98 percent control of local markets, and you say there are signs there is more competition coming. Shouldn't the approval of mergers of these monopolies be accompanied with some pretty firm conditions to break up the local monopolies? I mean, can't we move a little faster and a little more vigorously in the local telephone markets?

Mr. KLEIN. Well, Mr. Conyers, I would certainly like to move more vigorously. I think that would be good, and we have spent a great deal of time. For example, we worked with the Commission in New York on the unbundled network element issue with respect to Bell Atlantic, and the proposed rates, at least in the work plan, were significantly below the rates that otherwise had been offered. So I think that is certainly an effort worth pursuing. We, of course, like the Commission, in evaluating any merger have to evaluate it within the legal requirements set down by Congress under the Clayton Act and those are the boundaries we operate within.

Mr. CONYERS. Well, that is great. That is a response that says that you need more laws to work with to do the job or we are going to be looking at 98 percent controls in other areas, and that is what I will be getting, is that we are working within the law, Congressmen, if you don't like it, change the law. Now how much legal research are we going to require to find out that SBC and Ameritech—I ask unanimous consent for 3 additional minutes.

Mr. GEKAS. The gentleman is yielded an additional 2 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

SBC and Ameritech are potential competitors—well, they will never tell you that, but, I mean, what are we going to require to get to the heart of this matter. Here we have potential competitors, adjacent markets, it doesn't take a lot of foresight down the line to see what is going to happen, and we are looking at an antitrust division without a theory to go on.

Mr. KLEIN. Well, I think we have the right theories, but I think we need to do the factual work, and that is in any case, and as Chairman Hyde said at the outset, obviously that is a matter before us. But the antitrust laws have theories involving actual competition, involving potential competition, that we certainly would look at with respect to any merger where there are facts that would raise those kinds of concerns.

Mr. CONYERS. Well, we will talk about the criteria a little later, but let me try this. We have had a trillion dollars worth of mergers in 1 year alone. Doesn't that make almost a prima facie case that there has been a restriction of competition, I mean, isn't there an end to this somewhere in sight? Do we need another test besides competition?

Mr. KLEIN. Well, I don't think we do, and I think if you look at the Antitrust Division's record, and I am sure if the Federal Trade Commission were here today, they are currently in court litigating two major pharmaceutical mergers. We are in court right now challenging the biggest merger ever in the United States. That is the Lockheed Martin-Northrop Grumman. That is the largest challenge to a merger, about $10 billion plus. We are challenging the Primestar merger right now in court. We recently challenged a major merger in the aluminum industry. We have challenged large numbers of mergers where we have gotten relief in the radio industry. I think we are there and I think the business community knows when they bring up an anticompetitive one, we are certainly going to pursue it, but we have to do the work and find the facts.

Mr. CONYERS. You know we have $2 trillion worth of mergers coming up this year.

Mr. GEKAS. The attention span of the Chair has been violated, and the gentleman's time has expired.

We turn to the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. I thank the chairman.

First, let me just state briefly that my constituents in Cincinnati have expressed their concerns to me about local competition. In particular, they feel that there is a lack of competition and that companies who plan to compete in Cincinnati may focus only on business customers and not provide residential service. We don't want a situation where 10 different companies provide local service to businesses, but only one company provides the residential service. But let me shift gears just a little bit and take this opportunity to examine and ask some questions, Ms. Ness, about some recent controversial activities at the FCC in the tax area.

The Constitution clearly places the power to tax in the hands of Congress and not in an executive agency. I believe that the attempt by the FCC to raise and collect and distribute what many refer to as the Gore tax clearly demonstrates that the agency has overstepped its legal and constitutional bounds. I find it hard to believe that the FCC could think that the telecom reform legislation, whose goal was to reduce regulation, could be misinterpreted as a mandate to increase bureaucracy and raise billions of dollars in taxes.

Congress needs to take responsibility for the taxes that it imposes in Congress, not unelected bureaucrats. We need to be accountable to those we represent for the taxes that are imposed. There are already over 760 Federal education programs, which span 39 agencies at the price of over $100 billion annually. I would argue that instead of adding additional programs, financed by additional taxes, we should cut bureaucracy and return this money to our local schools to give them the ability to determine what programs are the most beneficial.

Will you comment on the FCC's recent activities in this area?

Ms. NESS. Certainly, Congressman. I would first start by saying all of the universal service programs are part and parcel of the

Telecommunications Act of 1996. We have attempted, to the best of our ability, in the first instance, to follow the recommendations that were set forth by a bipartisan, Federal-State joint board, which made the recommendations on all aspects of universal service, including high-cost funds, low-income consumers and schools, libraries, and rural health care providers. We implemented those recommendations in our rules. All are part of the Telecommunications Act, including the Snowe-Rockefeller provisions with respect to schools and libraries specifically.

The second point is all of those provisions provide for universal service contributions from telecommunications carriers, and then redistribution within the system. We believe fervently that we have been acting consistently with the Telecommunications Act. We are sensitive to some of the concerns that have been raised because some of the companies have begun to put line items on bills, not just to cover the cost of schools and libraries, but also, to cover the cost of high-cost funds and low-income funds. However, we believe we have been operating consistent with the Act to ensure that one of the main goals of the Telecommunications Act—that everyone has access to affordable universal service and advanced telecommunications services for schools and libraries—is implemented.

Ms. WATERS. Would the gentleman yield?

Mr. CHABOT. I only have a little bit of time. There is considerable opposition, as you know, and I think the opposition is only going to build as the public becomes more and more aware of what this Gore tax is.

Let me ask one more quick question. I am also concerned about the progress that the Commission is making on Calea. The intent of Calea was merely to ensure that law enforcement maintain the ability to conduct wiretaps in the face of expanding technology, and I believe that they should get that authority, but not the authority to play big brother to the American public. I would like to know what the thinking of the FCC is on Calea at this time?

Ms. NESS. We have certain responsibilities under the statute and we are pursuing those responsibilities. We have just been referred the issue. We have put it out for public comment.

But I would also add, going back to your question about universal service, that the portion relating to schools and libraries represents a very small portion, perhaps 24 cents out of each dollar. So Snowe-Rockefeller is maybe one quarter of the amounts that are actually regularly collected and distributed for universal service.

Mr. GEKAS. The time of the gentleman has expired. Without objection, the Chair yields 1 minute to the lady from California.

Ms. WATERS. Thank you very much, Mr. Chairman.

I am sorry that you are put in a position where you can see that there are opposing voices here, as it relates to one aspect of this discussion, primarily e-rate and perhaps universal service. And as was mentioned by my colleague, you know, the sides are growing and gathering their ammunition to deal with this issue. It couldn't come at a worse time for the companies, for the communications companies, while they are talking about merging and moving away from, as you described, commitments that were made under the Telecommunications Act.

I will just ask you this. Have you done anything or are you doing anything to implement that aspect of the Telecommunications Act that is in violation or in opposition to or goes in the wrong direction than what is stated in law?

Ms. NESS. We believe fervently that we have acted consistent with the statute, consistent with the intent of Congress at the time the statute was enacted.

Ms. LOFGREN. Would the gentlelady yield?

Ms. NESS. Similarly, we followed the directives of the Federal-State joint board that made the initial recommendations. That is a bipartisan group representing a number of different States, and we believe that we have been acting consistent with the law.

Mr. GEKAS. The time of the lady has expired.

Again, without objection, the gentleman from California, Mr. Berman, is recognized for 2 minutes.

Mr. BERMAN. I thank the chairman.

Mr. GEKAS. Then the Chair will indulge no further in straying from the program.

Mr. CONYERS. How about Zoe Lofgren for a minute? Please.

Mr. GEKAS. Let's see what happens with the Berman 2 minutes first.

Mr. BERMAN. I will ask my question in 30 seconds and then the answer doesn't count.

There is this issue out there about telecommunications reform. The charges, on the one hand, the long distance carriers and other potential competitors say that the local phone service has SBC's arm there, they don't encourage people to change carriers, they process manually instead of electronically, they do all kinds of things to make it difficult for people who want to switch.

The charge of the other side is these guys don't want to set up real competition, they want resale, they want to dictate a price which is ridiculously low, so that we are subsidizing their competing with us. Do you guys get into these kinds of things as you look at these mergers; do you end up saying this is not a right price to be willing to pay and then pretend like you are really trying to compete or this is not the appropriate way to handle a long distance—a carrier who wants to come in and compete on local phone service? To what extent do you get into that, both of you?

Mr. KLEIN. Typically, we get into that in a 271 context heavily. I mean, those issues come up all the time in 271. We have analyzed them with virtually all the different players on both sides and we hear the same kinds of arguments that you proposed. We can, as well, in appropriate circumstances, look at some of those issues under section 2, that is the monopoly section of the Sherman Act, but pricing decisions in mergers is not something we would typically look at.

Mr. GEKAS. The extra time of the gentleman has expired.

We will grant 1 minute, without objection, to the lady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. I just wanted to follow up on the comment made by my colleague, Ms. Waters, on the e-rate, because I was very involved in that, as you will recall. I think it is important to state that there were record votes and comments in the Record on this. Senator Snowe and Senator Rockefeller took the lead in the Senate. Here on the House side, it was myself, Congresswoman Morella, Congressman Orton, and Congressman Ney, who were the sponsors of the amendment that ended up the subject of a colloquy and an agreement to agree with Senators Snowe and Rockefeller. So there was a record. Looking at the language of the Snowe-Rockefeller amendment and the language that ended up in the Act, and then reviewing the universal service language in the 1934 Act, it seems to me that the language that Senator Snowe included was considerably more specific than that which existed in the prior act. Is that the case and are we adhering to what Senator Snowe wrote in your judgment, Commissioner?

Ms. NESS. I believe that we are adhering to the provisions of the 1996 Act. It did make universal service explicit. Whereas it had been a goal under the old '34 Act, it is now an explicit provision within the Act, and we are told to try to squeeze out implicit subsidies and make them explicit. That is what we are all attempting to do.

I would note that, even as we are implementing the Snowe-Rockefeller provisions of the statute, we have reduced the overall costs to the carriers. That is a very important concept. People have the impression that costs are going up and the prices the carriers are charging are going up, but in point of fact we have taken great pains to ensure that the cost to the carriers and therefore the prices to the consumers are going down. We are mindful and respectful of the concerns that the consumers on the first day and the last day and every day in between must be the beneficiaries of the changes in the telecommunications marketplace brought about by the Act, and we are attempting to do that.

Ms. LOFGREN. Thank you very much.

Mr. GEKAS. The Chair, now seizing the power of the gavel, will ask one question on its own. That is, the Commissioner has referred several times now to the fact that the Commission followed the act of '96, yet we have learned, you can correct me if I am wrong, that the GAO has found that the Commission or at least someone within the Commission in the purview of the act illegally created these administrative corporations for the purpose of pursuing the universal service tax, as we call it. What happened as to that? Wasn't that declared illegal by the GAO or at least suggested it was illegal?

Ms. NESS. The GAO did a study and opined specifically that two corporations that were set up by the National Exchange Carrier Association, pursuant to our rules, were illegal corporations. Our legal analysis and the analysis of the National Exchange Carriers Association, which is a quasi-private entity, disagreed with GAO's conclusion. We believe our actions were taken consistent with Federal law. Nonetheless, given the concerns that have been raised, we have asked the entities that were established to recommend a reorganization, and we are in the process of revising that structure to address the concerns that have been raised.

Mr. GEKAS. The Chair thanks the witnesses and, with gratitude, excuses this panel. We will proceed with the establishment of the second panel.

Over the commotion and the shouting, we will announce the formation of the second panel.

Our second panel consists of eight witnesses who will give us a variety of perspectives on the current mergers in the telecommunications industry. Our first witness is Bernard Ebbers, the President and Chief Executive Officer of WorldCom, Inc. Mr. Ebbers is a graduate of Mississippi College, and in 1983, he became one of the founders of LDDS, a competitive long-distance service provider, and he became its CEO in 1985. Thanks to his leadership, LDDS has grown into what is now one of the largest telecommunications companies in the country, WorldCom, as everyone knows.

Our next witness, second witness, will be Mike Salsbury, the Executive Vice President and General Counsel of MCI Communications. Mr. Salsbury is a graduate of Dartmouth College and he has a J.D. and an MBA from the University of Virginia. Before coming to MCI, Mr. Salsbury was the managing partner of the Washington office of the law firm of Jenner & Block.

Next we have Jim Ellis, the Senior Executive Vice President and General Counsel of SBC Communications. Mr. Ellis is a graduate of the University of Iowa and the University of Missouri at Columbia Law School. Mr. Ellis began his career with the old AT&T in 1972. After its breakup, he moved to Southwestern Bell, and he has been there since. He became its general counsel in 1988. We welcome Mr. Ellis.

Next, Kelly Welsh, the Executive Vice President and General Counsel of Ameritech. Mr. Welsh is a graduate of Harvard College and Harvard Law School. He also holds a Master's Degree from Sussex University in England. After clerking for Judge Luther Sweigart, Mr. Welsh practiced law at the Chicago firm of Mayer, Brown & Platt. He then served as the corporation counsel to the city of Chicago. He joined Ameritech in 1993 and became general counsel in 1996.

Rich Devlin, the Executive Vice President and General Counsel of Sprint, is with us. Mr. Devlin is a graduate of the New Jersey Institute of Technology and Fordham University Law School. Like Mr. Ellis, Mr. Devlin began his career at the old AT&T, where he held a number of posts. He moved to Sprint and became its general counsel in 1987. He has been with the company since that time.

The next panel member is Bob Taylor, the President and Chief Executive Officer of Focal Communications Corporation. Mr. Taylor is a graduate of the University of Chicago and its business school. Mr. Taylor held positions at several telephone companies before founding his own company, Focal, as we have said, in 1996. Focal is a competing local exchange carrier, providing local service in six cities, including Chicago. Mr. Taylor appears here today on behalf of the Association for Local Telecommunications Services.

Our next witness is Deborah Howard, the Executive Director of Internet Service Providers' Consortium. Ms. Howard is a graduate of Brown University, and she also has a Master's in Public Health from UCLA. She has written and spoken extensively in two different fields, public health and computers. Do they collide, public health and computers? Maybe not. In 1991, she founded her own Internet company called The Two-Cow Herd. In 1996, she became the executive director of the ISPC, and she appears here today on behalf of that organization.

The final panelist is Gene Kimmelman, the co-director of the Washington Office of Consumers Union, the publisher of Consumer Reports. He is a graduate of Brown University and the University of Virginia Law School. He served 2 years as the chief counsel of the Senate Judiciary Committee's Antitrust Subcommittee. He has also worked with the Consumer Federation of America and Congress Watch. He is recognized as a leading consumer advocate on telecommunications issues.

We welcome the members of the panel and we begin with the request that each panelist attempt to constrict the oral testimony to about 5 minutes, and we will accept all of the written statements without objection for the record, so the full text will be contained in the full record. We will begin with the panelists as we announced them, with Mr. Ebbers being accorded the first shot.

STATEMENT OF BERNARD EBBERS, PRESIDENT AND CEO, WORLDCOM, INC.

Mr. EBBERS. Thank you, Mr. Chairman and Members of Congress. It is a privilege to be here today. I was going to pass, for the sake of time, an opening statement, but I would like to take just a minute to correct something that was said in the previous panel. There was some comment about the combined MCI-WorldCom having job losses to the extent of some 75,000 employees. Let me tell you, that would leave us with minus 16,000 employees. We do not have that many employees on a combined basis and those comments that were made are strictly incorrect.

WorldCom, in its history, and we have been in existence since 1983, has never, on each successive year, not had more employees than it had in the previous year. Our expectation, as a result of MCI-WorldCom's combination, is that we will have a net increase of employees of at least 8,000 employees per year.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Ebbers follows:]

PREPARED STATEMENT OF BERNARD EBBERS, PRESIDENT AND CEO, WORLDCOM, INC.

Good morning/afternoon, Mr. Chairman and distinguished Members of the Committee. My name is Bernard J. Ebbers. I am Chairman and President and CEO of WorldCom, Inc., based in Jackson, MS. We are the nation's fourth largest long distance carrier. We're newly entering this country's local telephone markets and operating some significant new local networks in Europe. We are also a major provider of Internet access service in that rapidly growing and highly dynamic business. We are not dominant in any of these lines of business.

The last time I appeared before this Committee, we were debating the telecom legislation, and arguing that the Department of Justice should have a substantial role in reviewing Bell long distance applications. Back then we battled the Bells in Congress. Now they and GTE are battling us in the regulatory agencies and the courts as we attempt to realize the intent of the 1996 Telecom Act and get the interconnection we need to offer competitive local dialtone service to American businesses and consumers. The good news is that, slowly but surely, these battles are moving closer and closer to the commercial marketplace where they very clearly belong.

In November of last year, WorldCom and MCI announced an agreement to merge. MCI was the original upstart new entrant in long distance and is now also a new entrant in domestic local phone service. MCI's birthright was to demand competition and slay the monopoly dragon AT&T. WorldCom, born "LDDS" in 1983, is one of the many other new competitors that have flooded into the long distance market since MCI first opened the doors. While AT&T's 100% market share has been cut in half over several decades, still no other company comes close to its market share in long distance. And in fact, MCI WorldCom's long distance market share will not be close to that of AT&T.

I believe the combination of WorldCom and MCI, two companies without a trace of monopoly heritage, will increase competition in domestic and international telecom markets. Consumers across this country will benefit from the investment, innovation and competition that the merger will generate, especially in local markets. We are intent on helping to solve the most pressing problem in telecom markets today: the continued dominance of the local exchange by the incumbents, including GTE and Sprint, the only nationwide carriers that today are able to sign up their own captive local phone customers to their long distance service as well.

On day one after closing, MCI WorldCom will be operating in over 100 U.S. local telephone markets as a facilities-based CLEC with the scale and scope to challenge the major local telcos. Each of these incumbent telcos still enjoys a monopoly market share of 98% or more. Our local facilities built to date provide complementary, not redundant capacity. The newly merged company will have a greater chance at succeeding with a nationwide local facilities-based strategy than either of its predecessor companies would have had alone. The combined company will achieve significant cost savings and efficiencies such as: 1) reduced domestic network costs for leased lines, access charges, and collocation expenses, 2) reduced overhead for local service operations, and 3) avoidance of duplicative capital expenditures for network build-out and information technology. The ultimate winner will be the local phone service customer. The combined company will also have greater resources to enter into or expand operations in overseas markets—where the company must also compete with entrenched monopolists.

MCI WorldCom will be a stronger local competitor also because of two complementary attributes: MCI's national brand name and consumer marketing experience on the one hand; and WorldCom's local market expertise and small business base on the other. MCI's large base of residential long distance customers represents a significant marketing opportunity for the combined company's local exchange, long distance and Internet services. Residential customers will also be important to the new company in filling network capacity that might otherwise be idle during off-peak non-business hours. We will market and sell to residential customers of all income levels. Urban households will be the first residential customers served by MCI/WorldCom and other CLECs because, given the enormous expense of constructing local networks, cities are the places where we're already building these networks. Demand per mile is greatest in metro areas.

This merger is about opportunity and growth in a very dynamic sector of the U.S. economy. Since 1992, MCI has created 25,000 new jobs and in just the last three years, WorldCom has grown from about 4600 U.S. employees to about 16,500 today. Plans to grow revenue at 20% annually will require commensurate employment expansion. We already operate a huge office park complex near Tulsa, Oklahoma and two new major corporate campus projects are in the works in Mississippi, Texas and Virginia. Our jobs are generally high paying by industry standards and our recruiters are out in force even while the merger is pending.

On the subject of the Internet, we applaud the U.S. national policy to preserve the vibrant and competitive free market that currently exists for the Internet and other interactive computer services unfettered by regulation. Despite the protestations of opponents to our merger, no single company could ever hope to dominate, much less control, this rapidly expanding and complex network of hundreds of thousands of networks. This is because the Internet connects thousands of ISPs through an open, non-proprietary protocol designed specifically to permit the routing of transmissions over an almost infinite variety of pathways. Nevertheless, in order to secure necessary regulatory approvals both in Europe and here at home, we are in the process of finalizing the terms of a comprehensive Internet backbone and business divestiture. We are doing so to facilitate timely approval of the merger.

The irony is that, here again, it is really the incumbent local telcos, including GTE and Sprint, that control the only network bottleneck that could adversely affect the growth of the Internet and consumer access to it. The "last mile" link or "local loop" that connects each home and most businesses, schools and government offices to the nearest telephone network switching location is the most enduring and pervasive aspect of the local telephone monopoly. That is why we are making cost-based access to local loops and other network elements one of our top regulatory priorities.

MCI and WorldCom's combined past and future investment of tens of billions of dollars in CLEC assets is a continuing downpayment on competition and choice for both telecommunications and information services. Regulators willing, the new company will be permitted to get going soon to bring competition and choice to local telephone markets.

Mr. GEKAS. We accept the correction and we will not charge you with the time that you required for that.

Mr. EBBERS. I have no opening statement.

Mr. GEKAS. We will proceed to the second panelist, Mr. Salsbury, for 5 minutes.

STATEMENT OF MIKE SALSBURY, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, MCI COMMUNICATIONS CORPORATION

Mr. SALSBURY. Good morning, Mr. Chairman, Mr. Conyers, and members of the committee. I appreciate the opportunity to appear before you this morning.

My comments this morning will focus on the differences between competitive mergers and monopoly mergers in telecommunications markets. The current wave of competitive telecommunications mergers is driven by the need to acquire the resources to compete in the domestic and global telecom markets of the 21st century. The resources include both investment capital and personnel. Competitive mergers seek to eliminate unnecessary duplication of facilities and job functions, thereby freeing up resources to be deployed more efficiently—not eliminated but deployed more efficiently—by the combined firm.

That is what the merger of MCI and WorldCom is all about. Today, for example, MCI provides local service in 31 cities around the country. WorldCom provides local service in more than 70 additional cities. By combining operations, we can save money on hardware and software, can more efficiently use our engineering, operating, customer service and support personnel, and can make the investments necessary to develop innovative services.

Similarly, in global telecom markets, MCI will gain access to the substantial local and long distance networks WorldCom has built in Europe and elsewhere, without the need to invest in additional networks of our own.

The efficiency benefits of our merger are estimated to exceed $20 billion in the first 5 years. It is precisely because MCI WorldCom will pose the first credible threat to telephone monopolies here and abroad that opposition to the merger has appeared.

At the outset, please note that given the size of our proposed merger, it has relatively few opponents. For the most part, it is our competitors and their allies, not our customers, that have raised objections. A predominance of competitor complaints generally is regarded as indicative of a pro-competitive merger.

Our critics argue that since both MCI and WorldCom operate large Internet backbones, we somehow could use our combined networks to disadvantage the more than 40 competing Internet backbone providers. The size of MCI-WorldCom's Internet backbone alone, the argument goes, would induce customers to switch to our network, much like VHS technology overwhelmed Beta and Windows has overwhelmed Apple operating systems.

However, this argument relies on several key assumptions, among them, first, that MCI-WorldCom has or would develop some sort of proprietary Internet software that would be incompatible with competitor's networks; second, that customers would use our network, even if we lacked universal Internet connectivity; and third, that the incremental cost of expanding Internet backbone capacity increases as the size of the backbone increases, so our competitors could not achieve our scale and scope.

Each of these assumptions, and the argument itself, is entirely and demonstrably false. Vigorous competition, easy entry, open architecture, and explosive growth: These are the attributes of today's Internet. No single company could even begin to dominate this huge and growing network of networks, connected to thousands of Internet service providers using a protocol designed to route transmissions, over an almost infinite variety of paths. This was, after all, a protocol designed for military networks to survive nuclear attack. Indeed, the only possible source of market power with respect to the Internet is the local loop that is used to access the Internet backbones, the loop that is controlled ironically by the companies here and in Europe, that have complained the loudest about our merger.

Nevertheless, as has been widely reported, MCI and WorldCom have decided that it is better for our customers, our employees and our shareholders to resolve the regulatory clearance process quickly. At this time, discussions with the reviewing agencies continue. Although it would be inappropriate to comment on the details of these discussions, they have been productive, and we expect a favorable conclusion to the merger review process soon.

Mr. Chairman, if I could take a few moments of the gentleman's time.

Mr. GEKAS. The gentleman may proceed. He can borrow time from the first witness.

Mr. SALSBURY. Competitive mergers, such as MCI-WorldCom and Qwest-LCI, involving firms without market power generally do not present antitrust problems. These firms all face capable and vigorous competitors and the barriers to entries for new competitors are not great. Thus, the merged firms could not raise prices or exclude competition.

In contrast, monopoly telecommunications mergers present substantial antitrust risk. While they may offer some synergy benefits, monopoly mergers are not pursued primarily to achieve scale or efficiency. Rather, they seek to consolidate and maximize the subsidy flows that are relics of the regulated monopoly era. Today, the long distance access charge subsidy alone exceeds $10 billion annually.

Monopoly telecommunications mergers are particularly dangerous if monopolies are allowed to leverage their bottlenecks into competitive markets, using subsidy flows to create and use as a price squeeze against competing firms. For these and other reasons, MCI has continued to oppose the premature entry of our box into the long distance market in their own regions.

The 1996 act has not fulfilled its promise, due to a flood of litigation unleashed by the monopolists. I do not say this with rancor. The monopolies are simply protecting their shareholders' interests. But, we should recognize that so long as their bottlenecks and subsidies persist, they will continue to have the incentive and ability to frustrate the development of local competition.

For these reasons, MCI and others have urged State and Federal regulators to consider a second divestiture scenario; that is, to have the monopolies spin off their local loop networks as a way to eliminate the primary impediment to local competition. Divested of bottleneck facilities and subsidies, monopoly telecommunication mergers can be transformed into competitive mergers, producing pro-consumer efficiency benefits without antitrust risks.

Thank you.

[The prepared statement of Mr. Salsbury follows:]

PREPARED STATEMENT OF MIKE SALSBURY, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, MCI COMMUNICATIONS CORPORATION

I. INTRODUCTION

Good morning, Mr. Chairman and members of the Committee. My name is Michael H. Salsbury. I am Executive Vice President and General Counsel of MCI Communications Corporation. It is a privilege to testify before this Committee today on the effects of consolidation on the state of competition in the telecommunications industry.

The MCI WorldCom merger is unique among the large mergers that have recently been announced in the telecommunications industry. Unlike many other major telecommunications mergers of the last several years, neither MCI nor WorldCom possess monopoly power in any line of business or geographic area. The driving force behind this merger is the commitment of these two companies to becoming a legitimate, nationwide facilities-based competitor for local service.

It is just this type of bold, strategic thinking that has transformed the long distance telecommunications market. There should be no doubt about the positive impact of MCI's efforts to break up the Bell System and end AT&T's monopoly over long distance service. The benefits can be seen in the more than 70 percent reduction in long distance rates and the hundreds of competitive choices that consumers have in the marketplace. The FCC's most recent report on the state of competition in the long distance industry shows that AT&T has gone from 100 percent market share to just 44 percent today.[1] Active and vibrant competition in this market is great news for consumers. Prices have never been lower, service quality has never been greater and there have never been more innovative products available in the market. Unfortunately, despite passage of the Telecommunications Act of 1996, these benefits of competition are precisely what have been missing from the local telephone market.

Both MCI and WorldCom take great pride in the fact that we have earned every customer we have. There have been no guaranteed profits or captive customers and we have created a successful business. In short, we know what consumers want and we know how to compete for customers. It is this aggressive approach to our business that MCI WorldCom intends to bring to consumers in the local service market.

When the historic Telecommunications Act of 1996 was passed, many in Congress and elsewhere thought a decisive blow had been struck to eliminate the final frontier of monopoly in the telecommunications business. In light of our experiences in breaking up the old Bell System, MCI is not surprised that the path to meaningful local competition is long and difficult. Since the Act passed, our efforts have been focused on finding ways to achieve this important goal. We started investing in local facilities even before the 1996 Act was passed. Since then, MCI has spent billions of dollars on facilities to bring choice for local services to over 30 markets across the country for the first time. Together with WorldCom, we will have local facilities in over 100 markets across the country and even more facilities around the world on the day the merger is consummated.

At its core, our merger is about creating a company capable of being more than a niche player for local service. MCI WorldCom will bring long sought relief to captive local telephone ratepayers at home in the U.S. while at the same time helping keep U.S. companies as leaders of the global telecommunications revolution. It is precisely because the combined companies will pose the first legitimate threat to local monopolies both at home and abroad that the opponents of this merger have swung into action.

My testimony this morning will first focus on how MCI believes policymakers can clearly differentiate a pro-competitive merger like MCI WorldCom from mergers designed to extend monopolies and increase market power. Each time dominant firms merge, there is a growing anti-competitive effect. A pro-competitive "line in the sand" is necessary to prevent the mergers of monopoly firms from doing any more

[1] Long Distance Market Shares, First Quarter 1998, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, June 1998 at 11.

damage to the national policy of vigorous competition in all telecommunications markets.

Second, I will share with the Committee the many reasons why the issues raised by the opponents of the MCI WorldCom merger are baseless. In so doing, I will explain the extraordinary steps that MCI has taken to address the concerns raised by policymakers in Europe even though we maintain the merger poses no anti-competitive threat to any market here or abroad. I will also bring to light the anti-competitive motives and self-interest of the industry parties that have raised concerns about our merger.

Lastly, I will share some of the anti-competitive behavior of the incumbent monopolies (including those that have already merged and are proposing to do so) that MCI has encountered in the marketplace. I will offer MCI's experiences with the largely ineffective conditions imposed by the FCC in association with the Bell Atlantic/NYNEX merger. These experiences, none of which are unique to the Bell Atlantic/NYNEX territories, provide a case study showing how attempts to restrain ever-growing monopolies is unworkable and ultimately counter to the goals of the Telecommunications Act of 1996. I will then discuss a further divestiture as a potential remedy that this Committee could consider to finally make the potential benefits from local competition a reality for the American consumer.

II. TELECOM MERGERS: GOOD, BAD, AND UGLY

As in other parts of the national and global economy where competition is the norm, no one company has all the answers in telecommunications. Incredible richness and variety and continuing growth and innovation characterize almost all sectors of the $500 billion market for communications and information services. As a result, alliances, joint ventures, and mergers can help competitive telecommunications firms develop innovative new products and reduce costs.

The issue is not whether these mergers are good or bad in general. That's like asking whether change is good or bad: some change is good; some change is bad. It is the same with mergers. The hard part is to determine which are which—which mergers are changing the market for the better, and which would change it for the worse.

One crucial distinction can be drawn relatively cleanly: does the merger involve firms that already have monopoly power? Mergers that involve firms without monopoly power or dominance generally do not present any problems. The likelihood that these mergers will reduce overall competition in the market is low. After all, the fact that the merging companies lack monopoly power means that they face a number of capable, viable competitors, and barriers to entry into competitive telecommunications markets are usually low. It is true that any merger eliminates actual or potential competition between the merging companies, but the remaining companies in a competitive market will continue to exist and to compete. Of course, some telecommunications mergers could create market power. But there have been dozens, if not hundreds, of telecommunications mergers during the last two decades. No one has pointed to any merger among non-dominant carriers that has ended up reducing competition.

In contrast, mergers among local monopolists present risks to competition different in degree and kind from mergers among competitive firms due to the fundamental lack of competition for local service. Unlike the rest of the competitive telecommunications industry, incumbent monopolists still dominate markets for local telephone service, where consumers pay more than they should for service that is often not as reliable or innovative as it should be. Given the interrelationships among different telecommunications markets, and the fact that virtually all telecommunications must pass through the local loops still controlled by the incumbent local telephone companies, a merger between two local monopolists always presents a threat that each monopolist is merging not to increase its ability to compete, but to entrench its current monopoly, to eliminate a potential threat to its core business, or to leverage its existing monopoly into related markets.

To place mergers in context, we must consider the state of competition in the major segments of the telecommunications market. Last year alone, long distance customers switched carriers some 50 million times. There are literally hundreds of long distance carriers in the country available to consumers from coast to coast. The rates long distance customers are paying continue to drop each year. Since the break up of the Bell System, they have come down by over 70 percent. In the wireless industry, the introduction of Personal Communications Service (PCS) has put an end to the cellular duopoly and brought new and innovative services and lower prices to consumers. The story is the same for the competitive equipment and information service markets as well.

That brings us to local. Unfortunately, more than two years after the 1996 Act became law, local markets remain monopolies. No one seriously disputes that incumbent local telephone companies still control 98–99 percent of local markets. It is true that new local entrants—competitive local exchange carriers or CLECs—have grown rapidly. But two critical caveats must be noted, however. First, although revenues have grown, profits have not, and indeed for almost everyone except the incumbents, competing in local markets is unprofitable. That is largely because the incumbents have succeeded in their ongoing efforts to make entry as difficult and time-consuming and expensive as possible, while frustrating regulatory efforts to make the changes necessary to give CLECs a fair opportunity to compete as the 1996 Act contemplated.

Second, although the progress of new entrants despite these artificial obstacles has been impressive, the fact remains that they have attained only a tiny presence in local markets. CLECs are growing, but so too are the incumbents C in terms of customer lines, revenues, and especially profits. To see that the basic conditions in local markets are unchanged, one has only to look at what the House Commerce Committee said three years ago. In its report on the bill that became the Telecommunications Act of 1996, the Committee noted that The seven BOCs [Bell Operating Companies] control over 80 percent of the local telephone network," that The top 10 telephone companies control over 92 percent of the local telephone network," and that in the large number of markets for local telephone service there was no instance where any of the top 10 telephone companies compete with one another."[2]

What has changed since then? Nothing—except that the seven BOCs have become five and would like to make it four, and the number of telephone companies that control over 92 percent of the local network has been reduced from 10 to 8. This number could be reduced to 6 if currently pending mergers are approved by the Department of Justice (DOJ) and federal and state regulators.

A. Mergers Among Incumbent Monopolists are Different than All Others

The completed, pending, and potential mergers among incumbents that have produced even greater concentration in local telephone markets nationwide and threaten to produce even more, are one of the major threats to achievement of the revolutionary goals of the 1996 Act. Just as the Commerce Committee concluded three years ago, today there is still no instance where any of the top 10 telephone companies compete with one another for local telephone service. The BOCs are far more interested in keeping long distance companies and other local monopolists out of their local markets, than in getting into the long distance market by satisfying the market-opening tests of the 1996 Act or going outside their home territory.

The local telephone market is far bigger and far more profitable than the long distance market. The annual revenues of long distance carriers are about $50 billion (not including the access payments that long distance companies collect from their customers and then pay over to local monopolists to originate and terminate long distance calls over the local networks). The revenues of the local telephone market are twice that size—about $100 billion. And the cash flows of the incumbents are also about double those of the long distance industry—over 40% for the local telephone business versus roughly 20% for the long distance business.

It is therefore easy to understand why long distance companies like MCI and WorldCom have invested billions of dollars to enter local markets: MCI and WorldCom want to compete in a far larger and currently more lucrative market. We want to decrease the billions of dollars we pay each year to incumbent monopolists for inflated access charges. And we want to offer their customers the convenience of a package of local, long distance, and other services from a single source.

It is equally easy to understand that the incumbents have gone to any length to prevent local competition from developing and forcing down their monopoly prices and monopoly profits. To prevent effective, significant entry by long distance carriers and other new competitors, the incumbents have engaged in a variety of tactics that I will describe later in more detail. To prevent entry by other incumbents, the preferred strategy has been to merge with them.

With their vast experience and resources, and with the prospect of increased revenues and profits from the local telephone business outside their current territories, one would expect to see incumbent local telephone companies expanding into new territories. Why wouldn't SBC, for example, compete in Illinois with Ameritech, or Ameritech with SBC in Missouri? Why didn't Bell Atlantic—before its merger with NYNEX—compete with NYNEX in New York, and NYNEX compete with Bell Atlantic in New Jersey? After all, these are the companies with the most experience in providing local telephone service. They have the expertise in managing the network,

[2] H.R. Rep. No. 104–204, 104th Cong., 1st Sess. at 50.

they have the operating systems to support the business, they know the customers and the customers know them.

The BOCs and GTE talk endlessly about how they have opened up their local markets to competition as the 1996 Act required and how easy it is now is for new competitors to enter and go after the largest and most profitable customers. Why then don't the BOCs and GTE do it themselves?

The answer is simple. If one incumbent went into another's territory, the second would retaliate by going into the territory of the first. The safest, most reliable solution to this dilemma is to merge and avoid competitive conflict. Each party gets the benefits of expansion—an increased customer base with a presence in both territories—but with no sacrifice of monopoly profits.

It is no coincidence that first two BOC mergers were announced within two months after passage of 1996 Act. The Act changed the prior competitive equilibrium and put each BOC at risk that others would take advantage of the opportunity created by the Act and compete in additional local markets. To protect their core local markets before some of the significant potential entrants acted, the BOCs responded preemptively by merging.

B. Antitrust Laws Prohibit Anti-Competitive Mergers From Preempting Emerging Competition

The incumbents' primary defense of their mergers with each other is that the mergers will not reduce the current level of competition. It is true, for example, that Bell Atlantic did not compete with NYNEX before they merged, or that SBC and SNET do not currently compete with each other. The mergers, they argue, are inoffensive, because they do nothing more than increase the number of monopoly local markets controlled by a single entity.

This view rests on a fundamental misconception of antitrust law. Antitrust law is concerned not primarily with the status of competition *now* but, rather, with the outlook for competition *in the future.* The right question is not whether the proposed mergers will make the markets *less* competitive (after all, they couldn't be significantly less competitive than they are now), but whether they will stand in the way of making those markets *more* competitive.

The antitrust laws in general, and the specific antitrust law that guards against anti-competitive mergers, section 7 of the Clayton Act, demand a dynamic, not static, analysis to answer such questions. A forward-looking analysis is especially crucial here because we are at a critical juncture in the evolution of telecommunications markets. The relevant markets are characterized by rapid technological change, the dismantling of regulatory barriers to competition, and the establishment of federal policies specifically designed to open up these markets to competition.

Section 7 is a flexible, adaptable, powerful weapon against anti-competitive mergers in evolving markets. It prohibits mergers whenever there is a reasonable probability that there would be less competition in a given market after a proposed merger than there would be if the merger did not occur. It requires not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future."[3] Section 7 is intended to prevent not only the last in a series of mergers that results in actual monopoly, but to stop in its incipiency a cumulative process the ultimate result of which may be a significant reduction in the vigor of competition.[4]

Mergers among the large local monopolists are likely to reduce competition in two ways: (1) by impeding emerging competition in currently monopolized local markets; and (2) by lessening competition in the long distance market by increasing the incentives and abilities of the merged incumbent local exchange carriers (ILECs) to exploit their control over access to the customer.

i. Mergers Among Incumbents Reduce Local Competition

Mergers among incumbent local monopolists can reduce local competition in three ways. First, these mergers amount to a formal ratification of the long prior history of coordination and collusion among the BOCs and GTE to refrain from competing in each other's territories. If two large incumbents agreed not to enter each other's territories, such an agreement would be a *per se* violation of the section 1 of the Sherman Act—an agreement to divide territories among competitors is a felony for which conspiring executives go to jail. The incumbents should not be able to achieve the same result through merger. Moreover, whether or not the incumbents have engaged in a market division that is independently unlawful, there is plainly a risk

[3] *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362 (1963).

[4] *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317–18 (1962); *United States* v. *E.I. duPont de Nemours & Co.*, 353 U.S. 586, 589 (1957); H.R. Rep. No. 1191, 81st cong., 1st Sess. 8.

of coordinated mutual non-aggression. The mergers materially increase this risk by significantly reducing the number of participants that must tacitly coordinate their actions.

Second, by reducing or eliminating the likelihood of competitive entry by major incumbents into the others' territories, allowing the mergers would hurt the prospect of competition by firms with unique capabilities to break the current stranglehold on local markets. The incumbents' top priority is to protect their existing in-region base—to maintain their dominant position. An incumbent would not spend billions of dollars out-of-region, including a substantial premium for the acquired company, unless the purchaser expects substantial benefits in-region from the acquisition. The incumbents' perception of each other as potential entrants explains the acquisitions.

It is not a coincidence that SBC announced its bid for Ameritech shortly after Ameritech announced that it would use its monopoly base in Illinois to launch an assault across the Mississippi River into SBC's St. Louis stronghold. Whether Ameritech's announcement reflected an actual business plan, or a shrewd tactic by Ameritech to provoke a bid and increase the purchase price, does not change the point. This sequence of events demonstrates that incumbents take seriously the prospect of competition by other incumbents. Of course, the consequences of retaliation become more severe as the number of incumbents decreases: each incumbent stands to lose more if another incumbent seeks to enter, and each incumbent has an increased incentive to preserve the status quo.

Equally important, incumbents pose an especially serious threat to local monopolies in other regions. The incumbents are among the relatively few firms with the resources to enter capital-intensive local markets. Among that relatively small pool of significant potential entrants, the incumbents possess unique advantages: ready access to capital and capital markets; know-how and experienced personnel; functioning operational support systems; favorable treatment as large customers of vendors of local switches and other equipment; existing relationships with large corporate customers and name recognition.

In addition, an incumbent's inside knowledge of local network capabilities gives it an unusual ability to achieve pro-competitive regulatory action—for example, to demonstrate to state regulators that the cost-based rate for unbundled network elements like loops is lower, not higher. New entrants would be better able to rebut obstructionist arguments of the incumbent if their ranks include another incumbent.

Third, by capturing a significantly larger share of the access market in the combined region, the mergers shrink the total market available to potential entrants, making new entry less attractive, and putting the merged incumbent in a stronger position to deter entry through strategic manipulation of access charge rates. The merged incumbents will rely entirely on themselves for provide access to their long distance services within the merged territories. Hence the shift of an important share of long distance traffic from independent long distance carriers to the incumbents will reduce the potential business available to an independent. This is a critical part of the local market—interstate access charges in 1997 were $25 billion, or almost 25 percent of the total market.

For example, if SBC and Ameritech do not merge, when SBC seeks to provide long distance service in Chicago (whether originating in Chicago, as it can do today, or terminating from Texas or California, as it will be able to do when its gets section 271 authority), SBC will shop for the best deal on access offered both by Ameritech and by Ameritech's competitors. The merger would remove SBC as a potential customer of Ameritech's competitors because post- merger SBC will use only Ameritech's existing network for access. The importance of this issue has been illustrated by a number of the RBOC mergers. When those companies announced their merger, one of the touted benefits was the high percentage of long distance traffic that would originate and terminate in their combined region.

ii. Mergers Among Monopoly Incumbents Reduce Long Distance Competition

Mergers among large incumbents reduce not only local but also long distance competition. That is especially true while access charges remain so far above cost. As long as long distance carriers are not competing with the recipients of inflated access charges, the overall level of access charges does not impair long distance competition. MCI would always prefer access charges (or any of its costs) to be lower, and so would MCI's customers, because all long distance carriers must recover all of their costs from their customers through their retail prices. But MCI can compete effectively if all of its competitors pay the same (albeit excessive) price.

However, if long distance carriers must compete against the incumbents that recover these inflated charges, the situation changes radically. Effectively, the incumbents' long distance operation could obtain access at true economic cost—a fraction of the inflated price that long distance competitors are forced to pay. (The cost to long distance carriers is approximately 40 cents out of ever dollar while the actual cost to the local carrier is about a nickel.) Because the difference between the price of access and its economic costs is approximately $10 billion annually for interstate services alone, the incumbents would obtain a huge illegitimate advantage.[5]

A second way that these mergers threaten long distance competition is that they increase the opportunity for, and impact of, discrimination in the provision of access. A local monopolist can discriminate against unaffiliated long distance carriers in a multitude of subtle but enormously destructive ways—by refusing to interconnect or delaying interconnection, by providing superior types of interconnection to itself, by delaying delivery of facilities or repairs on competitors' access facilities. As you will see from the discussion of anti-competitive behavior outlined below, it is extraordinarily difficult, if not impossible, for government regulators to prevent any of these kinds of lethal discrimination.

This was indeed the principal justification for divestiture of the BOCs from their long distance arm AT&T when they provided both local and long distance service through the Bell System: nominal rules requiring the BOCs to treat AT&T's competitors the same as AT&T simply could not be enforced as a practical matter.[8] This kind of discrimination can have an even more devastating anti-competitive impact when it occurs on both ends of long distance calls. Mergers among incumbents can significantly increase the number of in-region interexchange calls in both absolute and relative terms.

Finally, mergers among incumbents make it even more difficult than it already would be for regulators and antitrust authorities to enforce rules against long distance discrimination through benchmarking, by comparing the conduct of different incumbents. These mergers thus substantially increase the likelihood of evasion of regulatory controls. For example, when there were seven of them, the BOCs argued strenuously that the fact that there were seven made it harder for them to avoid rules against discrimination.[7] By reducing the number of major incumbents, these mergers reduce the ability of regulators to engage in benchmarking.

C. The Fundamental Lack of Any Pro-competitive Justification

There are no pro-competitive efficiencies that offset the anti-competitive harms caused by mergers of large incumbents. For example, the FCC concluded that "the commitments made by Bell Atlantic and made a condition of our approval of the merger *mitigate* but do not fully offset, the potential adverse effects of the merger on consumers in the relevant markets." (emphasis added).[8] The timing of these mergers confirms this fact. After all, SBC and PacBell, and Bell Atlantic and NYNEX, could have merged at any time during the fourteen years after they were created and before the 1996 Act was passed. But within weeks after passage of a law the eliminated legal barriers that limited the ability of BOCs to compete with each other, not one but two sets of BOCs announced plans to merge. And as noted above, SBC's bid for Ameritech followed shortly after Ameritech's announcement of plans to compete in SBC's territory. The spur to mergers was elimination of competition, not achievement of efficiencies.

In a testament to its lawyers' creativity, SBC has come up with a clever, but transparent, new justification: the merger with Ameritech would give SBC the scale it needs to compete in local markets across the United States and to jump-start competition nationally."[9] Let us put to one side the incredible hypocrisy of SBC, one of the most intransigently anti-competitive of all the incumbents, in purporting to raise the banner of local competition. If SBC truly wants to advance the cause of local competition, it could do far more good far faster by cleaning up its act in its own territory than by continuing to export its unique brand of competition-squelching tactics, as it has done to California since it acquired Pacific Bell.

[5] Not long after the 1996 Act passed, NYNEX began advertising long distance service in Florida and Arizona targeting Northeasterner's who have retired or spend winters in these states. Their service offered a lower rate for calls made to the NYNEX territory. The difference in price was essentially the same as the difference between the true cost of terminating a call and the price charged to all other long distance companies.

[6] The discussion of the ineffectiveness of the Bell Atlantic/NYNEX merger conditions below also illustrates the magnitude of this problem.

[7] See *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993); *United States* v. *Western Elec. Co.*, 900 F.2d 283, 300 (D.C. Cir. 1990).

[8] In the Applications of NYNEX Corp. Transferor, and Bell Atlantic Corp. Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, File No. NSD–L–96–10 (August 4, 1997)("Merger Order").

[9] Remember How the Mighty AT&T Stumbled As SBC Acquisition of Ameritech Unfolds, *Washington Post*, May 19, 1998, at C3 (quoting SBC's general counsel).

In any event, SBC and the other major incumbents are certainly not at a scale disadvantage compared to the CLECs, whom they will dwarf in size for years to come. If CLECs can invest billions of dollars to compete in local markets where they have no local presence, so too can the major incumbents. Nor can SBC square its latest claim with its repeated assertions that CLECs have become significant competitive factors in SBC's current territory. One can search in vain for statements by SBC that these CLECs will never expand their relatively minor competitive inroads because they lack sufficient competitive heft. Both SBC-PacBell and Bell Atlantic-NYNEX are huge telecommunications giants with vast financial resources that they have been willing to invest in foreign markets less open to competition than U.S. markets. The notion that these behemoths are too small to do what other CLECs are doing is both self-serving and preposterous.

D. The Monopolists Version of the "Public Interest" Seems Not to Include Lower Rates.

Hearings are on-going in Connecticut and before the FCC regarding the proposed merger of SBC and SNET. Some of the parties to the proceeding have recommended that the merger be granted only if a set of "pre-conditions" and/or merger conditions are established. One of the proposed conditions is a reduction in rates charged to consumers. This is a condition actively being pursued by the Connecticut Attorney General among others. SBC is on record, however, challenging the Department of Public Service's authority to even impose a rate cut as a condition to this merger. SBC has also officially stated that it will walk away from the deal if a rate cut is imposed. Policymakers must wonder what benefits the merger of monopolies is going to bring to customers if rate reductions will not even be considered. New entrants including MCI have also requested improved rates for interconnection, unbundled network elements and resale in an effort to encourage more local competition.

III. THE MCI WORLDCOM MERGER IS CLEARLY IN THE PUBLIC INTEREST

A. With No Market Power, MCI WorldCom Cannot Dominate Any Market

In contrast to the combinations of dominant firms described above, the merger of MCI and WorldCom poses no threat to the public interest. Indeed, no other telecommunications merger is so clearly in the public interest. MCI and WorldCom are two companies that share a long tradition of fighting for competition in a telecommunications industry that to this day is dominated by the RBOC's, GTE and Sprint. Bringing together these two companies will enhance competition across all segments of the telecommunications marketplace.

The primary benefit will be in local markets, where MCI and WorldCom together have local facilities in about 100 local markets. This competitive local presence is critical to the future of wide spread local competition in the telecommunications business. To date, competitors (including MCI with facilities for local service) have not been able to crack the monopoly power of the incumbents. It is critical that those of us in the industry with a competitive birthright find a way to compete against the incumbent monopolists. It is clear they have no intention of competing against each other.

No serious arguments have been raised against the combination of MCI's and WorldCom's long distance business, which together will have a long distance market share of only about 25%, far less than AT&T.[10] The combination of MCI and WorldCom in long distance strengthens and diversifies our customer base, adding MCI's strengths in consumer mass markets and large business to WorldCom's expertise in serving medium to small size businesses.

There are no barriers to entering the long distance business and new companies are entering every day. Even the Bell companies, who claim to be so interested in getting into the long distance business, are free to get into the long distance business anywhere they *do not* possess a local monopoly. They have not done so. It seems they are only interested in "competing" if they have a built in anti-competitive advantage. The deals announced between Qwest and US West and Ameritech are illustrative. Instead of taking steps to build a customer base, the RBOCs partner with a long distance company. Furthermore, given the terms of the deal with Qwest, it is not clear the equivalent arrangement could be offered to other long distance carriers. This would be a violation of the law. At the same time, US West has

[10] In recent years, small carriers have seen the biggest growth in market share as AT&T's share has fallen below 50 percent.

stated that the competitive checklist from the 1996 Act is too difficult to meet.[11] Clearly, local competition is going to have to come from companies like MCI and WorldCom that understand how it is done and are serious about it doing it.

B. MCI WorldCom Would Not Dominate the Internet

With no rationale that would effectively stop the merger of MCI and WorldCom in either the local or long distance market, critics of the merger—our competitors and their employees—have seized upon the combination of MCI's and WorldCom's Internet assets as a reason why our merger should be stopped.

The argument of our critics is that both MCI and WorldCom's subsidiary, UUNet, operate such a large portion of the Internet backbone (a network of networks that link Internet service providers, or ISPs to each other) that we could somehow take advantage of our size and scope to disadvantage Internet service providers who were not our customers, adversely affecting the 40 or so other backbone providers as ISPs converted to MCI WorldCom. The theory, however, does not stand up to close scrutiny and is entirely unsupported by facts.

First, there is no credible evidence of current dominance based on market share. Based on the best publicly available data, the combined company would have approximately 20 percent market share based on revenue. Unlike telecommunications where regulated carriers are required by law to report a range of market information on a uniform, consistent basis, no other reasonably reliable information about the amount of traffic or relative competitive strength of Internet backbone providers or service providers is publicly available. Of course, 20 percent is far short of any market share that could conceivably give MCI and WorldCom a dominant position in any Internet-related service.

Second, there is no reason to believe that, given the current and substantial expansion of long haul telecommunications capacity in the United States as announced by several major firms, and low barriers to entry generally in the Internet backbone business, that any strategy to dominate Internet backbone services could bear fruit. Carriers such as Qwest, IXC, Williams Co., and Level 3, all have announced construction of major national networks during the next two years that would nearly double AT&T's current route miles (and probably more than significantly double AT&T's fiber miles). In addition there is no cogent explanation of how we would use our current assets to dominate the Internet going forward.

Vigorous competition, easy entry, open architecture and—as a result—dramatic growth and a large number of actual and potential competitors characterize the Internet. No single company could even begin to dominate this huge and complex network of networks connecting thousands of Internet service providers through a protocol designed specifically to permit the routing of transmissions over an almost infinite variety of paths. Any attempt by any one ISP to try to raise prices to other ISPs or retail customers or to degrade the quality of service would only cause other participants to avoid that ISP, leaving it with fewer customers and reduced market share. The only existing bottleneck is the local loop.

While we firmly believe that the merger of MCI's and WorldCom's Internet assets would not produce any anti-competitive effect, the ability of our critics to prolong a merger review that has already been underway for 8 months is well documented. As a result, we have decided that its far better for our customers, our employees, and the companies to cut short the review by divesting MCI's Internet backbone business. This will eliminate any possible concern that the combination of our companies will somehow have an unfair advantage in competing to serve ISPs.

GTE recently presented a study purporting to show that network externalities would lead to the domination of the Internet market by the carrier with the largest market share. This analysis is based on assumptions that bear no resemblance to the actual Internet marketplace. For example, the study assumes that customers do not demand universal connectivity, but rather are content with access to a limited number of sites. The GTE study also assumes that an ISP will not lose existing customers to a rival if its quality of service is degraded. Clearly, these assumptions are ridiculous, and indeed once they are corrected, the GTE model yields results that are much more realistic, namely, that it would be extremely difficult for any single company to dominate the Internet. This result is exactly what should be expected, because network externalities are indeed a highly pro-competitive force that drives the Internet toward interconnection and interoperability.

At this time, discussions with regulators about the precise contours of what MCI will divest, and to whom it will be divested, continue. Although it would not be appropriate to comment on the details of these on-going discussions, the discussions

[11] "US West Strikes Marketing Alliance with Qwest in Bold Move Skirting Rules," Wall Street Journal, p. A2, May 7, 1998.

have been productive and we expect an expeditious and favorable conclusion to our merger review from the European Commission, U.S. Department of Justice and the FCC. I believe it would be inappropriate to discuss any further details of our discussions publicly at this time.

C. The Self Interest of the Merger's Critics Makes their Claims Specious

It is important to understand a few things about the opponents to the merger. First, contrary to what some including GTE, the CWA and others would like you to believe, there are not many critics. Those that are complaining the loudest, including domestic local monopolies, their unions and other allies as well as companies that are or until recently were state-sanctioned monopolies across Europe, oppose this merger not out of some high-minded concern about the public interest. Rather, it is nothing more than a desperate attempt to hold on to and extend the monopoly era. They fear the MCI WorldCom merger precisely because it is designed to bring an end, once and for all, to the anti-competitive, anti-consumer monopoly environment that has trapped local telephone customers and enriched these entities for a century.

As you know, not too long ago, GTE wanted to buy MCI. And in the fair and square world of the free market, they lost. Since that time, GTE has been acting like a rejected suitor. From GTE's perspective, not only did they lose their desired partner, but MCI and its new partner, WorldCom, now pose the first direct threat to the very local markets GTE, the RBOCs and the other local monopolies are trying so hard to build a wall around. Of course, MCI WorldCom also intends to continue competing vigorously with these companies and others, including Sprint, in the long distance and Internet markets. So, not only is GTE the sore loser, but it and the others now have to face up to the fact that finally, a real chance for competition in the local market has appeared on the horizon. Now, I can understand what kind of threat this must represent to an entrenched monopoly. We have been through this before with Ma Bell. However, many people on this very Committee supported an Act designed to make sure this exact thing started to happen in local markets all over the country.

The monopolies cannot defend their reasons for building that wall around their local monopoly fortress. So they tried to create a new issue instead—the Internet. They raised the issue themselves and financed forums for others to raise these issues on their behalf. What better place to obscure their real agenda than the Internet, that vast network of networks without boundary or limit or jurisdiction or, key word here, *regulation*. Why not go after that? Policymakers and the public are just learning about the capabilities of the Internet and how it works. It is interesting that MCI's Internet customers—precisely the parties that GTE and Sprint wrongly claim would be hurt by the MCI WorldCom merger—have not raised concerns. Rather, they recognize that the customer is king is this highly competitive business. If we try to take advantage of them, they will simply go elsewhere. We can't expect the monopolies to fully appreciate this dynamic.

It doesn't matter to the monopolists that the Internet is everything they are not: decentralized, democratic and dynamically competitive. The monopolists hope that if they are able to create concern over an imaginary problem, then it will distract from the real issue—that the incumbents simply do not want to face competition.

I expect the Internet issue to be resolved to the satisfaction of the regulators both here and abroad. I also expect GTE, Sprint and those doing their bidding to try to manufacture new and different objections to our merger. The fact is, there is no legitimate reason to keep the MCI WorldCom merger from closing. The public interest supports swift approval. Indeed, it is the only pending merger that has companies trying to end local monopolies, rather than incumbents increasing the size and scope of their monopoly.

IV. EXPERIENCE DEMONSTRATES SIGNIFICANT STEPS ARE NECESSARY TO ACHIEVE THE GOALS OF THE 1996 ACT.

Since passage of the 1996 Act, it has become absolutely clear that the monopolies will go to extreme lengths to make certain that competition does not develop in their respective local monopoly markets. Indeed, they have used the courts to back out of or delay their obligation to open these markets to competition. They have also carefully selected certain jurisdictions that have relatively little familiarity with telecommunications issues and where they can be relatively certain of a favorable outcome. Take SBC, for example. SBC, after supporting passage of the 1996 Act, filed a constitutional challenge to major portions of the Act in hopes of slowing down the development of competition. They filed the suit in a tiny district court in Wichita Falls, Texas where telecommunications issues are rarely heard.[12] Not surprisingly, their brethren jumped on the bandwagon.

The list of anti-competitive litigation sponsored by the RBOCs and GTE is extensive. They claimed in the *Iowa Utilities Board*[13] case now pending before that Supreme Court that the states had both the legal jurisdiction and the expertise on a range of issues dealing with prices and availability of unbundled network elements. Now that they are unhappy with a variety of state decisions, they are back in federal court claiming that the courts should not defer to the states due to the need for uniform national implementation of the 1996 Act.[14] GTE began challenging state commission decisions even before they were finalized.[15] Seemingly for every regulatory action or contract negotiation, a lawsuit is filed by the incumbent monopoly. This is anti-competitive foot dragging at its worst.

In keeping with these delay tactics, every incumbent monopolist has missed numerous deadlines for opening their markets to competition—including for such critical items as operation support systems and local number portability that permit new entrants to begin signing up new local customers. MCI has been forced to file numerous state and federal actions seeking redress for untoward numbers of anti-competitive behavior by the incumbents.[16] Unfortunately there are hundreds, perhaps thousands, of other examples of intentional or benign neglect. Extending or strengthening the local monopolies will not help the public policy of increased local competition.

A. The Bell Atlantic/NYNEX Experience Illustrates the Problems Faced By Policymakers in Dealing With Mergers between Monopolies.

The experience in dealing with Bell Atlantic since its merger with NYNEX was approved is instructive.[17] On August 14, 1997, the FCC granted approval of the transfer and control of certain licenses and authorizations from NYNEX to Bell Atlantic with numerous pro-competitive conditions.[18] In reviewing the proposed transfer, the Commission found that the Bell Atlantic/NYNEX merger would actually harm the public interest by undermining competition in local telephone service.[19] The threat to competition from the potential merger was particularly acute because the merger came in the wake Congress's passage of the 1996 Telecommunications Act, which sought to stimulate real competition in local telephone service immediately. The Commission noted that it must be especially concerned about mergers between incumbent monopoly providers and possible rivals during this initial period of implementation of the 1996 Act."[20]

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[12] *SBC Communications Inc.* v. *FCC*, 981 F. Supp. 996 (N.D. Tex. 1997)

[13] *FCC* v. *Iowa Utilities Board*, Nos. 97–826 et. al., *ptn for cert. granted*, (Jan. 23, 1998).

[14] *U S West Communications, Inc.* v. *MFS Intelenet, Inc.*, No. 98–35146, Brief of Appellant at 11 (9th Cir. filed June 11, 1998); *GTE South Inc.*, v. *Morrison*, Civ. Act. No. 3:97–CV–493, GTE's Brief in Opposition to the Commissioners' Motion for Partial Summary Judgment (E.D. Va. filed Dec. 1, 1997); *Southwestern Bell Telephone Co.* v. *AT&T Communications of the Southwest, Inc.*, Civ. Act. No. A–97–CA–132–SS, Motion for Summary Judgment of Southwestern Bell Telephone Company Based on Violations of Statutory Standards and Supporting Brief (W.D. Tex. filed Apr. 30, 1997).

[15] *GTE South* v. *Theodore V. Morrison, Jr., et al.*, 957 F. Supp. 800 (E.D. Va 1997); *GTE South* v. *Linda Breathitt, Chairman of the Public Service Commission of the Commonwealth of Kentucky*, (E.D. Ky. 1997); *GTE Florida* v. *Julia L. Johnson, Chairman of the Florida Public Service Commission*, 964 F. Supp. 333 (N.D. Fla.1997).

[16] *MCI* v. *PacBell* E–97–11 was filed because PacBell was calling customers encouraging them not to switch to MCI's local service even before the customer had been migrated. MCI was also forced to file another FCC action because PacBell insisted that MCI provide written letters of authorization from customers for residential changeovers in service. MCI has also filed numerous state actions seeking enforcement of contract provisions dealing with operation support systems and other operational provisions. See also *MCI* v. *Bell Atlantic*, E–98–32 (Bell Atlantic has failed to negotiate in good faith regarding performance standards, measurements and credits, as is required by its merger order); *MCI* v. *U S West*, E–97–40 (U S West's National Directory Assistance Service and 1–8004–USWEST Express Calling Card Service constitutes premature entry into long distance); *MCI* v. *Ameritech* (Friendly User Trial), E–97–43 (Ameritech's trial using employees to test in-region long distance service constitutes a violation of section 272 because of co-mingling of operations for long distance and local services; also violates section 201 because of anti-competitive behavior that gives Ameritech an unlawful advantage in the market).

[17] The FCC concludes that the record evidence suggests that the proposed merger will likely "eliminate or retard" competition. Therefore, the FCC required Bell Atlantic and NYNEX to demonstrate off-setting pro-competitive benefits before they could approve the merger. Merger Order at ¶ 48.

[18] Merger Order

[19] Merger Order at ¶ 100.

[20] Merger Order at ¶ 4.

Though the Commission conceded that the merger's anti-competitive effects [were] not substantially mitigated by [its] potential efficiencies"[21], the Commission approved the merger subject to several conditions which were intended to some extent mitigate [its] potential adverse consequences . . ."[22]. These include conditions related to performance of requisite operations functions for purposes of interconnection and the provision of unbundled elements and associated remedies as well as pricing for CLEC interconnection, unbundled elements, and collocation. The Commission has recognized the importance of each of these in achieving Congress' goal of vigorous local competition.

It appears that without any fear of remedial action, Bell Atlantic has violated and continues to violate its obligations under the Merger Order. This experience illustrates the fundamental challenge to the ability of federal and state regulators to investigate and vigorously enforce pro-competitive policies on the incumbent monopolists. Regulators simply have not been able to overcome the built-in incentives merging monopolies have to engage in anti-competitive conduct. I offer some illustrative, though not exhaustive, examples of these violations for which we have sought action before the Commission, but for which we have yet to receive resolution.

Under the Merger Order, Bell Atlantic is required to offer rates for interconnection, transport and termination, and unbundled network elements, including both recurring and non-recurring charges, at the forward-looking, economic cost.[23] Interestingly, Bell Atlantic and NYNEX proposed this condition to the Commission in order to gain merger approval.[24] The Commission made clear that this meant Bell Atlantic's rates must correspond to the "TELRIC" costing methodology set out in its *Local Competition* and *Universal Service* orders.

Bell Atlantic has flatly refused to offer rates using the Commission's TELRIC methodology. Instead, Bell Atlantic has consistently argued that the rates that the states have provided satisfy their obligation to provide forward-looking, economic rates. The Bell Atlantic methodology is clearly not based on TELRIC.[25] Instead, Bell Atlantic's pricing models improperly inflate the costs of network elements; often by including both Bell Atlantic's embedded costs and costs attributable to inefficient network operations and technology. Despite the requirement of the Merger Order and its commitment to the Commission, Bell Atlantic has ignored its obligation and still refuses to propose rates that meet the TELRIC standard. Accordingly, on December 19, 1997, MCI was forced to file a complaint at the Commission to enforce this condition and the remove this significant barrier to entry. AT&T filed a similar complaint at the FCC in November of 1997.

Bell Atlantic is also required under the Merger Order to engage in good faith negotiations with requesting carriers to establish standards for network performance and specified OSS functions.[26] Performance reporting requirements and standards as well as enforcement mechanisms are critical to provide competing carriers with an enforceable means to ensure they will consistently receive nondiscriminatory access and interconnection.[27] Again, Bell Atlantic proposed these performance-related conditions to the Commission prior to merger approval. Nevertheless, Bell Atlantic has refused to negotiate the development of adequate performance standards, remedies and associated reporting in good faith.

Because Bell Atlantic stonewalled negotiations over a seven month period, MCI was again forced to file a complaint with the Commission on March 16, 1998. MCI asked the FCC for an order adopting performance requirements or, in the alternative, Commission arbitration of the appropriate standards, remedies, and reports. In order to resolve the complaint quickly, the Commission asked both parties to consider mediation of this complaint. MCI agreed to mediation, but Bell Atlantic refused.

Bell Atlantic is also required to file quarterly performance monitoring reports to include specific data as set forth in the Merger Order.[28] The information in these reports is necessary to determine the level and adequacy of service competitors are

[21] Merger Order ¶ 177.

[22] Merger Order ¶ 178.

[23] Merger Order at Appendix C, item 6.

[24] Letter of Thomas J. Tauke and Edward D. Young, III to Kathleen Levitz, Deputy Bureau Chief, Common Carrier Bureau, Federal Communications Commission, July 19, 1997.

[25] Rates have also been proposed in a number of states in the former NYNEX region. The rates proposed in those states were based on cost studies that were prepared and presented by NYNEX. They, too, are seriously flawed, are not consistent with TELRIC, and are subject to challenge on the ground that they are inconsistent with the Merger Order. For purposes of this complaint, however, all references are to cost studies presented by the former Bell Atlantic.

[26] Merger Order at ¶ 182, and Appendix C, item 7.

[27] See Merger Order at ¶ 194.

[28] Merger Order at ¶ 124 and Appendix D.

receiving from Bell Atlantic. Without these reports, it becomes next to impossible for a new entrant to perform significant, but relatively simple tasks for customers such as the provision of an installation date for service. Bell Atlantic has failed to fully comply with this condition as well.

In April of this year, the FCC cited numerous deficiencies in Bell Atlantic's second quarterly performance monitoring report.[29] The Commission directed Bell Atlantic to refile an updated and corrected report. Based on its recent submission to the Commission for the third report, Bell Atlantic in essence has no intention of complying with the Merger Order.[30]

Unfortunately, these examples could go on and on. The Commission granted the approval of the Bell Atlantic-NYNEX merger subject to a set of conditions to mitigate any negative impact of the merger on local market competition. If the parties are able to flaunt their refusal to comply with these obligations, then the purpose of the conditions is rendered meaningless and new entrants are left without meaningful safeguards to protect against any resulting competitive harms. The merger conditions are set to sunset on August 14, 2001. Since all indications are that there are no significant consequences for non-compliance, it is in Bell Atlantic's interest to continue to delay and engage in strategic incompetence as the clock on the conditions keeps ticking away. The lesson learned is that once the merger between monopoly firms is approved, the incentive to continue to engage in anti-competitive behavior inevitably increases.

B. LECs' Incentives Will Only Change As a Result of a Fundamental Restructuring of The Local Business: Divestiture II.

The experience with merger conditions and implementation of the Act come as no surprise. The requirements under the Telecommunications Act of 1996 designed to open local markets to competition suffer from the same basic deficiency as the efforts of the FCC to require AT&T to provide non-discriminatory access to its competitors in the period prior to the implementation of the MFJ. In both cases, the FCC and state regulatory commissions impose requirements on a company to act against its own self-interest.

For incumbent local monopolies, that self-interest lies in limiting the extent of competition for its core local services, while doing the minimum necessary to gain regulatory approval to enter long distance and other businesses. Each customer it loses to its competitors represents a reduction in revenues from local service and excessive access charges, and consequently a net reduction in profits. The ILECs have strong incentives to give the appearance of cooperation in making essential local exchange facilities and functions available to competitors, while in fact limiting the ability of competitors to make use of those facilities and functions. Whether by charging artificially high rates for their use or by creating operational roadblocks like those noted above, the incentive is to play these games and bide their time

In light of the continuing resistance of the incumbent LECs to opening local markets to competition, it is clear that only a solution that removes all incentives for the incumbent LECs to behave this way will result in the initiation and long-term development of competition for local exchange services. In the early 1980's, the divestiture of AT&T's local exchange and exchange access operations from long distance services removed the incentives for the local exchange carriers to discriminate in the provision of access services to long distance companies. The result was the development of vigorous competition in the long distance market. Now that local competition is the law of the land and the local exchange carriers are poised to enter the long distance business, divestiture of essential local exchange facilities from the remaining facilities and retail operations of the incumbent LECs will remove the incentives of the incumbent monopoly to discriminate against competing local exchange carriers.

To eliminate the incentives for the incumbent LECs to discriminate among competitors in the provision of bottleneck local facilities, it is necessary to identify those

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[29] Letter from Kenneth P. Moran, Chief, Accounting and Safeguards Division, Common Carrier Bureau, Federal Communications Commission to Patricia E. Koch, Bell Atlantic Corporation, dated April 13, 1998 (DA 98-711).

[30] The Merger Order clearly mandates that carriers purchasing interconnection from Bell Atlantic may request carrier-specific performance monitoring reports. To date, despite repeated written requests, MCI has yet to receive such a report with MCI-specific data. Without this report, it is impossible for MCI to determine that MCI is receiving service from Bell Atlantic at parity with that which they are providing themselves; a minimum level of service that MCI is entitled to as a matter of law. Despite the Commission's admonishment directing Bell Atlantic to standardize its reporting procedures and measurements between northern and southern states as soon as possible, it is still using different methods and systems for data capture and different sampling techniques for its northern and southern states.

network components and functions that are the source of the incumbents' market power. These facilities and functions must be separated from the remaining facilities and operations of the incumbent. Experience thus far in the local market has demonstrated that switching and interoffice transmission has the potential to be provided by multiple CLECs.

Several CLECs, including MCI, have deployed local switches in multiple markets across the country. The portion of the local network that has been most resistant to competitive entry thus far has been the subscriber loop connecting customers' premises with local exchange wire centers. While some CLECs have begun construction of facilities to connect customers to their switches, such facilities have been limited to areas that have high concentrations of customers within a small area—the downtown business districts of large cities.

In many geographic areas, however, the provision of loop facilities is characterized by very large *economies of scale*. In these areas, economies of scale may be so large that the provision of loops is a natural monopoly—loops may be provisioned economically only by a single entity, and competition in the provision of loops is economically infeasible. Where this is the case, CLECs will be unable to construct facilities to compete with the incumbents', and will be forced to purchase unbundled loops from the incumbent if any form of competitive local service is to be provided at all. The subscriber loop is thus the locus of market power for the incumbent LECs. By restricting access by competitive LECs to the subscriber loop, the incumbent LECs may preserve their dominant position in the provision of local exchange services, and indefinitely delay the onset of local competition.

The only way to change the LECs' incentive to restrict competition from competing providers of local service is to force a restructuring of their business by a second divestiture. Divestiture II would require the separation of subscriber loops from the other network components and retail operations of the incumbent LECs, and the creation of a new entity—"LoopCo"—to operate, maintain, and construct the divested subscriber loops and wire center facilities. The incumbent LECs would retain all other components of their local exchange networks, including end office and tandem switches, interoffice transmission facilities, signaling networks, and other functions such as directory assistance and local operators.

LoopCo would operate as a regulated utility, and would be required to offer nondiscriminatory access to subscriber loops, space within the wire center, and supporting facilities and functions such as the main distribution frame, digital cross-connects, and power. LoopCo would be prohibited from offering any form of switched service, including switched data services, and from offering any form of interoffice transmission services.

A second analogy may also be appropriate to consider in the context of removing incentives to discriminate among local exchange service providers. At the same time that local access facilities were spun off from the long distance facilities of AT&T, a second "divestiture" took place. The ownership of inside wire—the wiring connecting individual telephones within a customer's home or office to the network interface device—was assigned to the customers themselves. The result of this policy action was to create a competitive market in the installation and maintenance of inside wiring. Telephone companies continue to offer these services, but customers may also elect to have electricians or telecommunications wiring specialists install or repair their inside wire. If this model were applied to loop facilities, ownership of loops could be assigned to individual customers, who then would be able to interconnect with and contract for local service from any or all local carriers offering service in their area.

The concept of a second divestiture, or some alternative structural solution to the problems caused by the LECs monopoly control of the local loop, is being discussed in a variety of different forums. Senators DeWine and Kohl have circulated draft legislation over the past several months that addresses this very issue. The FCC and some state commissions are considering proposals for divestiture or structural separation as well. Among the differences in these plans are the degree of separation between the two halves of the LECs and the actual dividing line between the two entities.

There is much room for debate about how to carry out a second divestiture solution, but two principles are key. First, any separation must be a complete divestiture, with no joint ownership (either partial or full) of the two divested entities. Second, some significant portion of local facilities must be separated from the entity owning the loops. This will foster competition and investment in local networks by competing LECs. In is not enough to bring competition only to the retail end of the local business. We look forward to working with this Committee to discuss the benefits of such an action.

V. CONCLUSION

Mr. Chairman and members of the Committee, mergers among incumbent local monopolies presents a real and significant threat to the ability to achieve the goals of the Telecommunications Act of 1996. MCI believes a clear distinction must be made between pro-competitive mergers such as MCI WorldCom and those that will perpetuate the local monopoly. If the ultimate goal of vigorous competition in *all* telecommunications markets is to be achieved, your continued leadership and bold thinking along with that of the antitrust authorities and federal and state regulators is going to be necessary. If bold steps are taken and a strong competitive vision is pursued, we believe local competition and all of its corresponding benefits can be a reality for all consumers across the country. Approval of the MCI WorldCom merger is an important, historic step in that direction.

Thank you.

Mr. GEKAS. The borrowed time has expired.

Mr. SALSBURY. Thank you.

Mr. HYDE. We turn to Mr. Ellis.

STATEMENT OF JIM ELLIS, SENIOR EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SBC COMMUNICATIONS, INC.

Mr. ELLIS. Mr. Chairman, Mr. Conyers, members of the committee, good morning. Thank you for the opportunity to let me appear and talk about the proposed merger between SBC and Ameritech. The basis for the proposed merger rests in the market conditions, some of which have been described this morning by earlier speakers.

The implementation of the single European market, the Euro currency, the WTO agreement, the regional agreements, the wave of privatization, that is going on around the world, have all led to a removal of barriers to entry on a global basis and real globalization of the marketplace. Today, major companies are operating on a global basis in terms of competitors, markets, suppliers. Just about every aspect of their business operates on or touches the global marketplace. As a result of this, we have seen foreign companies come into the United States and acquire American companies to gain access to our markets. You all could make up your own lists, but mine begins with the most recent Mercedes announcement of their acquisition of Chrysler. We have seen Alacatel acquire Digital Switch. We have had notice or indication of Northern Telecom acquiring Bay Networks, a California company. Teleglobe, more recently, has announced its acquisition of Excel, a Dallas company. Roche Pharmaceutical has acquired GenTech, a San Francisco company. All of these examples involve companies that operate in Ameritech's or SBC's traditional operating territory, and in every case neither Ameritech nor SBC are in a position to follow our customers. We are not in a position to defend our companies that operate in our territory against the ability of other competitors, foreign and domestic, to offer a complete package of services. That is what our merger is about. We are seeking to have that ability, and to be able to defend our customers, pursue our customers and participate in an international market that is growing, according to some experts, at the rate of 30 percent a year.

Now what is our strategy? It is straightforward. The merger is the linchpin of it. It will give us the resources, the scale, the customer base to permit us to implement a three-part strategy. The first is what we call the national-local strategy. We will go into the top 30 markets outside our traditional operating territory, and we will offer basic residential, and I emphasize that, residential and business local exchange services. Combine that with the 20 markets in our traditional territory and we will have a company that will be operating in the top 50 markets across the United States. That is the first part of the strategy, and we are the first company, the first company, to announce a strategy to offer both residence and business local exchange services on a facility basis.

The second part of the strategy will tie those local networks together, create a national network, something we don't have today, create a new national network capability. And the third part is to link that up with the 19 countries we serve overseas. The result will be a new U.S. based global competitor.

Now what is in it in the public interest sense? The first thing is it will jump-start competition nationwide like nothing has since the implementation of the 1996 Telecom Act. The second thing that will happen, it will cause companies who have been on the fringe, companies like MCI and others, who have not entered the residential market, they have been on the fringe at the high end, they will have a choice. They either come in and match with the complete package or they will default that market. And the third thing, it will cause companies like incumbents, Bell South, Bell Atlantic and others, to come into our markets as we go into theirs to try and defend their position.

A word about jobs. This is a growth merger, it is about growth. We are going to have to go into places we don't operate, create networks that don't exist today. It is about growth. We have a track record. In California, since we closed the SBC–PT6 merger 15 months ago, there were critics saying this merger was going to mean loss of jobs. Since we closed the merger, there are 2900 additional jobs in 15 months in California. That is more than the next 5 largest employers combined. In SBC we have 6,000 additional employees, compared to what we had before the merger.

And with that, I would say simply this. This merger is about the public interest in the sense that it will ensure competition, it will fulfill the promise of the Telecom Act and it is going to enable this country to have another flagship carrier competing in the global telecommunications market.

Thank you.

[The prepared statement of Mr. Ellis follows:]

PREPARED STATEMENT OF JIM ELLIS, SENIOR EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SBC COMMUNICATIONS, INC.

The purpose of my testimony is to address the effects of consolidation, and specifically the merger of SBC and Ameritech, on the state of competition in the telecommunications industry.

I will divide my testimony into three parts. First, I will discuss the global nature of the telecommunications marketplace. Second, I will describe the SBC/Ameritech merger. And finally, I will discuss the benefits of the SBC/Ameritech merger for consumers and competition.

THE MARKETPLACE FOR TELECOMMUNICATIONS SERVICES IS INCREASINGLY GLOBAL IN NATURE

The world is shrinking in terms of commerce, travel and telecommunications. Major firms around the world are increasingly finding themselves operating globally in terms of customers, markets, suppliers, sources of financing, internal resources and competitors. A number of recently announced mergers demonstrate that major foreign firms are seeking access to American markets, products and skills (e.g., Daimler Benz (Germany) acquiring Chrysler; Alacatel (France) buying DSC Digital Switch; Northern Telecom (Canada) acquiring Bay Networks; and Teleglobe (Canada) buying Excel Communications). These mergers are all about geographic extension of core businesses and obtaining needed scale and scope, rather than the building of global conglomerates. Moreover, corporations are increasingly organizing their business units across national boundaries on a market or functional basis, rather than by countries. In addition, technology is decreasing the cost and increasing the value of telecommunications usage. In this environment, U.S. telecommunications companies who want to compete on a global basis cannot remain subject to artificial legal, regulatory and geographic distinctions and restrictions that are not imposed on our foreign telecommunications competitors.

There can be no dispute that the marketplace for telecommunications services is increasingly becoming global. The global market for all telecommunications services was approximately $700 billion in 1996, and has been growing at an estimated 20% per year. North America accounts for 32%, Europe 33% and Asia 27% of worldwide telecommunications revenue. Approximately 20% of all U.S. toll traffic now terminates in foreign countries.

Increasingly, customers want the capability to send and receive voice and data traffic on both a national *and* international basis. We are finding that our customers, and most significantly our major corporate customers, want the option to deal with a single carrier for all of their telecommunications requirements.

Not surprisingly, the telecommunications carriers most capable of meeting their customers' global need for service are the international carriers. The major international carriers include AT&T, WorldCom/MCI, Sprint, and Bell Canada in North America; British Telecom, France Telecom, and Deutsche Telekom in Europe; and Nippon Telephone and Telegraph in Asia. Even these carriers are forging global alliances. For example, Global One consists of Sprint, France Telecom and Deutsche Telekom. World Partners consists of AT&T and four non-equity partners, including Unisource. Unisource consists of the Dutch, Swedish, Swiss and Italian PTTs.

In order to compete with these major international carriers and global alliances, SBC believes that it must follow its customers and provide the full range of telecommunications services on both a national and international basis. SBC therefore developed a strategy to expand its capabilities and to position itself to meet the needs of its customers on both a national and international basis.

SBC also believes that this evolution of the global telecommunications marketplace inevitably will result in consolidation, with there ultimately being a hand-full of full service global competitors competing with many regional, specialized and niche carriers. Both domestic U.S. and foreign telecommunications carriers are feeling the same pressure to meet their customers' needs for service wherever they travel or do business. As they position themselves to become one of these global players, foreign telecommunications carriers are looking for opportunities to take over all or a portion of domestic carriers in order to gain a toe-hold in the U.S.

For example, France Telecom and Deutsche Telekom each own 10% of Sprint. British Telecom tried to take over MCI. It was announced that Cable & Wireless, the second largest British telecommunications firm, had negotiated a contract to buy MCI's Internet backbone in connection with WorldCom/MCI's effort to satisfy European regulators reviewing their merger. And just last week, Teleglobe, Inc., a Canadian company, announced that it was buying Excel Communications, Inc., a U.S. long distance carrier. This merger will create North America's fourth largest long distance company, behind AT&T, WorldCom/MCI, and Sprint. Teleglobe owns or operates licenses in 18 foreign countries, serves more Internet service providers than any other carrier, and has submarine cable and satellite facilities linking North America with more than 240 countries. At its annual shareholder meeting this year, Charles Sirois, Chairman and CEO of Teleglobe told shareholders that the company plans to be among the top three international telecommunications players.

As these foreign carriers increasingly expand their international footprint through the acquisition of domestic U.S. carriers, public policy in this country should encourage the development of U.S. "flagship" carriers as part of the surviving group of global players. SBC intends to be one of those "flagship" carriers and global telecommunications players.

THE SBC/AMERITECH MERGER

SBC's planned merger with Ameritech is in recognition of these changes taking place in the telecommunications marketplace and SBC's overall corporate objective to follow our customers and meet their telecommunications needs both nationally and internationally. In order to accomplish this objective, SBC intends to implement a "National-Local" strategy to build a nationwide network, interconnect that network with its international operations, and thereby create a new U.S.-based telecommunications company with both national and international service capabilities.

The centerpiece of SBC's "National-Local" strategy is the acquisition of Ameritech. Combined with Ameritech, the "new SBC" will have the assets, scale and scope, and management skills to compete on a local, regional, national, and international basis with other incumbent local exchange carriers, CLECs, interexchange carriers, and global competitors. The new SBC's combined assets will serve a 13-state region, and it will have operations in 19 foreign countries in Europe, Asia, Africa, and in North, South, and Central America.

The merger with Ameritech will enable SBC to implement its "National-Local" strategy with a three-pronged approach to becoming an integrated global telecommunications carrier.

First, after the merger with Ameritech is closed, SBC intends to enter the top 30 markets outside the combined company's traditional 13-state region. In this way, the combined company will be capable of serving its customers in at least the top 50 markets throughout the U.S. The new SBC will enter the new markets through a "smart build" strategy. Switches will be installed in the selected markets, combined with transport facilities that are either built, purchased, or leased in partnership with other carriers. The new SBC will serve *both* business and residential customers providing them a "one-stop shop" for local exchange, long distance, wireless, high-speed data, and Internet services. This part of SBC's strategy will create a new major full-service local exchange competitor in the 30 out-of-region markets that we will initially enter.

Second, the new SBC will, as we say, "connect the dots." That is, we will build upon our proven track record of success in providing high quality local exchange service by interconnecting our facilities in the top 50 markets in the U.S. In this way, the new SBC will create a new national, state-of-the-art voice and data telecommunications network.

Finally, the new SBC will interconnect its national, state-of-the-art voice and data network with its international operations to create an international network. SBC will thus become a major U.S. based, global telecommunications competitor able to follow its customers and provide services worldwide.

Neither SBC nor Ameritech alone could successfully implement this "National-Local" strategy. It will require the commitment of a critical mass of financial, management, and technical resources that can only be provided through the economies of scale and scope of the combined company. The purchasing power of the combined company will enable the new SBC to obtain volume discounts on purchases of the hardware and software necessary to build-out this new national network. The size of the combined company will also diminish the costs and risks associated with developing new products and services on such a large scale.

From an antitrust perspective under Section 7 of the Clayton Act, the SBC/Ameritech merger will not substantially lessen competition or tend to create a monopoly. SBC and Ameritech are actual competitors in the operations of their cellular companies only in Chicago and St. Louis. However, because FCC rules prohibit the combined company from owning more than one cellular license in the same market, we will divest one of the cellular licenses in both Chicago and St. Louis in order to complete this merger. Otherwise, SBC and Ameritech are not potential competitors in any market. A review of the underlying facts and documents by the Department of Justice (DOJ) and the Federal Communications Commission (FCC) will unequivocally demonstrate this to be the case.

BENEFITS OF THE SBC/AMERITECH MERGER

The SBC/Ameritech merger will provide significant benefits to consumers and competition.

Business and residential consumers in the 30 new markets that we will be entering after the merger will benefit from the entry of a strong new local competitor. The new SBC will be a full service provider to both business and residential customers in these markets. It will provide these customers in the regional territories of Bell Atlantic, Bell South, US West, and GTE with an additional choice of local, long distance, data and Internet service provider.

Implementation of the new SBC's "National-Local" strategy will speed the entry of long distance carriers and other competitors into the residential market to challenge SBC and the incumbents for those customers. Moreover, competition in the new SBC's 13 in-region states will be enhanced as the other Bell companies, GTE, long distance carriers and other CLECs will, in turn, enter our in-region markets in retaliation.

In addition to increased competition, consumers and the economy will also benefit in other ways. Our experience in the case of the Pacific Telesis merger provides such direct evidence. After we announced the SBC-Pacific merger, critics claimed that this merger would result in higher prices for local service, a decline in service quality, a decrease in investment in California, a massive loss of jobs and a set-back for competition in California. More than a year has passed since the SBC-PTG merger closed. If you look at the facts regarding what has happened in California, you will see that none of these negative predictions have come to pass. The undisputed facts are that since the SBC-PTG merger closed on April 1, 1997:

- prices for Pacific Bell's local service remain unchanged;
- quality of service has improved;
- Pacific Bell is meeting and exceeding the service quality standards established by the California PUC;
- new products and services (including ADSL) have been introduced in California;
- investment in the Pacific Bell network has increased since the merger;
- the company has created 2,869 additional jobs in California than existed before the merger closed, as well as an additional 2,900 jobs for SBC operations outside California since the merger was consummated; and
- local competition is flourishing in California.

An honest evaluation of the SBC-Pacific Telesis merger demonstrates that by every objective measure, this particular transaction was in the public interest. Consumers have benefited, employees have benefited, California has benefited and competition has most definitely benefited.

CONCLUSION

Just last week, each of the government witnesses appearing before a Senate Judiciary Committee on Mergers and Corporate Consolidation—the Chairman of the Federal Reserve Board, Chairwoman of the President's Council of Economic Advisors, Chairman of the FTC, and Assistant Attorney General-Antitrust—recognized that mergers today can be the result of globalization, technological change, and deregulation. As I have discussed in my testimony, each of these factors have been factors in SBC's decision to merge with Ameritech and to pursue its "National-Local" strategy in order to meet the needs of our customers and to respond to competition.

President Clinton expressed similar views recently, in commenting on the concentration in U.S. business. As reported by *The Wall Street Journal*, the President observed that nationalization and globalization of industries put "a premium on bigness, partly so you can afford to get into new market areas, partly so you can afford to handle bad years—you have to have more money." More importantly, the President indicated that "[t]he test of all these mergers ought to be this. Does it allow them to become more globally competitive in ways that don't unfairly raise prices or cut the quality of service to consumers in America?"

SBC believes that, in the case of its merger with Ameritech, the answer to this question is an emphatic "yes." Implementation of our "National-Local" strategy will result in greater local competition nationwide, with greater consumer choices, higher quality services, and lower prices overall. The interconnection of this new nationwide network with our overseas interests will create a new, dynamic U.S. "flagship" global competitor.

Mr. GEKAS. We thank the gentleman. We turn to Mr. Welsh for a fresh 5 minutes.

STATEMENT OF KELLY WELSH, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, AMERITECH

Mr. WELSH. Thank you, Mr. Chairman, Mr. Conyers, members of the committee. Thanks for this opportunity to address the effects of consolidation on the state of competition in the telecom industry.

I would like to begin with the singlemost central fact of life in our industry, one that drove our decision to merge with SBC, but also one that defines the competitive playing field of the future. That central fact is the globalization of the telecom industry.

Why is the telecom world going global? In large part because customers are demanding it. Customers expect to be able to call Tokyo as easily as they call Toledo, to move data seamlessly between manufacturing locations around the globe and to access ATM accounts in Europe or Asia just as quickly as in their hometown.

When a German company like Mercedes Benz operates a plant in North America, it wants its telecom carrier to serve all of its communications needs from voice calls to data, from local service to satellite links, whether in Detroit or Dresden. If U.S. companies fail to serve customers globally, those customers will turn to others and we will have less job growth here and lose jobs we now have.

But customer demand is only part of the story. This change is happening, in part, because America's leadership has helped to make it happen. No one here should underestimate the profound effect Congress had on global telecom when it enacted the Telecommunications Act of 1996.

Our commitment to open competition led 2 years later to a World Trade Organization agreement that committed much of the world community to international competition. Leadership by the United States was critical to getting our trading partners to open their telecom markets to United States companies.

Open markets and international competition have helped fuel this globalization. It is not theoretical. It is real, it is happening; and our public policies can either help America win or profoundly handicap our workers and our ability to compete.

Ameritech has already started the effort to compete on a national and global scale with important strategic investments in Europe including Belgium, Denmark, and Hungary. But as Scott Cleland of Legg Mason recently testified, it requires a massive capital base to play at a global level.

The combined SBC-Ameritech will have approximately $38 billion in revenues. Deutsche Telekom, for example, has approximately $42 billion in revenues; Nippon Telephone, $79 billion in revenues. Moreover, Deutsche Telekom partnered with France Telecom and Sprint Corporation to form Global One, which provides international services.

Similarly, AT&T, with $51 billion in revenues and several partners formed World Partners only last week adding Telstra, the dominant Australian telecom company. It is against these competitors that we must set our course. Our proposed merger will lead to more opportunity and growth, providing benefits not only to business but to residential customers.

The history of our industry is one in which exciting innovations often are introduced first in the business markets and then, if successful, to the residential market. Virtually all of us used a personal computer and cellular phone or 3-way calling first as a business tool. Now these are common features in our homes.

The merger will better enable our combined companies to be at the leading edge in bringing new products and services to the marketplace. But as much as things will change, some things will remain the same. Post-merger, Ameritech will maintain its headquarters in Chicago and its State headquarters in Indiana, Michigan, Ohio, and Wisconsin. We will continue to use the Ameritech name. We will continue to support economic development and education in Ameritech's region consistent with our well-established commitment.

In the end, the proposed SBC-Ameritech merger is about competition, customer choice, and job growth. We have detailed an aggressive national local effort that will give customers a new choice for local service in 30 major cities, and we will have the scope and resources to compete to meet our customers' global needs from Peoria to Paris. And in the process, we fully expect to promote robust job growth in the 5-State Ameritech region.

Competition, growth, new products and services, these are the engines to job growth. Mort Bahr, the president of the Communications Workers of America, recognizes this and has praised our proposed merger.

In short, the new telecom market is national and global. Congress and the U.S. Trade Representative helped to create the global market, a market that demands the efficient use of large scale. The proposed merger with SBC will enable us to compete in the global market more effectively. And it is only by competing and succeeding that we can continue to meet the needs of our customers and thereby continue to set a winning direction for our employees and shareholders.

Thank you.

[The prepared statement of Mr. Welsh follows:]

PREPARED STATEMENT OF KELLY WELSH, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, AMERITECH

Thank you for this opportunity to address the effects of consolidation on the state of competition in the telecommunications industry. I would like to discuss the proposed merger between SBC and Ameritech, and what it means for the future of telecommunications, consumers, and the American economy. I want to make three points:

1. The merger will benefit consumers by creating a company better able to compete nationally and globally;
2. The merger will spur competition, advancing the goals of the 1996 Telecommunications Act without risking recreation of the old Bell system; and
3. The merged companies will maintain their commitment to their regions; moreover, the merger, by creating a more effective global competitor, will create growth and new jobs.

I will address each of these points in turn.

1. The merger will benefit consumers by creating a company able to compete nationally and globally.

The telecommunications landscape has changed dramatically in the past few years. We in the telecommunications industry operate in a national and a global environment. The globalization of telecommunications has been well publicized, including the recognition that there will be company consolidations resulting in intense competition among a handful of truly global carriers and partnerships. Indeed, the merger of SBC and Ameritech is a response in the telecommunications industry to the same conditions President Clinton observed when he said that much of the recent merger activity in the economy was "inevitable" because of the nationalization and globalization of commerce, which puts a "premium on bigness." [1] Ameritech and SBC want to be leaders among the global carriers, not simply regional junior partners with foreign carriers. It serves the United States interest to have SBC/Ameritech compete to become a world-class carrier based in the United States, rather than barring us from that role.

Moreover, no one should underestimate the profound effect Congress had on global telecommunications when it enacted the Telecommunications Act of 1996. By

[1] Interview by Al Hunt (of the Wall Street Journal and CNBC) with Bill Clinton, President of the United States, Washington, D.C. (May 4, 1998).

passing this law, Congress made a policy decision that United States telecommunications markets would be open to competition. Two years later, the World Trade Organization Agreement On Basic Telecommunications Services became effective, and it committed much of the world community to the same basic policy decision with respect to international telecommunications. Leadership by the United States—importantly, leadership by example—was critical to getting our trading partners to open their telecommunications markets to United States companies.

At the end of the day, what drives the globalization of the telecommunications industry is our desire to serve our customers better. Increasingly, our customers want their telephone company to follow them and serve them wherever they go. Customers expect to be able to call Tokyo as easily as Toledo, to move data seamlessly between manufacturing locations around the globe, and to access their ATM account in Europe or Asia just as quickly as in their hometown. When a German company, like Mercedes Benz, operates a plant in North America, it wants its telecommunications carrier to serve all of its communications needs, from voice calls to data, from local service to satellite links, whether from Detroit or Dresden. Dr. Janet Yellen, Chair of the Council of Economic Advisors, correctly cited globalization and the need of U.S. companies to "provide one-stop shopping for foreign customers who demand that"[2] as a key force driving recent merger activity. U.S. telecommunications companies need to serve their customers globally or we will lose our edge in a rapidly expanding global market. We will have less job growth here in the United States—and lose jobs we now have—if we do not compete globally.

Ameritech has already started this approach, but we need to grow to move to the next level and most effectively compete on a national and global scale. We have made important strategic investments in Europe, including Belgium, Denmark and Hungary. But economies of scale matter in the national and global telecommunications marketplace. As Scott Cleland recently testified, "[i]t requires a massive capital base to play at a global level."[3] The combined SBC/Ameritech will have approximately $40 billion in revenues. We need this scale to compete with Deutsche Telekom, for example, which has approximately $38 billion in revenues, or Nippon Telephone which has approximately $71 billion in revenues. Even this comparison is not representative of the large scale of international telecommunications companies because, as you know, Deutsche Telekom partnered with France Telecom and Sprint Corporation (combined revenues total approximately $78 billion) to form Global One, which provides international services. Similarly, AT&T (with $51 billion in revenues) and several partners formed World Partners, only last week adding Telstra, the dominant Australian telecommunications company. Another of these partners is Unisource, which in turn is a consortium of European telephone companies.

International competition benefits residential customers as well. For example, the Internet is truly international in scope and knows no boundaries. One of our residential customers located in Chicago, for example, expects to be able to access a Web page located on a server in San Francisco, then one in Paris, then one in Hong Kong, then one in Sydney, all with a simple point and click, and at higher and higher speeds. This remarkable feat requires extensive international facilities and coordination. Just as important, the history of our industry is one in which exciting innovations are introduced first in the business market and then, if successful, migrate to the residential market. Virtually all of us used a personal computer, a cellular phone or three-way calling first as a business tool; now these are common features in our homes. The merger will better enable our combined companies to be at the leading edge in bringing new products and services to the marketplace.

The new telecommunications market is national and global. Congress and the U.S. Trade Representative helped to create this global market, a market that demands the efficient use of large scale. Our proposed merger with SBC will enable us to attain the necessary scale and to compete more effectively in the global market.

2. The merger will spur competition by advancing the goals of the Telecommunications Act without risking re-creation of the old Bell system.

This merger is consistent with U.S. competition policy: it will do nothing to diminish competition, and it will create economies and synergies that will spur competi-

[2] *Mergers and Corporate Consolidation In the New Economy: Hearing Before the Senate Judiciary Committee*, 105th Cong. 6 (June 16, 1998) (statement of Dr. Janet L. Yellen, Chair, Council of Economic Advisors).

[3] *Consolidation in the Telephone Industry: Hearing Before the Antitrust Subcommittee of the Senate Judiciary Committee*, 105th Cong. 3 (May 19, 1998) (statement of Scott C. Cleland, Managing Director, Precursor Group of Legg Mason Wood Walker, Inc.).

tion. Ameritech and SBC operate in different geographic areas both domestically, where we operate principally in different regions, and internationally, where we have made non-overlapping complementary investments (Ameritech's largest investments are in Europe, and SBC's are in Mexico and South Africa). We do overlap with each other on a few cellular properties, which we plan to divest. This merger does not increase concentration in any market.

The other reason this merger is pro-competitive is that it will spur more competition nationally and internationally. I have already discussed the importance of SBC/Ameritech competing internationally. This merger will spark local competition as well. The independent Yankee Group summed it up well when they reported that this merger will create "a formidable competitor not only for competitive local exchange carriers (CLECs) and ILECs but also for interexchange carriers (IXCs) such as AT&T and MCI/Worldcom that have dominated the national market and wireless carriers as well."[4]

A key to this increased local competition is the National-Local strategy, which involves a three-pronged attack. First, the merged companies intend to enter the top 30 markets outside the combined company's traditional 13 state region. SBC/Ameritech plans to do so by building and acquiring facilities, and partnering with other facilities-based carriers. This will be the first company to serve both residential and business customers on a national basis, providing seamless local exchange, long distance, wireless, high speed data, and Internet services. Second, SBC/Ameritech will use the 30 markets (and our in-region network) as a platform for a nation-wide, state-of-the-art voice and data network, providing an integrated service to business and residential consumers in both in-region and out-of-region markets. Third, SBC/Ameritech will connect this national, state-of-the-art voice and data network with its international operations to become a U.S. based integrated global telecommunications provider, following customers around the world.

Progress of this kind has not occurred to date because of incentives regulators have created for the long distance carriers not to enter the local market. If they were to enter, they would face long distance competition from the former regional companies serving those local markets who are now barred from providing in-region long distance service. Perhaps just as important, the longer they wait, the more price discounts and more favorable terms and conditions they can extract from regulators anxious to see more local competition from the long distance carriers. The National-Local strategy of the merged company can break that logjam.

Some commentators are now claiming that the Telecommunications Act of 1996 has failed to promote competition and, as a result, companies are "merging rather than competing." Therefore, our opponents say, the government should rescue the Telecom Act by blocking this merger. This thinking rests on flawed premises. Let me dispel a few myths.

The principal myth is that markets always react the way government planners hope they will. In fact, they do not. This is the lesson of the failure of government planned economies. Governments have a hard time controlling markets, or even knowing what a market will do next. Congress can tear down legal barriers to entry, but it cannot legislate entry into a market. Likewise, market participants—competitors and consumers—have a hard time predicting what a market will do. Markets have a way of humbling all of us. As Chairman Greenspan recently testified, "Adam Smith's invisible hand apparently does work."[5]

The next myth is that because things did not work out as planned, competition is in jeopardy. Competition in the local loop is occurring now, as we speak. Congress set the basic law: No more de jure monopoly. That is the right law. Indeed, in Ameritech's region there is significant and growing local competition. It has been about six months since my last appearance before this committee. Since then, local competitive entry in the Ameritech region has grown dramatically. In that short time, the number of providers competing with Ameritech has increased by 50% to a total of 63. Colocation has doubled and addresses 50% of all customer lines in our region; Interconnection trunks have increased by 90% to 160,700; Unbundled loops have grown 55% to 94,600; and Resold lines have increased by 60% to 636,500—not counting an additional 170,000 resold Centrex lines. Competition will spread and intensify, and it will continue to do so in ways we do not now anticipate. Indeed, the National-Local strategy can increase the intensity of local competition

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[4] *SBC/Ameritech Merger: And Then There Were Four*, Consumer Communications Report (the Yankee Group) May 1998, at 2.

[5] *Mergers and Corporate Consolidation In the New Economy: Hearing Before the Senate Judiciary Committee*, 105th Cong. 6 (June 16, 1998) (Statement of the Honorable Alan Greenspan, Chairman, Federal Reserve Board).

growth. But government cannot and should not attempt to micromanage the telecommunications industry.

Let me dispel another myth. This merger will not re-create the old Bell system. The myth of the revival of the Bell system is propounded by the old generals who are fighting the previous war. As you know, AT&T had a nationwide monopoly in what now are at least three discrete markets: long distance (including international calls), local service, and equipment manufacturing. It is wrong to claim that the merger of SBC and Ameritech—which currently are not engaging in manufacturing or providing in-region long distance and have scores of significant competitors for local service—would restore that monopoly. The MFJ explicitly did not limit the number or size of the RBOCs. No expert agency, judge or elected official decided that we must have a certain number of RBOCs or that the public interest requires that we draw geographic lines a certain way. Rather, AT&T decided how many RBOCs to create in its proposed plan of reorganization after divestiture. Further, the Bell system would not be reconstituted even when the combined SBC and Ameritech is permitted to provide in-region long distance service in competition with large providers such as AT&T. Unlike prior to 1984, there is competition in all the markets in which pre-divestiture AT&T had monopolies or virtual monopolies. The U.S. telecommunications market is so much more competitive and innovative today, that a return to the AT&T monopoly could never occur. The reality is one of global competition from global companies or partnerships. Soon, we will have one or more global satellite networks; the Internet grows at a geometric rate; voice is moving to packet switched technology and is being carried over a new kind of network; there are four to six very aggressive wireless carriers in many markets; and local competition is growing at a rapid rate. These developments and many more prove that the telecommunications industry is as dynamic and innovative now as at any time since Alexander Graham Bell invented the telephone. The merger is a part of these dramatic changes.

3. The merged companies will maintain their commitment to their regions, and the merger will spur job creation.

Increased competition from SBC/Ameritech will occur in part because of a new, national and global outlook, but one with a home grown perspective. At Ameritech we are proud of our commitment to our five state region. We do not just work in the Midwest. We are Midwesterners. That same commitment will continue in the combined company. Indeed, the combined "best practices" of Ameritech and SBC will help deliver innovative products and services to customers faster. It will let us innovate and improve customer service. And it will allow us to use our economies of scale to help get the best deal for customers.

Symbolic of this commitment is the fact that SBC has made clear that there will be no net decrease in jobs in our five state region resulting from the merger. Moreover, as we enter new markets and as we focus on customer service and innovation, the merged companies expect to add jobs in the mid-term and long term. Ours is a growth business; we have a growth plan; and we plan on that growth being realized in the United States as well as throughout the globe. That is why the Communications Workers of America supports the merger. Mort Bahr, President of the CWA, stated in his letter to the Clinton Administration that "[i]n the short time that SBC has had ownership of PacTel, we have seen jobs grow in California, good high tech union jobs. . . . SBC CEO Ed Whitacre has made the same commitment to job growth in the Ameritech states."[6] If we are not able to compete nationally and globally, the jobs in our region may be lost to competitors who have the scale and resources to win the global competition and take our customers away from us.

There is nothing more basic than the simple need to communicate. We enshrined it in our constitution in the First Amendment. The need to communicate has informed our politics, from famous debates to fireside chats. We understand that in everything we do, be it globally or locally, it all comes back to helping people communicate with people. This merger will promote that goal.

Mr. GEKAS. I thank the gentleman. We turn to Mr. Devlin.

[6] Letter from Morton Bahr, President, Communications Workers of America, to Al Gore, Jr., Vice President of the United States (May 12, 1998).

STATEMENT OF RICH DEVLIN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SPRINT COMMUNICATIONS CORPORATION

Mr. DEVLIN. Thank you, Mr. Chairman and members of this Judiciary Committee for this opportunity to present Sprint's views on two pending megamergers. The first is SBC-Ameritech and the second is MCI-WorldCom. Our view is that both of these mergers would aggregate and concentrate market power to the detriment of consumers and competition.

The SBC-Ameritech merger would create a massive telephone company, some $40 billion in revenue, that controls one-third of the Nation's telephone lines. Now I am not saying that big is necessarily bad. I am saying that this particular merger will harm consumers.

The merger would eliminate competition, the substantial, actual and potential competition, particularly in the St. Louis market where Ameritech had made plans to enter to compete against SBC and then dropped those plans after this transaction was announced. It will decrease the number and comparability of benchmark firms, which complicates the regulatory process and antitrust reviews. And it will decrease rivalry and innovation.

What we are talking about here is aggregation of local monopolies. And if you allow SBC and Ameritech to do that, they will have an increased ability and incentive to discriminate against their rivals.

The merger will also give added leverage to SBC and Ameritech to use their monopoly power to impair competition in competitive markets, just like the old Bell system did and resulted in antitrust lawsuits and divestiture. This country has spent far too many years and too many billions of dollars to break up telecom monopolies—to go backwards. We cannot afford to go backwards to recreate Ma Bell, where its prices were high and choices were low.

There are serious problems with this merger and they are not offset by the claimed benefits of SBC and Ameritech. My colleagues to the left claim that with this merger their companies will commit to enter 30 local markets outside of their monopoly territories.

First of all, I think we have to view this commitment with skepticism because neither SBC nor Ameritech has distinguished themselves in terms of opening their own local markets to competition. But even more questionable, this notion of tying SBC's willingness to compete for approval of this merger—it makes no sense. It is not credible that a company the size and only a company the size of these two giants together can compete in local markets.

The RBOCs are clearly in the best position of any companies in the United States to compete in local markets. They have the core human, financial, marketing, operational, and technological resources and experience to do this. They should be competing against each other, like Ameritech was going to do in St. Louis, rather than merging.

My colleagues claim that the global markets explain this all and somehow justifies the merger. I think that is a big nonsequitur. It is like saying, because the Earth is round, we need to do this merger. Yes, there are global aspects to the telecom industry, but the local business is in-the-trenches work. You have to build your systems, build your facilities, and market in specific towns. But even if it were a global market, they can participate today and they do so today, as their testimony indicated.

Frankly, you do not need to merge local monopolies to compete in global markets. There was a reference to Sprint there. Both of these companies individually, that is, both Ameritech and SBC, today are larger than Sprint. So the notion that Sprint somehow justifies their merger makes no sense to me.

The Telecommunications Act was supposed to open up local telephone monopolies. What we got instead was stonewalling, incessant legal challenges, and greater concentration. The merger of large regional telephone monopolies can only move us further away from the goal of local competition.

Mr. Chairman, 20 seconds on MCI-WorldCom?

Mr. GEKAS. 25 seconds.

Mr. DEVLIN. Thank you.

We had a serious problem with that transaction as originally proposed. We are very pleased that the Department of Justice and the European Commission insisted on meaningful structural changes to change that transaction. And based on those changes, Sprint no longer has objections to the MCI-WorldCom merger.

Thank you.

[The prepared statement of Mr. Devlin follows:]

PREPARED STATEMENT OF RICH DEVLIN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SPRINT COMMUNICATIONS CORPORATION

Consistent with the requirements of House Rule XI, clause 2(g)(4), a curriculum vitae and disclosure of government contracts is attached to this prepared statement.

Thank you for this opportunity to present Sprint's views on the consolidation trend occurring in the telecommunications industry. The Committee's hearing is timely in light of two pending megamergers: SBC/Ameritech and MCI/WorldCom. While the proposals to merge raise different issues in discrete economic portions of the very broad "telecommunications" industry, they share one commonality: they both seek to aggregate and concentrate market power to the detriment of consumers and competition. But they are also very different in one key respect: whereas the WorldCom/MCI merger may be 'fixable' (by complete divestiture of the Internet assets of one of the companies), the anticompetitive consequences of an SBC/Ameritech merger cannot be remedied by restructuring or conditioning. I briefly set forth the antitrust concerns of each below.

THE SBC/AMERITECH MERGER MUST NOT BE ALLOWED TO PROCEED.

Local phone service remains today a monopoly, notwithstanding Congress' passage of the Telecommunications Act of 1996. The Regional Bell Operating Companies ("RBOCs ") have used every legal ploy to evade their obligations under that Act in order to maintain their local monopolies. The proposal of SBC to acquire Ameritech would make matters worse. It would create a single phone company controlling nearly one-third of America's phone lines. The combination of SBC (with 15.2 million access lines), PacTel (17.6 million), SNET (2.23 million) and Ameritech (20.1 million) would leave the new company with more than 55 million access lines, representing 35% of all lines served by the large ("tier one") phone companies.[1] It would have more than $32 billion in telephone operating revenues—almost one-third of total tier one phone company revenues—and a total of $43 billion of regulated and unregulated revenues. Allowing aggregation of RBOC local monopolies to this extent will harm consumers and will further delay the benefits Congress intended in passing the 1996 Act.

[1] The data are derived from FCC ARMIS figures for the year 1997.

A Further Reduction in the Number of RBOCs Will Result in Substantial Anticompetitive Effects.

With the breakup of the Bell System in 1984, seven independent RBOCs were created. Subsequent consolidation has reduced the number to five and the proposed acquisition would further reduce the number to four. While the antitrust enforcement agencies and regulators have not thus far challenged this consolidation, the point has been reached where a further consolidation of the scope and character proposed would have dangerous anticompetitive consequences. The proposed consolidation would eliminate substantial actual and potential competition, further entrench a small number of massive phone companies with extraordinary market power, and decrease rivalry in innovation.

A. The Merger Would Eliminate Substantial Actual and Potential Competition.

In its proceeding to review the Bell Atlantic/NYNEX merger, the Federal Communications Commission found that Bell Atlantic was an actual participant in a portion of NYNEX's geographic market and that therefore the merger would eliminate substantial horizontal competition by increasing both the likelihood of collusion and the unilateral exercise of market power by the merged firm.[2] Like the situation in that case, SBC and Ameritech operate in adjacent geographic areas. Ameritech has taken concrete steps toward entry into SBC's territory in the St. Louis area, steps that are more substantial than those that had been taken by Bell Atlantic. Under the DOJ *Merger Guidelines*, Ameritech can be classified as a market participant to which market share should be attributed. Alternatively, Ameritech could be viewed as the most likely potential entrant into one or more SBC monopoly markets. Under either scenario, the merger raises serious antitrust issues because it would deny consumers the benefits of meaningful competition.

B. The Merger Would Decrease the Number and Comparability of Benchmark Firms.

When the Antitrust Division was forced to file suit to break up the Bell System, the courts found that antitrust enforcement had been all the more burdened because it was so difficult for regulators to effectively regulate the monolithic Bell System. After divestiture, the seven Bell Companies argued vociferously that the existence of seven independent companies meant more effective regulation because regulators could compare one to the others, in terms of price and quality of services. The proposed merger would of course reduce the number down to four.

The reduction in the number of benchmark firms creates not only regulatory problems, it must also be recognized as an antitrust concern. Any diminution of the FCC's and the states' ability to regulate these firms means that reliance on structural market factors to promote consumer welfare becomes correspondingly more important. Moreover, lack of benchmarks creates difficulties in agency and private antitrust enforcement as it becomes more difficult to distinguish between predatory and welfare enhancing effects of questioned conduct by comparing firm performance with other industry participants.

Economic and business literature in recent years has increasingly noted the procompetitive effects of benchmarking on industry participants themselves. See, e.g., Teece, *Information Sharing, Innovation and Antitrust*, 62 Antitrust L.J. 465, 477 (1994); Henry, *Benchmarking and Antitrust*, 62 Antitrust L.J. 483 (1994). Thus, in addition to the government, private parties use BOCs to assess the quality of their performance, especially those that must negotiate with the BOCs for essential inputs. And, of course, as the number of comparable firms decreases, the difficulty increases for participants to spot and emulate innovative firms and for customers and suppliers to reward the more efficient firm with patronage.

C. The Merger Would Decrease Rivalry in Innovation.

In a technologically dynamic industry such as telecommunications, rivalry in innovation is extremely important in promoting economic efficiency. According to recent commentators, the promotion of technological innovation should be the paramount goal of antitrust policy. *Innovation, Rivalry and Competitive Advantage: Interview with Professor Michael E. Porter*, 5 ABA Antitrust, No. 2, p. 5 (1991); Brodley, *The Economic Goals of Antitrust: Efficiency, Consumer Welfare, and Technological Progress*, 62 N.Y.U.L.Rev. 1020, 1026 (1987). A firm whose preexisting products earn a substantial flow of excess profits has much to lose from competition from rivals' innovative market entries and may therefore have an incentive to co-opt poten-

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[2] *In re Applications of NYNEX Corp. and Bell Atlantic Corp.*, File No. NSD–L–96–10 (rel. Aug. 14, 1997).

tially innovative rivals. Ordover and Willig, *Antitrust for High-Technology Industries: Assessing Research Joint Ventures and Mergers*, 28 J. Law & Econ. 311, 327 (1985). According to two former DOJ officials, a merger that removes a technological laggard may have little significance for R&D, but "the loss of a competitor at the forefront of innovation could have very substantial consequences for market performance." Gilbert and Sunshine, *Incorporating Dynamic Efficiency Concerns in Merger Analysis: the View of Innovation Markets*, 63 Antitrust L.J. 569, 578 (1995). Even where the merging firms are equals in technology "a merger of two firms with substantial share of current product-specific assets may further reduce their incentives for innovation. This would be especially true if the two merging firms were the most direct competitors in a technological race." Ordover and Baumol, *Antitrust Policy and High Technology Industries*, 4 Oxford Rev. Econ. Policy 13 (1988). SBC and Ameritech are direct rivals for innovation in telecommunications, and each of which has a substantial share of current product-specific assets. Their merger can predictably reduce innovation rivalry.

Indeed, SBC has already aborted the innovative video experiment of PacTel after the merger of these two firms. The same fate is likely to befall Ameritech's video ventures. In addition, innovative methods of opening markets may be curtailed. As the FCC noted in the Bell Atlantic/NYNEX order, "mergers between incumbent LECs will likely reduce experimentation and diversity of viewpoints in the process of opening markets to competition." (¶152). In addition, innovative interconnection offerings will increasingly be required to complement new services such as Sprint's recently announced Integrated On-Demand Network broadband services ("ION"). To the extent such innovation is blunted by the merged firm, the deployment of these new services will be delayed or halted altogether. For these reasons alone, the merger poses substantial anticompetitive risks.

The DOJ and the FTC have in the past few years challenged a number of mergers, in whole or in part, on the ground that competition in relevant innovation markets would be lessened.[3] Such an action is clearly warranted in this case.

There Are Predictable Anticompetitive Effects from Further Consolidating the RBOCs' Local Monopolies.

As the RBOCs consolidate, more and more local monopolies are brought under one roof. This could have serious effects on potential new entrants into telephony and other services and adversely effect competition between the RBOCs and IXCs when the RBOCs are free to enter long distance markets.[4] This is so because the aggregation of local markets gives the RBOCs an increased ability and incentive to predate (or discriminate against rivals) and leverage their current local monopolies.

Predation is a plausible strategy where the predator is active in a number of markets and the victim is only in a few. The larger firm can establish a reputation for predation to deter entry in all markets. Posner, *Antitrust Law An Economic Perspective* 185–186 (1976); Posner, *The Chicago School of Antitrust Analysis*, 127 U.PA. L.Rev. 925, 939–940 (1979). The Post-Chicago School of Economics also supports this view. Baker, *Predatory Pricing After Brooke Group: An Economic Perspective*, 62 Antitrust L.J. 585, 589, 595–96 (1994). See also III Areeda & Hovenkamp, *Antitrust Law* ¶727g (1996). Recent economic models have confirmed that predation is plausible where the predator operates in a numerous markets and, indeed, posits that the greater the number of markets in which the predator operates, the more likely is predation. See Milgrom and Roberts, "New Theories of Predatory Pricing" in *Industrial Structure in the New Industrial Economics* 112, 132 (1990). These authorities also argue that predation is more plausible where firms have imperfect or asymmetric information. The disparity in scale and scope as a large firm grows larger means that the smaller firms have less information about the potential predator's costs and intentions because their own costs and operations are on such a smaller scale, thereby making predation more feasible for the larger firm which has greater access to information.

A recent case has held that allegations of multi-market predation, especially non-price predation (sham litigation), may support a Sherman Act claim. *Damon Corp.* v. *Geheb*, 1982–83 Trade Cases (CCH) ¶65,117, citing Posner, *supra* and *United*

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[3] See, e.g., *United States* v. *S.C. Johnson & Son, Inc. and Bayer A.G.*, No. 94C50249 (N.D. Ill. filed Aug. 4, 1994); *United States* v. *Motorola, Inc. and Nextel Communications, Inc.*, No. 94–2331 (D. Wash. filed Oct. 27, 1994); *United States* v. *Microsoft Corp. and Intuit, Inc.*, No. C951393 WHO (N.D. Cal. filed Apr. 27, 1995); *Hoechst AG*, C–3629 (Dec. 5, 1995), 60 Fed. Reg. 49, 609 (Sept. 26, 1995); *Upjohn Co.*, FTC File No. 9510140, 60 Fed. Reg. 56,153 (Nov. 7, 1995).

[4] It should be noted that the RBOCs will retain considerable market power even when the standards are met for entering long distance markets.

States v. *Empire Gas Corp.*, 537 F.2d 296, 299 (8th Cir. 1976).[5] Another court has suggested that the multi-market predation theory is viable, albeit inapplicable to that particular case. *Advo Inc.* v. *Philadelphia Newspapers*, 51 F.3d 1191, 1196 n.4 (3rd Cir. 1995). These authorities support the view that where a firm acquires more markets by merger it is more likely to engage in predation.

In addition to this increased incentive to disadvantage rivals through predation or discrimination, the merger would increase the merged firm's ability to leverage its monopoly power into other geographic or product markets. For example, it could demand terms for interconnection in monopoly markets that were designed to disadvantage competitors in open markets or discriminate against downstream rivals in all markets. These terms could be much more subtle than the exclusive dealing generally found in leveraging cases. They could involve subtle favoritism and discrimination that would be difficult to detect, but would nevertheless be damaging to actual or potential rivals. The Supreme Court has noted the continued viability of concerns for monopoly leveraging. See *Eastman Kodak Co.* v. *Image Technical Services, Inc.*, 504 U.S. 451 (1992). The seminal Supreme Court case on monopoly leveraging fifty years ago specifically alluded to the dangers of increasing the number of local monopolies held by a firm bent on leveraging its power:

> A man with a monopoly of theaters in any one town commands the entrance for all films into that area. If he uses that strategic position to acquire exclusive privileges in a town where he has competitors, he is employing his monopoly power as a trade weapon against his competitors. It may be a feeble, ineffective weapon where he has only one closed or monopoly town. But as those towns increase in number throughout a region, his monopoly power in them may be used with crushing effect on competitors in other places.

United States v. *Griffith*, 334 U.S. 100, 107 (1948) (Douglas, J.). No better statement of the potential dangers of this merger could be expressed.

This discrimination or disadvantaging of rivals by a firm inclined to do so would also increase because the number of markets in which interconnection would be sought is greatly expanded. The gains from increased revenues for the integrated RBOC by disadvantaging rivals as compared with the revenues lost by denying access equal to those rivals is correspondingly increased.

Promises to Compete in the Future Are Not Credible and Cannot Overcome the Anti-competitive Nature of the Transaction

SBC and Ameritech claim that the merger will enable them to enter at least 30 local markets outside their territories. The promised benefit does not withstand scrutiny, however.

Skepticism is appropriate in light of the RBOCs' chronic resistance to Congress' fundamental policy of local phone competition. The balance struck by Congress in the 1996 Telecom Act, and agreed to by the RBOCs, was that local markets would be opened before the RBOCs could offer certain long distance services. SBC has used legal processes to attempt to turn the statute on its head by challenging regulators' efforts to open markets while trying to strike down the long distance restriction as unconstitutional.

Ameritech's recent announcement of a marketing "alliance" with Qwest represents a less direct attack than SBC's on the long distance provisions of the statute, but it would have the same effect of frustrating Congressional intent. And Ameritech's earlier efforts to implement freezes on customers' primary carrier choices just as competition was being introduced in its states was found unlawful by state regulators.

In any event, the claimed "efficiencies" must outweigh competitive harms. In order to do so, according to DOJ *Guidelines*, the efficiencies must be both cognizable (provable) and merger specific. Here, there is no evidence that the claimed efficiencies are merger specific, *i.e.*, that they cannot be achieved without the merger. It is simply not believable that only a company of this gargantuan size can compete

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[5] While the Supreme Court has expressed reluctance to employ predation theory to invalidate a merger, it expressly rejected a suggestion that the possibility of predation by the merged firm could never be used to block a merger. *Cargill, Inc.* v. *Montfort of Colorado, Inc.*, 479 U.S. 104 (1986). The Second Circuit subsequently held that a competitor has standing to challenge a merger if the post-merger market share is sufficient to increase the likelihood of predatory behavior (in that case non-price predatory behavior). *R.C. Bigelow, Inc.* v. *Unilever N.V.*, 867 F.2d 102, 107–11 (2d Cir. 1989).

It is also worth emphasizing that, even among the scholarship skeptical of the actual occurrence of predation, predation is uniformly deemed more likely in the context of rate-regulated industries, including telephony.

in local telephone markets; there are indeed numerous start-up competitive local phone companies in evidence today.

In the Bell Atlantic/NYNEX merger, policymakers decided to allow a smaller scale merger to go through subject to conditions that supposedly would ameliorate the anticompetitive effects of the transaction. The merger closed nearly a year ago, but conditions have been ineffective in prodding Bell Atlantic to open its markets. The SBC-Ameritech proposal invites policymakers to make the same mistake twice, on a grander scale injuring even more consumers. I urge your Committee to do all at its disposal to prevent this.

THE MCI-WORLDCOM TRANSACTION NEEDS SUBSTANTIAL RESTRUCTURING OF THE INTERNET ASSETS IN ORDER TO BE FOUND CONSISTENT WITH THE ANTITRUST LAWS.

The aggregation of MCI's core Internet backbone network to the core backbone networks already amassed by WorldCom through its acquisitions of UUNET, ANS, and Compuserve will give the combined WorldCom/MCI entity significant market power and thereby enable it to raise the costs of its existing core backbone competitors and limit the entry of new competitors. It is unsurprising, then, that both the Department of Justice and the European Union are apparently insisting upon substantial restructuring and divestiture of the Internet assets before allowing the transaction to proceed.

In order to better understand the likely anticompetitive consequences of the proposed WorldCom/MCI merger on the provision of Internet services, it is useful to briefly describe the provision of Internet backbone services. Internet backbone providers fall into distinct categories. The first tier or "top level" consists of core Internet backbone providers that own and control their own networks, exchange traffic with all other core backbone providers on a settlements-free basis, and have access to a large number of geographically dispersed locations. These firms offer high-speed transmission facilities that connect their nodes and that transmit high volumes of Internet traffic both nation-wide and globally. Access to any one of the core backbone providers offers ubiquitous Internet connectivity.

The lower tier backbone providers also maintain nodes and some modest transmission capability—albeit at lower speeds than those of core providers. However, they typically rely on facilities obtained from core backbone providers to transmit traffic throughout the United States and to other countries. Because the core backbone providers offer services to them that are costly to provide, the lower tier providers must pay for interconnection to the core providers' networks. The overwhelming majority of Information Service Providers (ISPs) do not maintain their own networks but rather obtain connectivity from backbone providers.

The merger would directly threaten competition in the market for core Internet backbone services.[6] Currently, there are four core backbone providers: WorldCom, MCI, Sprint, and GTE (through its ownership of BBN). These core backbone providers compete vigorously to provide facilities to lower tier backbone providers as well as to other ISPs. Such competition enables these providers to obtain access to core Internet backbone facilities at reasonable rates. With its acquisition of MCI, WorldCom would command an overwhelming share of the core Internet backbone market.[7] The WorldCom/MCI entity would in fact have two-to-four times the market share of its nearest competitor.

This dramatic change in market structure will place at risk the current settlements-free peering arrangements among core providers which has developed in a situation in which all current core backbone providers have roughly equivalent market shares. Once this equilibrium is disturbed, the dominant provider now has incentives to manipulate or deny access to its facilities in order to disadvantage its smaller rivals. The combined WorldCom/MCI entity may attempt to declare that all other current backbone providers, regardless of the size and scope of their backbone networks, must pay it for interconnection to its backbone facilities. Thus, the costs

[6] Core Internet backbone services plainly comprise a relevant antitrust market. Access to any core backbone provider permits any Internet user to reach any other Internet user through the interconnection arrangements that exist among core providers. Although there may be other routing arrangements through which Internet users can interconnect with one another, these alternatives are vastly inferior to access through a core backbone provider. Thus, a hypothetical monopolist that controlled the core Internet backbone market would be able to raise the price of access service. Under the *Horizontal Merger Guidelines* of the Department of Justice and Federal Trade Commission, the ability of a hypothetical monopolist to raise prices is sufficient to demonstrate that the provision of core Internet backbone services is a relevant antitrust market.

[7] Public sources have estimated that post-merger, 64 percent of all non-backbone ISPs would be connected to WorldCom/MCI. See Jack Rickard, "The Big, The Confused and the Nasty" Boardwatch (June 1997). Similarly, the combined WorldCom/MCI would have about 55 percent of total connections after the merger. *Id.*

of the current core backbone competitors of MCI and WorldCom may increase and these cost increases will, in turn, have to be passed on to lower tier providers and other ISP customers. The new entity may also find it profit-maximizing to degrade or even deny interconnection to smaller rivals to ensure that others begin to pay the newly demanded interconnection fees.

The merger will also increase entry barriers to potential core Internet backbone providers. Obtaining agreements with incumbents will be more difficult, and entry will have to occur at a greater scale in order to have any credible bargaining power with the dominant provider.

Consumers and the American economy are just beginning to understand and exploit the enormous potential of the Internet. To allow one entity to acquire dominant status such that this promise can be manipulated and diminished in the hands of one company would be very bad antitrust policy indeed. Sprint therefore congratulates this committee and the antitrust enforcement activity it oversees in ensuring that WorldCom/MCI transaction not go forward without *meaningful* restructuring and divestiture of the Internet assets.

I emphasize the word *meaningful* because, as this Committee is aware, MCI and WorldCom previously have attempted to circumvent their legal obligations by proposing ineffective solutions to this fundamental problem. It appears from unofficial reports of last week's European Commission Advisory Committee meeting that the EC has insisted on far more extensive conditions for the deal to gain approval. Sound antitrust enforcement requires a *complete* divestiture of either MCI's or WorldCom's Internet assets. Only this type of structural solution will maintain the current competitive balance among core Internet backbone providers and ensure that the core Internet backbone market remains competitive.

On Oct. 11, 1989, Devlin was named Executive Vice President, General Counsel and External Affairs for Sprint with responsibility for legal, state and federal regulatory and government relations functions, as well as corporate security functions. Prior to joining Sprint, Devlin held a variety of management and legal positions with AT&T. Devlin first joined Sprint on Jan. 1, 1987, as Vice President & General Counsel-Telephone. His responsibilities included providing legal and regulatory support for Sprint's local telephone operations.

Devlin holds a bachelor's degree in Industrial Engineering from New Jersey Institute of Technology and a law degree from Fordham University School of Law. He is a member of the New York and New Jersey State Bars.

He and his wife, Louise, have three daughters.

Federal Awards Since 10/1/94 *

PROGRAM	SOURCE	AMOUNT
36 CONS/LGCV	Dept. of Air Force-Pacific Air	**
45th Contracting	45th Contracting Squadron	50,900.00
AAFES	Army Air Force Exchange Svc.	
AAFES-800 service	Army Air Force Exchange Svc.	715,000.00
DECCOBOA	DISA/DECCO	
Dept. of Navy-Guantanamo	Dept. of Navy	
Dept. of State-Abu Dhabi	Dept. of State	125,435.70
Dept. of State-Athens	Dept. of State	129,284.67
Dept. of State-Bahamas	Dept. of State	87,094.00
Dept. of State-Canberra	Dept. of State	63,680.66
Dept. of State-Hong Kong	Dept. of State	285,903.63
Dept. of State-London	Dept. of State	258,593.19

Federal Awards Since 10/1/94 *—Continued

PROGRAM	SOURCE	AMOUNT
Dept. of State-Panama	Dept. of State	210,000.01
Dept. ot State-Mexico City	Dept. of State	112,500.56
Dept. of State-New Delhl	Dept. of State	287,0f3.f0
Dept. of State-Rome	Dept. of State	32f,226.39
Dept. ot State-Sao Paolo	Dept. of State	356,563.3f
Dept. ot State-Singapore/BIMC	Dept. of State	38,286.37
Dept. of State-Singapore/WTC	Dept. of State	38,286.37
Dept. ot State-Stockholm	Dept. of State	87,07f.36
DISA-Diego Garcia	DISA/DITCO	
DISA NH, CA & UK Tf	DISA/DITCO	260,955.57
DISA Onizuka/Vandenberg	DISA	
DITCO-Europe/Hungary	DITCO	36,000,000.00
FAATC fnternet Data	FAA	38,6f6.00
Federal Reserve Bank-San	Fed. Reserve Bank-SF	500,000.00
Fort Knox Phones	Fort Knox, KY Barracks	
GSA DTS Agreement	GSA	
GSA Schedule 58	GS–35F–1f7fD	
GSA Schedule 70	GS–35F–3273D	
I-NET	I-Net	
IMF Datalink (X.25)	International Monetary Fund	6,600/mo.
IMF Frame Relay	Int'l Monetary Fund-Frame Relay	291,785.85
IMF Voice/Fax	Internationat Monetary Fund	
Information Technology	fnfo. Technology Procurement	36,468.00
Intosec (SAIC)	Infosec	
Lightcom fnt'l, Inc.-Basic	Lightcom Int'l, Inc.	
NESC-Essex Amphib. Ready	NESC	
NESC-Saipan-Pers. Telecom	NESC-Saipan	
NESC-USS Peliliu	NESC	
NIPRNet	DISA	
NOAA/Dept. of Commerce	NOAA	30,000.00
NOAA/Dept. of Commerce	NOAA	30,000.00
NOAA/Dept. of Commerce	NOAA	30,000.00

Federal Awards Since 10/1/94 *—Continued

PROGRAM	SOURCE	AMOUNT
OPARS/NOODS	OECCO/NODOS	141,670.00
PDN	NASA/RMS Associates	10,000.00
PON	NIH/Nat'l Library of Med. Canada	116,666.67
SAIC CIO-SP	SAIC/NLM	66,861.00
SailorFon	NESC	
The Battle Group, Inc.	The Battle Group, Inc.	500,000.00
Treasury IRS DTS Agreement	Treasury IRS DTS Agreement	20,000.00
TSR-OITCO	DITCO	
TSR-OITCO	DITCO	
TSR-OITCO	OITCO	
US Coast Guard	US Coast Guard	99,337.00
US Information Agency-Hong	USIA	146,504.80
USOA-FAS	USDA-FAS (Foreign Agricultural	250,000.00
USDA X.25 Gateway	USDA	65,000.00
USPS-Little Rock Payphones	US Postal Service	100,000.00
USPS 800 Service	USPS	638,191.32
USPS C/B	US Postal Service	108,000.00
USPS Payphones (Eastern	US Postal Service	1,000,000.00
USPS T1-3/FR/ATM Svc.	US Postal Service	2,000,000.00
USSS-SNET	US Postal Service	2,200,000.00
UXBRIDGE	OISA/DECCO	

* List excludes classified awards.
** Not immediately determinable.

Mr. GEKAS. You owe 5 seconds to Mr. Taylor.
Mr. Taylor is now recognized.

STATEMENT OF ROBERT C. TAYLOR, PRESIDENT AND CEO, FOCAL COMMUNICATIONS CORPORATION

Mr. TAYLOR. Thank you very much. Good afternoon.

I am Bob Taylor, president and CEO of Focal Communications, a Chicago-based, privately-owned, competitive local exchange carrier providing local and long distance communications services. I am here today on behalf of the Association of Local Telecommunications Services, representing new competitors entering the local exchange marketplace. I will express my opinion on why I oppose the SBC-Ameritech merger.

At the outset, let me express my strong support for the pro-competitive policies embodied in the Telecom Act of 1996. In large part, because of the market-opening aspects of the Telecom Act, competitive local entrants have proliferated and have raised nearly $18 billion in capital since the Act.

As Congress reviews the proposed merger, I believe it is essential to evaluate three factors:

First, the extent to which these companies have followed the congressional mandates by opening up their monopoly local exchange markets to competition.

Second, how likely is it that their behavior will be worse, not better, if they are permitted to merge?

And finally, what kind of safeguards Federal and State policymakers must impose to protect competition for consumers if indeed the merger is approved?

My written testimony addresses each of these points in detail. But let me tell you a few things up front. Ameritech has been a bad actor with regard to opening its markets to local competition. SBC has been even worse. And the merger of the two is not good for local competition or consumers. Very significant safeguards are necessary, at a minimum, if this merger is to be consummated.

Competition can only be stimulated by encouraging the proliferation of market players, not making monopolists into megamonopolists. The proposed merger is intended to create a larger no-compete zone. Drawing on a topic which I think Chairman Hyde might be familiar with, it reminds me of Dennis Rodman's decision to ignore Coach Phil Jackson's instructions and attend a World Wrestling Federation event instead of pre-NBA final practices. It should not surprise us that Rodman chose to earn $250,000 for a wrestling event even though he knew he would be slapped with a $10,000 fine for violating NBA rules. Similarly, it should not surprise anyone that the regional Bells would undermine the Telecom Act's goals of forcing them to open their networks when they could instead consolidate power and bully regulators into giving them long distance relief.

It is all about incentives. That is why the best way policymakers can help develop competition in the SBC and Ameritech regions is by preventing the proposed merger and showing the regional Bells that you are serious about expecting them to perform, and that until they do so, they will not be allowed to enlarge their territories.

It is my personal opinion that the second best way Congress can help is to require a complete separation and full divestiture of the regional Bell companies' wholesale and retail functions. Divestiture would allow the regional Bells to compete for local service, essentially in the same way CLECs do. This may sound like an extreme position, but let me remind you that 20 years ago divestiture of AT&T sounded similarly extreme.

The new wholesale network company would have no incentive to favor one competitor over another, and that way Focal and CLECs could stand shoulder to shoulder with Ameritech and SBC and expect to be treated to the same level of service. Focal has shown that it can effectively compete for customers. But the BOC control of the bottleneck network facilities puts Focal's ability to grow at the mercy of its competitor.

Finally, Congress has a third but much less effective option and that is to lay out preconditions that SBC and Ameritech must satisfy before the merger is approved. Specific performance standards and enforcement mechanisms must be created to prevent SBC and Ameritech from precluding competition in their region. Congress must recognize, however, that the market will not wait for regulators to force change after the fact. The best approach therefore is to stop the merger.

Today while CLECs continue to find opportunities, we are still very much a David fighting Goliath. It is critical that we succeed. If we do not, consumers lose in two ways. One, consumers are deprived of the benefits of local competition in terms of price and innovation. And two, they risk having the incumbent leverage their monopoly power in the local markets to recreate the old Bell monopoly in both local and long distance.

This is clearly not what policymakers had in mind when they passed the Telecom Act. You must insist that the monopolies comply with the Telecom Act and open up their local markets prior to any discussion on any monopoly mergers.

At this time I urge Congress, the Department of Justice, and the FCC to stop the proposed merger between SBC and Ameritech.

Thank you very much.

[The prepared statement of Mr. Taylor follows:]

PREPARED STATEMENT OF ROBERT C. TAYLOR, PRESIDENT AND CEO, FOCAL COMMUNICATIONS CORPORATION

Good morning. Thank you for the opportunity to testify here today and for your interest in stimulating competition in the telecommunications industry. I am Bob Taylor, President and CEO of Focal Communications Corporation. Focal is a Chicago-based, privately-owned corporation that provides competitive local and long distance telecommunications services. Focal is authorized to provide service to consumers in California, Delaware, Florida, Illinois, Indiana, Massachusetts, New Jersey, New York, Pennsylvania and Virginia and has applied to provide service in an additional two states and the District of Columbia. Focal initiated service in Chicago in May 1997, and in New York in early 1998. Focal is a rapidly-growing competitive local exchange carrier (CLEC) that provides local switched telecommunications services to large corporations, Internet service providers and value added resellers. Focal's objective is to become the local provider of choice to telecommunications-intensive customers in Tier 1 markets.

I am here today on behalf of the Association of Local Telecommunications Services, better known as ALTS as well as Focal Communications. ALTS represents facilities-based competitors in the local telecommunications market offering voice, data, Internet and other advanced technological services.

At the outset, let me express my strong support for the pro-competitive policies embodied in the Telecommunications Act of 1996 ("Telecom Act"). When the Act was passed, its promise signaled to entrepreneurs that opportunities existed if they could marshal their resources and enter telecommunications markets, most particularly the previously closed local exchange market. The Act's premise was that the incumbent local monopoly would open its markets to competitors as the price for being able to enter the long distance market from which it had been barred. The hope and expectation was that, ultimately, a competitive market for local phone service would emerge. In large part because of the market-opening aspects of the Telecom Act, competitive local entrants, including both facilities-based and resale providers, have proliferated and new initial public offerings continue to be announced. Wall Street has viewed this emerging sector of the market as the future growth of telecommunications. CLEC industry revenue reached 2.7 billion dollars last year. Although relative newcomers, the competitive local exchange carriers (CLECs) closed 1997 with 1.4 million access lines and analysts project that this growth will double in 1998 to over 3 million lines. Finally, as the leading indicator of Wall Street's confidence, the CLECs have raised over 14 billion dollars in capital since the Telecom Act was passed. By contrast, for the four years prior to the Act, ALTS members raised only 2 billion dollars. In other words, thanks in part to the pro-competitive policies of the Telecom Act, CLECs were able to raise seven times the money in half the time.

Nevertheless, the CLECs still have a very long way to go. Today, while CLECs' enterprise value for this emerging market is estimated at 26 billion dollars, the ILECs' enterprise value is more than 15 times that—400 billion dollars. Compared to CLECs 2.7 billion in 1997 revenue, the ILECs had 101 billion dollars in 1997 revenue. While CLEC-served access lines increased to 1.4 million in 1997 and continue to grow dramatically, the ILECs had a total of 161 million access lines, an increase of over 6 million from 1996, and they are projected to increase in 1998 to over 168 million lines.

So, while CLECs continue to find opportunities, we are still very much a David fighting Goliaths. It is critical that local competition succeed. If it does not, consumers lose in two ways. One, consumers are deprived of the benefits of competition in terms of price and innovation and two, they risk having the incumbent local monopolies leverage their monopoly power in the local market to recreate the old Ma Bell monopoly in both local and long distance. This is clearly not what Congress had in mind when it passed the Telecom Act. In order to prevent this outcome, policymakers must be wary of permitting any more consolidations among the local monopolies. It must also insist that those monopolies comply with the Telecom Act and open up local markets to competition prior to any discussion on mergers. I urge Congress, the Department of Justice and the FCC to stop the proposed merger between SBC and Ameritech.

As Congress reviews the proposed merger of SBC and Ameritech, I believe it is essential that it evaluate the extent to which these companies have followed the Congressional mandate by opening their monopoly local exchange markets to competition; how likely it is that their behavior will be worse, not better, if they are permitted to merge; and finally what safeguards policymakers must impose to protect local competition for consumers, if the merger is to be approved. I will discuss each of these points in detail but let me tell you three things up front. First, Ameritech has been a bad actor with regard to opening its markets to local competition. Second, SBC has been the worst, and the merger of the two is not good for competition nor for consumers. Finally, very significant safeguards are necessary, at a minimum, if this merger is to be consummated.

Many in the industry concede that SBC firmly opposes competition, but I want to make very clear that, based on our experience, Ameritech has not exactly embraced competition and, in fact, has frequently flouted the requirements of the Telecom Act. To begin with, Ameritech has not met the competitive checklist required by Section 252 of the Telecom Act. Rather than dealing with Focal and other CLECs as large customers of Ameritech for interconnection services, transport, collocation space, and other wholesale services—effectively a large new market opportunity—Ameritech persists in treating Focal and other CLECs as, at best, steerage class passengers on a mammoth monopoly ocean liner—the SS RBOC. Ameritech continues to approach CLECs as competitors—not customers—and keeps them in place, below decks. If Ameritech treated CLECs as the customers that they are, they would be allowed to purchase first-class tickets, at a fair price, and be treated in such a way as to assure their continued patronage. The Telecom Act attempts to effectuate a change in course by the regional Bells by imposing a new set of rules. To date, the incentives contained in the Telecom Act for a change in course in terms of attitude and behavior are yet to be visible in either SBC or Ameritech.

Let me give you a few examples:

In order to provide service as a CLEC, Focal must interconnect with Ameritech. The Act recognizes this and obligates Ameritech and Focal to negotiate contracts to interconnect their networks. The Act did not and could not specify in detail performance standards for fulfilling its statutory and contractual requirements. Suffice it to say that our experience has been that an agreement to interconnect does not in itself result in interconnection. Without interconnection to the ubiquitous facilities of Ameritech, Focal's ability to serve customers is severely constrained.

Ameritech has failed to meet its contractual obligations to Focal by refusing to provide the tools necessary for interconnection. The requirements of the contract are very simple. In order to provide service, Focal must interconnect with Ameritech. To accomplish this, we use high capacity interconnection lines. Under our agreement with Ameritech, each of us is required to provide half of the trunks necessary to exchange calls between the two companies. Ameritech has never provided its full share. In fact, in order to put new customers on the network, Focal has had to provide two-and-a-half trunks for every trunk provided by Ameritech. Without these trunks we are substantially limited in initiating services to new customers and providing additional lines to existing customers. Ameritech's shortcomings become obvious when their service is compared to other companies. For example, WorldCom, another supplier of trunks to Focal, can increase trunk capacity within 2 weeks. Ameritech, by contrast, projects it will take 2 to 3 months to expand trunk capacity at the rate needed. WorldCom provides this high level of service because it is accustomed to operating in a competitive market and it values Focal as a wholesale customer, while Ameritech does not. Ameritech's ability effectively to limit our growth by providing slow service is a clear indication of the enormous power that continued control of the bottleneck elements provides to the regional Bells. We have been extremely successful marketing our services against Ameritech but our growth is limited by our speed in provisioning the services—a factor over which Ameritech continues to retain control by virtue of its monopoly position.

Ameritech also diminishes our ability to compete by serving as a bottleneck for both the exchange of local calls, and also for the exchange of traffic to and from long distance carriers. Focal, like many CLECs, exchanges traffic with interexchange carriers (IXCs) via Ameritech's access tandem switches. We have experienced lengthy periods where significant numbers of our (and, undoubtedly, other CLECs) calls have been blocked due to capacity limitations at these tandem switches. Ameritech is less affected by such blockages because it directly interconnects many of its end office switches to these carriers. These blockages could be easily resolved if Ameritech were to allow CLECs to route traffic to multiple tandem switches. Nonetheless, Ameritech artificially constrains CLECs to interconnect to one tandem switch, where insufficient capacity leads to blocked calls. If Ameritech allowed connections to multiple tandem switches, as Bell Atlantic has in New York, then temporary capacity issues at one tandem switch could be circumvented by using the spare capacity on the others. This is not unlike the difference between having a single road to use to get to a particular destination and having a half dozen equally good roads. In the former, an accident causes inordinate delays in reaching that destination. In the latter, you simply choose an alternate path.

In order to interconnect with Ameritech, CLECs may decide to collocate equipment in Ameritech's central offices. Although required by the Act to permit CLECs to collocate, Ameritech has made serious efforts to prevent CLECs from doing so and, when Ameritech does permit collocation, it imposes significant delays. Ameritech and SBC, to date, have also opposed the use of so-called "shared," or "cageless" collocation, which is one method that significantly increases the amount of space available for collocation. Finally, Ameritech has opposed the use of certain types of equipment—particularly the equipment necessary for competitors to run advanced data services using existing Ameritech copper loops at its facilities.

Ameritech and SBC have imposed unnecessary and inflated costs for the construction and conditioning of space for CLECs' use. For example, Ameritech charges nearly 50 thousand dollars to build and condition a 10 x 10 cage and nearly 1,000 dollars a month rent. SBC requires 600 square feet of space for collocation and, therefore, CLECs hear that "no room" is available in at least one-third of the central offices requested for collocation. By contrast, Focal makes collocation space available to our customers with virtually no notice, we impose no charge to build and condition the space, and rent and power charges typically average a few hundred dollars per month per customer. Indeed, Focal does not charge Ameritech for the space and power Ameritech utilizes to collocate its fiber optic terminal in our space. Clearly, we are motivated to facilitate collocation and Ameritech is not.

A third key obligation imposed by the Telecom Act and reflected in the interconnection agreement between Focal and Ameritech is the requirement for the payment of reciprocal compensation. Under the agreement, when Focal or Ameritech terminate local calls from each others end users, the carrier whose customer originates the call pays the other carrier compensation for the use of its network to terminate the call. For some time after Focal began service, Ameritech paid compensation for such call termination on all local calls—as is required. Suddenly, Ameritech took the position that it would no longer pay compensation for local calls to Internet service providers and simply began to withhold amounts it stated represented the percentage of local calls that we ostensibly terminated to ISPs. As a result, Focal was forced to file a complaint with the Illinois Commerce Commission seeking to enforce the interconnection agreement.

The Illinois Commerce Commission, in ruling on the complaint, stated that "Ameritech Illinois' unilateral 'remedy' is so ill tailored to its perceived problem that it lends substantial credence to the complainant's allegations that Ameritech Illinois' conduct is intentionally anticompetitive." The Commission found that Ameritech's "local exchange competitors are obligated by law to terminate calls made by Ameritech's customers, they incur costs in order to do so, and they are entitled to be compensated for the use of their equipment and facilities." Twenty state public utility commissions (PUCs), two United States District Courts and one state court all have found that reciprocal compensation is due for termination of calls to ISPs; including decisions in three of the five Ameritech states. In fact no regulatory commission or court has ruled to the contrary. To date, Ameritech continues to object to paying, even when ordered to do so, and continues to litigate the issue on a state-by-state basis.

Whether or not Ameritech wins these cases, it has already won a victory of sorts. It has created an atmosphere of fear and uncertainty regarding the marketing of services to ISPs, thus causing several CLECs to limit such marketing. It has also forced the much smaller CLECs to devote scarce resources on such legal battles—resources that could be more appropriately applied to continued efforts to win and service customers. With hundreds of staff attorneys available, litigation is a cost-effective strategy for the RBOCs.

Even as it has failed to live up to its obligation to open its monopoly local exchange market to competition, Ameritech has sought every possible avenue to gain access to the long distance market from which it is barred until it meets the requirement of Section 252. First, as a result of a so-called "marketing" arrangement that Ameritech made with long-distance provider Qwest, Ameritech can now offer local and long distance service—local service through Ameritech and long distance through Qwest. This arrangement totally undermines Section 271 of the Telecom Act, which bars regional Bell companies from offering long distance service until they have opened their markets fully to competition. The marketing agreement creates the appearance that consumers can get local and long distance through Ameritech, and it kills any incentive Ameritech may have had for opening its local markets as a precondition of being allowed to provide long distance service.

Further evidence of Ameritech's obstructionist activities is demonstrated by its attempt to completely avoid the market-opening obligations of the Act in connection with the provision of high speed data services, the largest growth area in telephony. To that end, Ameritech has filed a petition for regulatory forbearance under Section 706 of the Telecom Act. The petition, if granted, would allow Ameritech to operate Internet backbone and provide high speed data services throughout its region, while denying competitors access to this new network. This is a clear attempt to leverage Ameritech's existing monopoly into new developing markets through exclusionary practices. Ameritech intends to use the network to capitalize on its present customer base by creating a deregulated network to which it can transfer much of its traffic without having to comply with Sections 251, 252 and 271 of the Telecom Act. The significance of this is clear when you consider that Ameritech's CEO, Dick Notebaert recently stated in a speech at SuperComm '98 that "for the first time, fully one-half of the traffic that Ameritech will carry . . . will be between computers instead of people . . . and if data traffic continues to grow at its present rate, the percentage will grow to something like 99 percent of all traffic minutes by the year 2010."

Simply put, Ameritech has demonstrated again and again that it has little interest in complying with the Telecom Act, but rather seeks to expend its energy delaying competition, circumventing the Act, and reinforcing its monopoly franchise.

While Ameritech has created an atmosphere that makes competition difficult, SBC has created a climate where it is extremely difficult for new entrants to compete. Unfortunately, if allowed to merge, the character of the new company will be dictated by SBC, the more obstructionist of the two companies. In short, the SBC/Ameritech region would become a giant "competition-free zone."

Instead of working to comply with Section 252 of the Act in order to gain entry into the long distance market, SBC has gone so far as to challenge the very constitutionality of that and other market-opening provisions in court. (See *SBC Communications, Inc., et al.* v. *Federal Communications Commission, et al.*, Civil Action No. 7:97–CV–163–X) This case, if successful on appeal, would gut the Act. I don't need to remind you that the regional Bells lobbied vigorously and successfully to tailor the Act to allow them to compete in long distance. Now SBC has apparently forgotten the promises to open their monopolies that it, and the other regional Bells made during that campaign.

Congress should keep these promises in mind as it hears SBC's claims that it needs to merge with Ameritech because it would like to compete in out-of-region local markets, but without Ameritech at its side, it is too small. The relative success of so many ALTS members in the face of huge, uncooperative monopolies and modest funding is a testament to the lack of credibility of that argument. SBC's claim, however, does underscore the point that, since 1996, SBC and Ameritech each could have provided long distance or local service at any time in every state outside their regions, including in each other's regions. They chose not to do so. Instead of investing to bring competition to monopoly markets in the United States, SBC invested in expanding its own monopoly market by buying Pacific Bell and now Ameritech and SNET. The truth is that SBC wants to merge with Ameritech to expand its competition-free zone. It fully realizes the rewards of being a monopoly. Through the merger, SBC and Ameritech remove any threat of local competition from each other, and further increase their power to clamp down on up-start competitors. The proposed merger should be recognized for what it really is—a pact not to compete.

Despite its lack of interest in allowing competition in its local markets, and its abysmal record of compliance with the market-opening provisions of the Act, SBC has sought to gain entry into the long distance market by filing Section 271 petitions. Most recently, the Texas PUC said, in response to an SBC request, that if it were asked to give a recommendation on whether SBC should be allowed to enter that long distance market, it would have to say "not yet." One Texas PUC commissioner noted that the evidence demonstrated numerous instances of SBC's "lack of cooperation with [CLEC] customers and evidence of behavior which obstructs competitive entry." A second commissioner argued that SBC needs to "change its attitude" and suggested that it drop some of its numerous lawsuits challenging its interconnection agreements with competitors. Finally, the third commissioner on the panel of three expressed the need to create a new way of guaranteeing cooperation between SBC and its local competitors. The PUC set out 15 key changes that SBC needed to make. The list included 12 items from the FCC's competitive checklist that the PUC found SBC had not met. Further, the PUC recommended 29 actions SBC must take to bring its OSS up to par and 33 steps SBC should take to improve its performance systems. To demonstrate the complete failure of SBC to cooperate with competitors, one of the steps was simply to establish a consistent policy with deadlines to improve its response to inquiries by CLECs. It is hard to believe that after behavior this bad, SBC has argued that its failure to gain entry to the long distance market is evidence that the Act is not working. To the extent this is a failure, it is self-inflicted.

The same theme runs through much of the Texas Commission's decision and what we hear from CLECs operating in Texas. In fact, our original business plan did not include entry into the Texas market for that very reason. Put simply, SBC personnel, from top to bottom, do not evidence any desire or intent to make things work. Establishing and operating joint networks is complex. Even the best intentioned efforts will have some problems. With SBC, however, the attitude and conduct is non-cooperative. There is no pro-active effort to efficiently manage the joint networks.

It is our understanding that this attitude was quickly incorporated into the relationships between Pacific Bell personnel and CLECs operating in California. While Pacific Bell personnel had previously exhibited some initiative in solving network problems, once SBC took over, this cooperative attitude simply disappeared. Added to these difficulties is the fact that a merger of two companies the size of Ameritech and SBC obviously creates its own set of problems and uncertainties in terms of personnel and policy directions. What this means for companies attempting to grow their markets is an artificial constraint on growth directly related to the BOC bottleneck control of network facilities.

Moreover, not only did SBC, like Ameritech, reverse course and begin withholding from CLECs reciprocal compensation for calls to ISPs, it initially advised CLECs and the Texas PUC that, if any CLEC sought to obtain the reciprocal compensation that SBC had unilaterally withheld, each CLEC would individually have to litigate the issue. The Commission, in the course of considering whether SBC should be allowed into the long distance market, made it clear that it would not abide such obstructionist conduct. While SBC subsequently backed off its position, its recalcitrance is indicative of the anti-competitive mindset of SBC.

Similarly, SBC persisted in refusing to make available for resale contracts it had entered into with retail customers. SBC continued this refusal even after the FCC twice ruled in BellSouth proceedings that resale of contracts is required by the law. SBC maintained this position even after a hearing examiner ruled against it in a complaint action brought by a CLEC. Again, it was only in the context of the Texas 271 proceeding that SBC backed off this position.

A review of the recommendations for change and improvements made by the Texas PUC underscores that, at the heart of this matter, SBC, like Ameritech, has not changed course from treating CLECs as irritants and undesirables. SBC enjoyed life as a monopolist and will not readily forego those benefits. If anything, SBC's aggressive acquisition practices (targeting Pacific Bell, SNET, and now Ameritech for takeovers) strongly suggest it has decided to fortify its monopoly position against all comers.

Allowing SBC, with its track record of anticompetitive behavior, to become bigger and stronger threatens the viability of competition for more than a third of the nation's access lines. Congress should look at this merger with extreme skepticism in order to preserve and protect the promise of the Telecom Act and should assist in fulfilling that promise rather than allowing it to be foreclosed. The Telecom Act was not enacted to recreate Ma Bell.

Competition can only be stimulated by encouraging a proliferation of market players—not by making monopolists into mega-monopolists. The best way Congress can help develop competition in the SBC and Ameritech regions is by preventing the proposed merger and allowing competition to take form according to the principles of the Telecom Act. At the same time, Congress should send a message to all those responsible for enforcing the Act that Congress firmly supports them and continues to believe in the benefits of competition.

The second best way Congress can help—now I speak for myself on this point as CEO of Focal and not for ALTS—is to require a complete separation and full divestiture of the regional Bell companies' wholesale and retail functions. As the Illinois and Texas Commissions have recently noted, at the heart of the problem with Ameritech and SBC's treatment of CLECs and their approach to competition is their desire to protect their monopoly positions and the fact that the monopolists have not turned the SS RBOC around. They continue to move full speed ahead as monopolists, protecting their monopolies. This response is understandable from an economic perspective. As monopolists, the regional Bells have made money in good times and bad. What needs to be done is to break apart the company thereby creating stand-alone companies with incentives to fully address the needs of wholesale and retail customers; a network company that would provide facilities to Ameritech and CLECs on a wholesale basis, and a separate retail company that would sell services to the public. Presently, the retail side of the house controls the fate of the Company. The ability and energies of those who "sell" the use of network facilities cannot be expected to provide service at parity to its own retail unit and CLECs in these circumstances. While this conflict may be understandable, it is detrimental to competition and to the consumer's interest in choices. For this same reason, it is no surprise that the regional Bells, who wish to preserve their monopoly, would oppose this simple, logical solution. Divestiture would allow the regional Bells to compete for local services essentially in the same way CLECs do. As the Texas PUC noted in response to SBC's 271 request, SBC must change its attitude and treat CLECs as customers, not as competitors that should be deterred from success. The new wholesale network company would have no incentive to favor one competitor over another, and thus Focal and other CLECs could stand shoulder-to-shoulder with Ameritech and SBC's retail spin-offs and expect to be treated to the service they deserve as rapidly growing purchasers of Ameritech and SBC's network services.

Finally, Congress has a third, but much less effective option, and that is to lay out preconditions that SBC and Ameritech must satisfy before the merger is approved. Congress attempted to create meaningful measuring sticks for local competition through the provisions of Sections 251, 252 and 271 of the Act. Those provisions, however, have not proved explicit enough for SBC and Ameritech, motivated as they are by incentives different from those envisioned by Congress. New specific performance standards and enforcement mechanisms must be created to prevent SBC and Ameritech from precluding competition in their region. Bell Atlantic's 271 roadmap proposal, filed with the New York Public Service Commission, provides various types of safeguards including enforcement authority and penalties that must be included to ensure compliance. That proposal can be used as a starting point for identifying and imposing more meaningful conditions. Any such conditions must be met before, not after the merger. Further, unlike the merger conditions imposed on Bell Atlantic/NYNEX, which are to be enforced by the Federal Communications Commission (FCC), conditions for SBC/Ameritech should be enforced by the Department of Justice, as well as the FCC. These conditions should be implemented prior to any merger being completed.

Congress must realize, however, that imposing more rules, standards and penalties can have only a limited effect on bringing about the desired competition. First, as noted, the provision of telecommunications by multiple carriers is a complicated business. No rulebook or code will detail all the ways in which the enterprise can be delayed, impaired or made to fail. Second, enforcement is a reactive response. Due process requirements, limits on resources and the very nature of the legal process mean that the response to obstructionist or anticompetitive behavior is long delayed. Third, the threat of enforcement must be credible and the consequences for failing to abide by the rules sufficiently onerous that even a monopolist would think twice before acting. In a market moving at the speed of telecommunications, regulatory remedies are too little, too late.

The Telecom Act was not intended to perpetuate a system of discrimination between steerage class passengers and first class passengers. It was intended to allow everyone to buy a ticket. Focal and other entrepreneurial new entrants continue to believe that the Telecom Act is a milestone and that Congress should continue on course to steer the industry toward fair and open competition. We know and have proved that we can successfully compete with Ameritech or SBC in the marketplace. Our ability to grow and provide the service Americans want in the way that they want it should not be held hostage by our marketplace competitors. If more than a third of the nation's access lines are to be controlled by a single local monopoly, if the Act is to achieve its purpose, divestiture must occur.

Thank you for allowing me to appear here today. I would be glad to take any questions.

Mr. GEKAS. At this juncture, the Chair is about to surrender the gavel to the gentleman from Arkansas, Mr. Hutchinson, to complete this panel. And as the Chair does that, I would ask the new Chair to recognize Ms. Waters first on the minority side, by request of the ranking member.

Mr. GEKAS. With that, I surrender the gavel, with great reluctance I might add.

Mr. HUTCHINSON [Presiding]. Please proceed now, Ms. Howard.

STATEMENT OF DEBORAH HOWARD, EXECUTIVE DIRECTOR, INTERNET SERVICE PROVIDERS' CONSORTIUM

Ms. HOWARD. Thank you very much. Good afternoon, esteemed chairman, Representative Conyers, members of the House Judiciary Committee, and ladies and gentlemen of the gallery. It is my distinct honor and privilege to be with you this afternoon.

Allow me to introduce myself. I am Deborah A. Howard. I am the executive director and chair of the board of the Internet Services Providers' Consortium.

The ISP/C is the largest grassroots ISP International Trade Association and our organization is comprised primarily of small to mid-size ISPs, with a regional community focus, although we do not discriminate on the basis of geography or size, I might hasten to add. We were formed in June 1996 in response to concerns about the Communications Decency Act. It was at that juncture that we looked up long enough from our routers to realize that holding ISPs liable for content regulation was something that we needed to engage in. So it is very appropriate we be here today as well.

As our FCC colleague Doctor Robert Pepper terms us, the ISP/C is a jobs creation team comprised of mom-and-pop shops who gets grandmas on line. And as a co-owner of one of those mom-and-pop shops in Venice, California, I do want to let you know that my 91-year-old grandmother is definitely on line.

The more than 210 members representing 42 States and 10 international countries of the ISPC are very much concerned about both the mergers in question today, the MCI-WorldCom merger and the SBC-Ameritech merger. We will speak primarily to the first and allow the written commentary to cover the SBC and Ameritech merger, in the interest of time.

But in answer to MCI's general counsel, while we may be seen as competitors, we are also end users and we definitely are complaining.

Probably the biggest danger that we see is not government regulation on the Internet, surprisingly enough, although we are concerned with that; it is more the prospect of constraints in terms of market share from a small number of vertically integrated providers being able to control the Internet.

Mergers are a typical reaction of big monopolies who don't want to compete, says David C. McCort, chair of RCN Corp. And I could not put it better myself. In the case of the MCI-WorldCom merger, at bare minimum, at least 50 percent of the Internet backbone would be concentrated in one company; while in the case of SBC and Ameritech, with $56 billion combined, it would be 52 million phone lines representing approximately 40 percent of the local phone lines. That concerns us.

In regard to the MCI-WorldCom megamerger, we urge caution in the congressional assessment of the implications here, in particular, again, hitting on this backbone connectivity issue. In principle and in practice, the ISPC is strongly committed to free market enterprise and prevention of monopolistic business practices. WorldCom already owns UU Net, Grid Net, ANS, et cetera. And the addition of MCI to their portfolio would mean that somewhere between 50 to 80 percent, depending upon whose studies you look at, of the backbone would be controlled by one entity. This we see as a serious anticompetitive threat to our industry.

The market share that I feel most comfortable representing with the merger would be approximately 60 percent. That level of concentration is considered to be highly concentrated and one that could lead to predatory outcomes.

The only thing that really is stopping the MCI-WorldCom merger from being a complete monopoly is the fact that they as of now do not have equipment monopoly. But if they were to buy an equipment company dealing with Internet issues, we would be even more concerned.

We agree with the previous speakers in regard to the need to look at this merger. Along with the Communications Workers of America, the divestiture of the MCI portion or the UUNet portion of the Internet combined would be of interest, as well as divestiture of Mae East and Mae West, some of the peering points that are of concern as well.

In regard to the SBC and Ameritech merger, again, the written commentary will deal with that. I just want to point out one thing, being from California, since we have seen the SBC American merger of Pac Bell, we have had worse service, less privacy for consumers, more abuse, and higher prices.

Thank you for the time.

Mr. HUTCHINSON. Thank you, Ms. Howard. And now Mr. Kimmelman.

STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

Mr. KIMMELMAN. Thank you, Mr. Chairman, members of the committee. On behalf of Consumers Union, publisher of Consumer Reports Magazine, I appreciate this opportunity to appear before you here today.

I want to start off by talking about what no one has, the AT&T-TCI deal, because I think it fits well within this conversation. If that deal had been announced 2½ years ago, I probably would have been saying this is exactly what the Telecom Act seemed to be about: a big long distance company hooking up with a huge cable company, a new wire into the home to compete with the other wire into the home, the local telephone company. And I am hoping that is still the case.

But in the last 2½ years, I have learned to be quite skeptical. I hear promises, promises, promises, many of the same promises you have heard this morning: what we could do somewhere else, what we will do, could do tomorrow, but please don't look at the core monopoly we are holding onto today.

If you look at what has happened to TCI, that is an example of the problem here. TCI owns 10 percent of Time Warner. TCI is not the second biggest cable company, it is the biggest cable company. With a stake in Time Warner, those two companies serve more than half of all cable subscribers. They own dozens of the most popular cable channels. They own a major stake in more than 20 regional sports channels, the New York Knicks, New York Rangers, Madison Square Garden.

Is AT&T doing this to really come in and compete with the local telephone company? I sure hope so. Or are they doing it to retrench, to take advantage of a cable monopoly that is price gouging and in which they can earn higher profits? I hope not. And that is what I hope the inquiry will be.

Because what this seems to be evolving into, Mr. Chairman, is a retrenchment of companies sticking in their own sector, not crossing into new markets. First SBC bought Pacific Telesis. That was going to bulk it up, make it able to compete against other companies. Oops, no. Bell Atlantic swallows NYNEX. Now both of them have bulked up. So now apparently in order to compete, we need to be bigger. SBC needs Ameritech. We have mega-regional consolidation of existing monopolies in the local telephone market, not cross-industry competition. We have cable companies getting bigger.

MCI-WorldCom, very aggressive, looking like they are going into the local market. And then all of a sudden, a statement that maybe they will retrench and pull back from providing residential local phone service. They say no. Or did they mean that? I don't know. Everywhere I look, I see retrenching monopolies within their sectors rather than crossing over to compete.

We have a number of fallacies that are just developing. I heard them over and over again this morning. I would like to highlight them for you. Three or four major companies, global companies is all there will be. That should be enough. Economists think three or four is good. Three or four may be good in a market. Here these and three or four companies are regionally dominant companies that act like airlines do at their fortress hubs. There is nobody else there. There are three or four in the world maybe, but only one per market, with no one else there to compete to offer alternatives for consumers, offer choice and lower price.

Then there is the fallacy of the inevitability of competition. "Well, it is not here yet. It is going to be here." Well, the more retrenchment of monopolies we have, the less likely it is that new entrants will come in. Oh yeah, sure maybe some little companies on the margin serving small niche markets. But the greater the retrenchment of the monopolies, the more capital that is needed for someone else to come in and invest, the less likely they will do it.

Then there is the fallacy of names: Data networks, ISDN, digital line. The question is this: are there different transmission mediums used to compete head to head to offer these services, regardless of what they are called, that will offer choice and lower price for consumers? So far we have not seen that. And look what the consumers are facing. If things were so good, if all these industry promises were really coming true, why are cable rates going up four or five times faster than inflation? Why are local rates going up? Why are long distance customers, starting in July, facing up to $2 billion a year in new charges?

Part of it is regulatory failure. The Clinton administration has failed through the FCC and Antitrust Division to aggressively promote competition and to aggressively prevent monopolistic price increases.

Mr. Chairman, we ask that you and your colleagues on this committee and in this Congress play a greater role to make the regulators do their jobs to make the antitrust officials both promote more competition and stop this industry retrenchment.

[The prepared statement of Mr. Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

INTRODUCTION

As Consumers Union[1] warned[2] at the time Congress enacted the 1996 Telecommunications Act,[3] the Act's excessive reliance on undeveloped market forces would result in industry consolidation through merger, rather than explosive competition. Since then, the urge to merge rather than compete has engulfed virtually all facets of telecommunications, leaving consumers paying inflated prices from entrenching monopolies that are inadequately disciplined by either the market or regulation.

Consumers Union believes it is time for Congress to crack the whip on weak antitrust and regulatory responses to monopolistic behavior. And it is also time for Congress to crack down on monopolistic practices by adjusting the 1996 Act to reflect competition's snails-pace in consumer markets.

I. BACKSLIDING TO MONOPOLY AND INFLATED PRICES

Contrary to Congress' expectations, elimination of ownership restrictions and barriers to cross-industry competition have not resulted in massive competition among local telephone, cable television, long distance telephone and other industry players. Local telephone companies have merged with each other (e.g. SBC/Pacific Telesis Group, Bell Atlantic/NYNEX), long distance with itself (e.g. MCI/WorldCom), and cable giants have joined forces in monopolistic alliances (e.g. Time Warner/Turner, partly owned by TeleCommunications Inc., now united with Cablevision and Rupert Murdoch's News Corp.).[4]

The result is obvious, as pointed out by the *Wall Street Journal*, *Washington Post*, and *USA Today*:

> Two years ago, the federal government enacted a law designed to crack local telephone monopolies and bring consumers the benefits of competition. By sweeping away decades of regulation, Washington thought it was paving the

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about good, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] "Consumers Say Telecom Bill Comes Up Short on Competition, Higher Cable Rates and Excessive Mergers Likely," Consumers Union and Consumer Federation of America, February 1, 1996.

[3] Public Law 104–104 110 Stat. 56 (1996)

[4] Statement of Gene Kimmelman before Subcommittee on Antitrust, Business Rights and Competition of the Senate Committee on Judiciary, September 17, 1997

way for a free-for-all among the Baby Bells, long-distance carriers, cable operators and other telecommunications providers. Instead, the urge to merge has overwhelmed the compulsion to compete. Most people are still waiting for lower phone rates and better service, while the nation's telephone giants seem intent on vying to see which one can become the biggest the fastest.[5]

In rewriting the nation's telecommunications law three years ago, Congress envisioned a competitive free-for-all in which long-distance companies and local telephone companies, cable operators and even Internet providers would invade one another's businesses. But in the years since, much of this new competition has bogged down in technical difficulties and regulatory skirmishing-leaving consumers little to show for the new law in the way of lower prices, new services or greater convenience.[6]

Local Bells, rather than opening their markets to competitors have successfully sued to protect them. Result: After two years, local competitors serve a bare 1% of the Bells' 178 million customers. AT&T spent $5 billion attempting to get in and couldn't make a dent. Cable companies have mounted no serious threat . . . And proposed mergers and buyouts in other sectors indicate less an interest in head-to-head competition than establishing or preserving monopolies elsewhere in the telecom universe.[7]

Given this monopolistic entrenchment, it is not surprising the consumers are facing prices vastly inflated above competitive market levels. Local telephone rates are up as much as 20% in a number of states,[8] and most local phone companies have attempted to double local rates, in one manner or another.[9] In-state long distance prices have been rising at twice the rate of inflation and interstate long distance charges have barely declined.[10] Cable television prices are rising four to five times faster than inflation,[11] and consumers are beginning to face billions of dollars in unnecessary "line-items" that are tacked onto monthly local and long distance phone bills, ostensibly in response to the Telecommunications Act.[12]

II. TELEPHONE MERGERS

The recent announcement that SBC Communications Inc. seeks to acquire Ameritech illustrates how the Act appears incapable of achieving Congress' competitive goals. Contrary to the local Bell monopolies' assertions to Congress just a few years ago, the marketplace is delivering monopoly rather than competition for consumers.

The seven regional Bell monopolies lobbied Congress to lift the AT&T breakup's judicial consent decree so they could become seven new competitors in the long distance market and would gain incentives to compete against each other in their local phone business.[13] However since passage of the Telecommunications Act, the seven Bells have reversed course by consolidating into five larger local phone monopolies. Now SBC is expanding again by purchasing Connecticut local telephone monopoly Southern New England Telecommunications Corp. and Ameritech's midwest telephone monopoly. According to financial analysts, this makes sense because:

> "The local phone companies have figured out that it is better for their shareholders to combine with each other than to accept the risks and the expense of getting into price wars, building new facilities and providing lots of new services through their networks."[14]

Bell Atlantic already controls local phone service from Maine to North Carolina (except Connecticut), with a built-in long distance network that can originate and

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[5] Bryan Gruley, John Simons and John R. Wilke, "Is This Really What Congress Had in Mind With The Telecom Act?" Wall Street Journal, May 12, 1998

[6] Steven Pearlstein, "Phone Companies Eschew Price Wars in Favor of Mergers," The Washington Post, May 12, 1998

[7] Editorial, "Consumers Still On Hold For Benefits Of Competition," USA Today, May 15, 1998

[8] Steve Rosenbush, "Phone Rates Rising," USA Today, April 29, 1998

[9] Mike Mills, "Florida Seeks Higher Phone Rates to Expand Market," and "Phone Firms Seek Higher Local Rates," The Washington Post, March 8, 1998 and May 7, 1996

[10] Consumers Union and Consumer Federation of America, "Two Years After the Telecom Act: A Snapshot of Consumer Impact," January 21, 1998

[11] Paul Farhi, "FCC Chief Declines to Curb Cable Prices," The Washington Post, May 15, 1998; and David Lieberman, "Operators Pad Channel List to Pad Bills," USA Today, March 16, 1998

[12] Mike Mills, "AT&T Imposing Fee on Residential Users," The Washington Post, May 6, 1998

[13] Statement of James Cullen, Bell Atlantic Corp. before the House Judiciary Committee's Subcommittee on Economic and Commercial Law, February 2, 1994

[14] Steven Pearlstein, op. cit.

complete about 45 percent of long distance calling along the eastern seaboard.[15] If SBC's transactions are consummated, it will control one-third of all local phone lines (and 50 percent of business lines) in the country.[16] As a result of the consolidation, analysts predict additional mergers designed to maximize regional market control:

> Analysts predicted yesterday that the SBC-Ameritech merger would trigger other combinations, as rivals try to match the scale of the new giant. For example, Bell Atlantic Corp.—which only recently swallowed up Nynex Corp. in the Northeast—would be tempted to extend its hold on the eastern seaboard by acquiring BellSouth Corp. in the country's booming Southeast.[17]

With the nation divided in three or four mega-regional local telephone monopolies, Consumers Union believes the urge to combine the dominant long distance networks of AT&T, MCI/WorldCom and Sprint with a local partner will be irresistible. Just as SBC claims it needs more size and strength (i.e., more local monopoly) to begin competing against another local phone monopoly, AT&T argues that it could combine with a Bell company and thereby promote more local competition:

> And since the regional phone companies are ideally suited to compete against each other, a merger between a long-distance and local service company need not be unthinkable. Alliances or mergers between long-distance companies and regional phone companies could, in fact, be just the shot of adrenaline needed to get competition in local service moving.[18]

Apparently both local and long distance companies hope no one will notice that they are cashing in on today's monopolies in return for nothing more than empty promises about tomorrow's competition. As *USA TODAY* noted in a recent editorial:

> Consolidation today, competition tomorrow could put off forever the services consumers should have gotten yesterday.
>
> It's been two decades since [Judge] Greene took on dismantling AT&T. Except for long distance, though, most consumers remain hostages of monopolists. Will tomorrow never come?[19]

III. THE NEED FOR AGGRESSIVE ANTITRUST

Fortunately, antitrust enforcers and Congress have the tools to prevent local and long distance companies from combining to create massive regional one-stop-shopping monopolies for consumers' telephone needs. However, the Justice Department's Antitrust Division, which approved the Bell Atlantic/NYNEX merger, must reverse course and apply the more aggressive antitrust logic that the Federal Communications Commission (FCC) adopted for regional telephone mergers:

> 8. With respect to the proposed merger of Bell Atlantic and NYNEX, we conclude that the proposed merger will eliminate Bell Atlantic as a likely significant independent competitor in the market to provide local exchange and exchange access services, and bundled local exchange, exchange access and long distance services, to residential and smaller business customers particularly in LATA 132 and the New York metropolitan area (including northern New Jersey), but not limited to that area. We conclude that Bell Atlantic did plan to enter LATA 132 and other NYNEX territories, and that Bell Atlantic should be considered a competitor to NYNEX, but for the proposed merger . . .
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> 9. The proposed merger likewise eliminates NYNEX as a possible entrant into Bell Atlantic territories—the merger eliminates any prospect of NYNEX competing with Bell Atlantic in the southern half of the northeast corridor between Virginia and Maine, and in particular any prospect that NYNEX would have entered northern New Jersey either on its own initiative or a s a competitive response to Bell Atlantic entry into New York.
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> 10. We also conclude that Bell Atlantic, as a independent entity, possesses competitively significant assets and capabilities that otherwise would enable it to compete with NYNEX. Bell Atlantic and NYNEX are two of the five likely most significant market participants that would compete to provide local exchange and exchange access or bundled local exchange, exchange access and

[15] Statement of Bell Atlantic and NYNEX, "Bell Atlantic and NYNEX Agree to Merger of Equals," April 22, 1996

[16] Steven Pearlstein, op. cit.

[17] Id.

[18] Robert E. Allen, "For Ma Bell, the Bell Tolled Long Ago," Wall Street Journal, June 23, 1997

[19] Editorial, "Consumers Still On Hold For Benefits Of Competition," USA Today, May 15, 1998

long distance telecommunications services to residential and small business customers in LATA 132 and the New York metropolitan area. These five most significant competitors have, or are likely to speedily gain, the greatest capabilities and incentives to compete most effectively and soonest in the relevant market during implementation of the 1996 Act—Although Bell Atlantic's arguments in support of the application's focus on whether Bell Atlantic would have entered New York city de novo in competition with NYNEX, the proposed merger in fact eliminates these significant capabilities from any form of competition with NYNEX, whether de novo entry, through acquisition of a smaller, existing entrant, or via joint venture. Indeed, the record reflects the fact that, prior to the merger, Bell Atlantic had entered into some joint ventures as a means of offering service not only in New Jersey, but in New York as well.

11. Merging a dominant market participant, in this case NYNEX, with a participant ranked no less than fifth by competitive significance in terms of its impact in the relevant market, in this case Bell Atlantic, has two predictable effects. First, such a merger strengthens NYNEX's market power against competitive erosion by one of the most significant market participants. Second, the merger would by its own terms increase the likelihood of coordinated action among the remaining four most significant market participants to increase prices, reduce quality or restrict output . . .

12. Cognizant of the uncertainty as to the pace and extent of the lowering of barriers to entry, and taking the merger on its term alone and without any other considerations, we believe that Applicants have failed to carry their burden of showing, under the public interest standard, that entry would be sufficiently easy to mitigate the potential harms to competition from merging the leading and no less than fifth most significant participant in the market for providing telecommunications services to residential and small business customers. Applicants also have not carried their burden of demonstrating, under the public interest standard, that efficiencies generated by the merge will mitigate entirely the potential competitive harms . . .[20]

In addition, beyond the excessive concentration of market power that would result from Bell mergers, the FCC points out that regulatory rules designed to mitigate monopoly abuses through "benchmark" comparisons among numerous firms would be undermined. Ironically, it was the Bell monopolies that proposed this "benchmark" concept in their efforts to eliminate legal restrictions on their expansion into long distance and other markets:

A reduction in the number of separately owned firms engaged in similar businesses will likely reduce this Commission's ability to identify, and therefore to contain, market power. One way that this can happen is by reducing the number of separately owned and operated carriers that can act as "benchmarks" for elevating the conduct of other carriers or the industry as a whole. We find that the ability to compare actions of a larger number of carriers improves our ability to identify and constrain market power . . .

Ameritech stated: "No amount of sophistry can suppress the importance of benchmarks" and that "division of the local exchange networks among seven independent companies has greatly enhanced the detectability of any monopoly abuse and the effectiveness of regulation . . ."

Bell South stated: "The [seven RBOCs] will also facilitate the detection of questionable competitive practices by allowing each BOC to serve as a benchmark for the others." NYNEX stated: "Without such benchmarks, there was no uncomplicated and ready test for uncovering anticompetitive conduct . . .

Southwestern Bell stated that seven benchmarks provide "an effective deterrent against even subtle attempts to abuse any advantage which might arise from the ownership of local exchange communications facilities . . ."

151. Third, a decrease in the number of Bell Companies impairs the Commission's ability to monitor service quality . . .

If the number of large incumbent LECs is reduced, the Commission would obtain service quality information from fewer independent entities. As a result, the Commission would have fewer diverse resources of information about the service quality of incumbent LECs.

152. In addition, consolidation among major incumbent LECs may also hinder and delay transition to competitive, deregulated telecommunications markets by making it more difficult for the Commission and state regulators to develop and

[20] In the Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries, Before the FCC, File No. NSD–L–96–10, Adopted August 14, 1997 at 6–8

enforce necessary pro-competitive rules. Mergers between incumbent LECs will likely reduce experimentation and diversity of viewpoints in the process of opening markets to competition. Also, mergers increase the likelihood that cooperation among incumbent LECs can effectively inhibit or delay the implementation of the 1996 Act and other pro-competitive initiatives . . .

During the implementation of the 1996 Act, we will attempt to determine the best ways to encourage competition and pave the way for deregulation in local markets. The more independent LECs there are in this process, the more experimentation in different implementation efforts they will likely attempt. Through such experimentation and diversity, we are likely to discover solutions to issues and to resolve problems sooner than we otherwise would. We believe that the process of opening local telecommunications markets to competition and deregulation will likely be slowed by consolidation among incumbent LECs who would otherwise be participating in the process.

154. Another likely harmful effect of mergers of major incumbent LECs is to increase their ability and incentive to resist the pro-competitive process. On many issues, incumbent LECs as a group would best serve their collective interest if they all cooperated minimally with regulators and competitors during the process of opening their local markets to competition.[21]

Consumers Union believes that, had the Justice Department challenged the Bell Atlantic/NYNEX merger with the FCC's competitive logic, it is much less likely we would be facing a new wave of market consolidating mergers today. Without aggressive antitrust intervention that puts a stop to the SBC/Ameritech deal, consumers are doomed to face persistent local telephone monopolies that charge inflated prices.

IV. CROSS-INDUSTRY COMPETITION?

While some telecommunications mergers could ultimately enhance competition, massive industry consolidation has been accompanied by an immediate retrenchment—rather than an increase—in cross-industry competition. After years of clamoring to offer competition to the cable industry, the local telephone companies—fully unshackled by the Act to enter the video market through four different streamlined approaches[22]—have done more backtracking than competing against cable. Although Ameritech and BellSouth have made some effort to expand into video, the FCC reports that only 81 communities currently have head-to-head competition, offering cable rates 12–20 percent below the average cable monopoly.[23]

Similarly, since passage of the Act, major players in the cable industry have pulled back from head-to-head competition with phone companies and instead consolidated power in their cable markets.

For example, the two largest cable companies, Tele-Communications Inc. (TCI) and Time Warner, which serve more than one-half of all cable households in this country, are now tied at the hip through Time Warner's purchase of Turner Broadcasting Corp. Through ownership of dozens of the most popular cable channels, these companies exert inordinate power over video pricing and as a result of their horizontal dominance, they control which programming can get on enough cable systems to have a chance of market survival.

With relaxed regulatory oversight, TCI continues to expand its market power through complicated transactions that increase its control over popular TV programming and involvement in cable system management. For example TCI, through transactions with Rupert Murdoch's News Corp. and Cablevision Systems Corp., now has a substantial ownership stake in cable systems serving more than one-third of all cable household and has gained substantial ownership of more than 20 regional sports channels, Rainbow Media, the New York Knicks, Rangers and Madison Square Garden—in addition to the dozens of cable networks TCI already owns. By locking up an elaborate web of economic interests this cartel has a stranglehold on a critical segment of the entertainment industry.

And the long distance companies that promised to build local phone networks and offer one stop shopping have stopped in their tracks. After thumping their chests about new wireless technology, billions of dollars invested in building local systems and much ballyhooed internet services, the long distance companies have garnered

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[21] In the Applications of NYNEX Corp. and Bell Atlantic Corp. . . . op. cit.

[22] Pub. L. 104–104, 110 Stat. 56 (1996); see also In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, FOURTH ANNUAL REPORT, CS Dkt. No. 97–141, adopted by the FCC December 31, 1997

[23] FOURTH ANNUAL REPORT, op. cit.

about one or two percent of the local phone market.[24] Now AT&T seems more interested in merging with a local Bell monopoly, and MCI is joining forces with fellow long distance company WorldCom.

After threatening to build facilities to enter the local phone market, AT&T is in full retreat, attempting to buy an existing local monopoly rather than compete to enter that market:

> A year ago, AT&T Corp. Chairman Robert E. Allen declared war on the local phone monopoly, vowing to spend billions of dollars to erect rival networks that would capture one-third of the $100 billion-a-year business in just four years.
>
> Today, AT&T has made scant progress in delivering on that promise, serving fewer than 100,000 customers in a handful of markets. Its much-touted local invasion has turned out to be far more expensive and complicated than it originally envisioned . . .
>
> He [Mr. Allen] also noted that AT&T's foray into local service has "found the course muddy, and traction's not easy to get . . . No company can afford to build local network quickly all across the country."[25]

MCI may also be more focused on enhancing its long distance and business services through the proposed merger with WorldCom, rather than competing in the residential local service market. After the proposed merger was announced, WorldCom's vice chairman John Sidgmore stated that:

> . . .the residential customers likely would be transferred to other long-distance companies, potentially including the regional Bell companies.
>
> For example, he said, "an MCI customer would become a Bell Atlantic customer."
>
> Under this scenario, calls would still be carried by WorldCom and MCI wires. But the job of setting rates, providing operators and billing the customers would belong to the other companies. The customer would never hear the MCI name or deal with company.
>
> WorldCom would "sell" MCI customers to other long-distance companies, who would pay for rights to serve established accounts.[26]

While MCI/WorldCom claims the combined company would offer service to consumers, Consumers Union is concerned that the Sidgmore statement reflects a dangerous market reality that antitrust enforcers and the FCC must address: this type of consolidation could leave consumers with a local telephone monopoly and one dominant firm combining local and long distance service in a particular region. We have therefore asked the Department of Justice and FCC to block this merger unless the combined company commits itself to continued expansion of facilities-based local telephone competition for residential consumers.

V. MAKING THE TELECOMMUNICATIONS ACT WORK FOR CONSUMERS

Consumers Union believes Congress must fine-tune the Telecommunications Act by putting a lid on rates for monopoly services and moratorium on mergers until competition develops. Until that occurs, the only way to bring down prices for consumers is through aggressive regulatory action to implement the Act's principles.

The FCC must act to protect universal telephone service as it brings phone rates down to today's market costs. If the Commission squeezes the fat out of prices for connecting consumers to the local telephone monopolies' potential competitors, affordable local phone service can be preserved internet hookups for low-income urban and rural schools and libraries can be financed, and long distance rates should drop significantly.

For telephone service, the key to bringing these benefits to the American people is to follow a steady pricing transition designed to eliminate the inherent advantages an incumbent monopoly has over consumers and new market entrants. No one has articulated the nature and degree of this local telephone company advantage better than BellSouth did when it sought to compete as a new local telephone provider abroad:

> The timing of, terms and conditions for, and pricing of, interconnection determine which firms capture the available rents. Hence, the dominant incumbent, if it fails to accept the benefits which flow from a competitive market, can and

[24] Consumer Federation of America, "Competition in the Local Telephone Market" February 17, 1998.

[25] John J. Keller, "For AT&T, Building Local Service Is Tough Job," Wall Street Journal, June 11, 1997

[26] Mike Mills, "WorldCom Would Shift MCI's Focus," Washington Post, October 3, 1997

will rationally use interconnection negotiations to delay and restrict the benefits of competition. This enables it to perpetuate the rents which it obtains as a successor to a monopoly franchise at the expense of competition and innovation.

A dominant incumbent can limit both the scale and scope of its competitors, raising their costs and restricting their product offerings. In addition, it can divert or delay competition and innovation to protect its current revenues and give itself time to prepare and introduce similar products or service by exercising control over standards for connect and local numbers . . .

It has very powerful incentives to include monopoly rents in the price of complementary network services in order to perpetuate and increase its monopoly profits. It similarly has very powerful incentives to reduce the ability of its competitors to claim market share.[27]

As a result of inadequate price regulation in response to the local telephone monopolies' advantages, as described by BellSouth, consumers are at risk of paying vastly inflated local and long distance rates. Consumers Union, the Consumer Federation of America, and the American Association of Retired Persons have asked the FCC to cut nearly $8 billion out of local telephone companies' connection charges to eliminate inefficiencies, misallocated costs and above-market profits that are keeping phone rates above competitive levels.[28] So far, the FCC has failed to bring prices down to cost.

When attempting to compete with local telephone monopolies abroad, BellSouth and US West have identified the same sources of price inflation as consumers have in evaluating the Bells' local monopolies in this country.[29] For example, if regulators limited the Bell companies to profits comparable to those earned by similarly situated companies under current market conditions, consumers would save $5–6 billion/year.[30] If equipment deployed primarily to provide business or competitive services—like Centrex, SS7 and ISDN for businesses, excess fiber optic lines and switching capacity—were not allocated to basic residential service rates, consumers would save $3.00–4.00/month on their phone bills.[31] Finally, if general overhead, marketing, long distance and enhanced service costs were not over allocated to basic phone service, local costs would be reduced by more than $2.00/month for each residential subscriber.[32]

Last year the Bell companies and GTE earned at least 70 percent more than the national average return on equity.[33] By squeezing excesses out of prices consumers and potential competitors pay to the local telephone monopolies, the FCC would save enough money to finance the universal service program called for under the Telecommunications Act, maintain current local rates and bring long distance rates down significantly. The local telephone companies would receive regulated revenues that cover current, "off the shelf" prices for the equipment necessary to provide ubiquitous service, plus the opportunity to expand their revenues through unregulated services and lines of business opened to them under the Act.

CONCLUSION

Without rigorous intervention by policymakers, the industry promises of growing consumer choice in telecommunications and cable are unlikely to materialize. Without tougher antitrust enforcement, industry consolidation will wipe out the potential for broad-based competition. Unless the FCC brings the charges for connecting consumers to competing telephone companies down to current market prices, consumers will continue to face inflated local and long distance rates under the Telecommunications Act.

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[27] BellSouth New Zealand, Submission: Regulation of Access to Vertically-Integrated Natural Monopolies, A Discussion Paper, September 29, 1995 at 2 and 10 (emphasis added)

[28] Initial Comments of the American Association of Retired Persons, Consumer Federation of America, and Consumers Union, in the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access, CC Dkt. Nos. 96–262, 94–1, 91–213, and 96–263, before the FCC, January 29, 1997

[29] Reply Comments of the American Association of Retired Persons, Consumer Federation of America, Consumers Union and the Texas Office of Public Utility Counsel, in the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Dkt. Nos. 96–262, 94–1, 91–213, and 96–263, before the FCC, February 14, 1997 at 11–16, 21–24

[30] Initial Comments of the American Association of Retired Persons, op. cit., at 21, 34–43

[31] Id., at 25

[32] Id., at 25–26

[33] Business Week, March 30, 1998

Also, to stop skyrocketing cable prices, Congress must direct the FCC to clamp down on cable rates and monopolistic practices until head-to-head competition develops in the video business. If Congress really wants to bring broad-based competition to telecommunications markets, it must rewrite the Telecommunications Act, giving antitrust and regulatory authorities more tools to eliminate the most persistent pockets of telephone and cable monopoly power.

Mr. HYDE. [Presiding.] Thank you very much.

The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

When Mr. White testified, and I was not here for his testimony and I apologize for not being here, when he testified, I think he pointed out the fact that the Justice Department's major role is in anticompetitive concerns with mergers not so much as the FCC is with enhancing competition. And I am only going to address one set of the merger discussions here today because I do not have time in 5 minutes to get into it. So I am going to look first at Mr. Ebbers and Salsbury at WorldCom and the MCI. And I would like for you each to address or at least one of you to address this question.

Maybe I should ask the first one to Mr. Ebbers and second to Salsbury, questions that were posed by really Ms. Howard and Mr. Kimmelman in their testimony.

Mr. Kimmelman's testimony, at least in his written testimony, he suggests that WorldCom's Vice Chairman, Mr. Sidgmore, had indicated that if this merger were to take place, the residential customers would likely be transferred to other long distance companies, potentially including regional Bell companies. In essence, he says that WorldCom would sell MCI customers to other long distance companies and Mr. Kimmelman's testimony goes on to say, "This type of consolidation would leave consumers with a local telephone monopoly and one dominant firm combining local and long distance service in a particular region."

How do you respond to that, Mr. Ebbers?

Mr. EBBERS. Congressman, I respond to that this way. Mr. Kimmelman has been a man that I have known to have great integrity in the past, but he certainly has not displayed it in this testimony that he has supplied.

Mr. Kimmelman knows very well what he wrote in his testimony is not what the Vice Chairman of WorldCom said. He also knows for the part that has been quoted by the Vice Chairman of WorldCom that the Washington Post the very next day retracted the statement and said that they did not report it correctly.

We are absolutely committed to consumers and residential customers both on a facilities basis and any other way we can do, either with unbundled network elements or on a resale basis.

Mr. MCCOLLUM. You have no intention to divest, if you go through this merger, the retail customer at the local level at all?

Mr. EBBERS. Absolutely not.

Mr. MCCOLLUM. I think that is very important and I think this needed to be brought out.

Let me ask a question and maybe, Mr. Salsbury, you can answer this. Ms. Howard said in her testimony, she suggests because of the concentration of power, if you will, that will be involved in this merger with Internet service providers that one or the other ought to happen, MCI or the WorldCom U-net should be divested, one or the other. I know that has been in the press and discussed, but perhaps it gets to the heart of something. But is there an argument that is being made that you should not, it isn't necessary? Or where are we in all of this? From the standpoint of your companies, do you think that this is something that is anticompetitive or do you disagree with her view for you to keep both of these features?

Mr. SALSBURY. We completely disagree with that view, as I said, and I think it is covered in my written testimony. These statements about how much traffic goes in our backbone are sort of guesses that people make. You can look on Sprint's Internet web site and see that they say they carry more than half of all the Internet messages in the world and several others have the same claims.

The problem is with the Internet a message could go over two or three networks from origination and nobody knows where it started from and nobody knows where it is going to. So there is a significant amount of double counting and it is very difficult to tell how much of the Internet backbone is controlled actually.

Mr. MCCOLLUM. So you would disagree with her assertion that a combination would approximately double the backbone control that is enjoyed today by either one of your companies if a merger goes through?

Mr. SALSBURY. They are roughly the same size, so that probably, when you combine them, you would double either one of them. But combined, they are probably in terms of traffic in the 30 to 40 percent range. In terms of revenue in the Internet, it's probably about 20 percent.

Mr. MCCOLLUM. Mr. Ebbers, you do not see that as a problem with regard to vertical concentration that Ms. Howard was describing if you do not divest one of those?

Mr. EBBERS. No, we don't, especially because of the leadership that we have heard lately because of the new technology that is coming on, for example, that Sprint has announced, that other companies are also into. You know, the fact that this all goes over one line is a significant factor. And we're only months away from the fact that you won't be able to tell whether a voice communication goes over that wire, whether an Internet communication goes over that wire, whether it is an international call going over that wire, or whatever. It is going to be bits that are going over that wire.

And so, we think that unless we are going to set a limit on the number of bits any company can handle, it is going to be indistinguishable in the future. Nonetheless, let me add that, because there are so many other pro-competitive benefits to this merger, this merger was really built on establishing ourselves as a formidable competitor to be in local service that we have been willing to divest one of those backbones.

Mr. HYDE. The gentleman's time has expired.

The gentlelady from California.

Ms. WATERS. Thank you very much, Mr. Chairman. I appreciate your allowing me to go early so that I can get to our caucus meeting and for our ranking member's concern about this.

Let me just say that if I take Mr. Salsbury's argument to its logical conclusion, as he describes competitive mergers as opposed to monopoly mergers, I can only conclude that the bigger you are, the better you are, and the bigger you are, the better you are able to provide services and the less capital you need to provide those services. So that means that it goes in the direction of favoring monopolies, in my evaluation.

However, I do not really have time today to get into all of the concerns one should have, legislators and public policymakers should have about these mergers. As I look, for example, at fiberoptics and where WorldCom has initiated its fiber-optic systems and I see they are not in minority communities, I want to ask you about that. I want to ask you about your personnel systems and what you do about minority participation not only at the very top levels of management but the ability for minority businesses to be involved in this growth and this development. But given that we do not have time, we have got some time to follow all this and be concerned about access, I want to ask you questions that I started out with earlier today about e-rate fund.

At the time the Telecommunications Act of 1996 was drafted, did your company agree to provide to the e-rate fund under the universal plan?

Each of you could just answer that. Mr. Ebbers.

Mr. EBBERS. We agreed to provide whatever the legislation required and whatever the regulatory authorities suggested that we require as long as everybody pays.

Mr. SALSBURY. I don't think it is a question of agreement or disagreement. We have always obeyed the law and what the FCC has directed.

Mr. WELSH. Congresswoman, we agreed to obey the law. And we don't have a problem with the e-rate except insofar as it has been interpreted to require grant money to non-development communications.

Likewise, we have complied on the e-rate. We agreed to follow the law.

Mr. TAYLOR. We were formed as a result of the Act.

Ms. WATERS. Does your company believe that customer fees should be raised in order to pay for e-rate?

Mr. EBBERS. I beg your pardon?

Ms. WATERS. Do you believe that customer fees should be raised in order to pay for e-rate?

Mr. EBBERS. Well, it doesn't matter to us how they get it as long as everybody pays.

Ms. WATERS. Do you believe you have to raise your rates to pay?

Mr. EBBERS. Yes, we have to raise our rates.

Mr. SALSBURY. We haven't raised our rates. The law requires that any subsidies be clearly specified and identified in the bills, and we are following the law to do that.

Mr. ELLIS. I agree with Mr. Ebbers, our position is that everybody who participates and it should be limited to telecommunications.

Ms. WATERS. Do you have to raise your rates to the customer in order to pay for e-rate?

Mr. ELLIS. We have not raised our rates.

Mr. WELSH. We have not raised our rates for that.

Ms. WATERS. Mr. Devlin?

Mr. DEVLIN. Congresswoman, just so you don't get an incorrect impression, the local telephone companies don't need to raise the rates because they just put in their access charges which gets charged to long distance companies. Sprint will pass through our universal service charge and a surcharge to customers and it will be identified. We support the program but we will identify the charges.

Ms. WATERS. You do believe you have to line item that out of the bill?

Mr. DEVLIN. We think it is the right way to proceed, yes.

Ms. WATERS. Are any of you trying to get out of the agreement to provide the e-rate funding for schools and libraries?

Mr. EBBERS. No, ma'am.

Ms. WATERS. If so, could you identify why you are trying to do that, why would you want to get out, Mr. Ellis?

Mr. ELLIS. It is the same point I made before. We supported the Act as it was written. The problem we have with it the way it has been interpreted and applied by the FCC requires us to permit payments that are intended to support telecommunications services to schools and libraries to go beyond telecommunications services to provide for things that were not contemplated in the Act. That, in addition, while we are required to pay into the telecommunications carriers, other parties that take out of the fund are not required to participate. That is our only problem.

We yield to no one in terms of the support that we have traditionally given to schools, and we support the e-rate as it was written but not if it is extended to nontelecommunications carriers and services.

Ms. WATERS. Thank you very much, Mr. Chairman.

Mr. HYDE. The gentlelady is granted an additional 30 seconds.

Ms. WATERS. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank you very much for bringing the e-rate question up and the response you elicited from the panel. But one other point that ought to be added is that it is an inside job. The reason they can obey the law is because, if we reduce the rates by 50 percent or eliminate them, they will come back to the next hearing and tell you, ma'am, we obeyed the law.

And it was the Congress that decided to retract this very important provision of the Telecommunications Act. I got beat over the head about that. I heard about wiring the schools. "How could you possibly be against the Telecommunications Act when we are going to wire the poor schools in America, Conyers?" Come on, get with it. As soon as you get the bill, the very same people that were arguing it on the floor of the Congress are now leaving the rule to get it wiped out.

I thank the gentlewoman.

Ms. WATERS. Thank you very much.

Mr. HYDE. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Let me go to Mr. Ellis and give you an opportunity to respond to some rather strong statements that I think have been made in this hearing today.

First of all, Mr. Taylor, I believe it was stated that SBC and Ameritech have really performed as bad actors and have not opened up their local markets to long distance carriers. Would you just respond to that?

Mr. ELLIS. Thank you, Congressman. I am delighted to have the opportunity.

First of all, SBC on the day the Act was passed brought every one of our officers together, 50 of them at the time and said, here is what we are going to do; we are going to implement the letter and spirit of the Act.

We set out and have spent over a billion dollars to do just that, money that would not have been spent but for the requirement that we open our networks and help our competitors get in business and take our business, an unprecedented requirement. Now, with what result? Today, as we sit here, we have lost over 1 million access lines, 1 million lines to local competitors.

You can argue is a network open at 100,000, at 200,000 at 500,000 lines lost. But I submit, at a million lines lost, those people who want to compete at the local exchange have the opportunity to do so.

Second, is there evidence that the local market is open. The very mergers that are taking place. People are paying large premiums to come in and buy telecommunications businesses. They would not do that if they did not have the ability to compete in the local exchange market. You don't pay billions of dollars if you go into a business where you can't compete.

The third point I would want to make, in terms of Mr. Devlin's statements, we used to share an office right next door to each other at AT&T. And I would be willing to get on an airplane and take him to Dallas and any member of this committee and show him our OSS systems. They are state of the art. Congressional staffers have told us this. The Department of Justice has told us this. The FCC staffers have told us this. Nobody has a better OSS system than we do.

I would be pleased to have him come look at our systems. And then let's go to Las Vegas, where Sprint operates; and I would submit, if he can find a single area that SBC stands second to what Sprint is doing, I'll certainly pay his airfare and buy him lunch.

Mr. HUTCHINSON. Mr. Ellis, I want to cover a few other areas and hopefully give you a chance to respond.

You are opening up a million lines. The FCC has not approved your company as meeting the guidelines of the Telecommunications Act. Where is the problem there? Briefly?

Mr. ELLIS. The problem there is we believe the FCC has not followed the law insofar as to what they have required. They are holding us hostage to the fact that many carriers choose not to enter the $10 Local Exchange market. Local rates in Texas, for example, are $10. Mr. Kimmelman talks about they are going to lower local rates. It has taken 120 years for them to get to $10. And that is about the rate in all our States. With people having a $10 incentive to come in and compete with, they are not doing it. Yet we are being held hostage because they won't come in and compete for the $10 customer. It doesn't make sense.

No strategic planner of MCI, AT&T will set out to come in and compete for the $10 customer if they know when they come in and compete for $10 it is going to unleash us. We are going to be able to go in and compete in lucrative long distance markets. It is a disincentive under the Act. And I don't blame them for not coming in if they know it will let us get in their business.

Mr. HUTCHINSON. Let me ask one more question. You indicated your long-term strategy was to improve your market share to be able to participate in the international market. You had three different parts to your goal. One was to get into 30 markets, local service, national local strategy, and then tie your local net worth together and then be able to compete more globally overseas.

Right now, you are merging a couple old Baby Bells together and at some point it looks to me like you are going to have to do additional mergers down the road to accomplish your ultimate goal. And is it in the foreseeable future that you would want to merge with a long distance carrier?

Mr. ELLIS. No, I don't see that. We have got our hands full with implementing this. Let me put this in perspective. We have zero, zero ability in terms of presence in any of these 30 markets. We don't have any national network. We don't have a global network. We have got to put that together, and that is a substantial undertaking.

We want to be in a position to go after the Chrysler. When Mr. Devlin and his partners, the Germans, are able to go Mercedes and say, let us give you one stop shopping all around the world, we don't have that capability. We want an American flag company to be able to go to Chrysler or go to Mercedes, in this case in Germany, and say, give us the opportunity to give you common services, common features, and compete against the global giant that is represented by Deutsche Telekom and the Sprint partnership.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. Ellis, SBC is seeking to merge with Ameritech. If the local markets are so open, why don't you go into Ameritech's market? And doesn't that mean that you could be or are a potential competitor?

Mr. ELLIS. Congressman, we looked at the Ameritech market and looked at other markets and made a decision that, with our other responsibilities, including the billion and a half dollars I talked about spending, we did not have such a plan. Our strategy has evolved from the Telecom Act period up to the period when we acquired Pacific Telesis as being basically a two-region company. That's what it was. We looked then at what was happening. And the various factors I talked about are driving us to the position that we have a choice. We can stay a regional company, two regions, and operate there and see the customers like Chrysler and like the other companies I mentioned leave us. We can't keep them. We'll end up if we do that focusing on two regions. We want to be able to follow our customers. And it is as simple as that.

Mr. CONYERS. Mr. Kimmelman, is there as much openness as I am being urged to believe?

Mr. KIMMELMAN. Well, as far as we can tell by the complaints of those trying to come in, it does not appear to be the case. But let me, even for a moment, grant the notion that there could be openness. If you go to an airport where there is one airline that seems to have all the gates, all the landing slots, and they say all of a sudden, we are open to another competitor coming in; just expand the airport. They come in, they pay for it, they can construct more.

Mr. CONYERS. That is what is happening in Detroit right at this minute.

Mr. KIMMELMAN. It is tough to get a lot of people interested in competition even if there is a green light, even if the rules of the road are totally fair, if someone has a dramatic, dramatic head start advantage. And that's what I fear some of these mergers are leading to, that before we get enough infusion of openness and competition with commitment of capital, with companies not just small niche players but large companies coming in, you let the incumbent that already starts with the monopoly expand into other regions and it creates a disincentive for others to come. So there are substantial complaints. Hard for me to assess who is being absolutely honest about it. But even if there is openness, if there is too large a monopoly head start, it is extremely hard to generate new competition.

Mr. CONYERS. Thank you.

Mr. Salsbury, Mr. Ebbers, and then Ms. Howard. This is with reference to MCI and WorldCom. If this were to happen, we could end up with a 62 percent monopolization, maybe more, of the Internet, which could lead to control of both Internet pricing and access. True?

Mr. SALSBURY. Congressman, I said earlier that we don't believe those numbers are true. No one has ever demonstrated those numbers are anywhere near accurate.

Mr. CONYERS. Well, I guess we cannot prove it. What kind of numbers would you give me?

Mr. EBBERS. Let me add, Congressman, if I could.

Mr. CONYERS. Let me just ask him what, you don't like 62 percent or more. Tell me what figure you would think is fair.

Mr. SALSBURY. As I said earlier, Congressman, by our best measurements on traffic, it would be between 30 and 40 percent with the combined companies of the Internet. And by revenue, it is measurably, everybody knows, it is about 20 percent.

Mr. CONYERS. Okay. Mr. Ebbers?

Mr. EBBERS. I was going to say the same thing.

Mr. CONYERS. You were going to say the same thing.

What about the concerns of limiting the availability of wholesale long distance market for long distance resellers competing now with MCI?

Mr. SALSBURY. We certainly serve the carrier segment of the long distance market. And I don't know, Mr. Ebbers could speak for the combined company. I don't imagine we are going to abandon that part of the market.

Mr. CONYERS. Mr. Chairman, could I ask for unanimous consent for 2 additional minutes?

Mr. HYDE. Without objection, so ordered.

Mr. CONYERS. Thank you. Did you want to add something, Mr. Ebbers.

Mr. EBBERS. No, other than to say that, through the history of WorldCom, WorldCom started out as a reseller; and we do rely on that segment of our business to grow that business. In fact, it is the fastest growing part of our business. It is amazing that some of our competitors don't offer those services like we do. But we are very committed to that marketplace. By the way, it is beneficial to us, that's why we do it, because it distributes our traffic into the evening and nighttime period.

Mr. CONYERS. Okay. Mr. Salsbury, MCI's SEC filing showed a pulling back of about $5 billion in new fiber to compete in local markets and the continued alleged red lining of African-American communities with local investments. Was that or something to that effect in your filings?

Mr. SALSBURY. I don't think there is anything about red lining in our SEC filings, Congressman.

Mr. CONYERS. What about retrenchment?

Mr. SALSBURY. There has been a retrenchment in terms of investment in local communities, in terms of installing local fiber rings and switches, for two reasons. First of all, because the incentives intended to be established by the Telecom Act haven't actually come about, and secondly because of the merger with WorldCom where we don't have to make a lot of that duplicative investment.

Mr. EBBERS. Let me just add that we have not retrenched; we have redeployed that capital and have increased the expenditure on local service buildouts by $2 billion a year.

Mr. CONYERS. Glad to hear that.

Ms. Howard, any comments?

Ms. HOWARD. One concern we have that I did not mention in my earlier testimony which I want to address to Mr. Ebbers and to counsel for MCI is that it would certainly be reassuring if we could have some more public disclosure regarding peering agreements and assurances that there would not be favoritism of packet deployment at the NAPS, because that's where we have some concerns with regard to investment. Because when there is such a concentration, there is nothing to preclude packets being favored if they are from a MCI-WorldCom deployment as opposed to other networks.

Mr. HYDE. The gentleman from Indiana, Mr. Pease.

Mr. PEASE. Mr. Chairman, an inquiry. Is it possible for me to relinquish my place in the queue to Mr. Delahunt and still reserve my right to ask questions later?

Mr. HYDE. Well, yes, although I was hoping to avoid Mr. Delahunt altogether.

Mr. DELAHUNT. I have to defer to Sheila Jackson Lee. We both have a 1. So you can get rid of us by 1:00, Mr. Chairman, if that is your druthers and your sentiment.

Mr. HYDE. Not at all. I am prepared to stay here until 1:01.

Mr. PEASE. I will defer to both of my colleagues. I do have some questions, but I am sensitive to their time concerns.

Mr. HYDE. The gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, let me thank all of my colleagues for their graciousness and, as well, the chairman and the ranking member. Let me officially go on record for the genius of both Mr. Hyde and Mr. Conyers. I had the privilege of serving on the telecommunications conference committee. I know how hard they worked on this very important issue.

Not to be punitive in terms of the oversight of the Judiciary Committee but to be forthright and visionary, and that is it predicted what no one else predicted, that in spite of the fact that we had not had mergers before in the telecommunications industry and there were those who argued vigorously against us ever seeing those mergers, here we are today. We have had the privilege previously of dealing with banking mergers.

It does not necessarily mean that mergers do not bring about opportunities. I think that is where I would like to go, in particular, is to focus on what we have before us and focus on the representations that the gentlemen are making, some, of course, are not making those representations, that we can live in this world of merger. I still, however, would want to make sure that we have the privilege and the responsibility in Judiciary and the Justice Department to do the very careful scrutiny that is, I think, required.

Mr. Chairman, I would like to submit an opening statement into the Record.

Mr. HYDE. Without objection, so ordered. It shall be received into the Record.

[The information referred to follows:]

PREPARED STATEMENT OF SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I would like to thank Chairman Hyde and Ranking Member Conyers for holding this important hearing on the legal and economic implications of the proposed mergers which are currently causing headlines in the telecommunications industry.

This hearing is the third in a series of hearings on mergers in American business. While the first two focused on the recent dealings in the airline and banking markets, this one seeks to understand exactly the recent events in the high-growth telecommunications industry.

This area is different from the other two in one significant way—the telecommunications industry was dominated by one company, AT&T, until 1984. When that monopoly was split-up, it was hoped that the benefits would eventually find their way to the people and businesses that pay the phone bills for this country.

Today, however, the landscape has vastly changed. Phone bills are but one of the services that you receive from telecommunications corporations. Millions of consumers must now sort through monthly bills for their Internet access, cable television, and wireless phones. The result is that we must look at the issues which are at the heart of this hearing with a fresh perspective.

My primary concern rests with the effects of these mergers on consumers. With this country firmly entrenched in the Information Age, telecommunications services have become vital parts of the lives of both businesses and individuals. Therefore, we must review these issues with exacting scrutiny and deliberation.

As evidenced by our actions in 1996, our national policy attempts to encourage competition in all segments of the telecommunications marketplace. It is thought that this competition will result not only in the best prices for consumers, but also the best service. In the arena of telecommunications, however, lack of competition, and its effects, are often hard to gauge. Therefore, we must look at each of the proposed mergers separately and independently. I hope that we can maintain the distinctions between the two proposed mergers that provide the backdrop for the discussion today.

The issues resulting from the proposed MCI-Worldcom merger are vastly different from the ones which flow from the SBC-Ameritech merger. For instance, the employees of MCI, Worldcom, Sprint and other long distance providers, are largely ununionized. Therefore, we must speak in the place of union leaders to protect the interests of the thousands of workers whose lives can be dramatically altered by these circumstances.

Furthermore, I have concerns about MCI-Worldcom's business strategy as they use their new resource base to move into more market segments. For instance, there have been some questions raised as to whether a new player in the local telecommunications marketplace could target only the most lucrative telecommunications contracts, and leave the unprofitable ones for remaining competitors.

Lastly, the MCI-Worldcom merger has been characterized as anti-competitive, because both Worldcom and MCI own a substantial portion of the Internet backbone. However, there have been recent media reports that MCI has resolved this issue by divesting itself of its portion of the backbone, thereby minimizing those concerns. I hope that this hearing will allow us to take a closer look at the nature of this divestiture, and help us assess the potential problems which could result from an over-concentration of Internet backbone control.

The proposed merger by SBC and Ameritech implicates substantially different issues. As "Baby Bell" corporations, both Ameritech and SBC firmly control local service in their respective regions. Although this is not a monopoly per se, both of these corporations enjoy somewhat of a virtual monopoly within their respective regional zones.

The SBC-Ameritech merger, would in effect, expand SBC's local market share to almost one-third of the entire country. What we must assess today, is the effects of that change as it relates to the objective of encouraging competition in the telecommunications market.

I am concerned as to whether that concentration of telecommunications resources will be used, not only to further expand SBC nationally and internationally, but also to keep other potential local services providers out of their markets. In the Telecommunications Act of 1996, this Congress took steps to ensure that there would be more competition for corporations willing to provide local phone service, and I am curious as to whether that will indeed be possible upon completion of this merger.

The telecommunications industry is important because it touches and concerns practically every citizen of the United States. I hope that the information that we elicit today helps inform the public as well as policy-makers everywhere. Thank you.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I think the questions that I would like to ask, in particular to the gentleman deal with MCI and WorldCom and to the gentleman dealing with Ameritech and SBC, is the impact on the consumers. I do think it is important to distinguish the two mergers. And because we are having a hearing and we are having people being here representing several companies, we want to pay the right kind of detail and attention to each of these opportunities, each of these efforts. I hope that you will take my questioning in the spirit that it is offered.

I would like the gentleman to offer very concisely, how does this impact consumers? Answer the question directly. Will we be seeing the rates going up? We know the atrocious response we are getting in the cable TV industry with increasing rates. Help me understand that.

Then Mr. Ellis in particular, knowing SBC's work in South Africa and Mexico, which should be applauded and lauded, is your greater emphasis going to be your competitive edge in the international arena? I think that is key. And the gentlelady from California and the ranking member asked a question that I have great concern with. We won't be able to answer it here. The e-rate.

There was a commitment. There was an advocation, if you will, for many of us from inner city neighborhoods and communities that we would finally get to equally walk on the super highway with the mounting of an effort to wire our schools and libraries. It not only hurts our heart, it breaks our heart to hear that there are companies now going side way and up way and around the corner to suggest to our inner city neighborhoods that that is not what we would want to do. Knowing the work that I have dealt with some of my local Bells, SBC in particular, what are you telling me about non-telecommunications? That issue seems to be one that you should work out but not give the overall impression that you are not supportive of the e-rate.

Finally I will say, and I do not expect an answer because of the time, please give me both the Gekas memos, if I could get a copy of those that he asked for, and all of your figures on layoffs and diversity. Could you just answer those questions that I just raised, the MCI-WorldCom and SBC-Ameritech?

Thank you.

Mr. SALSBURY. Let me take a crack at it from the consumer benefits from MCI's perspective. As I indicated in my statement, we see great savings, which obviously in competitive markets those will find their way to consumers because long distance rates have fallen by 70 percent since the Bell System divestiture. They are continuing to fall. We have passed along the benefits of competition most recently with a 5-cent Sunday offering, which has been very enthusiastically received by our customers.

We would hope, as Mr. Ebbers said, one of the real driving forces behind our merger was to get the scale and the heft necessary to attack local markets, and we would assume we will be successful at that and bring the benefits of competition in those markets to consumers.

Mr. EBBERS. We need to remember that people talk about local networks were built where they are. The reason is because when a lot of those networks were built 5 or 6 years ago, the only service that we were allowed to provide was dedicated access service. We were not allowed to provide switch services, and so we had to build them where we could provide the service.

Now that we have those city buildouts, we are extending them into the multi-family dwelling areas first and then keeping on expanding them because we have a base to operate from. They were not built there because we didn't want to serve the consumer. The consumer body switched services and we were not allowed to provide it.

Ms. JACKSON LEE. Thank you. Those I have left out, please help me get them in writing. I appreciate it.

Mr. Ellis.

Mr. ELLIS. Congresswoman, I certainly don't see this would impact rates. All our basic local rates are under a price cap regime where they are capped. So when somebody sits here and says local rates have gone up, that is not true, that is not a problem.

Secondly, with respect to our commitment to diversity, I think that we have a clear record. We are proud of it. For instance, in California, we committed to $50 million to make sure that the unserved and underserved communities benefit from universal service of all types. With respect to the e-rate, I think I made my position clear, we are not opposed at all to that.

Ms. JACKSON LEE. What do you consider non-telecommunication entities?

Mr. ELLIS. There are virtually no limits on how money can be used by schools and libraries under this fund. What we are talking about is applying it for telecommunications services. And if you take money, if you are eligible to take money out of the fund, you should also be required to put it in.

In other words, the idea, it is a subsidy. For one situation, they subsidize, but the same class ought to be taking money out that is putting it in. That is our position. In terms of the international situation, as I've explained, we want to be a global competitor. We want to be able to follow Digital Switch, for instance, when they go to Northern Telecom. We want to have that capability. It will be important to our company and the communities we serve.

Mr. HYDE. Does the gentlelady require additional time?

Ms. JACKSON LEE. Only with the chairman's kindness and the recognition of Mr. Delahunt, if Mr. Welsh could answer in maybe 10 seconds or so, Mr. Chairman, I don't have any questions.

Mr. WELSH. We also have price caps in our five States. So there will be no price increase on basic services as a result of this merger. We also think that by bringing two strong companies together that will be able to innovate and spread the costs of innovation over a broad residential customer base. Resident customers will have the benefits of new products and services as we go forward.

Ms. JACKSON LEE. Mr. Chairman and my colleagues, I thank you very much for your indulgence.

Mr. HYDE. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. I found this very informative this morning. I can understand the need to compete in the global market. And I think it was Mr. Ellis who said you want to be a flagship competitor.

But the implication of that really is that to do that you need this merger, which I guess poses the question in my own mind that what you really are asking is for the policymakers in the enforcement agencies when making decisions, and I am directing this to Mr. Ellis but it is true throughout the entire industry as I see it, and I might be wrong, is that you are asking us to look at the marketplace in terms of the world, not within our national borders.

Mr. ELLIS. No, Congressman. I have not made myself clear. There are three pieces to the strategy. One is the national-local strategy, in which whether you look at it from an antitrust standpoint or public interest standpoint, I think that our entry into those 30 markets, when we go into New York City, we go to Tampa, we go to Seattle, we go to Denver, we go to Phoenix, that is going to break open competition in the local business for residents and business like nothing else that has happened so far. That is one.

Two, we don't operate nationally. We don't have a national network. We will tie those cities together. We will become a strong domestic competitor.

Mr. DELAHUNT. Let me go to your point about Deutsche Telekom. The point is that to secure the necessary economic strength and the capital necessary to compete, you are really asking us to take a look at the global market?

Mr. ELLIS. Indeed, it is a global market.

Mr. DELAHUNT. I respect that. And maybe we should. But what I am saying is, there are different boundaries now that you are asking us to examine.

Mr. ELLIS. If we assumed for a minute I would say that there are walls around the United States, and that is all this was about——

Mr. DELAHUNT. Let me retract my time because I think Mr. Taylor wants to make a quick and concise comment.

Mr. TAYLOR. As I think about our customers in New York and Chicago, and for example we provide phone service today to 10 out of the 20 largest corporations in Chicago, as well as residential customers, none of them ask us if we are global. None of them want a phone company that is necessarily global. They want a phone company that provides good phone service at a reasonable rate, and they get it today from companies like Focal. And we don't need to be worldwide to do it.

Mr. DELAHUNT. I appreciate your statement. But comment on my observation if you will.

Mr. TAYLOR. I think that the——

Mr. DELAHUNT. Am I wrong or am I in the ball park, or what?

Mr. TAYLOR. I think you're correct as it is defined by SBC-Ameritech. I don't think it's correct if you look at it from a public interest standpoint as to what is good for the American consumer.

Mr. DELAHUNT. Let me just ask another question. Everyone here has made certain representations, and I was glad to hear Mr. Ebbers correct my statement about 75,000 jobs. Let me stand corrected. I did secure the submission of the CWA and it indicates that the merger translates into the loss of 75,000 telecommunications jobs that would have been created by the year 2002 absent the merger. That was the statement of CWA, and I did not intend to misquote it. That still causes me great concern, however.

Mr. EBBERS. Well, it is just as wrong as your first statement.

Mr. DELAHUNT. I will let you debate that with the CWA. Okay?

At the same time, you are all here, you represent different segments of the industry, you have different perspectives. As Mr. Ebbers has said, his responsibility is to the shareholders exclusively and fundamentally. We have a different responsibility. We have a public policy role here and our responsibility is to the citizens of the United States, not necessarily to any particular shareholders. We understand our different roles.

But after we take and accept your representations at face value, how can we enforce it? I mean, once the Department of Justice and the Commission have acted, that is it, we cannot go back and undo it.

Mr. Kimmelman, would you want to comment on that?

Mr. KIMMELMAN. Yes, I would, Mr. Delahunt. I think you are absolutely right on the point. There are all these promises you will get more competition but you see more consolidation. That's what we fear, it cannot be undone. That is particularly why I understand Mr. Ebbers takes offense at me raising the question in the Washington Post. I don't believe it was fully retracted. There's a concern here about investment.

If MCI-WorldCom will serve the residential market, we would like it to be in the final agreement with the Justice Department and the FCC, enforceable. If there is a true pro-competitive benefit, whether it is AT&T, TCI or the SBC transaction, it needs to be written in an enforceable way. However, it is not just a global market. It is a global market, a national market, and a local market. You have to have choice at the place where you purchase the service. And so, it is a broader analysis; and if a transaction consolidates power in such a way as to substantially impede competition, it should just be rejected.

Mr. DELAHUNT. Let's presume SBC and Ameritech is an approved merger, that their representations are made a matter of public record. If they are not respected, then, in terms of future applications, ought that behavior to be rewarded? Mr. Ebbers?

Mr. EBBERS. Yes, Congressman, I think that is a valid point. Commissioner Ness made some points this morning about what they required Bell Atlantic and NYNEX to do and what they got out of them as concessions.

The sad point about it is they haven't done any of it. It was a condition to the merger, but they haven't done any of it. The FCC doesn't have a way to go back now and enforce them and require them to do it.

Mr. DELAHUNT. I think that is something that this committee ought to be addressing in terms of the enforcement mechanism.

Given the incredible patience of the chairman, I will yield back.

Mr. HYDE. The gentleman's time has expired.

Mr. EBBERS. Mr. Chairman, may I make one more comment?

Mr. HYDE. You surely may.

Mr. EBBERS. One of the things that is so kind of frustrating to me as a businessperson, not a policymaker and so on, and I understand the roles of each, is that a lot of our discussions about local service, buildouts, and those type of things get discussed in policy. Let me give you some sort of very basic numbers.

The reason the Bell operating companies want more local service is because the gross profit of the average Bell operating company is over 40 percent. Those are published statistics. The average profit for companies like WorldCom and MCI are 20 percent.

Now, you can forget a Bell operating company wanting to give up some 40-percent business to get in return some 20-percent business. On the other hand, that's why we build local networks because we want some of that 40-percent business.

When you go to Europe, the average PTT over there, national company, has 50-percent margin operating profits. That is why we are building local networks in 35 cities internationally because we want some of that 50-percent margin business. And we get all caught up in, is it good policy or something. It is money, baby.

Mr. ELLIS. Could I respond to that, Mr. Chairman?

Mr. HYDE. Yes, Mr. Ellis.

Mr. ELLIS. I will try to be brief.

At the time of the Pacific Telesis merger, we had the opportunity and obtained from the California commission a public filing, a record, by AT&T. It showed AT&T earned 78.9 percent return on their intrastate investment, their long distance business. At the time, Pacific Telesis, on their intrastate operation, was earning less than 10.

Now, I submit to you, when you provide local service at the $10 range, you are not earning 40 percent. The problem is just the opposite of what Mr. Ebbers says. The reason people don't come into the local market is they are disincented, when they can focus on where the money is, follow the money. And I submit, for the last 5 years, there is fiber all over every city where every one of the members lives, there will be fiber providing service to business. Why? Because that's where the money was and is at that time.

Every single place, follow the money. If there is money to be made, there is an alternative to the Bell network in spades.

Mr. EBBERS. Mr. Chairman, they get $10 plus the universal service contribution. And if they would like to do something about it, put it up for sale, and we would be willing buyers at that rate.

Mr. ELLIS. Maybe we should talk later.

Mr. HYDE. I was going to say, if I could get a broker's fee, we might put that together. I don't know.

In any event, the Bible tells us that at the wedding feast at Canaan they saved the best wine to last. We are no different. The gentleman who wins permanent possession of the patience trophy, Mr. Pease from Indiana.

Mr. PEASE. Thank you, Mr. Chairman. I look forward to that fiber net over every member's hometown. When you get to Seelyville, Indiana, let me know, because that is where my telephone service comes from.

Let me preface this, Mr. Ellis, by saying that I do not oppose the merger between SBC and Ameritech. It may sound like it from the questions I am going to ask you. But I do have some concerns about what is going to happen assuming it does go through. And there are some questions raised by some of the things that have happened in the last year or so.

I understand that SBC planned to enter 30 markets or said it would enter 30 markets and was going to spend about $2½ billion over 10 years to do that, which I calculated at $250 million a year.

How you plan to spend that $250 million a year in 10 cities does not seem like a major capital investment to me, one? And two, how do you split that between residential and business?

Mr. ELLIS. The $2½ billion figure is capital. What we are setting out to do is go into the 30 markets more or less simultaneously. There is a business plan that takes it out. Over by the year 2003, we will be in all those markets. And we are going in on the basis of what we call the smart bill strategy. It is not unlike the Selex strategy. We are going in with a facility-based switch in every one of those markets. We will have intelligence in the switch.

In addition, we will not use our own fiber between 50 cities. We will acquire. There is frankly a lot of fiber out there. We will use that. That is how we reduce our capital requirements. We will follow our customers.

I will give you an example. In Phoenix, and we know this by each of the markets, there are 2,200 businesses in the city of Phoenix, that metropolitan area, that have headquarters in either SBC territory or Ameritech territory. That's the nucleus. Sixty percent of those, by the way, are from Ameritech territory. We will follow those customers and build a switch in Phoenix and begin to serve those customers. That reduces our exposure, our risk. And when we go in there, we will offer to any residential customer in the city of Phoenix residential service in competition with U.S. West.

Now the expensive part of this is not the capital, but operating expenses. The expensive part of doing this is we have got to provide common systems, we have got to provide operations support, we have got to provide common features, we have got to have the design engineers, the marketing practices, the software people. We are going from nothing outside our region to develop and build this operation. That is the expensive part. That is the risk that we are taking.

Mr. PEASE. From what I hear from you now, it seems like your plan is simply to follow your customers, and that is business customers. I am concerned about residential service in those 30 cities.

Mr. ELLIS. What I am saying, Congressman, the strategy is to follow the customers from our territory wherever they go around the world. That is what makes this doable to us. That is why we need the bigger base of customers, that is, that Ameritech brings to start to go into Phoenix. We know where our customers have locations. We go to them and say, look, we can offer you a complete package. That gives us the platform in Phoenix to go in and compete for customers that we could not otherwise justify. They have the same $10 customer in Phoenix that we have in Texas. It is very difficult to go in and compete at a rate for $10. But if you are there and have a platform to work off of, it begins to be viable economically.

Mr. PEASE. I think we need to talk more on this, but there are other things I want to talk about, too.

If your plan is $250 million over 10 years for those 30 cities, and SBC, I think, had a profit last year of a billion and a half, after write-offs, why do you need Ameritech to do that?

Mr. ELLIS. There are a number of reasons, but one of them was announced this morning. We had, AT&T, a much bigger company than we are and a bigger company than we would be combined, what did it do, it just announced a plan to acquire the largest cable company, why, for the very reason they also acquired Teleport, the very reason these people are merging. You need the scale and scope. We are playing in a marketplace where you are going to have to have that capability. When we announced our merger, the market reaction that day cost us $6 billion. The risk factor is very, very substantial.

Mr. PEASE. I don't disagree with your point, but if you are putting forward this merger and saying that one of the reasons for it is, you need to—you want to go into these 30 cities, and the merger will help you do that, but you made more than enough money to do it last year without the merger, what is the connection?

Mr. ELLIS. It is a multifaceted strategy. You focused on going into those 30 cities, that is one part. The other part is connecting; the other part is going global. Remember, what we started out to do nobody has done. If it was as easy as a single company going in and doing it, somebody would have done it at this point. Nobody has.

It is a major undertaking to go in and start from scratch in Phoenix. We don't have any facilities there. We don't have any facilities in many of the places we have to be. We are going to have to build them. And we are not going to take that on, take the risk and exposure on our own. We can spread by scale and scope, we can take synergies out of this, help us finance that, but we are not going to take that kind of risk on our own, and nobody else has either, for serving residents and business.

Mr. HYDE. Does the gentleman require additional time?

Mr. PEASE. Well, I am a little bit bemused. I do have another area I would like to ask about, Mr. Chairman.

Mr. HYDE. Without objection, the gentleman is granted 2 additional minutes.

Mr. PEASE. I would like to ask anybody on the panel what the experience is in Canada and Mexico in terms of competition, particularly after the efforts of the last few years in trying to improve competition among our three countries.

Mr. TAYLOR. I will reply to that. Prior to starting Focal, I was with MFS Communications, now a part of WorldCom, where I ran the Mexico and Canada operations for that company. Clearly, they have different public policy mandates, different issues, different economies. In Canada, we are seeing the beginning aspects of local telephone competition, companies like Metronet and Rogers Communications merging. It is going along a different path in Canada because they never had a divestiture of long distance and local like we had in the United States.

In Mexico, it is going somewhat differently. MCI has made significant investments down there, and Mr. Salsbury can certainly comment on these, but they are running into the fact that the Federal Government in Mexico is still in the process of determining the rules as it applies to competition and making sure there is a fair and even playing field. I think from a perspective of countries, the United States is certainly much more advanced in the terms of its competition in local and long distance because of the policies that you and your members have made. It is just different situations.

Mr. PEASE. Does anybody else want to comment?

Mr. EBBERS. I guess I could sum it up by saying it is a disaster. Mexico is unbelievable. It makes you wish you had never been there. And Canada obviously is a little bit more controlled, but even being a natural-born Canadian, I have to tell you that they are still in the Dark Ages with respect to competition there. It is almost impossible to go there, and obviously the foreign ownership rules, you can't grow through acquisition there, so you don't have the base to start with.

Mr. PEASE. Has SBC's experience in Mexico been different from what has been painted here?

Mr. ELLIS. Well, it has been different. SBC has a financial interest in Telmex. The Government of Mexico is implementing market opening policies. It is been highly controversial. We have seen many of the same battles going on down there that have gone on up here.

If you would permit me, though, to speak to one other point. We spend a lot of time in this country, every regulator, every Congressman is involved in these issues, the Department of Justice talking about, have we opened our network, have we done this sufficiently and so forth. For 2½ years, that has been the battle, and I submit it will be for several more years.

In contrast, we went to England, we started a business over there plowing in—we took the franchise, took our money, plowed in a cable, the cable offered telephone and cable TV. We knocked on doors, and in 4 years, we got 25 percent of the homes passed, who took our telephone service in competition with BT.

Now what did we get from BT? We didn't get the right to resell their service, we didn't get the right to access their OSS systems, we didn't get the right to any of the 14 items on the checklist, save one. That one was, we got the right to interconnect our customers with theirs so they could talk. That was it. We didn't have equal access, we had to build our own billing system, we had to do it all; and in 4 years, we did it and got 25 percent of the homes we passed. Today, in England—and this is a statistic that is 6 months old—38 percent of the homes in England have a facility-based alternative, a facility-based alternative to the incumbent BT that offers both long distance and local.

I am not suggesting turning the clock back. I am not suggesting anything other than simply to point out we spent thousands and thousands of hours implementing what was supposed to be a deregulatory bill and fighting over every single letter, sentence and word that there isn't another way, and that is the way in England and in many parts of the world.

I am not sure if this committee knows, but around the world barriers to entry have fallen in the telecommunications market, and it is only—I submit, only in this country, of the large countries, anyway, where you have a situation where 80 percent of the telephone industry can't be in the long distance business. It is only here. Thank you.

Mr. PEASE. Thank you, Mr. Chairman.

Mr. HYDE. I want to take this opportunity to thank every one of you. Every one of you has made a substantial contribution to our understanding. The record made is going to be restudied and a report ultimately will be issued. You have made a tremendous contribution to one of the toughest issues facing us, and it is getting tougher. There has been balance, intellect, firepower, information, passion, and interest. It has been a wonderful hearing, and I salute all of you. Thank you for your contribution.

The committee stands adjourned.

[Whereupon, at 1:24 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

ALCATEL TELECOM,
ALCATEL NETWORK SYSTEMS, INC.,
Ashburn, VA, June 25, 1998.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CHAIRMAN HYDE: Yesterday I had the pleasure of attending your Judiciary Committee hearings on the effects of mergers and acquisitions on competition in the telecommunications sector. While I found the session very informative, there is one misperception that I would like to correct concerning Alcatel. At one point a reference was made to the pending acquisition of DSC by Alcatel in the context of mergers and acquisitions by telecommunications operators. Contrary to what was inferred, both Alcatel and DSC are telecom equipment suppliers and not network operators like WorldCom, MCI, SBC, and some of the other companies that appeared to be the focus of your hearings. In fact, those companies are the natural customers of Alcatel since normally Alcatel does not sell directly to subscribers or end users.

I hope that you find this clarification useful. If you or any member of your staff has a question concerning this matter, I can be reached at (703) 724–2930.

Sincerely yours,

DAVID W. OWEN, *Government Affairs Executive.*

Cc: K. Prabhu, President & CEO; L. Hulbert, Sr Vice President

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ASSOCIATION FOR SERVICE
DISABLED VETERANS,
Stanford, CA, July 20, 1998.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN HYDE: As you may know, telecommunications and information technology have made an immense difference in the quality of life and in economic participation for the 43,000,000 disabled persons of our nation.

This is especially true for the members of the Association for Service Disabled Veterans (ASDV), a nationwide organization of In-service Disabled and Prisoner of War Veteran Business Owners (SDVE).

ASDV attended the June 24, 1998 Committee on the Judiciary hearings on "The State of Competition in the Telecommunications Industry," and we feel that we must challenge some of the testimony presented at that meeting, in particular the criticism and abusive innuendo directed at SBC Communications and the benefits of the SBC/Ameritech merger.

The various national telcoms and the one consumer representative, made negative references to SBC and its conduct and future policies. ASDV has had numerous occasions to experience the attitudes and policies of SBC and we have immense praise and compliment for the veracity, integrity and civic commitment of SBC executive leadership, especially the service to the well being and rehabilitation of America's disabled and prisoner of war veterans.

We were alarmed that SBC competitive adversaries were not questioned more closely regarding their misstatements alluding to SBC/Pacific Bell and SBC/Southwestern Bell investment in the public interests of its customers.

ASDV and its members have unqualified praise for SBC's performance as a "good corporate citizen" and the sensitivity of SBC executives to the needs and aspirations of those veterans maimed and tortured while preserving the freedom of this world.

As we have conveyed to those committees in the U.S. House of Representatives and the U.S. Senate and the Administration Agencies charged with telecommunications issues, ASDV would be pleased to present testimony in future hearings regarding "the telecommunications industry and the public interest."

Sincerely,

JOHN K. LOPES, *SDV*
Chairman, ASDV.

STATEMENT OF COMMUNICATIONS WORKERS OF AMERICA

The Communications Workers of America (CWA) appreciates the opportunity to submit testimony for the permanent record concerning consolidation in the telecommunications industry.

CWA represents 630,000 active members who live throughout the United States. Most of these wage earners work in the telecommunications industry. Our dues payers work for firms providing local, long-distance, wireless, cable, broadcasting, Internet access, and other information services. CWA also represents wage earners who work for state and local governments, health care institutions and other public and private sector organizations.

The Telecommunications Act of 1996 spells out two broad goals for U. S. telecommunications policy. The first is to enhance competition. The second, as stated in the preamble to the 1996 Act, is "to secure lower prices and higher quality services for American telecommunications consumers and to encourage the rapid deployment of new telecommunications technologies."

Experience over the past two years teaches that there is a tension between these two goals. In the marketplace, competition thrives—and firms invest—where there are profits to be made. Capital flows and competition develop to build networks to serve lucrative business customers. But there are few market signals encouraging investment to serve local residential consumers where initial costs are high and profit margins are much lower.

Consequently, two years after Congress passed the 1996 Telecommunications Act, capital is not flowing and little, if any, competition is developing to build networks to serve lower-margin consumers and small businesses in the local exchange. Most analysts now conclude that over the next decade, 90 percent of consumers will never see competition for their local telephone business.

Instead, new entrants are competing with the incumbent carriers to serve only the high-end of the market, taking advantage of their ability to offer lower prices by arbitraging public subsidies that flow to keep residential rates low.

CWA is concerned that absent public policy intervention, competition will lead to a two-tiered telecommunications infrastructure, with many firms competing to serve high-end business customers with advanced networks, while the incumbent carrier serves residential customers with a deteriorating infrastructure.

It is in this context that the mergers and acquisitions taking place in the telecommunications industry should be evaluated. In analyzing proposed mergers, policymakers should consider these questions:

> First, would the merger promote both the pro-competitive and (broadly defined) universal service goals of the Telecommunications Act?
>
> Second, would the merger create jobs and preserve high-wage employment standards in the telecommunications industry?

These two standards provide a useful starting point from which to examine the two largest telecommunications mergers currently under review, the proposed MCI-WorldCom merger and the proposed SBC-Ameritech merger.

While both of these proposed mergers combine two very large companies, they are very different mergers, driven by divergent competitive strategies.

The combination of MCI-WorldCom is based on arbitraging public subsidies to serve only lucrative business customers. If the merger is approved, then MCI will abandon its planned local network build-out. These two companies have said they will make $20 billion in cost-cutting over the next four years, which translates into less infrastructure investment and large lay-offs. Moreover, the merger of MCI and WorldCom will reduce competition in Internet, long-distance, and local consumer markets. MCI and WorldCom have demonstrated their determination to go to whatever lengths are necessary to maintain a non-union workforce and to push down middle-class employment standards in the industry. In short, this merger is not in the public interest and should not be approved.

By contrast, the SBC-Ameritech merger will create a stronger company that will continue to serve 57 million residential consumers and global corporate customers under one corporate roof. This merger will create employment opportunities due to network build-out and expansion, while recognizing the union as a partner in strengthening the public network. This merger will enhance competition, while at the same time amassing capital to upgrade networks serving both high-end business and low-end residential consumers.

MCI-WORLDCOM MERGER WILL HARM LOCAL RESIDENTIAL CONSUMERS

MCI and WorldCom claim that their proposed merger will result in a stronger competitor at the local exchange. But evidence demonstrates that such a merged company has no intention to compete to serve local residential consumers. Rather, the proposed merger is driven by a business strategy that arbitrages public subsidies by bundling services to business customers.

Two days after the MCI-WorldCom merger was announced, WorldCom Chief Operating Officer John Sidgmore stated in a *Washington Post* interview (dated Oct. 3, 1997) that the merged company planned to retreat from the consumer market by transferring MCI's current long-distance residential customers to another firm. We are "not in the consumer business," he said. "It's very difficult for us to find a way to make economic sense out of the advertising budgets, the customer services budgets, etc. required to be in the consumer business." The next day Mr. Sidgmore tried to soften his original statement. The plan to transfer residential customers was only a "possibility . . . we would consider." But he repeated that the merged company would show little interest in the residential market.

Of special significance, the chief operating officer of WorldCom said:

"Our religious focus is on the business customer. It is a Chad."

In fact, WorldCom and MCI have filed documents with the Securities and Exchange Commission which show that the merged entity plans to reduce spending in the local exchange by $5.3 billion over the next four years. These reductions are not administrative efficiency savings. Those are captured elsewhere. The overwhelming portion of these savings—$2 billion in reduced capital spending and $3.3 billion in reduced operating cost spending—would result from shifting MCI's business strategy away from the residential and small business local exchange market.

In addition, MCI and WorldCom anticipate saving billions of dollars in access charge bypass, charges which flow to incumbent local exchange carriers to subsidize local residential rates. This is one reason that Wall Street is so enthusiastic about the merger. By bundling local, long-distance, and Internet services on the combined MCI-WorldCom end-to-end private network, the merged company could avoid public subsidies and could compete for lucrative business customers with lower rates.

From a different standpoint, CWA is concerned that MCI's and WorldCom's local network build-out redlines minority neighborhoods. Appended to this testimony are maps showing where MCI and WorldCom have built local networks in five cities—San Francisco, New York, Chicago, Los Angeles, and Atlanta. The maps also show neighborhoods of majority African-American businesses and residences. In each of the five cities, the MCI and WorldCom networks bypass the African-American neighborhoods and businesses. Whether this is economic or racial redlining, or both, it is most certainly not in the public interest.

The narrow anti-public interest strategy of the proposed MCI-WorldCom merger differs dramatically from the proposed SBC-Ameritech merger. SBC and Ameritech have stated clearly that the business strategy driving their proposed merger is the need to serve corporate clients in all markets in which they are located. Absent a merger, SBC and Ameritech contend that these high-end clients will migrate to another carrier that is able to provide bundled services on a global basis.

A major dissimilarity between the proposed MCI-WorldCom merger and the proposed SBC-Ameritech merger is that a combined SBC-Ameritech would continue to serve 57 million residential consumers in 13 states on their local networks with carrier-of-last resort obligations. A merged SBC-Ameritech would remain accountable to state regulators to serve all consumers in their local exchange territory—they could not abandon those customers, regardless of market dynamics.

A merger between SBC and Ameritech would be the best that could be achieved in meeting the goals of the 1996 Telecommunications Act. Those companies would continue to maintain carrier-of-last resort obligations and would continue to serve 90 percent of the residential consumers in their areas. But they also must be able to grow in order to strengthen their ability to compete against the unregulated carriers that have no such obligations. In fact, the worst case scenario for consumers would be to limit the ability of incumbent carriers to compete for high-end customers, thereby starving the public switched network of revenue while competitors win business by bypassing public subsidies.

THE MCI-WORLDCOM MERGER WILL REDUCE COMPETITION

If the proposed merger between MCI and WorldCom is approved, it would have an anti-competitive impact in the Internet and long-distance markets.

Much public attention has focused on the fact that a merged MCI-WorldCom would dominate the market for Internet connectivity. It now appears that MCI has agreed to spin-off its Internet business to remedy this anti-trust problem. It is essential that such a divestiture result in the permanent transfer of MCI's entire Internet business and customer base, with strong and enforceable non-compete provisions. The Department of Justice should not sign off on a remedy until the divestiture is complete and the DOJ is satisfied that MCI's long-distance customers will not be allowed to migrate back to the merged company for Internet service.

In addition, the MCI and WorldCom merger would combine the nation's second and fourth largest long-distance providers, thereby eliminating WorldCom as the "maverick" wholesaler that has served to exert downward pressure on the lock-step long-distance pricing of the Big Three (AT&T, MCI, and Sprint).

In contrast, the SBC-Ameritech merger eliminates no actual competition. Regulators have not identified the possible reduction in "potential" competition (which has only been identified in the St. Louis market) as a barrier to merger approval.

EMPLOYMENT IMPACT

In terms of employment impact, the contrast between the proposed MCI-WorldCom and the proposed SBC-Ameritech mergers could not be more stark.

The MCI-WorldCom merger is based on $20 billion in so-called "synergy" savings. Already, MCI has laid-off more than 4,500 employees in anticipation of the merger. *Forbes* magazine (July 6, 1998) notes that the merged entity will "lay off thousands" as it shuts down overlapping parts of its networks and aims to meet its promises to Wall Street.

CWA estimates that over the next four years, the reduced investment and pull-back in plans to service local markets will lead to a loss of as many as 75,000 jobs that would have been created by the two companies absent a merger.

The MCI-WorldCom merger combines two companies with among the worst record of abuse of workers' organizational rights. The history goes back more than a decade for MCI. In December 1986, ten days before 200 MCI sales representatives in Southfield, Michigan were to vote in a National Labor Relations Board (NLRB) election to select union representation, MCI abruptly fired the 200 employees and closed the facility without any advance notice. The message was clear: MCI management would eliminate hundreds of jobs rather than deal with organized workers. Even today, MCI trains every manager in "union avoidance." Managers are taught "union free principles" with a 2-inch thick handbook. Similarly, WorldCom has resisted all attempts at worker organization.[1]

In contrast, the SBC-Ameritech merger will create jobs. CWA has received a commitment to that effect from top management at those companies. The union received a similar commitment when SBC made its offer to buy Pacific Telesis, which SBC has more than honored. Since the SBC-Pactel merger, SBC has created more than 4,000 bargaining unit jobs in California and Nevada.

Furthermore, SBC recognizes the value that union representation adds to its company. SBC set the model for the telecommunications industry when it agreed to recognize union representation in its new growth subsidiaries once a majority of employees sign cards requesting union representation. The SBC model of respect for workers' rights is one that will benefit the company, the industry, and the nation.

In conclusion, the challenge for policymakers in this era of large telecommunications mergers it to preserve affordable, quality service and network upgrading for all Americans, while enhancing and preserving high-wage, high-skill employment opportunities. The proposed SBC-Ameritech merger will further these goals. The proposed MCI-WorldCom merger will not.

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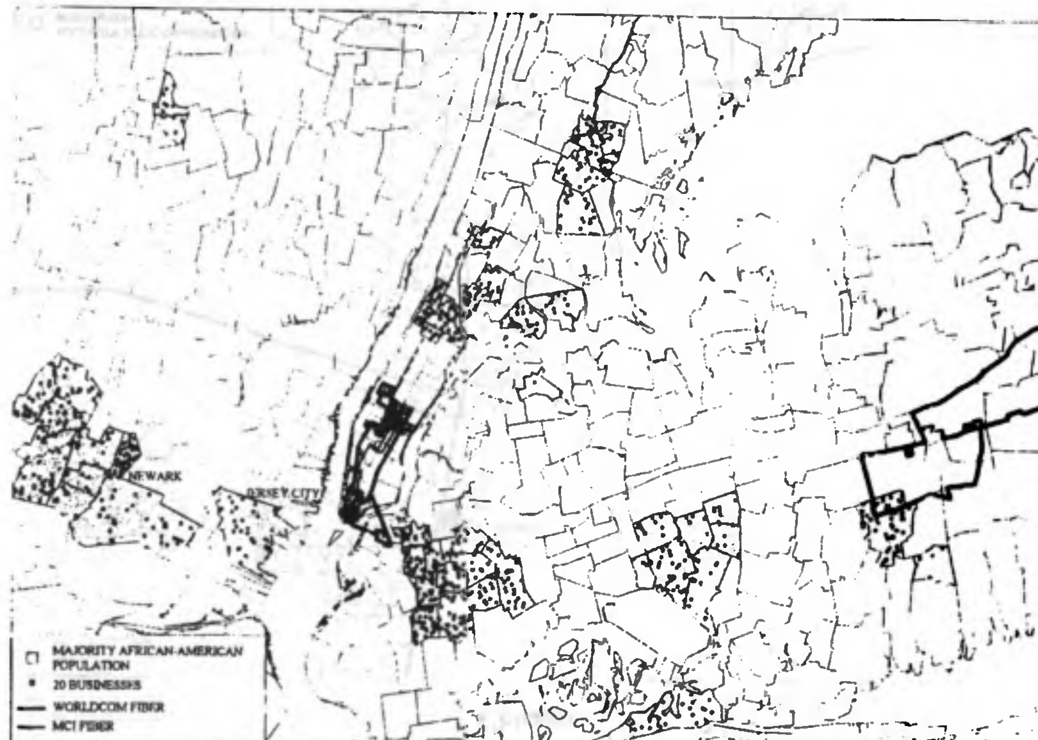
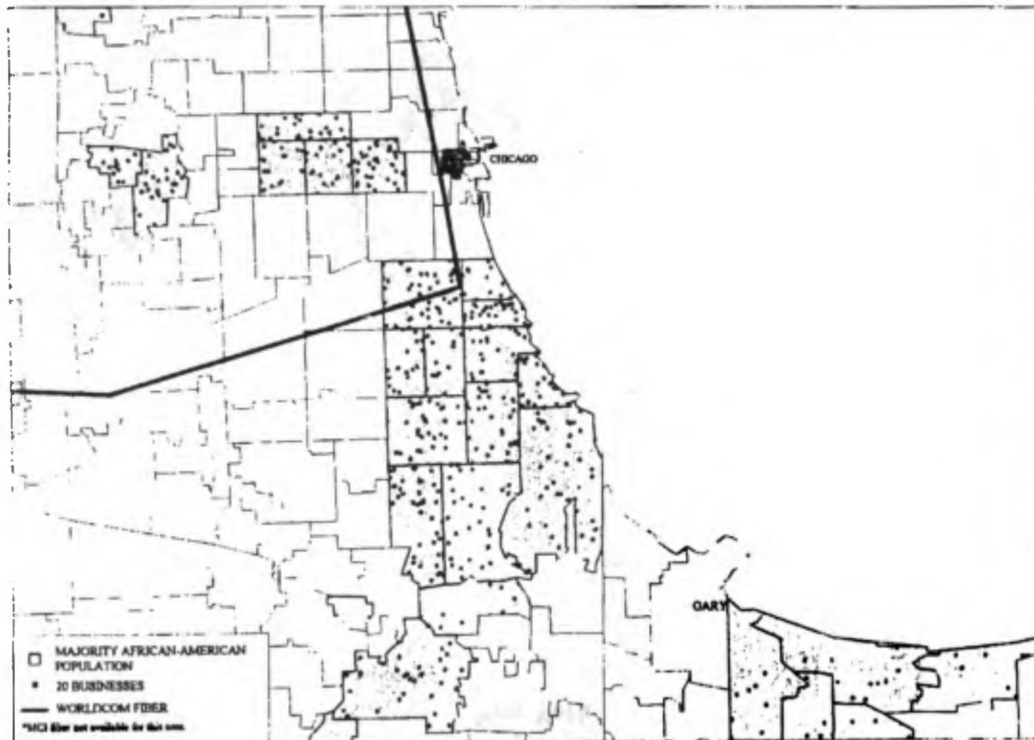
[1] This anti-union animus extends to other long distance competitors, such as Sprint Long Distance, which shut down a telemarketing facility in 1994 and fired more than 200 workers to avoid union representation.

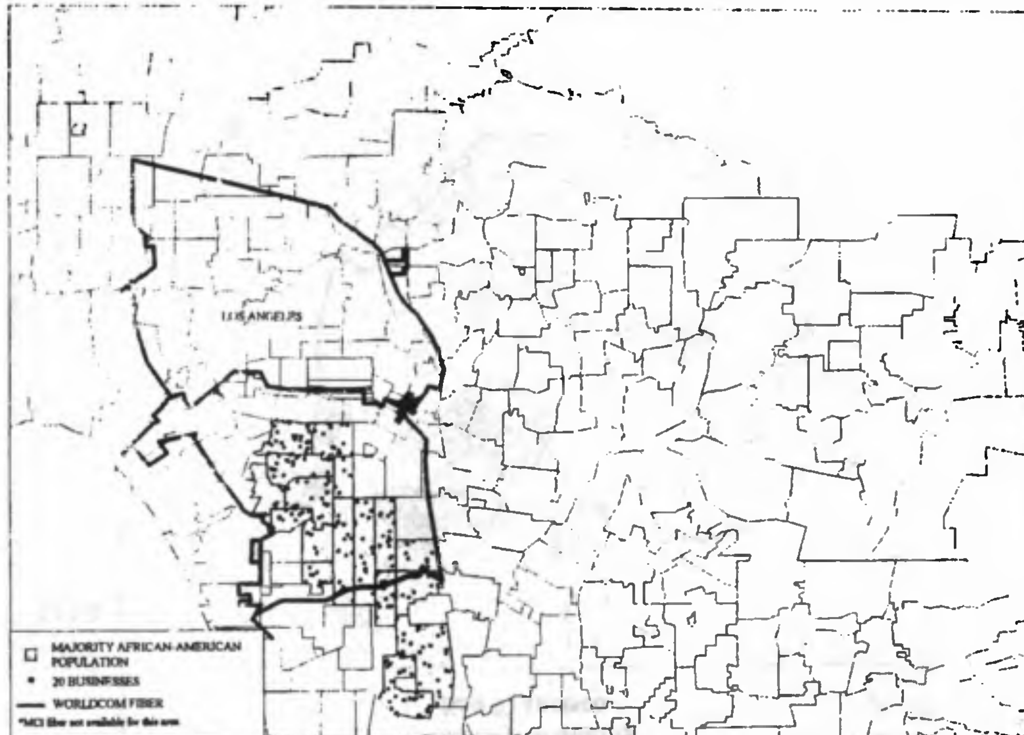
Minority Redlining
New York



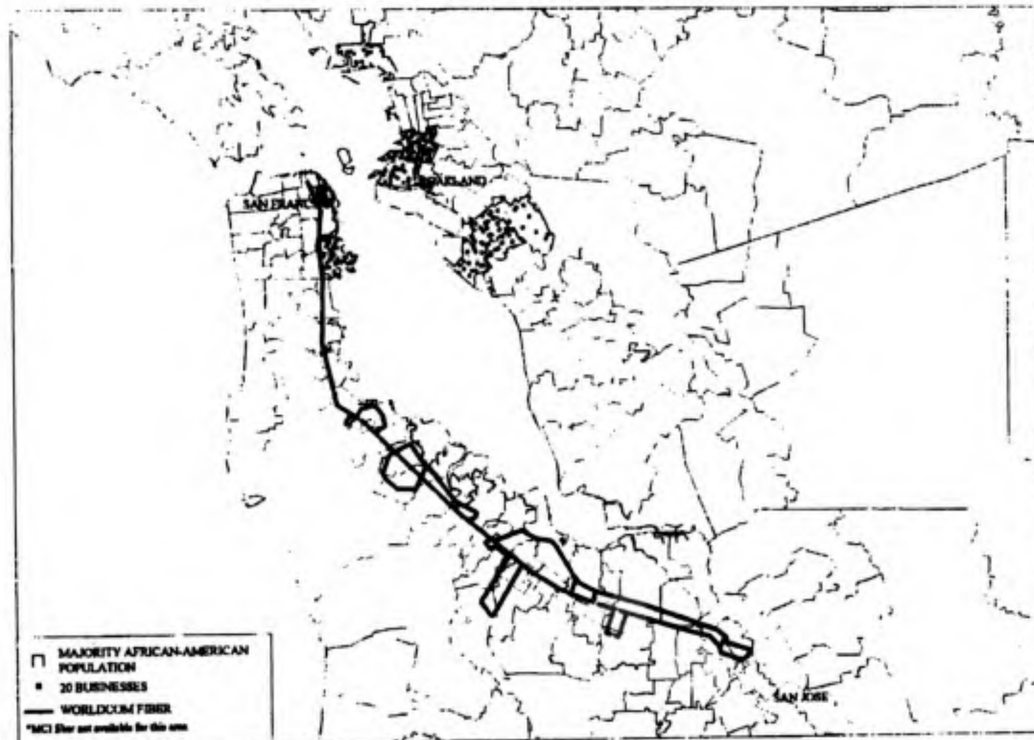
Minority Redlining
Chicago



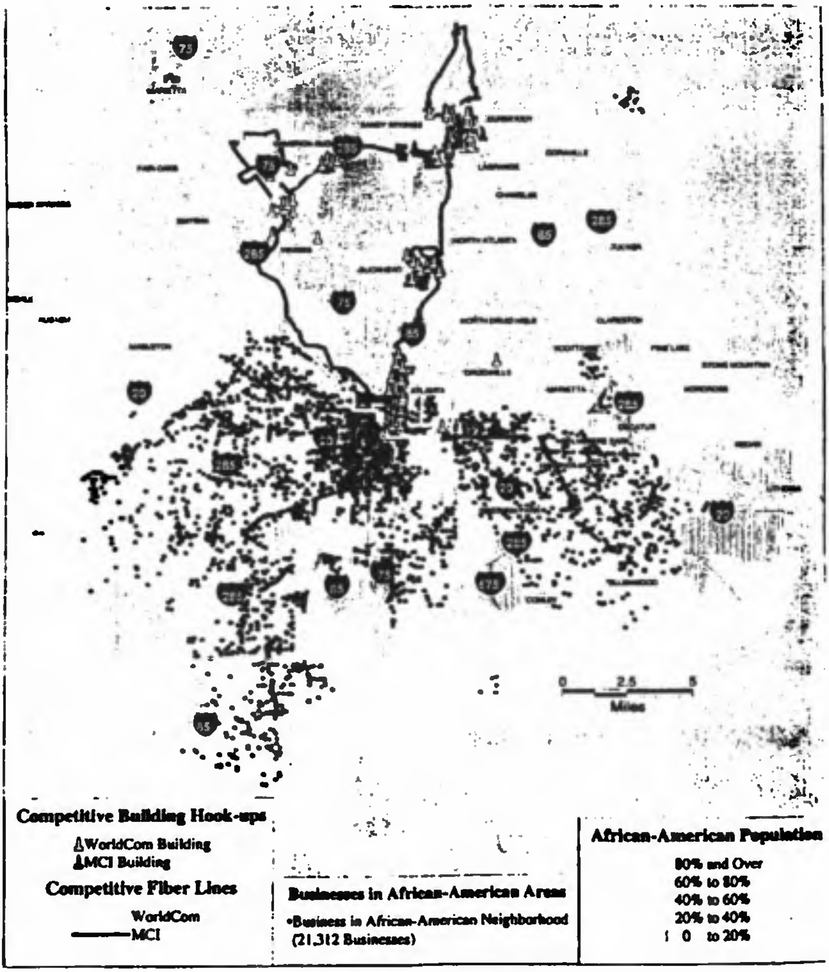
Minority Redlining
Los Angeles



Minority Redlining
San Francisco



Where WorldCom and MCI Provide Local Telephone Service in Atlanta and Where They Do Not



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