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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

3

4 In the Matter of the Petition) Docket No. UT-991991
of) Cause No. U-86-79
5) Cause No. U-86-101
MCI WORLDCOM, INC. and SPRINT)
6 CORPORATION,) Volume III
) Pages 36-244
7 for an Order Disclaiming)
Jurisdiction, or in the)
8 Alternative, Approving the)
Transfer of Control of Sprint)
9 Corporation's Washington)
Operating Subsidiaries to MCI)
10 WORLDCOM, Inc.)
)
11 In the Matter of the Petitions)
of)
12)
U.S. SPRINT COMMUNICATIONS)
13 COMPANY, and)
)
14 MCI TELECOMMUNICATIONS)
CORPORATION)
15 _____)

16

17 A hearing in the above matter was
18 held on May 16, 2000, at 9:22 a.m., at 1300 Evergreen
19 Park Drive Southwest, Olympia, Washington, before
20 Administrative Law Judge KAREN CAILLE, Chairwoman
21 MARILYN SHOWALTER, Commissioner RICHARD HEMSTAD, and
22 Commissioner WILLIAM R. GILLIS.

23

24 The parties were present as
25 follows:

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1 MCI WORLDCOM, INC., by Jean L.
2 Kiddoo, Attorney at Law, Swidler, Berlin, Shereff,
3 Friedman, LLP, 3000 K. Street, N.W., Suite 300,
4 Washington, D.C., 20007-5116, Ann E. Hopfenbeck,
5 Attorney at Law, 707 17th Street, Suite 3600, Denver,
6 Colorado, 80202, and Brooks Harlow, Attorney at Law,
7 4400 Two Union Square, 601 Union Street, Seattle,
8 Washington 98101.

9 SPRINT CORPORATION, by Eric S.
10 Heath, Attorney at Law, 330 S. Valley View Boulevard,
11 Las Vegas, Nevada 89107.

12 SBC COMMUNICATIONS, INC., by
13 Patrick J. Pascarella, Attorney at Law, 175 E.
14 Houston Street, San Antonio, Texas, 78205, and Judith
15 A. Endejan, Attorney at Law, Williams, Kastner &
16 Gibbs, Two Union Square, 601 Union Street, Suite
17 4100, Seattle, Washington 98101.

18 THE COMMISSION, by Jonathan
19 Thompson, Assistant Attorney General, 1400 S.
20 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
21 Washington 98504-0128.

22 PUBLIC COUNSEL, by Robert Cromwell,
23 Jr., Assistant Attorney General, 900 Fourth Avenue,
24 #2000, Seattle, Washington 98164.

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36 Barbara L. Nelson, CSR
37 Court Reporter

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1 JUDGE CAILLE: Let's go on the record. We
2 are here this morning for the first of the
3 evidentiary hearings in the MCI WorldCom-Sprint
4 merger, which is Docket UT-991991, and this docket
5 has been consolidated with two other matters, Cause
6 Numbers U-86-79 and U-86-101. And these matters
7 concern waivers of the statutory and regulatory
8 provision pertaining to securities, transfers of
9 property and affiliated interests granted previously
10 to Sprint and MCI.

11 Today is May 16th, and we are convened in
12 the hearing room in Olympia, Washington. Our first
13 order of business will be to take appearances. If
14 you have already put in your name, address, and
15 e-mail and fax, you don't have to do that again.
16 Just identify yourself and whom you represent. And
17 we'll begin with you, Mr. Harlow.

18 MR. HARLOW: Thank you, Your Honor. Good
19 morning. Brooks Harlow, representing Petitioner, MCI
20 WorldCom.

21 MS. KIDDOO: Jean Kiddoo, representing --

22 JUDGE CAILLE: One other thing I need to
23 remind everyone is to please bring the microphone
24 close to you when you speak.

25 MS. KIDDOO: Sorry. Jean Kiddoo,

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1 K-i-d-d-o-o, representing Petitioner, MCI WorldCom,
2 Inc.

3 MS. HOPFENBECK: Ann Hopfenbeck, Senior
4 Attorney with WorldCom, Inc.

5 MS. ENDEJAN: Judy Endejan, representing
6 SBC Communications, Inc.

7 MR. PASCARELLA: Pat Pascarella,
8 representing SBC.

9 MR. HEATH: Eric Heath, representing Sprint
10 Corporation.

11 JUDGE CAILLE: Oh, sorry, Mr. Heath.

12 MR. HEATH: That's okay. With me today are
13 Nancy Judy and Rick Kapka, a witness.

14 MR. CROMWELL: Won't Mr. Heath feel like a
15 stepchild at the dinner table.

16 JUDGE CAILLE: Mr. Cromwell.

17 MR. CROMWELL: Robert Cromwell, on behalf
18 of Public Counsel.

19 MR. THOMPSON: And Jonathan Thompson, on
20 behalf of Commission Staff.

21 JUDGE CAILLE: All right. Let the record
22 reflect there are no other appearances.

23 MS. HOPFENBECK: Judge Caille, later in the
24 hearing, there will be another attorney appearing on
25 behalf of WorldCom. His name is Anthony Epstein.

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1 When he does arrive, I will have him complete an
2 appearance form, including his address, e-mail, and
3 telephone numbers.

4 JUDGE CAILLE: Thank you very much. Okay.
5 I understand there are some preliminary matters, Ms.
6 Hopfenbeck, that you would like to address?

7 MS. HOPFENBECK: Yes, Judge. Initially, I
8 wanted to -- actually, I would ask that perhaps a few
9 of these matters might be more appropriate once the
10 Commissioners are already here.

11 JUDGE CAILLE: Oh, all right.

12 MS. HOPFENBECK: Just to clarify the name
13 change and the stipulation with respect to exhibits.

14 JUDGE CAILLE: Okay.

15 MS. HOPFENBECK: So there's an
16 understanding of that. One matter that probably is
17 more appropriate to deal with now would be the timing
18 of the filing of the brief addressing jurisdictional
19 issues.

20 At the time that this hearing was initially
21 set, the thought was that there would be one business
22 day between the close of the hearings and the filing
23 of that brief to allow us to incorporate any factual
24 matters that arose during the course of the hearing
25 pertinent to those issues. It now appears that that

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1 brief is due on Friday.

2 We would like to request at this time leave
3 to file that brief not the day after hearings, but we
4 would like to have one business day extension, so
5 that if the brief -- if the hearing closes on
6 Thursday, as we initially intended, we'd like to file
7 that on Monday. If we do go into Friday, as is
8 potential, although hopefully now unlikely, we would
9 like to file that brief on Tuesday.

10 And I have consulted with Counsel for the
11 Staff, the Commission, for Public Counsel, and for
12 SBC, and they're all in agreement with that request,
13 or do not object.

14 JUDGE CAILLE: Everyone was supposed to --
15 refresh my recollection. Was everyone supposed to
16 file at the same time on this?

17 MS. HOPFENBECK: No.

18 JUDGE CAILLE: I didn't think so.

19 MS. HOPFENBECK: The petitioners are filing
20 their opening brief addressing jurisdictional issues
21 immediately after the hearing closed, and then
22 there's a reply brief. I think the expectation is
23 that we would be willing to consent to a
24 corresponding extension for the reply brief on
25 jurisdiction from the other parties.

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1 JUDGE CAILLE: All right. Is that
2 acceptable to everyone?

3 MR. CROMWELL: Yes, Your Honor.

4 MR. THOMPSON: It is, Your Honor.

5 MR. PASCARELLA: Yes, Your Honor.

6 JUDGE CAILLE: So we will finalize that
7 toward the end of the hearings, and when we know
8 whether there are going to be hearings on Friday or
9 not. All right. I am going to excuse myself for
10 just a moment and get the Commissioners. I believe
11 I'll swear in Mr. Porter, then we don't have to do
12 that.

13 MR. CROMWELL: Your Honor, do we have the
14 bridge on? I just wanted to see that --

15 JUDGE CAILLE: It's supposed to be.

16 MR. CROMWELL: I just want wanted to check
17 and see if we had anybody out there.

18 JUDGE CAILLE: Is there anyone on the
19 bridge line?

20 MR. CROMWELL: Thank you, Your Honor.

21 Whereupon,

22 DAVID N. PORTER,
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25 JUDGE CAILLE: Now I will excuse myself.

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1 (Recess taken.)

2 JUDGE CAILLE: I'd like to welcome the
3 Commissioners to the bench. As I indicated before,
4 if you would please go around the room, introduce
5 yourselves to the Commissioners, so they know who you
6 are. And let's begin with Mr. Heath.

7 MR. HEATH: Eric Heath, appearing on behalf
8 of Sprint Corporation.

9 MR. HARLOW: Good morning, Commissioners.
10 Brooks Harlow, on behalf of WorldCom, Inc.

11 MS. KIDDOO: Jean Kiddoo, on behalf of
12 WorldCom, Inc.

13 MS. HOPFENBECK: Ann Hopfenbeck, on behalf
14 of WorldCom, Inc.

15 MS. ENDEJAN: Judy Endejan, on behalf of
16 SBC Communications, Inc.

17 MR. PASCARELLA: Good morning. Pat
18 Pascarella, for SBC.

19 MR. CROMWELL: Robert Cromwell, for Public
20 Counsel.

21 MR. THOMPSON: And Jonathan Thompson, for
22 Staff.

23 JUDGE CAILLE: Thank you. And Ms.
24 Hopfenbeck, you have a couple preliminary matters
25 that we thought should be heard by the Commissioners,

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1 and if you will attend to those.

2 MS. HOPFENBECK: Good morning, Your Honor.
3 The first thing I would like to make you aware of is
4 that approximately two weeks ago, MCI WorldCom
5 changed its name of the parent company to WorldCom,
6 Inc., so that for the sake of clarity during the
7 course of the hearings, we will all be referring to
8 the parent as WorldCom, Inc.

9 Next, the next matter concerns a
10 stipulation regarding the admission of various
11 exhibits that have been pre-marked for identification
12 by the parties. WorldCom has reached a stipulation
13 that all of the documents that have been pre-marked
14 and identified as exhibits that were produced by us
15 to the parties in the course of discovery and
16 therefore originated with WorldCom and/or that
17 originated with Sprint Corporation, we would agree to
18 their admissibility now, subject to a few conditions
19 that we've talked to the other parties about and
20 would like a ruling on by you today.

21 Initially, some of the documents that are
22 included as exhibits are not dated and some do not
23 indicate the author or specific origin or the purpose
24 for which the document is prepared, and so I think
25 there will be argument certainly in brief and perhaps

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1 some examination addressed to establishing a
2 limitation on the use of those documents or relevance
3 of those documents for use in this proceeding. But
4 to move the hearing along, we found this the most
5 expeditious way to handle this admission of these
6 documents.

7 We would like to -- because we anticipate
8 that some of these documents will not actually be
9 used by opposing counsel in the course of their
10 cross-examination, we'd like to reserve the right to
11 ask a few questions about them on redirect, if
12 necessary, to place them in proper context and to
13 give you an understanding of what we do and don't
14 know about documents.

15 The other thing that we would like to
16 request in consideration before agreeing to the
17 admission of these documents at this time is that we
18 have leave at the conclusion of the hearing to file a
19 reply brief.

20 Early on, we decided we'd just have
21 simultaneous statements of position, but because the
22 arguments about some of these documents won't appear
23 until for the first time in brief, we'd like leave to
24 file a reply brief to address those arguments, if
25 necessary. That concludes my statement on those

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1 issues.

2 JUDGE CAILLE: All right. So Ms.
3 Hopfenbeck, there are two issues that you would like
4 the Commission to rule on. That is that you reserve
5 the right on cross to delve into some of -- or to
6 clarify some of these exhibits and leave to file a
7 reply brief. All right. Any response?

8 MR. THOMPSON: I would just say I think
9 that's a fair approach, Your Honor.

10 MR. CROMWELL: Your Honor, I have no
11 objection to that approach, Your Honor, I think that
12 provided the reply brief that Ms. Hopfenbeck is
13 contemplating is open to all parties. In other
14 words, that -- I guess the clarification I would ask
15 is whether the reply brief is designed to be limited
16 solely to the content, relevancy or nature of the
17 exhibits or whether it is a general reply brief
18 whereby all parties could then reply to the brief
19 filed by the other parties.

20 I suppose at this point my preference would
21 be for the latter, sort of an open reply, rather than
22 a limited evidentiary.

23 CHAIRWOMAN SHOWALTER: You would be
24 modifying this proposal, if you are modifying it, to
25 say why not just have reply briefs, is what you're

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1 really saying?

2 MR. CROMWELL: Yeah, I guess I'm sort of
3 wondering, we hadn't really talked in depth about
4 this.

5 MS. HOPFENBECK: But we did contemplate
6 that it would be in the nature of a true reply brief
7 and all parties would have the opportunity to do
8 that. We'd be amenable to a page limitation on that
9 reply brief.

10 CHAIRWOMAN SHOWALTER: Sounds good to me.

11 JUDGE CAILLE: All right. Both those
12 requests are granted, and we will discuss the page
13 limitation towards the end of the hearings. Mr.
14 Porter has already been sworn, and I believe, Mr.
15 Harlow, will you be introducing this witness or --

16 MR. HARLOW: No, Your Honor. Ms. Kiddoo
17 will.

18 JUDGE CAILLE: Ms. Kiddoo.

19 D I R E C T E X A M I N A T I O N

20 BY MS. KIDDOO:

21 Q. Good morning, Mr. Porter. Could you please
22 state your name and business address for the record,
23 please?

24 A. My name is David N. Porter. My business
25 address is WorldCom, 1133 19th Street N.W.,

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1 Washington, D.C.

2 Q. And what is your title with WorldCom?

3 A. Vice president, government affairs.

4 Q. Mr. Porter, did you cause to be filed at
5 the Commission pre-filed direct testimony consisting
6 of 18 pages of questions and answers, which have been
7 marked as Exhibit 1?

8 A. Yes, ma'am.

9 Q. Do you have any corrections or changes to
10 those questions and answers?

11 A. I have one correction. On page two, line
12 18, a sentence was improperly typed. The sentence
13 should read -- well, I'll read what it says first and
14 then I'll read the correction. As written, it says,
15 MCI was acquired by WorldCom, Inc. in 1997. The
16 sentence should read, MFS was acquired by WorldCom in
17 December 1996.

18 Q. Thank you, Mr. Porter. Mr. Porter,
19 attached to that pre-filed testimony, were there what
20 have been noted in the testimony as Exhibit DNP-1,
21 which has been marked as Exhibit 2, consisting of 13
22 pages of maps of carrier networks?

23 A. If I'm responding to the number of pages, I
24 have to count them.

25 Q. Sorry.

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1 A. A cover sheet, plus 13 pages, yes.

2 Q. Do you have any corrections or changes to
3 those maps?

4 A. No, ma'am.

5 Q. And finally, was there attached to your
6 pre-filed testimony an exhibit, which was identified
7 as Exhibit DNP-2, which has now been marked as
8 Exhibit 3, consisting of three pages of an SBC press
9 release and a map of the Williams Communications
10 Network?

11 A. Yes, ma'am.

12 Q. Thank you. Turning to your pre-filed
13 rebuttal testimony, Mr. Porter, did you cause to be
14 filed with the Commission pre-filed rebuttal
15 testimony, consisting of 15 pages of questions and
16 answers?

17 A. Yes, ma'am.

18 Q. And do you have any corrections or changes
19 to that pre-filed rebuttal testimony?

20 A. There may be other typos, but one typo that
21 I'd like to correct is on page two, at line 19. Dr.
22 Hausman's name was misspelled, and I'd like to have
23 that corrected, please, to read, instead of
24 H-a-u-s-m-e-r, H-a-u-s-m-a-n.

25 Q. Thank you, Mr. Porter. Mr. Porter, if I

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1 were to ask you the questions that were set forth in
2 your pre-filed direct testimony, Exhibit 1, and your
3 pre-filed rebuttal testimony, Exhibit 4, today under
4 oath, would your answers be the same as set forth in
5 the pre-filed testimony, as you've corrected it this
6 morning?

7 A. Yes, ma'am.

8 MS. KIDDOO: Thank you. If it's
9 appropriate, I'd like to move for the admission of
10 Mr. Porter's testimony and Exhibits 2 and 3.

11 JUDGE CAILLE: Is there any objection to
12 the admission of his testimony?

13 MR. CROMWELL: No objection, Your Honor.

14 MR. THOMPSON: None.

15 MR. PASCARELLA: No objection.

16 JUDGE CAILLE: All right. Then Exhibits
17 T-1, 2, 3, and T-4 are admitted into the record.

18 MS. KIDDOO: Thank you, Your Honor. I'd
19 like to tender Mr. Porter for cross-examination.

20 JUDGE CAILLE: Mr. Thompson, will you
21 begin?

22 MR. THOMPSON: I will.

23 C R O S S - E X A M I N A T I O N

24 BY MR. THOMPSON:

25 Q. Good morning, Mr. Porter.

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1 A. Good morning.

2 Q. I want to start out talking with you a
3 little bit -- I want to emphasize a little bit --
4 about a subject that I know you like to talk about,
5 and that is MMDS.

6 A. Yes, sir.

7 Q. You stated in your direct testimony, at
8 page eight, that the merger should accelerate the
9 deployment of new, innovative and advanced services
10 like MMDS, which MCI WorldCom intends to use to offer
11 high-speed digital access to residential and business
12 consumers alike. MMDS is a fixed wireless
13 technology; correct?

14 A. Yes, that's correct.

15 Q. And that means that it's used at a
16 stationary site, such as a home or a business office;
17 correct?

18 A. Yes.

19 Q. Okay. And it essentially involves, does it
20 not, the placement of transmission towers about the
21 landscape, and in an effort to offer an alternative
22 to the last mile of the local exchange company's
23 network, basically?

24 A. That's the use we intend to make of it.
25 That's not its current use, but yes, that's correct.

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1 Q. Okay. And its current use is in television
2 applications; isn't that right?

3 A. It's typically called wireless cable TV,
4 yes.

5 Q. And it's --

6 A. At least one of the uses of it.

7 Q. And it's currently a one-way or a
8 one-directional technology; right? I mean, it's
9 broadcast out and there's no return signal; correct?

10 A. The historic use has been point to
11 multi-point, so yes, broadcast one way.

12 Q. Okay. And is it correct to say that
13 research and development is currently underway in
14 making this a viable two-way technology that would
15 allow, say, Internet use over this technology?

16 A. Yes, it's very fair to say that, and we
17 have a number of trials underway to demonstrate or to
18 perfect that capability.

19 Q. Okay. Let's see. Would you agree that if
20 it is eventually successfully deployed, it would
21 basically be a competitor with DSL and cable
22 technologies?

23 A. Yes, that's our intent.

24 Q. Okay. Is voice -- will it eventually be
25 aimed at the voice market?

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1 A. That's an excellent question. It's an item
2 of debate. At WorldCom, our current plan is to use
3 it for data services, but there is no reason that it
4 couldn't be used as DSL can, for example, to provide
5 both voice and data service. Sprint may have
6 different plans.

7 Q. But its voice capabilities aren't proven as
8 yet; correct?

9 A. We haven't tried voice on it yet, that's
10 correct. But it is a digital broadband pipe, and I
11 have no reason to think that voice couldn't be done
12 on it, but to my knowledge, we have not done it.

13 Q. Okay. Would you imagine, though, that it
14 would have much of an advantage over current wireless
15 technology as concerns voice transmission?

16 A. Well, as you know, one of the benefits to
17 WorldCom of this merger is to gain access to Sprint's
18 PCS network, which is a premier digital voice band or
19 voice grade service, so one possible combination
20 would be to use the PCS for voice and the MMDS for
21 data. If it were my decision, which it's not, that's
22 probably what I'd do, but I believe your question was
23 would it be possible for MMDS to do voice, and I
24 believe the answer is yes, but that's not my
25 understanding of our current plan.

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1 Q. But it wouldn't have the advantage of being
2 mobile; correct?

3 A. That's correct. PCS is a mobile service,
4 and we're talking with MMDS as a fixed wireless. But
5 it would be possible to use the MMDS, for example, in
6 the same way that I understand AT&T is using its PCS
7 spectrum for -- I believe they call it Project Angel,
8 their wireless to the house for both voice and data.
9 I don't propose that I am an expert on Project Angel,
10 so that's just my understanding from what they've
11 released.

12 Q. Isn't it true that Sprint and WorldCom hold
13 licenses that give them an exclusive right within a
14 certain territory, and that the holdings of the two
15 companies basically cover half of the country each?

16 A. That's approximately correct. It is
17 correct, the second half, that between the two of us
18 we hold licenses in markets that cover approximately
19 half of the households. The part that's not
20 precisely correct is that there are in each market 33
21 channels of MMDS, and in each market we separately
22 may own, you know, one or more channels and lease one
23 or more channels from other carriers.

24 The only part I objected to in your
25 question was that we don't have the exclusive use of

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1 all of the spectrum in any market that I'm aware of,
2 and certainly not in most markets. There may be some
3 that we have all 33 channels, but I'm not aware of
4 any.

5 Q. But the parts that the companies do not
6 hold are typically held by people who hold those
7 rights for the current use, which is community-based
8 television and that sort of thing?

9 A. Yes, that's correct.

10 Q. Okay. Is it your position that the
11 licenses of Sprint and MCI need to be consolidated
12 for this technology to be successfully developed?

13 A. No. It's my position that the technology
14 can be more effectively developed because together
15 we'll have a volume sufficient enough to stimulate
16 development, which we've already seen beginning to
17 happen by the manufacturers, and that together we can
18 take advantage of assets that each other have so we
19 think we can deploy the technology more rapidly.

20 But if your question is is this the only
21 conceivable way it could happen, the answer is no.
22 We think this is an advantageous way for it to
23 happen, and that's why we're proposing it.

24 Q. Isn't one possibility, however, that one
25 company could simply buy the other's licenses?

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1 A. Well, that's a possibility. Both companies
2 purchased in the open market, competing against each
3 other, licenses last year. Each of us, as I recall,
4 acquired four or five wireless cable companies
5 covering different geographic areas of the country.

6 But the benefit of being together is that
7 we believe there will be a significant synergy
8 between the Sprint PCS facilities, particularly the
9 towers, where we hope to be able to also offer MMDS
10 and not have to build duplicate towers and go through
11 the tower siting debates that I know you all are well
12 familiar with, and that they can use our local fiber
13 facilities as backhaul and thereby avoid having to
14 duplicate that investment, as well.

15 So again, the answer to your question is
16 yes, that perhaps is an alternative, that we could
17 have bought their spectrum or other spectrum, but we
18 think the combination would give us both assets that
19 will allow us to get into the market better and at
20 less total cost.

21 Q. Is it true that because of the ongoing
22 research needs and needs to acquire the licenses for
23 two-way, authority to do two-way communication, that
24 the company, WorldCom, doesn't presently have any
25 specific plans to deploy MMDS in Washington?

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1 A. The FCC has ruled that two-way use is -- or
2 has adopted two-way use as an authorized use, but
3 they haven't licensed the existing channels for
4 two-way use. My understanding is that they intend to
5 have a licensing window that will open shortly after
6 the Fourth of July. We intend to apply to have our
7 licenses converted to two-way licenses.

8 Their administrative procedure asked then
9 for two or three months before the licenses are
10 granted, so we're hopeful that licenses -- that we'll
11 have two-way authorization on the licenses we hold by
12 the end of the year, hopefully by Thanksgiving.

13 We have to do frequency coordination, site
14 location, equipment development, as you've suggested,
15 so all of those things need to be done. But at the
16 same time, we have trials up and running with live
17 customers in Jackson, Mississippi, Baton Rouge,
18 Memphis. We just announced four more trials in
19 conjunction with the President's attack on the
20 digital divide in bringing MMDS service to four
21 school systems in the Southeast, and I apologize, I
22 don't remember the four city names, but if you'd
23 like, I can get that. So we know the technology
24 works, but it is not yet commercially deployed.

25 Q. And I believe my initial question was that

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1 the company does not have any specific plans to
2 currently roll out the MMDS technology in Washington?

3 A. I beg your pardon. WorldCom --

4 Q. Excuse me.

5 A. Yeah, as I understand it, as I recall the
6 map of licenses, I don't recall that we have licenses
7 in Washington State. I believe Sprint has those
8 licenses. So the specific answer to your question is
9 WorldCom, pre-merger, does not.

10 Q. I want to shift subjects. You indicated at
11 page 10 of your direct testimony that after this
12 merger, there will be at least eight interexchange
13 carriers other than WorldCom operating or building
14 fiber facilities in Washington, and you indicated
15 that those included AT&T, Williams, ELI, Qwest, IXC,
16 Level 3, GST and Global Crossing/Frontier. Which of
17 those firms, other than AT&T, has a substantial share
18 of the retail long distance market at present? Do
19 any of them?

20 A. At present, given that most of these are
21 new entrants, based on 1998 data, which is the latest
22 data we have, none of them have significant, I think
23 was the word you used. I believe Qwest and
24 Teleglobe, which is not on this list, have market
25 shares in the state that are slightly smaller than

00061

1 Sprint's. They're up in the measurable range now,
2 even in 1998, but we anticipate that 1999 data, for
3 example, for Qwest, apparently Qwest had a very good
4 year in 1999, and we would expect their market share
5 will be significantly higher based on '99 data, but I
6 don't have that data yet. So the answer, based on
7 '98 data, is yes, you're correct.

8 Q. And is Qwest's share in the business market
9 or in the mass market?

10 A. I don't know, as a matter of fact, who
11 they're marketing to. It wouldn't surprise me if
12 it's in the business market. I honestly don't know.

13 Q. Okay. I want to talk a little bit about
14 what investments a firm would have to make to compete
15 for significant market share in retail mass market
16 long distance.

17 You pointed out that there are 502 carriers
18 registered to provide long distance service in
19 Washington, and I think you were quick to concede
20 there that many of those are resellers. But you
21 would concede, wouldn't you, that virtually anyone
22 can register to be a telecommunications company?

23 A. As I understand the current rules, the
24 answer to that question is yes, but I also understand
25 they can become a communications company with almost

00062

1 no capital investment by reselling the services, for
2 example, of WorldCom, taking advantage of our
3 billing, adding their marketing.

4 So as I recall the numbers, and I
5 understand there's a new exhibit that I haven't
6 looked at this morning yet, other carriers, or
7 carriers other than AT&T, WorldCom, Sprint and US
8 West, have approximately 20 percent of the long
9 distance market in Washington today. So while I
10 would concede that on any individual company, they're
11 probably not a large percentage, reserving as we have
12 already the discussion of Qwest and Broadwing,
13 certainly in aggregate, they've added up to a
14 significant part of the market.

15 Q. I want to turn your attention to Exhibit
16 C-24. And this is a -- I'm not sure exactly how to
17 handle this, because it is on blue paper, marked as
18 confidential. And I believe it was provided to the
19 parties as a response to Public Counsel's Data
20 Request 39.

21 MS. KIDDOO: Do you have a copy for the
22 witness?

23 MR. THOMPSON: Oh, I apologize.

24 THE WITNESS: Could we have just a moment?

25 CHAIRWOMAN SHOWALTER: Did you say C-24?

00063

1 MR. THOMPSON: C-24, correct.

2 MS. HOPFENBECK: I'll let him use mine.

3 MR. THOMPSON: Okay, thank you.

4 THE WITNESS: I beg your pardon, C-24?

5 Q. C-24; correct.

6 A. Yes, thank you.

7 MR. THOMPSON: Would there be any objection
8 from WorldCom to my discussing the author and the
9 nature of this document on the record?

10 MS. KIDDOO: No objection, as long as we're
11 not talking about the substance of what's in it.

12 MR. THOMPSON: Well, I'll eventually get to
13 that point, too, but maybe I'll just have everybody
14 read along. Okay.

15 Q. Mr. Porter, would you agree that this
16 apparently represents a report produced by a
17 consultant to MCI WorldCom, giving, as it's labeled,
18 a competitive overview of the business markets for
19 1998?

20 A. Based on the cover sheet of the document,
21 yes, that's what I would understand.

22 Q. Okay. I'd like to ask you to turn to the
23 page that is Bates stamp numbered MWA 08446. So
24 that's about the fifth page, and it's titled The
25 Marketplace in 1998 at the top.

00064

1 A. Yes, I have that.

2 Q. Do you see the line that begins self-owned
3 networks?

4 A. Yes, I do.

5 Q. I guess I'll just ask -- there might be an
6 objection to my asking you to read that aloud, so I
7 guess I'll just ask you to read that to yourself.
8 And understanding that there's some context to put
9 this in, would you agree with the statement that's
10 set out there?

11 A. I don't know the analysis that leads to the
12 percentages at the end of the line. I can agree to
13 the statement generally. May I?

14 MS. KIDDOO: It might make sense. I have
15 no objection, Mr. Thompson, to saying that this
16 sentence talks about economies of scale that are
17 derived from self-owned networks, and there's a
18 percentage as to what that economy of scale is. And
19 so, therefore, I think if we talk about the sentence
20 and what the general subject matter is, you can ask
21 Mr. Porter whether he agrees with that percentage
22 which you have, in fact, asked, but I think it would
23 be clearer for the transcript to be able to talk a
24 little bit about what the substance is, and I have no
25 objection to that.

00065

1 MR. THOMPSON: Thank you. I appreciate
2 that.

3 Q. You mentioned that this is -- is this for
4 cell phone markets?

5 A. I can't tell from this page.

6 Q. Well, I mean, looking at the document as a
7 whole, it appeared to me to be an overview of
8 business markets generally.

9 A. I beg your pardon. I thought you had said
10 in your initial question self-owned?

11 Q. Oh, yeah, right.

12 A. Not cell phone.

13 Q. I guess I misheard you. Okay, self-owned;
14 correct.

15 A. And I would agree, generally, that there
16 are benefits of self-owning a network. The question
17 I believe you asked me is would I concede or do I
18 agree that it's as large as the percentages that are
19 shown at the end of this line?

20 Q. Right.

21 A. And I simply don't have a way of knowing in
22 what context those numbers were derived.

23 Q. Okay.

24 A. The portion of their total cost that
25 network operations represent is about the percentage

00066

1 that's shown in this map or on this chart in total.
2 So if this is talking of this amount of savings on
3 the network, it's that amount of savings on
4 approximately that same amount of total cost. I'm
5 not sure that -- did I make that clear?

6 Q. You mean as --

7 A. May I just use the percentages?

8 MS. KIDDOO: Go ahead.

9 THE WITNESS: I beg your pardon. I'm not
10 real good at that. The sentence reads, Self-owned --
11 self-owned networks provide greater economies of
12 scale, allowing carriers to promise savings on
13 average of about 15 to 20 percent. And it's my
14 understanding that network cost amount to about 15 to
15 20 percent of our total cost of doing business.

16 Now, it may be just a coincidence. If this
17 is saying that we can save 15 to 20 percent of our
18 network-related cost by owning the network, that's
19 conceivable. If it says that we can eliminate -- if
20 the coincidence of the numbers is that they suggest
21 that by owning the network, we don't have to pay the
22 15 or 20 percent of our total cost that network cost
23 represent, that's clearly not true. We have to pay
24 the network cost.

25 So I apologize. I don't know precisely the

00067

1 context of this last sentence, but it is entirely
2 plausible to me that we could save 15 to 20 percent
3 of our network cost by owning the network.

4 Q. And that's versus -- is that versus
5 resellers?

6 A. Versus somebody who doesn't own their own
7 network, so yes, a reseller or someone who leases
8 capacity from a third party, yes.

9 Q. So I had my math instructor here help me
10 out. So essentially, what you're saying is 15
11 percent of 15 percent means that we're talking about
12 two percent of total?

13 A. I believe your math instructor has the
14 numbers -- order of magnitude, yes, two to three
15 percent of our total cost, if in fact we can save 15
16 to 20 percent of our network cost by owning the
17 network ourself.

18 Q. Right. You mentioned a number of firms in
19 your -- well, there were a number of companies
20 mentioned in your testimony, as well as in the
21 application of the companies that have their own
22 fiber facilities around the country, and maps of
23 those were appended to the application.

24 I want to attempt to put those fiber routes
25 in context somewhat. And I'd ask you, for that

00068

1 purpose, to turn to Exhibit Number 33.

2 A. Yes, sir.

3 Q. And are you familiar with this book? It's
4 by Elizabeth Dodd. It's called The Essential Guide
5 to Telecommunications. I think it was published in
6 1999.

7 A. I am not familiar with it. I --

8 Q. Okay.

9 A. But I can see the cover, yes.

10 Q. Okay. I offer it for a limited purpose,
11 and that is on the page following the cover, page 97
12 of the book I have copied there, there's a schematic
13 diagram of interconnection interexchange carriers to
14 the local exchange carrier. Does that seem like an
15 accurate schematic of how the interexchange carriers
16 connect with the local exchange carriers to you?

17 A. Generally, no. My understanding of a more
18 typical -- would you like me to describe what the
19 picture is, or do you all have it?

20 Q. I think everyone has it.

21 A. Excuse me. Thank you. Typically, an
22 interexchange carrier, long distance carrier's point
23 of presence is connected to the local telephone
24 company's closest wire center, and then from there to
25 the local telephone company's local tandem office if

00069

1 the access lines are tandem switched. If the access
2 lines are not tandem switched, we would still go from
3 a POP to the local telephone company's office, may or
4 may not go through the physical location where the
5 tandem central office is, and would have a direct
6 facility to the terminating local central office.

7 So for example, this chart would be
8 accurate, omitting the originating ILEC central
9 office would be accurate if all of the terminating
10 traffic was tandem switched. We have a desire not to
11 have our terminating traffic tandem switched. One,
12 because we save money; two, because we eliminate a
13 potential point of failure in the provision of the
14 service. So on a broad overview, the chart is
15 adequate for part of how access is acquired. For the
16 way we prefer to acquire access, it's not accurate.

17 Q. Okay. What I really wanted to do is just
18 sort of use it as an opportunity to discuss some of
19 the terms that are used. And I appreciate your
20 clarification. Is it accurate to say that the loop
21 that's depicted there as the interexchange carrier
22 network, that's basically the fiber routes that were
23 depicted on the attachments to the application;
24 correct?

25 A. The interexchange carrier maps that you

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1 provided?

2 Q. The interexchange carrier maps?

3 A. Yes, sir, that's correct.

4 Q. Okay. Can you explain to us, please, what
5 a point of presence is?

6 A. That is typically the point where an
7 interexchange carrier -- the point of physical
8 presence where an interexchange carrier interfaces
9 within a local LATA or within a local service area
10 with facilities usually of the incumbent local
11 exchange carrier or occasionally of competing local
12 exchange carriers. So it's a point of presence.

13 Q. Is there switching equipment at the point
14 of presence or --

15 A. Not always. It depends on the size of the
16 market and the local community. In larger markets,
17 yes, there is typically a toll switch at the point of
18 presence. In smaller markets, the toll switching may
19 be done at a distant location and the point of
20 presence could just be a facility interface.

21 Q. Okay. But is there additional plant owned
22 by the interexchange company or leased by it or under
23 some arrangement, is there additional plant at the
24 level sort of below the point of presence? In other
25 words, what's depicted there is the access line from

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1 the interexchange carrier's POP to the local
2 customers?

3 A. As I understand your question, it is do
4 interexchange carriers typically own plant or
5 facilities lower in this picture than the point of
6 presence, and the answer to that question generally
7 is no. At divestiture -- excuse me, at the breakup
8 of the bell system 16 years ago, those assets, the
9 assets on the ILEC side of the interexchange carrier
10 point of presence went to the ILEC.

11 Now, it is true that companies like
12 WorldCom and AT&T and other carriers are now using
13 facilities provided either by their own competitive
14 local exchange carrier or by other local exchange
15 carriers as substitutes for the facilities that would
16 otherwise have been owned and provided by the ILEC.
17 But generally speaking, the use of the language in
18 the industry is that the IXC networks typically stop
19 at the point of presence and the competing local
20 exchange carrier networks typically begin at the
21 point of presence.

22 For example, MFS, before we had
23 authorization to provide intrastate service, provided
24 facilities from customers' premises to their
25 interexchange carrier presences. That's why we were

00072

1 called initially competitive access providers. And
2 that name has evolved, as you know.

3 Q. Okay. If I'm a company that owns a good
4 deal of fiber around the country and I have a point
5 of presence in, say, the Spokane LATA, say in the
6 city of Spokane, how do I go about offering
7 residential telephone service at a point within that
8 same LATA, but say 200 miles distant from there?

9 A. Yakima.

10 Q. Okay.

11 A. Feel I'd pick a place.

12 Q. Good idea.

13 A. Typically, I would buy -- I'm an
14 interexchange carrier. I would buy originating and
15 terminating access service from the local exchange
16 carriers operating in the Spokane LATA. As I recall,
17 the dominant interexchange -- or excuse me, dominant
18 local carrier in Spokane is US West. The reason I
19 use the word dominant is not intended to be
20 pejorative. Access tandems are owned by the dominant
21 carrier in each LATA.

22 So the access tandem would provide an
23 interexchange carrier with originating and
24 terminating access to every other central office in
25 that LATA. It's not necessarily the most efficient

00073

1 way to get access, but if you wanted to come in, have
2 no other facilities, have no direct trunk groups to
3 any of the central offices, you can gain access for
4 both originating and terminating traffic throughout
5 the LATA by procuring originating and terminating
6 access service from the carrier that operates the
7 access tandem.

8 Q. You indicate that it's not the most
9 efficient way, and I imagine it's not the cheapest
10 way, either; correct?

11 A. No, sir.

12 Q. Okay. And does this go back to the exhibit
13 we were looking at a bit earlier, where the
14 consultant is discussing the advantage of owning
15 one's own network?

16 A. In part, it does. One of the synergies we
17 anticipate, for example, from this merger is that by
18 combining the long distance traffic of the two
19 companies, WorldCom and Sprint, we'll be able to
20 justify -- economically justify more direct trunks
21 from our point of presence to terminating central
22 offices, thereby avoiding the charge for tandem
23 switching, for example. And if we get sufficient
24 demand, we'll be able to justify building our own
25 facilities.

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1 So in addition to not having to pay the
2 access charge, we don't have to pay -- or the tandem
3 switching charge, excuse me, we also don't have to
4 pay the transport charge. We don't know any way yet
5 to avoid the local switching charge, because that's
6 the way you get to or from the end user customer.
7 And until we win all those customers, an event that's
8 not anticipated any time soon, we'll have to continue
9 to buy originating and terminating local switching
10 from the ILECs.

11 Q. So terminating access charges are, in part,
12 mileage-based; correct?

13 A. Yes. It depends, again, on the type of
14 access you have. If you have direct end office
15 access, the mileage charge is based on the airline
16 distance, basically the straight line distance, from
17 your point of presence to the terminating central
18 office.

19 If you buy tandem switched access, not only
20 do you have to pay for the tandem switching, but the
21 mileage charge goes up, because the mileage charge is
22 then calculated from your tandem, or from your POP,
23 excuse me, to the tandem, and from the tandem to the
24 terminating central office.

25 So if you think of it just as a triangle,

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1 with the POP at one corner, the terminating office at
2 the other, at a second, and the tandem switch
3 somewhere else, the third corner of the triangle, if
4 you buy direct access, you only -- you pay for the
5 direct line. If you buy tandem switched, you pay for
6 the two legs of the triangle, plus the switching at
7 the intermediate spot. So there's some significant
8 savings with direct trunking.

9 Q. Okay. So there -- I mean, it sounds like
10 what you're saying is that there is a scale economy
11 in having a lot of points of presence or widespread,
12 ubiquitous points of presence as a facilities-based
13 long distance carrier?

14 A. Yes.

15 Q. Okay. And is it also fair to say that
16 AT&T, MCI and Sprint generally have more points of
17 presence -- well, let me start this way. Isn't it
18 fair to say that the big three that I mentioned have
19 points of presence in more LATAs around the country
20 generally than do the fiber companies you mentioned?

21 A. I think, as a general statement, that's
22 fair to say.

23 Q. Okay.

24 A. As long as it doesn't imply that it's
25 necessarily true in any given market or universally

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1 true for the three of us. Because, for example,
2 WorldCom doesn't have facilities ubiquitously, Sprint
3 doesn't have facilities ubiquitously, but we do have
4 POPs, because we lease facilities from someone else
5 and have a point of presence in every LATA.

6 So the answer to your question, though, is
7 yes, I think it's fair to say that the three who've
8 been around longer probably have more POPs than the
9 new ones.

10 Q. Well, maybe number of POPs is not a good
11 way of estimating what the system's footprint is, if
12 I can put it that way. Is there a better way of
13 estimating that?

14 A. Well, for example, WorldCom uses facilities
15 provided by Touch America. We use facilities
16 provided by other carriers in other parts of the
17 market, typically, to get into independent telephone
18 company territory, so we use companies like CapRock
19 down in Western Texas, and Valley Net in West
20 Virginia, and similar around the country.

21 Your question, though, comes to looking at
22 specific networks. Touch America has more POPs in
23 the Northwest probably than any other carrier.
24 Nationally, they don't, because, of course, AT&T and
25 WorldCom and Sprint nationally would have more POPs

00077

1 than Touch America. So I'm a little -- I'm not
2 exactly sure what parameter of the question you'd
3 like me to discuss.

4 Q. Well, I'm just frankly trying to get an
5 understanding of if there's a good -- you indicated
6 that, I believe earlier in your testimony, that
7 there's some advantage to getting close to the
8 customer with your facilities, such that you overcome
9 mileage-based access charges?

10 A. Yes, sir.

11 Q. And just because you have a lot of -- a
12 company might have a lot of POPs doesn't mean that
13 they're necessarily widely dispersed, I guess?

14 A. Well, they can be -- they could have a
15 number of POPs that were widely dispersed, but only
16 in a regional area, rather than national. That was
17 the only distinction I was trying to make. You need
18 to look at each individual carrier and see what their
19 footprint is. CapRock, which is very -- has a lot of
20 POPs all over New Mexico and West Texas and Kansas,
21 isn't here. So you know, obviously they'd have no
22 impact in Washington, but they'd have a significant
23 impact in the market where they're operating.

24 Q. Okay. Are fiber miles or maybe route miles
25 a better way of estimating that?

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1 A. Well, route miles give you a good measure
2 of the total length of a carrier's network. Again,
3 US West, for example, has a lot of route miles of
4 fiber in Washington and none in Virginia. So even
5 there, you have to look at where the map or where the
6 network is operating, but if you're speaking only of
7 interLATA carriers, route miles is a reasonable
8 measure of the scope or diversity of a network.

9 Q. How much of what you referred to, I
10 believe, as the emerging interexchange companies'
11 business is in mass markets in Washington? I think
12 we might have discussed this before, actually.

13 A. What percentage of our total business in
14 Washington is --

15 Q. No, I'm talking about the -- actually, I
16 think I already asked that question, and you
17 indicated that the companies that you mentioned in
18 your direct testimony as being fiber-owning companies
19 aren't presently doing a lot of mass market long
20 distance business in Washington?

21 A. That's correct, to my knowledge. The
22 capacity that they're providing presumably to
23 resellers than to business customers may in fact be
24 provided, the resellers may be serving the mass
25 market, but I don't think that was the question you

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1 asked me.

2 You asked, at least as I recall the
3 question, you asked are these underlying fiber
4 network operators themselves marketing to the mass
5 market. And my response, as I recall it, was not to
6 my knowledge, but with the exception, perhaps, of
7 companies like Qwest and Broadwing.

8 But the other network providers are selling
9 their capacity to someone. And the resellers are
10 buying their capacity from someone. All of those
11 relationships we don't see. I don't know who the 500
12 or 450 resellers buy their capacity from. Some of it
13 may, in fact, be from these new entrants, but it
14 wouldn't show up as new entrants mass market sales,
15 so --

16 Q. I see.

17 A. I think we're together, but --

18 Q. Right, okay. Would you agree, however,
19 that these fiber companies that you mentioned,
20 including Williams, et cetera, in the passage from
21 your testimony I referred to earlier, that they are
22 primarily responding to the growth in demand for
23 broadband connectivity and not to demand for voice
24 transmission?

25 A. That's a good -- that's kind of a loaded

00080

1 question. I think the whole industry is responding
2 to an explosion in demand for broadband services.
3 Data services generally are growing very rapidly.
4 We're seeing a doubling every four months of capacity
5 dedicated to data. While we're seeing -- continuing
6 to see good growth in voice, it's nowhere near that
7 percentage of growth.

8 The other side of the coin that we haven't
9 really seen come into the market yet, though, is that
10 Bell Atlantic, with its acquisition of GTE, if and
11 when that's approved, will gain both facilities here
12 in the state and have a nationwide fiber network from
13 which they can offer both voice and data services.
14 SBC has done the same thing with Williams. So while
15 we may not have seen Williams itself marketing to the
16 mass market, SBC has promised that they will be
17 marketing in the Seattle area, presumably to both
18 business and mass market customers. Frontier, with
19 Global Crossing, I think it was, Cincinnati Bell with
20 IXC, now called Broadwing.

21 So I think there's a lot going on in the
22 market that we simply haven't -- it hasn't been
23 around long enough yet to see that will address some
24 of the questions that you have asked. It does not
25 show up in 1998 data.

00081

1 Q. Okay. I want to turn to a statement you
2 made in your direct testimony at page 11, and I'll
3 just read it. It says -- I'm paraphrasing a little
4 bit. It says there's ample evidence that there are
5 neither barriers to entry nor capacity constraints in
6 Washington's interLATA market. Indeed, the
7 petitioners, along with AT&T, control an
8 ever-diminishing share of long distance capacity
9 nationwide and in Washington.

10 And I guess we talked a little bit about --
11 well, I guess we may not have. Let me just ask you
12 this. When you say capacity in that passage, what
13 are you referring to? How would you measure
14 capacity?

15 A. Well, there are a couple of ways. The way
16 I had in mind right there was route miles or fiber --
17 excuse me, route miles, not fiber miles, route miles,
18 as you asked a few minutes ago. KMI Corporation, an
19 outside consulting firm unrelated to us, has
20 estimated that in just three years, AT&T, WorldCom
21 and Sprint have gone from owning approximately 70
22 percent of the route miles of fiber interexchange or
23 interLATA route miles to only 30 percent of the route
24 miles. And that's because companies like Williams
25 and Qwest and Level 3 have entered the market with

00082

1 significant new nationwide networks that again don't
2 show up in the 1998 data. But the other thing, in
3 addition to --

4 Q. Let me just cut in there for a moment.

5 A. Yes, sir.

6 Q. When you talk about the 1998 data, are you
7 talking about --

8 MS. KIDDOO: Excuse me. Could we let Mr.
9 Porter finish the question and then you can ask your
10 next question?

11 MR. THOMPSON: Sure. I'll write it down,
12 so I don't forget.

13 MS. KIDDOO: Do you remember what you were
14 about to say, Mr. Porter?

15 THE WITNESS: Yes, I'd be happy to come
16 back to it, but I can finish it now, if you'd like.
17 All I was going to say is that, in addition to route
18 miles, the transmission speed on fiber has increased
19 very significantly in the last three or four years.
20 What we used to do as an OC 12 fiber-optic network or
21 an OC 48 network at 600 and -- well, let's see, OC 12
22 was 622; OC 48, as I recall, was about 2.4 billion
23 bits of information per second. We're now doing OC
24 192, which is 10 gigabits. We've begun operating at
25 OC 768 -- I'm sorry, I have to think of these numbers

00083

1 -- which is 40 gigabits per second, and that's on
2 each individual channel or color of light going over
3 the fiber.

4 We used to think we could transmit on fiber
5 on any color we wanted to as long as it was white,
6 and we discovered -- sorry. We discovered we could
7 do it on white, red, yellow, blue. Now the industry
8 typically is using 40 colors of light, and Lucent has
9 announced, last Thanksgiving, perhaps in a bit of
10 exploratory fervor, that they've done a thousand
11 shades of light simultaneously on one piece of fiber
12 in the laboratory. It's not commercially developed
13 yet.

14 So not only do you have the question that
15 you asked, which was route miles, expanding very
16 significantly and the traditional long distance
17 carriers, as you might call them, having gone from 70
18 percent of the route miles to 30 percent of the route
19 miles, you have very significantly increased capacity
20 in digital transmission speed and in number of
21 channels with fiber.

22 So all of that combines to say, in my
23 opinion, there is the potential of a lot of capacity
24 in the state of Washington.

25 Q. Okay. So I guess to summarize, for the

00084

1 technologically impaired, there's a lot -- the pipes
2 are getting longer and you can also put more into the
3 pipes than you could before?

4 A. Yeah, they're getting longer and fatter.

5 Q. Okay. When you -- I think you referred to
6 a report by an organization called EMI?

7 A. KMI.

8 Q. Or KMI?

9 A. Yes, sir.

10 Q. Okay. And did you say that they're
11 currently indicating that the Big Three presently own
12 a 30 percent share of route miles; is that correct?

13 A. My understanding of their statement is that
14 the Big Three, or traditional carriers, whatever you
15 want to call it, now own 30 percent of the in-place
16 or planned fiber, yes.

17 Q. Okay. Are you aware of -- well, I know you
18 are, because you provided it to us in a response to a
19 DR, but there's a 1998 report from the FCC that
20 indicates that, at least in 1998, that number was
21 closer to about 70 percent, I believe?

22 A. The number that was owned?

23 Q. For route miles controlled by AT&T, MCI and
24 Sprint versus other?

25 A. I don't have the number directly in front

00085

1 of me, but if you represent that's what it said, yes,
2 I believe that. That's precisely the reason that I'd
3 like you to consider data beyond 1998. Most of the
4 -- for example, Qwest's network, they will have
5 completed, since 1998, a 33,000 route mile fiber
6 network by the end of this year. That doesn't show
7 up in the -- you know, the beginnings of it show up
8 in the FCC data. Level 3 wasn't there. Williams, in
9 1998, was still leasing capacity from us. GTE, some
10 of you may recall from a previous acquisition
11 hearing, was our largest wholesale customer in 1998.
12 They are no longer. Well, they're still a customer,
13 but it's not a significant customer, because they've
14 moved their traffic off of our network onto their
15 network. None of that shows up in the FCC report.

16 That doesn't make the FCC report wrong,
17 it's just a year and a half, two years behind the
18 times. And the market has moved very quickly. So
19 yes, in fact, I wouldn't be at all surprised if KMI
20 didn't base their 70 percent number on the FCC's
21 report. I don't know that, but it would be
22 consistent.

23 Q. Okay. What -- you mentioned this earlier,
24 and I'd like to go back to it. You mentioned that
25 the cost of facilities represents a relatively small

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1 portion of WorldCom's budget, I guess, if that's the
2 right way to put it?

3 A. Yes, sir.

4 Q. And could you explain that to me again,
5 what the percent is?

6 A. I haven't done the calculation in the last
7 year or so, so I'm reserving that I should take
8 another look. But typically, network-related costs
9 have been 15 to 20 percent of our cost of doing
10 business. Access charges have typically been in the
11 range of 40 to 45 percent of our cost of doing
12 business. Sales and general administrative and all
13 of our other expenses add up to the remainder, and
14 then profit. So the network operation itself is a
15 relatively small portion of our total cost of doing
16 business.

17 Q. But the sales and marketing, if I'm
18 characterizing that correctly, the leftover portion,
19 would you --

20 A. Well, let's not call it leftover. It's
21 what gets the customer in the door.

22 Q. Good point. It's somewhere in the
23 neighborhood of 40 percent, then, or --

24 A. The sales and general administrative
25 expense for WorldCom has been running in the 20 -- my

00087

1 recollection is 22 to 24 percent range.
2 Depreciation, taxes, interest, expenses, would also
3 be another significant part of the total cost of
4 doing business that I didn't mention when I mentioned
5 the other three categories.

6 So by order of magnitude, I guess I'm
7 saying 15 to 20 percent for the network, 20 to 25
8 percent for sales and general administration, 40 to
9 45 percent for access charges. I haven't figured the
10 number exactly, but taxes, interest, capital-related
11 expenses would probably be another 15 or 20 percent.
12 If you add all those together, if you get around 90
13 percent, you'd be covering the total cost.

14 Q. Okay, good. You made the point that sales
15 and marketing and so forth is important because it
16 gets people in the door. I think that's a good point
17 to go to Exhibit C-36, if you would, please.

18 A. Yes, sir.

19 Q. Now, this represents WorldCom's response to
20 a Staff Data Request about Dr. Kelley's testimony.
21 However, I just want to -- I don't know if you can
22 respond to it, but I just want to go over -- maybe
23 you're familiar with it. Are you?

24 A. I don't -- I saw this yesterday afternoon.
25 I'm not familiar with how it was created, but I'll be

00088

1 happy to take a shot at your question.

2 Q. Well, okay. So this, again, is a
3 confidential document, but I would ask that you
4 please turn to -- I think -- I can certainly say what
5 it is, I imagine. It appears to summarize the
6 expenditures of AT&T, MCI and Sprint on advertising
7 by category for 1997, 1998, and 1999; correct?

8 CHAIRWOMAN SHOWALTER: Is this page 9253,
9 or is it page five of nine?

10 MR. THOMPSON: That's one of the pages.
11 It's a several-page --

12 CHAIRWOMAN SHOWALTER: It's the whole thing
13 that we're looking at?

14 MR. THOMPSON: The whole thing we're
15 looking at.

16 Q. But yeah, we might as well go to MCI
17 WorldCom's bottom line for advertising in all
18 categories. And that is on the page ending with the
19 Bates stamp number 255. It says page seven of nine,
20 actually, at the bottom, I see.

21 A. Thank you, because my Bates numbers are
22 holes.

23 Q. Okay.

24 A. I just happened to -- page seven, you said?

25 Q. Correct.

00089

1 A. Got it.

2 Q. So the figure on the MCI WorldCom total
3 line for 1999 year -- let's see, yeah, 1999 dollars,
4 year to date, that figure, how does that figure into
5 the overall expenditures of the company, again, as a
6 percentage, if you could refresh my memory?

7 A. Well, that would be part of the number that
8 I represented as sales and general administrative
9 expense.

10 Q. Okay.

11 A. Which was 20 to 25 percent of our cost of
12 doing business.

13 Q. Okay.

14 A. Advertising is only one piece of that, but
15 --

16 Q. I see. And then that would be -- in
17 addition to that would be direct marketing and
18 telemarketing?

19 A. And employee salaries.

20 Q. Oh.

21 A. And me.

22 Q. Yeah.

23 A. Please. Let's not cut it too short.

24 Q. Okay.

25 A. That's all of the operations of the

00090

1 business other than what's directly related to
2 running the network or expenses that we pay outside
3 the business. So sales and general administrative
4 includes executives, legal, advertising, marketing,
5 all the employee expenses and these expenses.

6 Q. Okay, I understand. I want to shift
7 subjects at this point to another part of your
8 testimony, your direct testimony. On page nine of
9 your testimony --

10 A. Of my direct?

11 Q. Direct testimony.

12 A. Thank you.

13 Q. You touch on some topics that you already
14 addressed today when you say powerful new competitors
15 are poised to enter the Washington local and long
16 distance markets within the next 12 to 18 months,
17 including SBC, Bell Atlantic, GTE and US West/Qwest.

18 Can you tell me what WorldCom's position is
19 with regard to US West's compliance with the
20 requirements of Section 271 of the 1996
21 Telecommunications Act?

22 A. I guess there are a couple ways to answer
23 that. The company position is that they should
24 comply, and that this Commission should bring them
25 into compliance as quickly as it can. If your

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1 question is are they complying yet, it's my opinion
2 they are not. So I guess if you would -- I'm not
3 quite sure what --

4 Q. Well, I think that is what I want to get
5 at. I also -- I guess I would ask you, do you have
6 an opinion about US West's compliance relative to
7 other RBOCs around the country, as far as speed and
8 willingness to comply with the requirements of 271?

9 A. That's a leading question, sir.

10 Q. That's what I'm allowed to ask.

11 A. Section 271 is not a piece of the
12 regulatory business that's in my direct
13 responsibility, so I'd be more than happy to tell you
14 my understanding of the company's position, but I
15 can't put it as something that's under my direct
16 responsibility. We strongly supported, and still do,
17 the Telecommunications Act of '96. But some of the
18 companies, and I think US West is perhaps the best
19 example, have not been very aggressive in complying,
20 at least in my opinion, in complying with the
21 requirements of the act.

22 That falls in several categories. In
23 particular, in Section 251, in providing cost-based
24 unbundled network elements, and in particular, the
25 network element platform, which is the only way that

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1 we think we can rapidly enter the residential market.
2 I'd be happy to explain that, if you'd care to ask
3 me. In the questions of universal service reform, in
4 the question of access charge reform.

5 And then in the specific requirements of
6 Section 271, which, among other things, require
7 compliance with 251, but in particular, add the
8 availability of functional OSS, operating and support
9 systems, which I know this Commission is
10 participating in an investigation of right now.

11 We need all of those things to come
12 together for us to be able to offer a residential
13 mass market type of service in Washington. We don't
14 think those are available today. Are they doable?
15 In my opinion, yes.

16 The New York Public Service Commission, New
17 York Telephone -- excuse me, NYNEX, and then Bell
18 Atlantic New York -- Bell Atlantic New York, in fact,
19 did do a reasonably good job of complying with those
20 requirements, and we supported them in their 271
21 application, a fact that somewhat dismayed some of
22 our other IXC industry companions.

23 We don't -- we're not opposed to their
24 entry to the market; we're opposed to the entry to
25 the market before they've satisfied the conditions

00093

1 for entry. In my opinion, they haven't done that
2 here yet.

3 Q. Given that, do you think that we may have
4 cause for particular concern about the concentration
5 in the market that would result from this merger in
6 this part of the country?

7 A. Concentration in the local market?
8 Absolutely.

9 Q. No, in the long distance market?

10 A. I beg your pardon. No, I don't think so.
11 As I understand, we have a new exhibit, which I
12 haven't had the opportunity to study, that came
13 today, that indicates that AT&T has the significant
14 portion of long distance in the state. US West, as I
15 recall, was number two, at 24, 25 percent, MCI was
16 number three, Sprint was number four, but Qwest and
17 IXC, as I recall, were not that far behind, at five
18 and six. Seven was pretty far away.

19 But we know that the fiber is here. We
20 know that Bell Atlantic has announced they're coming
21 with their Bell Atlantic-GTE deal. SBC has
22 represented that they will be in the state of
23 Washington both with long distance and local service.
24 US West-Qwest entry into the interLATA market is
25 really up to US West.

00094

1 If you all approve the acquisition by
2 Qwest, Mr. Nacchio has indicated that he expects that
3 US West will move toward compliance more quickly than
4 it might otherwise. Whether that happens, I don't
5 know.

6 But I think there is both plenty of
7 capacity and plenty of people entering the market
8 that the question of long distance shouldn't be a
9 serious concern. That's on a looking forward basis.
10 That's based on what's happened in the last two
11 years; it's not based on 1997-1998 data.

12 The thing that, in my opinion, this merger
13 does and should be of keen interest to you is it
14 creates the likelihood, in my opinion, that there
15 will be a strong third party to compete for local
16 service, both when US West comes into compliance and
17 using our own fiber and the MMDS and the PCS, I think
18 we'll be an effective third party in this market that
19 you might not otherwise have.

20 JUDGE CAILLE: Excuse me, Mr. Thompson,
21 would this be a convenient time for us to take our
22 morning break, or am I --

23 MR. THOMPSON: Actually, it would be a good
24 time.

25 JUDGE CAILLE: Okay. Let's take a

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1 15-minute break, and come back at 11:05.

2 THE WITNESS: Thank you.

3 (Recess taken.)

4 JUDGE CAILLE: Let's go back on the record.

5 We are resuming the cross-examination of Mr. Porter.

6 Mr. Thompson.

7 Q. Mr. Porter, before we went off the record,
8 you referred to an exhibit, I believe, that contained
9 market share information for Washington State;
10 correct?

11 A. I referred to a document that I was shown
12 this morning when I came in that I understood was a
13 Staff exhibit.

14 Q. Oh, okay. Well, can I direct your
15 attention, then, please, to Number 29 in the proposed
16 exhibits.

17 CHAIRWOMAN SHOWALTER: Exhibit 28, did you
18 say?

19 MR. THOMPSON: Twenty-nine. And I should
20 add that this actually should be designated as
21 confidential, and I think it is on the exhibit list,
22 but it's not on yellow paper, as it should be.

23 THE WITNESS: Yes, sir, I have it.

24 Q. Is this the document you're referring to?

25 A. Yes, I understand the one I had -- was

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1 shown this morning was an update. I don't know if
2 this is the updated one or not, but yes, it was a
3 document like this.

4 Q. Okay. So it may have been --

5 A. It may have -- it was a document like this,
6 yes, sir.

7 Q. Okay. Realizing that you didn't compile
8 this information, but you did make reference to it --

9 MS. KIDDOO: Excuse me, Your Honor. There
10 may be some confusion here. It might be simpler to
11 have us just tell you what Mr. Porter looked at. I
12 believe he looked at this document this morning and
13 then looked at some corrections that Staff sent
14 separately, but this document, this Staff document is
15 the document that Mr. Porter looked at this morning.
16 It's not an updated version.

17 MR. THOMPSON: Okay.

18 JUDGE CAILLE: Thank you.

19 THE WITNESS: Thank you both.

20 MS. ENDEJAN: Excuse me. I hate to
21 complicate things, but I'm trying to figure out where
22 the correction came in. Okay, thank you.

23 MS. KIDDOO: What Mr. Porter was referring
24 to as a correction was something that was e-mailed by
25 the Staff last night.

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1 MR. CROMWELL: Could I also have a copy of
2 that when you have a chance?

3 MS. HOPFENBECK: It's from the Staff, so --

4 MR. THOMPSON: Yeah.

5 THE WITNESS: I'm sorry. I didn't see
6 anything.

7 Q. Well, in any case, you were referring to
8 Staff's numbers, then, I would conclude, as far as
9 what market share is in Washington?

10 A. Yes, sir.

11 Q. And would you agree that these bring
12 together both -- because they just represent total
13 revenue in this state, they bring together both
14 business and residential and small business mass
15 market revenues?

16 A. Recognizing that the document doesn't have
17 a caption on it, I was under the impression, and I
18 may be wrong, but I was under the impression that
19 these were toll revenues intrastate, not total
20 revenues. I don't know that for a fact. Were they
21 toll revenues only? That's what I thought they were.

22 Q. That's my understanding, as well. But I
23 mean, if they were toll revenues, that would include,
24 would it not, not only toll revenues derived from
25 mass markets, but also from business markets?

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1 A. As --

2 MS. KIDDOO: Objection. I think Mr. Porter
3 has testified, Your Honor, that he doesn't know where
4 the Staff got these numbers and was making some
5 assumptions, but certainly can't testify as to what
6 underlies them. Perhaps Mr. Blackmon will be able to
7 testify about that when he's on the stand.

8 MR. THOMPSON: Well, maybe, if I might just
9 ask -- I think I'm asking questions to try to
10 determine what his assumptions were.

11 JUDGE CAILLE: Is there still an objection?

12 MS. KIDDOO: No, I think that's fine. I'm
13 not sure what it gets us, but he can ask the
14 question.

15 JUDGE CAILLE: All right.

16 Q. You assumed -- well, tell me what you
17 assumed that this represented, if you please?

18 A. My assumption was that this represented
19 intrastate toll revenues of these carriers for 1998,
20 that it didn't include interstate revenues and didn't
21 include local revenue.

22 Q. Okay, fair enough. So that would -- but
23 that number would aggregate both mass market revenues
24 and business revenues in your assumption, would it
25 not?

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1 A. In my assumption, that's correct.

2 Q. Okay. If you'd please turn to your
3 rebuttal testimony at page nine, lines 10 through 15.

4 JUDGE CAILLE: And that is Exhibit T-4.

5 THE WITNESS: My rebuttal testimony, page
6 nine. Yes, sir.

7 Q. Could you please -- actually, line eight,
8 could you begin reading, please, at -- well,
9 actually, please begin reading at line 10, where it
10 begins, If WorldCom, and then just read to the end,
11 please.

12 A. Yes, sir. If WorldCom could and did do so
13 -- and I believe that refers to raising prices
14 unilaterally -- this would create a pricing umbrella
15 of which SBC could readily take advantage in
16 marketing its own long distance services. WorldCom
17 would face two choices. Either keep its new higher
18 rates and lose market penetration or reduce prices to
19 compete. So even if Dr. Hausman were correct that
20 WorldCom would raise its prices, which he is not,
21 WorldCom would be forced immediately to lower its
22 prices again to compete.

23 Q. Okay. Could you identify for us a specific
24 instance when MCI WorldCom lowered its long distance
25 rate in response to a plan offered by a company other

00100

1 than Sprint or AT&T?

2 A. I don't have that kind of information with
3 me. In our filing at the FCC, reply comments in this
4 matter in that jurisdiction, we provided two
5 exhibits, which I don't recall if we provided here as
6 responses or not. We filed two exhibits there that
7 listed approximately four pages of innovations done
8 by carriers other than AT&T, WorldCom and Sprint in
9 the residential market, and another four pages of
10 similar innovations, either pricing or new services
11 that were offered by business customers.

12 I apologize, I don't have that with me, but
13 if you'd like that material, I can get it fairly
14 quickly. In regard to your specific question, I
15 don't have a chart that lays out our price changes
16 versus our competitors' price changes on a time line.

17 Typically, as I understand what our
18 marketing folks do, and I believe we'll have a
19 witness here tomorrow who is more equipped to address
20 this, we do our price changes based on what we think
21 we need to do to maintain and win customers in the
22 marketplace. As you know, every customer we have we
23 had to win from someone, and in order to maintain
24 customers, we have to continue offering services that
25 will net either neutral or positive as far as total

00101

1 customers.

2 Churn in the industry is, order of
3 magnitude, a third of the customers each year change
4 carriers. And so to keep up with that, we have to
5 offer, on a continuing basis, new services, new
6 plans, new prices, but I don't have the specific
7 layout of price actions by other carriers compared to
8 ours, so I can't answer your question.

9 Q. Okay. I think no actually would have
10 answered the question.

11 A. Well, but no, with no explanation, is not
12 helpful.

13 Q. Certainly. Dr. Blackmon, in his testimony,
14 made a comment that the unbundling of Sprint's
15 package of wireless and wire line services must be
16 considered a negative result. And I believe you
17 responded to that in your rebuttal testimony. And
18 you did that at page 12 of your rebuttal testimony,
19 lines 16 through 20. And I'd like to ask you to
20 please read that, if you would.

21 A. Lines 16 to 20 of page 12?

22 Q. No, excuse me.

23 A. That would be part of the question.

24 Q. I'm sorry, line 18, and then carrying over
25 to line two on the following page.

00102

1 A. All right. Would you like me to read the
2 question, as well, or just the answer?

3 Q. Well, yeah, please read the question, as
4 well. Even though I tried to paraphrase it, it would
5 be helpful.

6 A. Yes, sir. Do you have any comment on Mr.
7 Blackmon's statement that the unbundling of Sprint's
8 package of wireless and wire line services must be
9 considered a negative result? Answer: Yes. I do
10 not understand why Dr. Blackmon believes that these
11 services are being unbundled. The application and my
12 direct testimony are clear that because MCI WorldCom
13 -- now WorldCom -- and Sprint are bringing -- excuse
14 me, bring complementary capabilities to the table,
15 the combined WorldCom will be able to offer the
16 customers of both companies more comprehensive
17 bundles of services than either company standing
18 alone can offer today.

19 Q. Okay. I believe it's one of the main
20 themes of your application and your testimony that
21 one of the main things WorldCom stands to gain in
22 this merger is the addition of Sprint's PCS wireless
23 product to the combined company's portfolio of
24 products; is that correct?

25 A. That's one of the benefits of the merger;

00103

1 yes, sir.

2 Q. Okay. If it's true, as you contend, that
3 -- or as the company contends, maybe not you
4 personally, that customers want to buy
5 telecommunications products in a bundle from a single
6 provider, can you explain how it is that there's, I
7 guess, a public interest benefit in taking a wireless
8 product that's already affiliated with Sprint long
9 distance and adding essentially a second long
10 distance carrier to that bundle?

11 A. Yes, sir. The thought here is that by
12 putting the two companies together, combined we'll be
13 better able to compete against the ILEC, and in
14 particular, when it gets into the long distance
15 business, and AT&T and its cable conglomerate.

16 We think that by putting the assets of the
17 two companies together, one asset, a significant
18 asset, which is the PCS, another one is our joint
19 MMDS licenses -- we have international facilities
20 that Sprint doesn't have, we both have networks that
21 complement each other, we have local networks that
22 they don't have outside their local territory -- that
23 the combined company will be a viable third choice in
24 the long term for customers that are getting a total
25 product with AT&T's wireless and local service over

00104

1 cable, with US West or Qwest local service, wireless
2 service, long distance service, and we're trying to
3 find a way to combine the assets that will let us be
4 a third choice for a full range of services. We
5 think this way is the best way for the two companies
6 to do that.

7 Q. Okay. Could I direct your attention,
8 please, to Exhibit 37. And if you'd turn past the
9 pages there that appear to be printouts from a web
10 site --

11 A. Yes, sir.

12 Q. -- to the copy of a direct mail advertising
13 mailed to B.G. Blackmon, Jr.?

14 A. Yes, sir. I believe this is taking
15 advantage of your resources.

16 Q. That's right. Would you agree that this
17 appears to represent an offer for wireless service
18 from MCI WorldCom to a customer that I can represent
19 to you lives in the Olympia area of Washington?

20 A. On Henson Street. Yes, sir, it would
21 appear to be that.

22 Q. So how is it that MCI is currently able to
23 offer wireless service?

24 A. We have resale agreements with a number of
25 facility-based wireless carriers in the country.

00105

1 Q. And how does PCS represent an advantage
2 over that?

3 A. It gives us a common platform, a digital
4 service instead of an analog service, an owned
5 product where we can control the deployment and use
6 of the service and have it as part of a package that
7 we control and direct the technology and the
8 provisioning of the service.

9 Q. Well, isn't it the case that, at least
10 according to this advertisement, this is a digital
11 service? I'm referring to the phone thing.

12 A. Yeah, it refers to an LG 330 digital phone,
13 and in the text on the next page, it appears to refer
14 to a Choice 75 digital plan. So it's possible that
15 the vendor in the Olympia area is using either PCS
16 spectrum or is using digital services on cellular
17 spectrum. I don't know who the vendor is, but you're
18 right, this does appear to be a digital offering.

19 Q. Okay. I want to shift now to the part of
20 your rebuttal testimony where you address, or you set
21 out, I guess, some proposed conditions, beginning in
22 response to the question at line four on page 13.

23 MS. KIDDOO: Sorry, could I ask Mr.
24 Thompson to repeat that?

25 MR. THOMPSON: Sorry. Page 13 of the

00106

1 witness' rebuttal testimony. And I want to begin
2 referring to basically his answer in response to the
3 question at line four on that page, where it says,
4 What, in your response to Dr. Blackmon's --

5 Q. In any case, is it fair to say that
6 WorldCom believes that, to the extent this Commission
7 has concerns about the proposed acquisition of
8 Sprint, that it should address those by imposing
9 conditions on the merged company's business
10 practices, rather than prohibiting the acquisition
11 outright?

12 A. Well, the first position would be that we
13 think the merger, as proposed, is in the public
14 interest of the citizens of Washington, and that it
15 should be approved as proposed. But in order to
16 address concerns that the intervenors, including
17 Staff, have expressed, we have attempted to offer
18 conditions, I think, as you put it, or assurances or
19 commitments that were designed to address the issues
20 -- or the concerns that you had expressed, and that
21 if the Commission decides that your concerns have
22 merit, we're offering these commitments as a way of
23 addressing your concerns. Yes, sir.

24 Q. Okay. I'd like to go through those with
25 you at this point, so that we can understand, the

00107

1 Commission can understand exactly what WorldCom is
2 and isn't offering.

3 A. Okay.

4 Q. First I'd like to direct you to line 12 of
5 page 13.

6 A. Yes, sir.

7 Q. And you state there that first, carrying
8 over -- excuse me. Well, first, there you state, The
9 operations of United will be unchanged by approval of
10 this merger. See that?

11 A. Yes, sir.

12 Q. Okay. Can you tell me just what you mean
13 by the phrase "by approval of this merger?" In other
14 words, does WorldCom intend that to mean that there
15 will be no changes as a cause of this merger, or does
16 it mean that there will be no changes at any point
17 after the merger?

18 A. Not the second. The first is a reasonable
19 statement. What we're attempting to say is that the
20 merger that we're asking approval of is a combination
21 of the holding companies, and that we are not, with
22 this application, asking for a change in the way that
23 United or Sprint of Washington is doing business in
24 the state.

25 But we are not saying what you suggested

00108

1 with the second half of your question, that there
2 will be no change in the future. As I believe you
3 know, in our estimate of benefits of the merger, we
4 have not included in our estimate any savings related
5 to changes in the ILEC operation, because we have no
6 overlapping or comparable ILEC activities. Sprint
7 has that business, has been doing that business well,
8 and we have no reason to, you know, without even
9 having looked at each other's business plans, to
10 think that we would make changes in that immediately,
11 and we're not asking for changes today, but we are
12 not promising that there will not ever be changes.

13 Q. You're familiar with the operations of
14 United Telephone Company of the Northwest
15 particularly; correct?

16 A. No, only generally.

17 Q. Are you aware that the headquarters are in
18 Hood River, Oregon?

19 A. I understand that there's a staff
20 headquarters in Hood River, yes, and I believe the
21 Washington operation headquarters is there, but
22 that's just about exhausted what I know about Hood
23 River at the moment.

24 Q. Okay. Just so we can get an understanding
25 of what the company's position would be on what it

00109

1 could and could not do under the proposed conditions,
2 what sort of changes to the organization and
3 operation of United would you believe WorldCom would
4 be allowed to make without violating the commitment
5 offered in your testimony?

6 A. My understanding is anything that this
7 Commission would allow them to do today without prior
8 approval or anything that this Commission would
9 require them to do with approval, whatever that
10 approval is, that we would continue to do or have the
11 ability to do if the merger is consummated.

12 I don't know the scope of Sprint's business
13 plans in the state of Washington, so I'm not telling
14 you that there is no reorganization of Sprint that's
15 already underway or planned that won't continue. All
16 I'm trying to say is that WorldCom, as the acquiring
17 company, is not proposing today any change in the
18 Sprint ILEC operation in Washington from what Sprint
19 was planning to do. I can't tell you what Sprint was
20 planning to do.

21 Q. But the bottom line, I suppose, is that
22 there is no commitment not to change the operations
23 in the future within your testimony, to the extent
24 that that would be allowed by this Commission?

25 A. There's no -- you're correct. There is no

00110

1 commitment never to make a change. There is a
2 commitment that if any of those changes require
3 Commission approval, we would come to the Commission
4 and seek that approval at that time.

5 But as you know, we haven't exchanged
6 business plans. We remain competitors until the
7 merger happens, and so we have not begun the kind of
8 investigation that your question implies.

9 Q. The second commitment offered by WorldCom
10 in that block quote, where the previous quote came
11 from, is that United will continue to comply with all
12 Washington statutes and applicable regulatory
13 requirements; correct?

14 A. Yes, sir.

15 Q. So in other words, it's just a commitment
16 to comply with existing laws, and there's nothing
17 further in terms of a commitment there, really, is
18 there?

19 A. It's a commitment that we'll try to be a
20 good citizen, but you're right. It's a commitment to
21 obey the law. And we believe Sprint's been doing
22 that and will continue to do that.

23 Q. Would the consequence of WorldCom failing
24 to comply with these commitments be that the merger
25 would be voided?

00111

1 A. No.

2 MS. KIDDOO: Objection. I think that calls
3 for a legal conclusion from this witness, Your Honor.

4 MR. THOMPSON: Well, I'm trying to get at
5 exactly what the applicant is proposing, and I think
6 we need to have an idea what the result would be if
7 these commitments weren't met. I mean, it's not a --
8 it would certainly be a legal decision to be made
9 whether it was enforceable, but I think we need to
10 have an idea of what that offer is.

11 MS. KIDDOO: Well, I think, Your Honor,
12 that Mr. Porter has been testifying at some length
13 with respect to these first two items and can
14 certainly talk about what we were proposing with
15 respect to the other assurances that are set forth in
16 his testimony, but leaping from that to the
17 Commission's enforcement mechanisms I think calls for
18 conclusions that Mr. Porter is not a legal witness
19 qualified to answer.

20 JUDGE CAILLE: Anything further, Mr.
21 Thompson?

22 MR. THOMPSON: Well, I think my question is
23 actually if there's an additional enforcement
24 mechanism that's proposed as part of these
25 conditions. And I think that's separate from what I

00112

1 heard from the objection, which is whether this is a
2 question about the Commission's current enforcement
3 mechanisms.

4 JUDGE CAILLE: Perhaps if you could
5 rephrase your question to include that.

6 Q. Okay. Let me phrase it this way. Is
7 WorldCom offering that if it fails to meet up to the
8 commitments in this offer, that the merger is voided?

9 A. No, sir.

10 Q. Okay. And there's no proposal from
11 WorldCom in addition to the usual penalty or remedial
12 action that the Commission could impose anyway?

13 A. I apologize. I'm not personally familiar
14 with all the enforcement tools that the Commission
15 has. If your question is is there something else
16 that's proposed in this paragraph --

17 Q. It is.

18 A. -- specifically, the answer is no. There's
19 not a specific additional enforcement clause that's
20 in this paragraph.

21 Q. Okay. Or elsewhere in your testimony?

22 A. No, but I understand there have been other
23 discussions.

24 Q. Okay. I want to turn now to the third
25 commitment in that block paragraph, and that is that

00113

1 WorldCom will maintain investment in United's network
2 and work force; correct?

3 A. Yes, sir.

4 Q. There doesn't appear to be any time limit
5 on this commitment. Is it safe to assume that
6 WorldCom is making this commitment for as long as it
7 owns or controls the local operations of Sprint?

8 A. I don't know that we have -- you're
9 correct, there is no specific time limit. I think it
10 is a reasonable assertion that as long as we own the
11 ILEC facility, we will -- it's our intent to do that.
12 Not doing that is to fritter away a resource. Excuse
13 me. I don't know if that's a proper technical
14 phrase. But you're right, there is no specific time
15 line put on this.

16 Q. Okay. And as with the previous commitment,
17 there's no additional offer from the company as far
18 as an enforcement mechanism?

19 A. That is correct. Again, I'm not familiar
20 with all of the enforcement mechanisms that this
21 Commission has, but I understand generally that you
22 do have enforcement authority over service quality
23 and similar issues, and you would retain those.

24 Q. Let's hypothetically imagine that it would
25 be possible for United to reduce its work force or

00114

1 decrease its investment and still comply with the
2 rules of this Commission. I take it there's nothing
3 in what you're offering that would prevent the
4 company from doing that?

5 A. As I understand your hypothetical, if we
6 could provide the same or better quality of service
7 with fewer resources, it seems to me that that might
8 be in our interest. But we also have contractual
9 relationships with many of our employees that we have
10 to honor and we have to better understand the
11 services that are being offered here in Washington
12 today. And as I have testified, we haven't begun
13 that kind of a state-specific review of operations
14 yet.

15 Q. Well, let me revise my hypothetical. Let's
16 assume that United is essentially currently staffing
17 at levels or investing at levels that are greater
18 than the amount allowed by law, required by law,
19 excuse me, and that WorldCom, following a merger,
20 would choose to reduce that level. I take it there
21 would be no consequence, as far as anything that the
22 company's offering in your testimony?

23 A. We're committing to maintaining the quality
24 of service that's offered today. I think your
25 question is if we could maintain that quality of

00115

1 service with fewer resources, would we do that. I
2 think we would not be exercising our management
3 responsibility if we didn't consider that.

4 I don't know, in point of fact, whether or
5 not that's possible, because, as I've said, we
6 haven't begun that kind of a review yet. But you're
7 right, there is nothing specifically here that says
8 we wouldn't attempt to provide the service more
9 efficiently if we could.

10 Q. So is WorldCom proposing that the current
11 1999 level of capital investment will not be
12 decreased?

13 A. No. I don't know what the 1999 level of
14 investment is. I know Sprint has been doing
15 significant network upgrades around the system. I
16 don't know whether that includes Washington or not.
17 It may well be that Sprint's upgrade in Washington is
18 next year and that there will be a significant
19 increase year over year, or it might have been last
20 year, and there's a decrease year over year.

21 What we're offering or committing to do is
22 to maintain the program that Sprint has in place,
23 whatever that is.

24 MR. THOMPSON: Your Honor, I would object
25 to the prolonged answer, and move to strike

00116

1 everything following no.

2 MS. KIDDOO: Your Honor, I think that the
3 witness is entitled to explain his answer.

4 JUDGE CAILLE: Generally, the way we do
5 answer questions here is to provide a yes or no
6 answer, and then, if the witness feels that he needs
7 to expand upon that, we do allow that.

8 MR. THOMPSON: Well, my objection goes to
9 the fact that the answer was not responsive to my
10 question.

11 MS. KIDDOO: I think we could have the
12 answer read back, but I think that Mr. Thompson's
13 question did call for the kind of answer that Mr.
14 Porter was giving, as to what this commitment means
15 and what it's committing to and what it's not
16 committing to with respect to the capital investment.

17 JUDGE CAILLE: I'm going to deny the
18 objection.

19 Q. As specifically with reference to work
20 force levels, is WorldCom proposing never to decrease
21 work force levels of United Telephone?

22 A. No, sir, we are not proposing never to
23 decrease work force levels.

24 Q. Okay. Now, if we can turn to the
25 additional commitments that WorldCom is offering in

00117

1 your rebuttal testimony, the first of these is a cap
2 on the average effective in-state rate, correct, at
3 page 13 of your testimony?

4 A. Yes, sir.

5 Q. I want to get at specifically what WorldCom
6 is proposing to cap and not to cap with some
7 questions. Is it your understanding that on at least
8 some of WorldCom's pricing plans, that it charges a
9 monthly fee of \$4.95?

10 A. It's my understanding that we have a plan
11 that has a monthly minimum, yes, sir.

12 Q. Is a monthly minimum the same as a monthly
13 fee?

14 A. I beg your pardon. Yes, I may have spoken
15 imprecisely. Yes, a monthly fee.

16 Q. Okay. Is WorldCom proposing that the
17 calculation of the effective rate per minute, as you
18 have it, will include the 4.95 monthly fee?

19 A. My understanding of what I intended, the
20 answer is yes. I understand there has been further
21 discussion since this testimony was filed that I
22 haven't participated in that has some further offer
23 from the company, but it's not reflected here.

24 Q. Okay. You mentioned a minimum charge, but
25 isn't that imposed on some plans instead of the

00118

1 monthly fee? And in those cases, it's \$3?

2 A. My recollection is that we have a number of
3 pricing options for customers to consider, and that,
4 depending on the volume of calling they make, one
5 plan might be more attractive than another. I
6 apologize. I don't know every specific plan that we
7 have here, but we have as a witness tomorrow a
8 representative from our mass marketing group who may
9 be able to answer that question. I'm simply -- I
10 don't know.

11 Q. Okay. But if that were the case, is
12 WorldCom proposing that the calculation of the
13 effective rate per minute include those monthly
14 minimums?

15 A. That's what I intended by my testimony;
16 yes, sir.

17 Q. Okay. And just to clarify, when you said
18 that that's what you intended in your testimony, is
19 that any different than what -- is there a difference
20 between that and what the company is offering?

21 MS. KIDDOO: Your Honor, I think Mr. Porter
22 has testified that he is not intimately familiar with
23 the plans that are in place. And what the company's
24 proposal here is that we have a specific mass market
25 witness who is intimately familiar with the

00119

1 Washington plans and precisely how this commitment
2 would impact those plans, and she will be available
3 for Mr. Thompson's cross-examination.

4 JUDGE CAILLE: Any response, Mr. Thompson?

5 MR. THOMPSON: Well, it's a little
6 difficult, because the condition is stated in this
7 witness', Mr. Porter's, testimony. And you know, if
8 I can get an assurance that Ms. McMahon will be able
9 to clarify this point within Mr. Porter's testimony
10 --

11 MS. KIDDOO: We can give that assurance,
12 because I think what Mr. Thompson is wanting to get
13 at is precisely the effect of this commitment and
14 what it means with respect to plans that are in place
15 in Washington, and Ms. McMahon can testify as to
16 that, yes.

17 JUDGE CAILLE: Is that correct? Is that
18 what you're trying to --

19 MR. THOMPSON: That does correctly
20 characterize what I'm trying to get at, yes.

21 JUDGE CAILLE: All right. And we have your
22 assurance that she'll be able to answer that?

23 MS. KIDDOO: That's right, and will be here
24 tomorrow.

25 JUDGE CAILLE: Thank you.

00120

1 MR. THOMPSON: I'm sorry. I would just add
2 that I guess what we're looking for is WorldCom's
3 commitment, and not the opinion specifically of Ms.
4 McMahon, and it seems to me that Mr. Porter's in a
5 better position to provide that.

6 MS. KIDDOO: Ms. McMahon, Your Honor, can
7 testify as to WorldCom's commitment on this issue.
8 She is an officer of the company and can commit to
9 that, if that's the concern.

10 JUDGE CAILLE: What I see here, Mr.
11 Thompson, is that what you're asking this witness, he
12 really doesn't have the knowledge to answer. If
13 there's some other question you can ask him to search
14 out what you're trying to search out, please rephrase
15 your question.

16 MR. THOMPSON: I think I'll withdraw my
17 question.

18 JUDGE CAILLE: All right.

19 MR. CROMWELL: Your Honor, could I
20 interject for a moment, just to try and simplify my
21 own cross-examination of Mr. Porter later? Is the
22 company offering Ms. McMahon as a cross-examination
23 witness as to all aspects of the commitments the
24 company made in Mr. Porter's testimony?

25 MS. KIDDOO: No, Your Honor, the company is

00121

1 not. The company is offering Ms. McMahon as the
2 appropriate witness to whom to direct the questions
3 Mr. Thompson was directing to Mr. Porter as to this
4 commitment as to the rate levels, and that is what
5 she can testify to.

6 MR. CROMWELL: Just for clarification, it's
7 rate levels in the Washington plans that are
8 currently offered?

9 MS. KIDDOO: Right.

10 JUDGE CAILLE: Yes.

11 MR. CROMWELL: Thank you, Your Honor. My
12 apologies for the interruption.

13 Q. Mr. Porter, do you recall in Dr. Blackmon's
14 testimony his concern that this merger -- that as a
15 result of this merger, there would not be enough
16 competition to ensure that reductions in access
17 charges are passed through to end use customers?

18 A. I recall the concern. I don't recall the
19 specific testimony.

20 Q. Okay. Do any of the commitments in your
21 testimony require that WorldCom reduce rates to pass
22 through those reductions and access charges that may
23 occur in the future?

24 A. No, not that's included in my testimony. I
25 believe that will be required by the competitive

00122

1 market, but not by the question you asked.

2 Q. You have testified that this -- I believe,
3 that this merger would permit WorldCom to lower
4 costs; is that correct?

5 A. Yes, sir; that's correct.

6 Q. Does this commitment to cap rates at
7 current levels result in any pass-through to
8 consumers of the lower cost that you expect to
9 result?

10 A. The commitment does not. The commitment is
11 a commitment not to raise rates. Our expectation is
12 that we have been reducing rates fairly steadily for
13 the last five years, and that we will continue to do
14 that. But no, there is not a specific commitment
15 here to reduce rates further.

16 Q. Okay. Can you help us understand why
17 WorldCom is proposing that this condition apply for
18 six months, as opposed to some other period of time?

19 A. The proposition in the testimony was
20 intended to lead to settlement discussions that
21 turned out not to be productive. And so there are
22 different terms that had been offered from this in
23 the course of those discussions. And to the extent
24 that you'd like, you can pursue those tomorrow. I'm
25 not personally familiar with them, as we've

00123

1 discussed. But no, the specific point that's here
2 was intended as a starting point.

3 Q. So in other words, you wouldn't be able to
4 answer my question as to whether the company has any
5 specific plans to raise prices after a six-month
6 period?

7 A. I cannot answer your question as to whether
8 or not there's specific plans. I would be astounded,
9 but that's not my personal business.

10 Q. Would it be fair -- this may get into
11 pricing and may be for Ms. McMahon, but would it be
12 fair to assume that with all the work to integrate
13 these companies that would go on following a merger,
14 that it would be unlikely for there to be any pricing
15 shifts within a six-month period?

16 A. Again, I honestly don't know, because I
17 don't know the plans of the two companies separately.
18 Your point is valid, that it will take some time to
19 integrate the two companies and to capture the
20 savings that we expect, but the competitive
21 marketplace may require pricing changes before we can
22 capture all of those benefits of putting the two
23 companies together.

24 Q. Next, if you would please look at your
25 commitment number three on page 14 of your rebuttal

00124

1 testimony?

2 A. Yes, sir.

3 Q. Is this really -- is it your position that
4 this really represents a commitment on the part of
5 the company?

6 A. My understanding is that activity to change
7 the content of the web page has or is taking place.
8 I understand you, or one of the other intervenors,
9 has concern that the web page wasn't clear in some
10 respects, and we're trying to fix that.

11 Q. So this states essentially something that's
12 -- a commitment that's been made --

13 A. That's been made --

14 Q. -- previously, but there's nothing
15 additional here; is that fair to say?

16 A. It's a commitment that we're making in
17 response to concerns that you had expressed, yes.
18 And it may be done.

19 Q. I guess we're searching in vain for the
20 words shall or will, but I take it that this is sort
21 of stated in the past tense and it simply states that
22 the company has made efforts to improve the
23 information in its web page; correct?

24 A. Well, again, Ms. McMahon will be here
25 tomorrow, and this is her purview. My understanding

00125

1 is that we're making this change at your request,
2 yes.

3 Q. Okay. Looking now at number four on that
4 same page --

5 A. Yes, sir.

6 Q. -- which is to rebalance interLATA and
7 intraLATA rates?

8 A. Yes, sir.

9 Q. Is this to be a one-time event, or is
10 WorldCom committing never to charge different rates
11 for interLATA and intraLATA calls?

12 A. My understanding is that you have a concern
13 that the intraLATA and interLATA intrastate rates are
14 not identical, and this is a commitment to change the
15 plans so that we have a uniform intrastate rate. It
16 is not my expectation that this is an unequivocal
17 commitment to always have those two rates together,
18 and certainly, as the Commission considers access
19 charge changes, the company will have to consider how
20 those changes affect the rate.

21 But, again, it's a mass markets rate
22 commitment that Mrs. McMahon will be here tomorrow to
23 discuss. But I've explained to you my understanding
24 of the commitment.

25 Q. Well, in other words, you don't have the

00126

1 answer?

2 A. I believe I -- one, I gave you the best
3 answer I have and told you the person whose
4 responsibility it is will be here tomorrow. Yes,
5 that's correct.

6 JUDGE CAILLE: Mr. Thompson, would this be
7 a convenient time to break for lunch?

8 MR. THOMPSON: Yes, I think it would, Your
9 Honor.

10 JUDGE CAILLE: All right. Then let's
11 return at 1:30.

12 (Lunch recess taken.)

13 JUDGE CAILLE: Let's go back on the record
14 and resume the cross-examination of Mr. Porter. And
15 Mr. Thompson.

16 Q. Good afternoon, Mr. Porter. I hope you had
17 a pleasant lunch.

18 A. Thank you. I hope you did, as well.

19 Q. I want to -- we've been going through the
20 numbered conditions, I guess you'd call them, that
21 you have spelled out in your rebuttal testimony. And
22 I want to now look at number six, which is on page 15
23 of your rebuttal testimony, which states that MCI
24 WorldCom has already implemented improvements to its
25 customer service centers that are resulting in

00127

1 decreasing levels of customer complaints, as
2 discussed in Ms. McMahon's rebuttal testimony. So
3 this doesn't represent a commitment to anything
4 beyond the status quo; correct?

5 A. It represents a commitment to the
6 customers, but it's not a commitment that was driven
7 solely by this merger; that's correct.

8 Q. Now that we've gone over all the points, I
9 want to step back and talk about what is not here.
10 WorldCom is not offering any commitment to pass
11 through in retail rates to its customers the cost
12 savings that it's arguing will result from this
13 merger; correct?

14 A. We're not promising to do that here. We
15 strongly believe that the competitive market will
16 force us to do that.

17 Q. Do you recall from Dr. Blackmon's testimony
18 the concern that there were no plans to offer
19 advanced services in the United Telephone customer
20 area?

21 A. I apologize. No, I don't recall that, but
22 --

23 Q. Okay. Well, in any case, is WorldCom
24 offering any commitment or are you, in your
25 testimony, offering any commitments to deploy

00128

1 advanced services in the United area?

2 A. My understanding is that the company is
3 willing to offer that. I have not offered that in my
4 testimony; that's correct.

5 Q. Do you imagine Ms. McMahon will be able to
6 make that representation and not you?

7 A. On advanced services or on --

8 Q. Correct, in United's area.

9 A. May I have a sidebar conversation for a
10 moment? I apologize. There's a point of confusion
11 in what I have been --

12 MS. KIDDOO: Your Honor, this goes to the
13 question of confidential settlement discussions, so
14 we haven't really -- Mr. Porter's having an awkward
15 time responding to this question.

16 JUDGE CAILLE: I see.

17 MS. KIDDOO: I think it might help to
18 clarify, for Mr. Porter's benefit, whether Mr.
19 Thompson's talking about MMDS commitments in the
20 Sprint territory or some other kind of commitments,
21 because Mr. Porter has testified about deployment of
22 advanced services. So perhaps if that question were
23 asked, Mr. Porter would have an easier time
24 answering.

25 JUDGE CAILLE: Mr. Thompson, can you

00129

1 clarify it?

2 MR. THOMPSON: Well, the point of my
3 question is really just to clarify what the
4 commitments -- or commitments, I'm not sure if that's
5 the right word, but what the proposed conditions in
6 Mr. Porter's testimony contain and don't contain. So
7 I actually think I'll probably withdraw my question
8 to the extent that it would, you know, get into
9 settlement discussions or anything of that nature.

10 Q. But I do want to ask, it is correct, is it
11 not, that there is not a proposed condition here to
12 deploy advanced services in the United areas?

13 A. Both companies have made a significant
14 investment in MMDS spectrum, and we have made -- the
15 chairman of my company has made -- excuse me, the
16 chief executive officer has made a commitment that
17 the company will rapidly deploy that technology. But
18 the question that you asked me, is there specifically
19 a commitment in my rebuttal testimony to an express
20 delivery of that technology in the United territory,
21 the answer is no.

22 Q. Is WorldCom, through your testimony,
23 offering the condition to deploy its fixed wireless
24 service? And that would be -- I withdraw that
25 question.

00130

1 Is WorldCom offering through your testimony
2 any commitment to offer local exchange to residential
3 and small business customers in addition to
4 Washington markets?

5 A. I have expressed our desire to offer
6 services to residential customers and explained that
7 in order to do that, we feel we have to have UNEP,
8 excuse me, UNE platform at cost-based rates with OSS.
9 But if your question is does this testimony expressly
10 commit to that with no other conditions, the answer
11 is no.

12 Q. And is WorldCom offering any commitment
13 that will not -- that it will not withdraw or
14 increase the prices on any of the calling plans
15 offered today by WorldCom or Sprint?

16 A. We did offer in my testimony that we would
17 not increase the average revenue per minute for a
18 period of time, but the question that you
19 specifically asked, I understand, is subject to
20 different discussion and is not in my testimony.

21 Q. Is WorldCom offering any specific
22 commitment to reduce the Commission complaint levels
23 of WorldCom to the levels currently achieved by
24 Sprint?

25 A. I believe that question specifically will

00131

1 be addressed by Mrs. McMahon. We're certainly hoping
2 we don't get complaints from the Commission.
3 Controlling what the customers say is -- we'll
4 attempt to be offering the quality of service that
5 will improve that, as it has improved in the first
6 part of this year. But, again, that's subject to a
7 separate discussion and not specifically in my
8 testimony.

9 MR. THOMPSON: That concludes my questions,
10 Your Honor, for the witness. Thank you, Mr. Porter.

11 THE WITNESS: Thank you.

12 JUDGE CAILLE: Thank you. Mr. Cromwell.

13 MR. CROMWELL: Thank you, Your Honor. Let
14 me move some documents here to get to the microphone.
15 Your Honor, just to avoid the possibility that I will
16 forget to do this later, just to put on the record
17 that Exhibit 20 should be marked C-20.

18 JUDGE CAILLE: Thank you.

19 C R O S S - E X A M I N A T I O N

20 BY MR. CROMWELL:

21 Q. Good afternoon, Mr. Porter.

22 A. Good afternoon, sir.

23 Q. How are you doing?

24 A. Reasonably well, thank you. How are you?

25 Q. Good. I have a couple questions just to

00132

1 follow-up on your cross-examination with Mr.
2 Thompson. Earlier in your testimony, you stated that
3 nothing prevents a company without significant
4 capital to invest in retailing services by purchasing
5 services from WorldCom or some other source of long
6 haul. Is that an accurate restatement of what you
7 said earlier?

8 A. I think it's a reasonable paraphrase, yes,
9 sir.

10 Q. Would you agree, then, that if Sprint and
11 WorldCom merged, that there would then be less choice
12 in that market for those types of services?

13 A. No, not significantly less. As you --
14 would you like me to explain or shut up?

15 Q. That's fine. You also discussed fiber
16 capacity earlier; is that correct?

17 A. Yes, sir.

18 Q. And speaking hypothetically, if fiber
19 capacity was used up, in other words, at some point,
20 if we wanted to analogize to Moore's law to fiber
21 capability and said that it broke at some point and
22 we actually did max out the ability of the existing
23 fiber infrastructure to increase at the exponential
24 rate that it has been, as you've discussed, and
25 plateaued, would that -- and let's also presume, for

00133

1 purposes of this hypothetical, that the demand for
2 that fiber capacity went up to that limit.

3 Under those circumstances, would you agree
4 that that would decrease the amount of choice and the
5 opportunity for retailing services because WorldCom
6 would not have sufficient capacity to resell and also
7 serve its own customers?

8 A. No. I believe, under the hypothetical
9 you've given, you have asserted that all of the fiber
10 capacity of all of the carriers entering the market
11 in Washington would be used to its fullest capacity.
12 And given what I would characterize -- I'd use the
13 word explosive, I think you used exponential. Given
14 the amount of fiber capacity that's been added in the
15 last two years, if the market were to see a demand as
16 staggering as you're suggesting, which we would
17 welcome the opportunity to address, we'd put more
18 fiber in the ground.

19 In the extreme that you hypothesized, even
20 today, the amount of fiber that represents our share
21 of the market in Washington is a relatively small
22 percent. I find it, I suppose, conceivable, but
23 unlikely that no one would address the demand in the
24 market by placing more fiber or more electronics, but
25 your hypothesis was at the extreme.

00134

1 Q. Yes, thank you.

2 JUDGE CAILLE: Mr. Cromwell, can you be
3 sure to speak slowly, not only for the reporter, but
4 for those of us trying to follow your questions?

5 MR. CROMWELL: Oh, my apologies, Chairwoman
6 Showalter. I know that is one of the faults I always
7 apologize for in this forum.

8 CHAIRWOMAN SHOWALTER: It's easier for you,
9 especially if you have written questions.

10 MR. CROMWELL: Oh, yeah, I understand. I
11 will try to be more evenly paced.

12 Q. Other than AT&T, no other company has
13 double-digit long distance mass market share in
14 Washington, other than, of course, WorldCom and
15 Sprint; is that correct?

16 A. No, sir, I believe not. As I recall the
17 exhibit I looked at this morning, I believe the
18 exhibit said that US West has 25 percent -- or 24
19 percent, pardon me, of the market of toll calling
20 within the state of Washington, and that's before it
21 gets interLATA relief.

22 Q. And setting aside the exhibit that we were
23 discussing earlier and your response including US
24 West, how many other companies have high single-digit
25 long distance mass market share?

00135

1 A. My recollection, based on 1998 data, not
2 reflecting last year's results, was, as I recall --
3 well, I could look the numbers up, but single-digit,
4 high single digits would have been Sprint. I'm not
5 sure where GTE was at in 1998. And then, in the
6 lower mid-range single digits, my recollection would
7 be Qwest and what's now Broadwing, but I'd need to
8 refresh my recollection from the chart.

9 Q. But those would be lower single-digit, not
10 higher?

11 A. Yes, sir.

12 Q. And in your direct testimony, did you state
13 that the companies concluded that the merger was
14 necessary to give them the assets to compete with the
15 -- I believe you used the term mega bells and AT&T?

16 A. I don't recall if I used the term mega
17 bell, but if I didn't, it was an omission, so thank
18 you. I --

19 Q. Is that accurate?

20 A. It is our opinion that we needed to either
21 acquire the assets to compete with them or that we
22 would be acquired ourselves; yes, sir.

23 Q. You also stated that residential customers
24 would be better served by having a viable third full
25 service competitor than they would if only two

00136

1 providers emerged from industry consolidation, did
2 you not?

3 A. Yes, sir, that's my opinion.

4 Q. And the opinions you expressed in your
5 direct testimony assumed that US West will receive
6 its Section 271 approval and be that third competitor
7 you described, does it not?

8 A. Well, US West already is the dominant
9 provider of long distance -- or local service, and
10 the second largest provider of toll service within
11 the state. My expectation is that if and when they
12 qualify for 271 relief, they will be growing even
13 stronger in the total market; yes, sir.

14 Q. I guess maybe to focus my question more
15 specifically, when you were writing your direct
16 testimony, you were contemplating US West; is that
17 correct?

18 A. US West; that's correct.

19 Q. Thank you. And is it your opinion, then,
20 that following the same line of logic, residential
21 customers would be even better served if there were a
22 viable fourth or fifth full service competitor
23 seeking to serve them?

24 A. If there were a viable fourth or fifth
25 competitor, yes.

00137

1 Q. So under your scenario, US West will then
2 occupy the competitive position that Sprint would
3 occupy but for this merger?

4 A. No, under my scenario, US West probably
5 occupies or will occupy, after it gains 271, the
6 dominant position, and AT&T may well be the second
7 position, and the combined WorldCom-Sprint, we would
8 hope, would be a very viable third position. And I
9 don't know who would be the fourth position.

10 Q. Pardon me just a moment as I make a note.
11 Hypothetically speaking, Mr. Porter, were this merger
12 not to be approved by the Commission and US West to
13 eventually enter the long distance market, that
14 market then would contain the Big Three, as stated
15 earlier, US West, as well as the other competitors,
16 some of whom you've referred to today; is that true?

17 A. It would contain, if your proposition or
18 hypothetical was that the merger were not approved?

19 Q. Correct.

20 A. It would contain US West and AT&T and
21 whoever acquired Sprint and whoever acquired us.
22 You're asking me to speculate about mergers that we
23 hope won't happen. I don't know -- we know, for
24 example, that had we not brought this proposition to
25 you, that it would be most likely that the

00138

1 proposition the board would be considering today is
2 BellSouth with Sprint.

3 The question in our mind was not whether or
4 not Sprint would remain an independent company or
5 even that MCI WorldCom, now WorldCom, would have
6 remained a separate company had we not proposed this
7 combination to gather the assets we thought we needed
8 to compete against AT&T and US West here, AT&T and
9 BellSouth in their region, and so on around the
10 country.

11 So I don't know -- I apologize. I'm not
12 trying to be evasive. I don't know who else might
13 have acquired whom if we hadn't brought this
14 proposition to the table.

15 Q. Your response is interesting to me. Is it
16 your opinion, then, that but for this merger, both
17 WorldCom and Sprint would be merged into other
18 companies?

19 A. That is my opinion. Specifically with
20 Sprint, we know that BellSouth was bidding against
21 WorldCom to acquire Sprint. So I think that's not a
22 hypothetical; that's a fact that has passed.

23 Q. And do you have an opinion, but for this
24 merger, who WorldCom would have merged with or
25 acquired?

00139

1 A. No, but there's -- no, I don't know who.
2 Each of the major bell companies has already signed
3 up with some other long distance carrier, which,
4 among other things, demonstrates that alternatives
5 are in fact available. Whether I guess US West, at
6 one point, had talks with which telecom, or maybe it
7 was Qwest that had those talks, I mean, no, I don't
8 --

9 Q. Do you have an opinion, sir?

10 A. I don't know. I have an opinion that
11 someone would, but no, I don't have an opinion of who
12 it would have been that would have been successful.

13 Q. Okay. Again returning to the hypothetical
14 that I posed, it is also true, is it not, that from a
15 competitive standpoint, that that hypothetical market
16 would be less concentrated than the market we see
17 today, assuming US West would achieve more than one
18 percent of the long distance market here in
19 Washington?

20 A. Well, US West already has 24 percent of the
21 long distance market. So I --

22 Q. I suppose I could clarify to --

23 A. I apologize. Yeah, if the question is
24 assuming that US West has 271 authority and gets the
25 interLATA intrastate, the opportunity to compete for

00140

1 that market in addition to that, the only on-point
2 evidence we have at the moment is what SNET has done
3 in Connecticut and what SB -- excuse me, what Bell
4 Atlantic -- I'm sorry, I should have referred to SBC
5 in Connecticut, I apologize. What Bell Atlantic has
6 done in New York. In less than a quarter in New
7 York, Bell Atlantic acquired more long distance
8 customers intrastate than Sprint had in 15 years.

9 Q. So would your answer be yes, then?

10 A. I apologize. The question was?

11 Q. The question was, I'll read it again, that
12 from a competitive standpoint, that hypothetical
13 market would be less concentrated than the market we
14 see today?

15 A. No, I think the market would be more
16 concentrated, because US West's share of the market
17 would be increasing significantly after they get 271
18 approval.

19 Q. Regardless of the presence of WorldCom and
20 Sprint as separate entities?

21 A. We have been working aggressively, and I
22 think the FCC market statistic numbers demonstrate
23 that over the last several years, WorldCom and Sprint
24 have been holding their own or trending very slowly
25 upward in market share, AT&T has been coming down,

00141

1 and new entrants have been capturing all of the
2 growth. With US West, I think we would have to work
3 even more diligently to hold our position, but
4 combined, we think we have a better chance of doing
5 that than if we aren't combined.

6 Q. Forgive me for being simplistic, but yes or
7 no, is it your opinion that that market would not be
8 -- excuse me, it is your opinion that that market
9 would be more concentrated regardless of whether
10 WorldCom and Sprint were joined or not?

11 A. It's my opinion that the market will be
12 less concentrated if we merge.

13 Q. Thank you. I take it, Mr. Porter, that you
14 understand that it is the duty of the companies to
15 demonstrate that this merger is in the public
16 interest here in Washington; is that correct?

17 A. I understand that we have an obligation to
18 show that there is --

19 MS. KIDDOO: Objection, Your Honor. I'm
20 not sure, but I think Mr. -- the question is calling
21 for a legal conclusion as to what the standard of
22 Commission review is.

23 MR. CROMWELL: Actually, Your Honor, I was
24 referring to Mr. Porter's direct testimony at page
25 three, line six.

00142

1 Q. Do you have that in front of you, sir?

2 A. Page three, line six?

3 Q. I believe so.

4 A. Yes.

5 Q. Would you like to read that to yourself?

6 A. I have.

7 Q. Do you understand that that is the

8 company's obligation?

9 A. I understand that we have to demonstrate
10 that it's consistent with the public interest and
11 will benefit Washington consumers and businesses,
12 yes, sir.

13 Q. Thank you.

14 MS. KIDDOO: Your Honor, I just want to
15 make sure the record is clear. The testimony here
16 says that we will show that the merger is consistent
17 with the public interest. It does not give an
18 opinion by Mr. Porter of what the standard review of
19 the Commission is. I want to make sure that his
20 response to that question, which I had heard as a
21 question of what the standard was, does not reflect
22 in the record that he was drawing a legal conclusion.

23 MR. CROMWELL: Respectfully to Ms. Kiddoo,
24 Your Honor, I was not asking Mr. Porter to express
25 legal conclusions in this matter.

00143

1 MS. KIDDOO: All right. Thank you.

2 Q. Mr. Porter, I would like to ask your
3 opinion about some other matters, however. Is it
4 your opinion, then, that -- well, let me put it
5 another way. Let's take a step back. In your
6 opinion, when will US West receive its Section 271
7 approval from this Commission and the FCC?

8 A. In my opinion?

9 Q. In your opinion?

10 A. When they decide they want to.

11 Q. Do you have a date that you would associate
12 with that opinion?

13 A. No.

14 Q. Have you ever stated an opinion on this
15 issue formally or informally?

16 A. I stated, I believe even this morning, that
17 Mr. Nacchio, Qwest's chairman, has asserted that as a
18 benefit of the proposed Qwest-US West merger, he
19 would intend to encourage US West to come into
20 compliance more quickly than it otherwise would.

21 It's my opinion that when this Commission
22 finishes its investigation of the 271 proposals, that
23 if US West is chosen to comply, it can get into
24 market three to four months after this Commission has
25 acted, assuming they apply promptly to the FCC and

00144

1 the FCC approves the petition, but all of that is
2 dependent on activity that is at US West --
3 essentially at US West's control.

4 Q. Just so I'm being clear, you believe that
5 it would take them about three to four months to
6 enter the market after receiving both Commission and
7 FCC approval or --

8 A. No.

9 Q. After Commission approval, with FCC
10 approval following thereafter?

11 A. Assuming that this Commission reached a
12 conclusion to support their application, my
13 understanding is it would take about three months of
14 -- well, the FCC has a statutory limit, as I
15 understand it, of three months, and Bell Atlantic has
16 demonstrated that they can be in the market a week
17 after they get approval. I have no reason to
18 anticipate that US West couldn't be in that quickly
19 if they chose to. But that applies -- that assumes
20 that they have satisfied the 271 requirements, which,
21 of course, is the predicate.

22 Q. Do you think that is likely to occur this
23 year?

24 A. This year? I'm -- not unless they make
25 some very dramatic changes. No, I don't think so.

00145

1 Q. Is it possible next year?

2 A. I think it's -- is it possible? I think
3 it's very possible. Is it likely? Again, that
4 depends on their management decisions. But yes, I
5 think it is possible toward the end of next year.

6 Q. And based on your knowledge, do you think
7 it likely?

8 A. Well, I used to work with Mr. Nacchio, and
9 if Joe sets his mind to it, yes, it's possible. But
10 that asked a question of significant changes to
11 corporate culture that, you know, I can only
12 speculate with you on whether or not that will really
13 happen.

14 Q. Do you have an estimate or an opinion on
15 the share of the long distance market that US West is
16 likely to acquire when it obtains its approval from
17 this Commission and the FCC?

18 A. I can tell you what reportedly has happened
19 with SBC in Connecticut and what has happened with
20 Bell Atlantic New York.

21 Q. Actually, thank you. I'm not asking for
22 what has occurred elsewhere; I'm asking if you have
23 an opinion about what might occur here?

24 A. I don't know how US West customers view US
25 West. I think they have the position to be able to

00146

1 capture a significant share of the market. I have
2 not forecasted a percentage; no, sir.

3 Q. And do you know whether your company has?

4 A. No, I don't, other than in my testimony, I
5 think I refer to the numbers that were achieved in
6 other markets, but no, not specifically attributed to
7 US West.

8 Q. And do you have any opinion on how long it
9 might take US West to acquire -- I think you used the
10 word substantial this morning, substantial market
11 share, or maybe we could be more precise and say
12 sufficient market share to constrain pricing?

13 A. Well, in the intraLATA market in
14 Washington, they already have it. In the interLATA
15 market in Washington, we've talked at some length
16 about the other competitors who are in the market,
17 and it's my expectation that US West might be able to
18 capture as much as five percent of the market a
19 quarter. Will they do that? I have no way of
20 knowing. But the mere fact of their entry or their
21 potential entry is an effect on the pricing
22 flexibility in the market.

23 Q. In your rebuttal testimony, you also
24 discuss entry by other regional bell operating
25 companies into the Washington market, do you not?

00147

1 A. Yes, I do.

2 Q. You state in your rebuttal testimony that
3 if US West were to receive its approval and then fail
4 to meet its obligations, competition would be
5 crippled, did you not?

6 MS. KIDDOO: Excuse me, Your Honor. Could
7 I ask for a reference as to where we're --

8 MR. CROMWELL: Page five, lines seven
9 through nine.

10 Q. Please let me know when you had a chance to
11 refresh your recollection, Mr. Porter.

12 A. Yes, thank you. I found and refreshed my
13 memory of that. Would you like me to address your
14 question?

15 Q. Well, my first question was whether you
16 made the statement?

17 A. Yes, I made the statement, but not in the
18 way that you characterized it.

19 Q. All right. Let me ask you another
20 question. Today, is there any risk of that effect in
21 today's interLATA in-state long distance market,
22 since US West is not permitted there today?

23 A. Well, the context of the question -- of my
24 statement, I believe, is that if US West does not --

25 Q. Mr. Porter, I'm sorry, but I did not ask

00148

1 you that question. The question I asked you was
2 whether there was any risk of that effect in today's
3 interLATA in-state long distance market, since US
4 West is not currently permitted there?

5 A. Today, since US West is not permitted in
6 that market, their bad actions affect all of us
7 equally. I apologize. I didn't understand that to
8 be the way your question was headed.

9 Q. That's all right. You also stated in your
10 testimony, did you not, that the availability of
11 capacity and the number of providers constrains the
12 ability of the merged companies to increase rates?

13 A. Yes, sir.

14 Q. And in your testimony, you also review the
15 current marketplace for long distance and identify a
16 number of interexchange carriers who are registered
17 in Washington to provide long distance services in
18 Washington, did you not?

19 A. Yes, sir, I did.

20 Q. And how many of those carriers, which you
21 identified, are currently making price-specific
22 offers in the long distance mass market via
23 television and mass media advertising campaigns which
24 support those product offerings?

25 A. I don't know.

00149

1 Q. Is there someone who will be testifying at
2 this Commission this week who will know?

3 A. I understand that Dr. Kelley has done some
4 review of that. I don't know how many of the 502
5 he's looked at, but I have not.

6 Q. Would Ms. McMahon also be someone to ask?
7 I'm just trying to --

8 A. Obviously, you're welcome to ask her. I
9 don't know -- I don't know if she has that knowledge
10 or not.

11 Q. Okay. You also mentioned in your rebuttal
12 testimony that Qwest and Excel -- just for the court
13 reporter, Qwest is Q-w-e-s-t. Excel, I think it's
14 E-x-c-e-l-l?

15 A. One L.

16 Q. One L, thank you.

17 A. Actually, I think it's now Teleglobe, but
18 --

19 Q. Keeping track of mergers is a separate
20 business, isn't it?

21 A. Apparently.

22 Q. Pardon me for the digression. You also
23 mentioned in your rebuttal testimony that Qwest and
24 Excel are developing brands through brand recognition
25 advertising, did you not?

00150

1 A. Yes, sir.

2 Q. You also mentioned Verizon as an example of
3 development of a new brand, did you not?

4 A. I believe I did.

5 Q. However, there is a difference between an
6 advertising campaign designed to develop brand
7 awareness and one designed to market a specific
8 product to the mass market, is there not?

9 A. I don't know that I know enough about
10 marketing to distinguish between the two. My
11 understanding of developing a brand name is you
12 wouldn't bother to do that if you weren't trying to
13 sell a product. But I agree there's a difference
14 between always marketing a product with an
15 advertisement versus building brand recognition, so I
16 don't know how to parse the difference.

17 Q. Is there another witness who will be
18 appearing before the Commission who might be better
19 able to address that issue?

20 A. Ms. McMahon knows a good deal about mass
21 market advertising, but I don't know if she can parse
22 that question.

23 Q. In your opinion, is a prerequisite to
24 achieving significant long distance mass market share
25 a strong branded product offering supported by

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1 television and mass media advertising?

2 A. No.

3 Q. Are you generally familiar with MCI's mass
4 market advertising?

5 A. Generally familiar with their advertising,
6 yes.

7 Q. And the advertising used by the industry,
8 in general?

9 A. By some of the participants, but not by all
10 the participants.

11 Q. There are many telecommunication companies
12 that engage in print and broadcast advertising
13 directed at the mass market, are there not?

14 A. My expectation is that at least some of
15 those 502 in Washington are engaged in that activity;
16 yes, sir.

17 Q. And do you know how many of them use
18 television or mass media advertising that focuses on
19 their brand, but may not mention a specific product?

20 A. No, sir, I don't.

21 Q. And let's maybe tease this out a little bit
22 finer. Let's say there's one group of advertising
23 that focuses on a brand. Would you accept that
24 that's a common form of advertising in the industry?

25 A. I don't know how big a group is to make it

00152

1 common, but yes, I would agree there's a variety of
2 advertising that focuses on brand; yes, sir.

3 Q. And a subset of that branded advertising
4 would also include a mention of a product. For
5 example, wireless services?

6 A. I'm sorry, I thought I understood you to be
7 drawing a distinction between a brand name and a
8 product advertising.

9 Q. Yes.

10 A. So I would recognize the second question as
11 a different category of advertising, not as a subset
12 of your first category. My understanding is you're
13 distinguishing between product advertising and brand
14 name advertising.

15 Q. Correct. And a product that, I'm assuming,
16 for purposes of our discussion, would also, in the
17 ad, mention the brand that's associated with that
18 product?

19 A. Probably, yes.

20 Q. So then that product-specific brand
21 advertising would be a subset of all of the branded
22 advertising the company might do?

23 A. I hadn't understood that to be the
24 teleology you were drawing, but if you wish, yes.

25 Q. Then a further subset might be an ad that

00153

1 mentions not just the brand and the product, but that
2 also makes a specific price-based offer to the mass
3 market consumer?

4 A. Again, you're calling that a subset of a
5 larger that was all a subset of brand-only
6 advertising, and that's where I'm failing to follow.

7 Q. Well, maybe I can give you an example that
8 would be close to home. I am presuming that the
9 company will be doing WorldCom mass market
10 advertising to let the public know that WorldCom is
11 the company's identity now, as you informed us, or,
12 rather, Ms. Hopfenbeck informed us earlier?

13 A. Yes, sir.

14 Q. And perhaps a subset associated with my
15 second category would be advertising that doesn't
16 just mention WorldCom, whatever great accolades you
17 wish to associate with it in your advertising or who
18 you would have pitching it --

19 A. Yes, sir.

20 Q. -- but that would also mention a product,
21 such as long distance services. And then an example
22 of a third category would be an ad that makes a
23 specific offer on price, such as 10 cents a minute or
24 five cents a minute?

25 A. Five cents, for example; yes, sir. I think

00154

1 we would have all three of those kinds. My only
2 concern was calling one a subset of the other. I'm
3 not arguing that we would have all three kinds of
4 advertising.

5 Q. I guess, to use your term, my teleology
6 would be as to informational content?

7 A. Yes, sir.

8 Q. As opposed to a target. Are you aware of
9 how many telecommunication companies use television
10 and mass media advertising directed at the mass
11 market that make price-specific offers of long
12 distance services?

13 A. No, sir.

14 Q. Is there another witness who will have
15 information in that regard?

16 A. I apologize. I don't know. Again, Ms.
17 McMahan may, but I don't know.

18 Q. Fair enough. Mr. Porter, you stated, in
19 response to a data request, that Staff propounded to
20 the company that you had no work papers supporting
21 your testimony before this Commission; is that
22 correct?

23 A. That's correct.

24 Q. And did you have any assistance in drafting
25 your testimony?

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1 A. Yes, I did. I had legal review by an
2 assembled group of attorneys, and I had one staff
3 member who helped me draft the testimony.

4 Q. Who was that staff member?

5 A. A gentleman by the name of Merwin,
6 M-e-r-w-i-n, Sands, S-a-n-d-s.

7 Q. And setting aside legal review for the
8 moment for obvious reasons, when you were generating
9 your testimony to this Commission, was Mr. Sands
10 drafting it and then you modifying or approving that
11 draft, or was he doing perhaps research, assisting
12 you in some specific aspect? Could you inform us,
13 please, on that?

14 A. Generally, this testimony I drafted
15 personally and asked him questions from time to time.

16 Q. And was your testimony drafted for this
17 Commission or is it a subset, if you will, of the
18 testimony you've provided elsewhere?

19 A. Actually, as I recall, it was the first
20 testimony I drafted, and the testimony later is
21 better.

22 Q. Okay, fair enough.

23 A. But I had to start someplace.

24 MR. CROMWELL: One moment, please. Thank
25 you for your time, Mr. Porter. I have no further

00156

1 questions.

2 JUDGE CAILLE: Thank you. Ms. Endejan.

3 MS. ENDEJAN: Mr. Pascarella will conduct
4 the examination.

5 JUDGE CAILLE: All right. Mr. Pascarella.

6 MR. PASCARELLA: Could we take just a very
7 short break?

8 JUDGE CAILLE: Certainly. We're going to
9 take just a very short break.

10 (Recess taken.)

11 JUDGE CAILLE: Okay. Let's go back on the
12 record.

13 C R O S S - E X A M I N A T I O N

14 BY MR. PASCARELLA:

15 Q. Good afternoon, Mr. Porter. My name's Pat
16 Pascarella. I'm an attorney with SBC.

17 A. Good afternoon, sir.

18 Q. I don't have a whole lot. At least one
19 follow-up question from your earlier questions. You
20 were talking about what might occur in Washington
21 post-271 relief in terms of the share that US West
22 may be able to capture in the long distance market.
23 And you were asked what you based your opinions on,
24 and you said -- you identified, I think, at least two
25 things. You said what Bell Atlantic had done in New

00157

1 York and what had occurred in Connecticut vis-a-vis
2 SNET or SBC.

3 Is there any other evidence or any other
4 bases for your opinion as to the share that US West
5 might capture in Washington post-271 relief?

6 A. Those are the two primary examples.
7 There's an example with Cincinnati Bell, but it's
8 unique, because it was never out of the long distance
9 business. And there's an example with GTE, in GTE's
10 in-region locations. GTE, though, also was never
11 officially out of the business.

12 So in the context of US West's entry, I
13 think the Bell Atlantic New York is probably the most
14 on point, and the SBC in Connecticut, again, is
15 distinguishable because, of course, SNET could have
16 been in the long distance market.

17 Q. Okay. On page three of your affidavit,
18 your direct testimony --

19 A. Yes, sir.

20 Q. -- you say that you're going to show that
21 the merger of MCI WorldCom and Sprint is consistent
22 with the public interest. What did you understand
23 consistent with the public interest to mean for
24 purposes of your affidavit?

25 A. I understood it to mean that I was

00158

1 expressing the opinion that consumers, both
2 residential and business, in Washington would be
3 better served by approval of this merger than they
4 would be if the merger were not approved.

5 Q. Could you expand a little bit on what you
6 mean by better served?

7 A. Yes, sir. It's my opinion, which I hope I
8 have expressed, that by putting the assets of the two
9 companies together, the assets of WorldCom and Sprint
10 together, that together we will be better equipped to
11 provide a full range of services to customers in the
12 state of Washington, and that together we would form
13 a third viable alternative to the local service
14 offerings of AT&T through its cable operations and US
15 West, or Qwest, through the ILEC operations of US
16 West.

17 Q. You just used the word viable right now.
18 You used it in your affidavit, too. What do you mean
19 by viable?

20 A. Able to continue as a stand-alone,
21 independent business. Generally, what I have in
22 mind.

23 JUDGE CAILLE: Excuse me, Mr. Pascarella,
24 when you say affidavit, you mean his testimony; is
25 that --

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1 MR. PASCARELLA: I'm sorry, Your Honor.

2 JUDGE CAILLE: I just want to make that
3 clear for the record.

4 MR. PASCARELLA: Yes, I meant testimony.
5 I'm sorry.

6 JUDGE CAILLE: Thank you.

7 Q. Were this merger to be blocked by the
8 Department of Justice or somehow not go through, is
9 it your position that MCI and Sprint would not be
10 viable competitors?

11 A. If this merger were blocked for some
12 reason, it's my opinion that there is at least one
13 other firm that had expressed a very strong interest
14 in Sprint, BellSouth; that there are other firms who
15 have expressed an interest in gaining an entrance
16 into the United States market, thinking particularly
17 of Deutsche Telekom and France Telephone, and perhaps
18 NTT, and that, in my opinion, Sprint would be an
19 acquisition target for one of them or someone else
20 relatively quickly, and that WorldCom would then be
21 kind of left alone on the branch and be the potential
22 target.

23 But with SBC already having decided to team
24 up with Williams and Bell Atlantic with GTE and Qwest
25 and US West, the immediately obvious candidates

00160

1 domestically are otherwise occupied.

2 So I don't know who -- I think, in response
3 to one of the other questions, I said I couldn't
4 speculate who would necessarily be the acquiring
5 company. But at that point, without the
6 Sprint-WorldCom deal, with Sprint having gone to
7 someone else, we'd be left without wireless, without
8 MMDS, without the long distance synergies that this
9 merger proposes. And I think we would either be
10 scrambling very quickly ourselves to find someone
11 else, who else is not immediately obvious to me, or
12 be having discussions with someone not necessarily of
13 our choosing.

14 Q. As a result of Sprint merging with someone
15 else, and you identified possible opportunities, is
16 it your opinion that they would then be a viable
17 competitor?

18 A. I think they would be better with us.
19 That's the judgment of their management and our
20 management. Their management had the express
21 opportunity to make a choice between BellSouth and
22 WorldCom. They and their stockholders -- management
23 chose and the stockholders agreed.

24 Whether or not Sprint paired with someone
25 else, BellSouth, for example, would be viable. I

00161

1 think it's very likely that BellSouth, teamed with a
2 long distance carrier -- in fact, as I recall, they
3 own 10 percent of Qwest already -- would be very
4 viable. Whether or not it would be as good for
5 customers in Washington as this one is a different
6 question. I think this is a better deal for
7 Washington than a merger between Sprint and
8 BellSouth, but that's my opinion.

9 Q. You talk in that same sentence about a
10 third viable competitor, which implies to me that
11 there are, in your view, going to be three
12 competitors?

13 A. At least three.

14 Q. Is that accurate?

15 A. It's my opinion that in each market there
16 will be at least two strong competitors, the bell
17 operating company, AT&T cable. I believe we could be
18 the third most viable competitor, but your company
19 has promised to enter this market, both with local
20 and long distance. Bell Atlantic has promised to
21 enter this market. It is my expectation that we will
22 be more successful in this market than you will be,
23 but that you will be far more successful than we in
24 your home territory.

25 So you come to a balancing question, which

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1 we're asking this Commission to approve the merger
2 that we've proposed to them.

3 Q. Well, you list a lot of other folks in
4 here.

5 A. Yes, sir.

6 Q. Five hundred and two registered long
7 distance carriers, eight that either own or control
8 fiber in Seattle. What is the inclusion of the
9 identity of those companies in your affidavit
10 intended to imply? I'm not trying to be obtuse here,
11 maybe, but on one hand you're talking about there
12 being three, maybe four competitors, and on the other
13 hand, we're listing eight, ten competitors, 502
14 potential competitors. I think -- which is it, is
15 kind of the question I have?

16 A. Good question. In trying to identify
17 facility-based interexchange carriers and the 502 or
18 so carriers that are listed on the Commission's web,
19 we're trying to demonstrate that as far as the
20 inter-city market is concerned, there's a lot of
21 capacity, a lot of competitors, and that together
22 we're all going to be chasing after what will become
23 or is already a very competitive long distance
24 business. And this ignores completely wireless and
25 the Internet and, you know, whatever other

00163

1 technologies we don't know about yet.

2 But in the local market, I think it's
3 reasonably widely concluded or conceded that there is
4 a cable, copper cable, typically, a land line
5 connection from the traditional telephone companies,
6 there's a coaxial, probably fiber coax connection
7 from the cable companies, and we're trying to create
8 a third pathway, using MMDS for broadband access for
9 at least part of the market that's independent from
10 those two. I don't know how many other links to the
11 residence or to the business we can reasonably
12 expect.

13 In the business market itself, highly
14 concentrated downtown areas, we've got a number of
15 CLECs. But most of us have concluded that our share
16 of the resi market wouldn't be sufficient to building
17 out fiber to the residents, because, of course, the
18 incumbent already has that market.

19 That's why I conclude that if we do this
20 merger, that we would provide, in my opinion, a
21 viable third alternative to at least a significant
22 portion of the residence market, and I don't know of
23 a fourth alternative that can reach that size of the
24 market, unless the power companies decide to take
25 advantage of the relationship they have with just

00164

1 about every consumer. That's possible. They haven't
2 shown much interest in that yet. They're doing
3 inter-city, but not local, and I'm speculating, in
4 response to your question, that I don't -- I see
5 three on the horizon. There may be a fourth, but I
6 don't see 50.

7 Q. Okay. You said that you would be a third
8 alternative to a significant portion of the
9 residential market. A third alternative for what?

10 A. We believe -- well, we know that the MMDS
11 technology can be used for broadband service, it's up
12 and working. You could allocate a portion of that
13 capacity to provide voice services in the same
14 bandwidth. Sprint has PCS licenses. My expectation
15 is we may well use PCS as the voice platform and MMDS
16 as the data platform. But putting those two
17 together, we would cover, combined, we would cover
18 both narrow band and broadband access to the
19 residence, as we're able to develop and build out
20 that wireless capability.

21 Q. Are you saying today that there are plans
22 to use the PCS licenses to provide fixed wireless
23 voice to the home?

24 A. I'm saying today that I am aware of a
25 specific trial of that capability by Sprint in Des

00165

1 Moines, Iowa. Whether or not it turns out to be
2 economically attractive as a stand-alone product is
3 what I understand the trial is about. And I don't
4 know how the trial's going, but I do know that that's
5 happened. I know that Project Angel, the
6 oft-promised AT&T fixed wireless proposal that I
7 understand you may have had something to do with at
8 the beginning, is a product that uses, I believe, PCS
9 spectrum in a fixed application.

10 Whether or not those fixed applications
11 turn out to be the best use of the spectrum that's
12 also capable for mobile services, I don't know.
13 That's a trade-off that the marketplace will help us
14 make. And I understand there's more spectrum, you
15 know, possibly coming, who knows in what band yet.
16 But yes, I'm talking about using potentially PCS for
17 a fixed application.

18 Q. Okay. I'm going to try to paraphrase what
19 I think you said a few minutes ago, and what I want
20 to do is give you the opportunity to correct my
21 attempt.

22 A. Oh, okay.

23 Q. I think what you said a few minutes ago is
24 that MCI doesn't need this merger to compete in a
25 long distance market?

00166

1 A. I think that's a paraphrase. I don't think
2 I said that explicitly, but we are competing in the
3 long distance market today. The question that your
4 paraphrase begs is if everybody else teams up and
5 provides a full service offering and we're left in
6 the long distance market only offering long distance,
7 will we be viable, and I would offer the opinion that
8 I thought we would more likely than not would be
9 acquired. But are we profitably offering long
10 distance service today? Yes, sir, we are.

11 Q. How will this merger help MCI to be a
12 better competitor in the long distance market?

13 A. In a couple of ways. Well, one easy
14 example is that by combining the traffic volumes of
15 Sprint and WorldCom, we believe we'll be able to
16 justify significantly more direct end office trunking
17 for our access services that will reduce our cost.
18 We'll be able to reduce the combined cost of sales
19 and general administrative expenses between the two
20 companies, reducing the cost of, on average, of both
21 companies. We'll be able to take advantage of their
22 network where our network isn't and our network where
23 their network isn't, and so we will complement the
24 interoffice or interexchange facilities of each
25 other.

00167

1 All of those things should make us a more
2 viable -- combined, more viable long distance
3 competitor. But the real benefit, I think, is in the
4 potential of getting a viable third local competitor.
5 All of those things I mentioned about long distance
6 are true, but what we're trying to do is put
7 ourselves in a position to be able to offer a full
8 suite of services, and without local, we think we're
9 -- we think our opportunity will be less attractive.

10 Q. So the efficiencies, for lack of a better
11 word, that you just identified, could MCI continue to
12 be a successful competitor in the long distance
13 market without those efficiencies? In other words,
14 without this merger?

15 A. If the question is looking only at the long
16 distance market, yes, I think we could, but it's my
17 opinion that if we don't have a full suite of
18 services, including local and wireless, broadband and
19 narrow band, local and long distance, that we won't
20 survive as a stand-alone company.

21 Q. Well, so what's going to happen to Level 3
22 in two years?

23 A. I hope they're wondering that themselves.
24 Level 3 has what I understand is a very attractive
25 state-of-the-art network that is very much aimed at

00168

1 capitalizing on Internet growth. We're attempting to
2 create a similar network. If the Internet continues
3 growing as rapidly as it has been, and it's kind of
4 hard to keep that explosive growth in mind as the
5 number gets bigger and bigger every year, but if the
6 number continues to grow, my expectation is that
7 Level 3 will find use. In fact, earlier we were
8 speculating that perhaps all of the capacity would be
9 used.

10 They will find use either selling some to
11 us or selling some to you, or perhaps they'll team up
12 with someone else, as well. We'd like to serve the
13 mass market, and this is our way of thinking we can
14 do that. I don't know if they have that desire or
15 not.

16 Q. Well, what I've heard today is that the
17 second and third largest long distance providers in
18 the United States need to merge to be better
19 competitors in the long distance market or in a
20 market that includes long distance in the future,
21 however you might define it, but that we shouldn't
22 worry about the anticompetitive effects of that
23 merger because they will be disciplined by these very
24 small carriers that, according to what we've been
25 talking about this last 20 minutes, won't even remain

00169

1 viable into the future. Do you understand that
2 question?

3 A. I didn't understand the question portion of
4 the statement, but I understand -- I think I
5 understand the point you were trying to make. By the
6 two companies merging, we will have a more effective
7 long distance marketplace, but long distance isn't
8 what's driving our desire to get together. That's
9 very helpful, we certainly anticipate synergies from
10 that, and we've addressed that in our prospectus and
11 business -- what's called the S4. I guess that's a
12 prospectus.

13 The thing that getting us together will do
14 will give us combined narrow band, broadband, and
15 paging wireless platform. It will give Sprint access
16 to our intra-city fiber-optic networks and
17 collocations. It will give them access to our
18 international facilities that, when combined, we
19 think would give us sufficient resources to compete
20 against you in the 14 states where you're the
21 predominant carrier against US West, against Bell
22 Atlantic.

23 So I don't really -- even though the whole
24 gist of the discussion this morning was focused on --
25 or at least most of it was focused on long distance,

00170

1 that's really not what this merger is about. The
2 merger is about together being able to be a more
3 viable competitor in the long distance and to create
4 a viable third way to get to the mass market for
5 local service, data service, wireless, whatever.
6 That's my reaction to what I thought was the intent
7 of your question.

8 Q. Do you have to do the latter to succeed in
9 the former? Do you have to be able to address that
10 mass market to be a successful long distance provider
11 going forward?

12 A. In my opinion, yes, sir.

13 Q. Well, then, with the exception of the
14 incumbent LEC, the owner of the cable TV network, and
15 yourselves if you deploy MMDS, who else is going to
16 be able to address that market successfully, in your
17 view, and how are they going to get there?

18 A. Well, I think it's going to be a challenge.
19 There are, as you know, multiple PCS licenses in each
20 market. Sprint typically owns one of those licenses,
21 you typically -- excuse me, the incumbent local
22 telephone company typically owns one of those
23 licenses, either the cellular license or the large
24 PCS license or -- excuse me, the cellular license or
25 the small PCS license, or the large PCS license. So

00171

1 there are -- there will be other players who may be
2 able -- and power companies that I mentioned a while
3 ago, who may be able to assemble the assets.

4 In our opinion, this merger between
5 WorldCom and Sprint offered the best way, to these
6 two companies' management, in their opinion, of us
7 surviving and playing in that market. But however
8 many or who others may ultimately prevail, I don't
9 know. I don't think there will be many.

10 Q. So we can't rely on them to discipline any
11 anticompetitive concerns they have, because they may
12 not even survive?

13 A. Actually, I think you can rely on us trying
14 to discipline you, or US West or Bell Atlantic. You
15 have the incumbent company. I apologize. I don't
16 mean to make it personal. The incumbent telephone
17 company, by its position in the local market, has
18 already an account position with every customer, has
19 the account maintenance cost for every customer
20 already covered, so this discussion we had earlier
21 today of nonrecurring charge for long distance, Bell
22 Atlantic doesn't have to do it, because they've
23 already got that part of their expense covered in
24 their local rates.

25 We need to be able to offer a service as

00172

1 complete as the service you offer, or you will have
2 services where you can allocate cost away from the
3 competitive services to the less competitive services
4 to our disadvantage. I'm not arguing that that's
5 nefarious on your part; I'm just saying that in order
6 for us to be fully competitive, we have to be able to
7 offer a product that is similar in scope to the
8 product you offer or you have an advantage.

9 Q. But my question was, if they don't have all
10 the advantages that you hope to gain as a result of
11 this merger, will it be possible for these 502 or
12 eight or whatever the list we use is, companies that
13 you identify as being in the market in one way or
14 another or about to enter the market in one way or
15 another in Washington, how will it be possible for
16 them to serve as a disciplining force should we
17 assume that there will be anticompetitive
18 consequences as a result of this merger?

19 A. With or without US West's entry?

20 Q. Well, it's my understanding that US West
21 has a little problem right now, which is that they're
22 not allowed to offer long distance.

23 A. That's why I asked with or without their
24 entry.

25 Q. Well, let's say without, and then we'll do

00173

1 the latter.

2 A. Well, if they never get in, then the
3 question of the leverage they would have by having
4 the entire local base, or 95, 98 percent of the local
5 base, doesn't become a relevant question in the long
6 distance market. And other carriers, including us,
7 who don't have as overwhelming a local presence, and
8 obviously no one else could have, will be better
9 equipped to compete against each other.

10 The context of my previous answer to you,
11 at least as I thought I understood the question, was
12 what do we think we need to accumulate in order to be
13 able to compete against you in-region and US West
14 in-region after 271 entry, when you have the benefit
15 of the local base from which to grow and we don't
16 have that and have to capture some of that if we, in
17 my opinion, if we are to survive.

18 In that environment, post-271, your
19 question of the -- out of the life expectancy of the
20 other 502 carriers I suspect is a significant
21 challenge to their business plan. I think many of
22 them will find submarkets that they can offer product
23 in, wholesale markets, but for it to be a full
24 service provider, which is what we think we need to
25 be in the mass market in order to compete against

00174

1 you, we think we need this merger, and we think there
2 won't be a whole lot of other people competing.

3 So it will be the three of us, and maybe
4 one or two others. There's nothing that forecloses
5 the market; it's just a question of who has the
6 assets that you're able to bring together. It will
7 be us competing, which is better than a duopoly,
8 approximately not as good as a perfect competition.
9 I don't know quite how to define that, but I think
10 three is better than two.

11 Q. On page eight of your testimony --

12 A. My direct testimony?

13 Q. Sorry.

14 A. My direct testimony?

15 Q. Yes.

16 A. Thank you.

17 Q. On lines 19, 20, 21, you say, quote, The
18 increased competitiveness of the interLATA toll
19 market is driven largely by the explosive growth and
20 fiber-optic capacity to carry toll. Strike that
21 question.

22 On page 10 of your direct testimony, on
23 line eight, you say, quote, This list includes 502
24 carriers registered to provide long distance service
25 in Washington. Why did you feel it relevant to

00175

1 include that fact in your affidavit?

2 A. Because, in my opinion, it demonstrates
3 that there are no barriers to entry in the long
4 distance market. If there are 502 carriers
5 registered, I don't know how many of them have
6 revenue, I don't know how many are active in the
7 market, but if there are 502 carriers registered, the
8 barrier to setting yourself up to do business
9 apparently is very low. The scope of the business
10 that they're doing individually, I don't know.

11 Q. So you included this fact in there to show
12 that you can register your name relatively easy in
13 Washington?

14 A. Well, I don't know what their business
15 plans are and I don't know what activity the
16 Commission requires each of them to do, but yes,
17 there are some 500 entities authorized to provide
18 service in the state.

19 Q. What about the next line? You say that,
20 quote, there will be at least eight interexchange
21 carriers other than WorldCom operating or building
22 fiber facilities in Washington. What was the reason
23 for including that fact?

24 A. An attempt to demonstrate that in the
25 interLATA market, and actually here, the intraLATA

00176

1 toll market, but in the interLATA market there are a
2 number of carriers providing facilities designed to
3 be used for interLATA service.

4 Q. And what relevance does that have to
5 whether or not this merger is in the public interest?

6 A. The question or the concern that I was
7 attempting to address was that, in my opinion, the
8 existence of these carriers, and I believe there are
9 more than this, but the existence of these carriers
10 offers some assurance to this Commission that when
11 WorldCom and Sprint merge, there will still be a
12 significant number of other participants in the
13 interexchange market to offer capacity, including
14 you, should we decide no longer to compete in the
15 market, a fact that I think is very unlikely, but
16 nonetheless these other carriers exist in the
17 marketplace today to -- I believe the word that was
18 used earlier is discipline our behavior.

19 Q. What did you mean when you just said "shall
20 we decide to no longer compete in the market?"

21 A. Well, the concern, as I understood it from
22 the testimony, or discussion, was that we might
23 decide to take advantage of our position as a
24 combined entity, which would be half the size of
25 AT&T, about the size of US West before it gets

00177

1 interexchange access, and decide to raise our prices.

2 And what I'm attempting to show is that
3 should we decide to raise our prices, a point that I
4 don't think is likely, but should we decide to, there
5 are a number of other carriers who are both
6 physically equipped and in the market who could
7 capture whatever market was price-sensitive, should
8 we raise our price and customers want to go somewhere
9 else. It was merely intended to show that there are
10 alternatives, facility-based alternatives in
11 Washington, not including US West yet, to discipline
12 our behavior in the interexchange market.

13 Q. Okay. So ELI can discipline you in the
14 same market in which you need to merge with Sprint to
15 remain viable?

16 A. No. We're -- again, we're talking two
17 different scenarios. My proposal to you and to this
18 Commission is that WorldCom and Sprint, when merged,
19 will be able to offer viable competition to US West
20 and AT&T in this local market. You'll be helping,
21 Bell Atlantic will be helping, but we'd like to be
22 competitive with all of you. We think we need this
23 merger to improve our opportunity to serve a full
24 service product.

25 The question that I was attempting to

00178

1 address here was assuming there was no US West entry,
2 a point that I think is unlikely in time, but even
3 without US West entry, there are these other
4 providers who can offer wholesale capacity, retail
5 services. My understanding is that other carriers in
6 this market already have captured -- I think the
7 aggregate is 20 percent of the market. So it's
8 apparent that other carriers are having success in
9 the market, but in the market that we see coming,
10 particularly with US West, with long distance entry
11 and AT&T with the cable assets, we feel we need more
12 assets to be able to offer a full service in
13 competition with those two carriers.

14 And then, what SBC chooses to do as it
15 enters the market, how much resource you choose to
16 put in Seattle, remains to be seen. You may, in
17 fact, turn out to be a fourth viable competitor. But
18 we would like to be one of at least three.

19 Q. On page 12 of your testimony, your direct
20 testimony --

21 A. Yes, sir. Thank you.

22 Q. On lines 16 and 17, you're talking about
23 new providers of network capacity, and you say,
24 quote, This capacity can be brought into service
25 quickly and at a reasonable cost, close quote. Can

00179

1 you explain to me in a little more detail what you
2 mean by that?

3 A. Yes, sir. The carriers that this refers to
4 are the eight or so that we were discussing a few
5 minutes ago, who already have their fiber in place.
6 So they have obtained capital, gotten rights of way,
7 buried plant, and what remains to be done, having
8 done all of that, is to light up the fiber and to
9 market.

10 And we believe that the ability to increase
11 their capacity, given the fiber that's already in
12 place and the electronics that are rapidly -- or in
13 the market or rapidly entering the market would give
14 them the ability to develop capacity quickly.
15 Whether or not they also develop the sales, whether
16 they do retail themselves or use other people to
17 retail, I don't know, but the physical asset is in
18 place.

19 Q. So if a provider's got network capacity in
20 place, what it needs to add to that to address the
21 mass market can be acquired at reasonable cost?

22 A. Well, it's not free.

23 Q. I didn't ask that.

24 A. No. You know, they can choose what segment
25 of the market or how much of the market they want to

00180

1 try to address at any given time. They clearly need
2 to acquire a sales channel. Whether they do that
3 through resellers or develop their own requires some
4 effort.

5 As we discussed earlier, they can use
6 access provided by the incumbent local telephone
7 company to reach the entire area, if they want to use
8 tandem switched access, for example, so they only
9 need one point of presence to be able to reach the
10 entire LATA. That capability can be developed and
11 deployed pretty quickly. It's not a trivial
12 exercise. I don't mean the money is hanging low on
13 the tree waiting to be picked, because every customer
14 they win they have to take away from wherever that
15 customer is today. And as we've discovered, that's a
16 continuing challenge, but it's not a barrier to
17 entry.

18 Q. Is it safe to assume that by reasonable
19 cost, you mean a cost at which they're able to still
20 compete in the marketplace with? Let me try that
21 again. You say at a reasonable cost. By reasonable,
22 do you mean that if they're forced to incur that
23 cost, it won't be so high a cost that it would
24 prevent them from competing in the marketplace?

25 A. Well, yes, sir, that's what I mean. They

00181

1 have the facility in place, they can add the
2 additional resources basically based on market
3 success. You can start off small, and as you gain
4 customers, you add resources so that you can gain
5 more customers. They have to find qualified
6 employees, they have to get operating support systems
7 at work, they have to do marketing, they have to win
8 the customer. I'm not trying to propose that it's a
9 trivial exercise, but the incremental cost is
10 relatively small.

11 Q. It's doable?

12 A. In my opinion, yes, sir. I believe in your
13 opinion, as well.

14 Q. On page 16 of your direct testimony --

15 A. Yes, sir.

16 Q. You're talking about MMDS. In lines nine,
17 10 and 11, you say that adding WorldCom as a fixed
18 wireless player in the local exchange market
19 increases the probability that there will be three
20 ways to reach at least some residential customers,
21 and I would underscore at least some. Did you have a
22 more specific amount of residential customers in mind
23 when you wrote that?

24 A. Yes, sir. MMDS is a radio-based
25 technology. Radio waves travel in reasonably

00182

1 well-known and predictable ways. They have trouble
2 going around corners and over hills. The MMDS
3 licenses that the two companies combined hold, or
4 when combined would hold, give us the ability to fly
5 over, meaning if you can see the antenna, we can give
6 you service, but we pass over order of magnitude 50
7 to 55 percent of the households in America.

8 Now, of that 50 to 55 percent that we pass
9 over, there's a second question of how many can we
10 see. We have to be able to get a radio signal to
11 that location. There are several ways to attack
12 getting radio signals around obstacles. How many of
13 that 55 percent or 50 to 55 percent we'll be able to
14 reach, without having done specific engineering
15 studies, you don't know, but let's assume it's 60
16 percent. That says that to roughly a third of the
17 households in America, 60 percent of 50 percent, or
18 55 percent, we think we can offer a direct
19 radio-based MMDS-based service.

20 We'll have other ways to reach customers.
21 We would still be very interested in selling local
22 services, based on the unbundled network element
23 platform, because there would clearly be a
24 significant number of customers we can't otherwise
25 reach. And it may well be that as we continue to

00183

1 develop our fiber networks, that we will pass
2 high-density -- I think they're called multiple
3 dwelling unit buildings, where we'll also be able to
4 take -- drop our fiber into the building and compete
5 on a fiber-based solution. We don't anticipate at
6 this time that fiber to an individual residence is
7 likely to be attractive for us. But that's what I
8 mean by at least some.

9 Q. Okay. Are you aware of any efforts that
10 are being undertaken or were undertaken to quantify
11 some in Washington, either by Sprint or MCI?

12 A. I'm not aware of what Sprint has done. MCI
13 WorldCom does not have licenses in the state.

14 Q. Could you look at page 10 of your rebuttal
15 testimony?

16 A. Yes, sir.

17 Q. I need you to explain something to me. On
18 lines 11, 12 and 13, you say, quote, In fact, about
19 half of Sprint's network and one-third of MCI
20 WorldCom's network consists of routes not duplicated
21 by the other petitioner's network?

22 A. Yes, sir, I see that.

23 Q. Rather than me struggling, could you expand
24 on that?

25 A. A bit.

00184

1 Q. All right.

2 A. I don't have -- I can't give you
3 Washington-state specifics, but WorldCom today
4 reaches about a third of the LATAs using facilities
5 we don't own. We get them from other vendors, some
6 from Sprint, some from AT&T. I mentioned Touch
7 America this morning, Valley Net, CapRock. Sprint
8 does the same thing. They offer a ubiquitous
9 service, but they don't have facilities ubiquitously.

10 If you were to take our two networks and
11 look at them together, about half of their network
12 doesn't go where we go -- excuse me. Half of their
13 network goes where we don't go and about a third of
14 our network goes where they don't go. So another
15 benefit of the merger in the long distance market is
16 that the combined footprint of the two companies will
17 cover more markets with facility-based long distance
18 than either company does today.

19 Q. But you're not telling me that WorldCom
20 today can't reach 50 percent of Sprint's market?

21 A. No, sir. I'm telling you we use facilities
22 provided by someone other than us. We resell. We
23 buy wholesale capacity from other carriers and we
24 incorporate that in the product we offer.

25 Q. Who are your wholesale providers, do you

00185

1 know?

2 A. I just mentioned several of them. Sprint,
3 as a matter of fact, AT&T, Touch America, Valley Net,
4 Hyperion. I think Hyperion is now called Adelphia,
5 if I remember correctly. We use a variety of
6 carriers. Actually, I think we even use Williams.

7 JUDGE CAILLE: Excuse me, Mr. Pascarella,
8 how much more cross-examination do you have? I'm
9 just trying to figure out when we can take a break.

10 MR. PASCARELLA: How about two more
11 questions, Your Honor?

12 JUDGE CAILLE: That sounds very good.

13 THE WITNESS: Thank you.

14 Q. Do you know whether or not WorldCom has any
15 plans to offer a wholesale MMDS-based product or
16 service?

17 A. Yes, sir. Plans is probably too grand a
18 term at this point, but Mr. Ebbers has committed that
19 we will offer MMDS capacity on a wholesale basis. I
20 can't tell you -- you know, since we just acquired
21 the MMDS licenses late last year and the FCC hasn't
22 yet acted on our -- well, petitions haven't been
23 filed yet, they're not timely yet, I can't tell you
24 precisely which markets and what timetable, but we
25 have committed to make that capacity available on a

00186

1 wholesale basis. Not exclusively on a wholesale
2 basis. We'll use some ourself, but the --

3 Q. Not to revisit the commit condition
4 discussion of earlier --

5 A. Is that a commitment?

6 Q. -- that means what he said that this is
7 something that WorldCom would consider doing. I'm
8 just trying to understand, when you say he committed
9 --

10 A. He said we would do it. The history of
11 WorldCom, unlike the history of MCI, was that Bernie
12 has a -- excuse me, Mr. Ebbers has a very strong
13 feeling that the best way to sell your network
14 capacity is to provide it to whoever can fill it. So
15 we had a very strong wholesale mindset at WorldCom,
16 and that wholesale mindset continues, although with
17 the additional capacity, our attractiveness as a
18 wholesale provider has been challenged by these other
19 vendors.

20 If, by offering capacity on the MMDS
21 network, we can fill the network, we'll sell the
22 capacity. The question that none of us know yet is
23 what the customer take rate's going to be, what
24 bandwidths customers will be demanding. All of that
25 market experience we haven't gained yet. It's not

00187

1 just we. I mean, this is a technology that we're
2 intending to use for a new purpose. But if we can
3 fill the channels by selling capacity to you on a
4 wholesale basis, we will. How much that is, I don't
5 know.

6 Q. Not in any way to impugn your commitment,
7 are you aware of any obligation, whether legal or
8 regulatory or otherwise, that you provide a wholesale
9 offering based on MMDS?

10 A. I'm not aware of any obligation, other than
11 business judgment. No obligation, as you
12 characterized it.

13 MR. PASCARELLA: Thank you, Mr. Porter. I
14 appreciate your time.

15 THE WITNESS: Thank you, sir.

16 JUDGE CAILLE: All right, thank you. We
17 will take our afternoon recess now and be back at
18 3:25.

19 (Recess taken.)

20 JUDGE CAILLE: All right. Let's go back on
21 the record after our afternoon recess. And this is
22 the time for the Commissioners to have an opportunity
23 to question the witness. Chairwoman Showalter.

24 E X A M I N A T I O N

25 BY CHAIRWOMAN SHOWALTER:

00188

1 Q. Yes, I have just some clarifying questions
2 or follow-up questions, and then I may have some more
3 substantive questions.

4 At the beginning of your testimony, you
5 talked about Sprint and WorldCom together being
6 licensed, I think you said, for half of all
7 households. I just -- I wasn't clear -- first of
8 all, that was referring to MMDS licenses; is that
9 right?

10 A. Yes, ma'am. And we together have licenses
11 that pass over about half of all households.

12 Q. Okay. So you don't each have half;
13 together, you have half?

14 A. Yes, ma'am.

15 Q. And then I think you also said that
16 regardless of who's holding the license, it's never
17 an exclusive license. That is, that other people,
18 other companies also have MMDS licenses in those
19 areas?

20 A. Yes, ma'am. There are 33 channels in the
21 MMDS and MDS spectrum, and they're licensed to a
22 variety of people. In fact, about half of them are
23 reserved for educational institutions. Some of those
24 licenses we have either direct ownership or subleases
25 on, but to my knowledge, there are very few, if any

00189

1 markets, where we have all of the licenses in the
2 market under contract.

3 Q. Okay. And then, at another point you were
4 discussing that 20 percent of the market share
5 belongs to, quote, the others. Again, were we
6 talking about -- what were we talking about there?
7 What market are we talking about?

8 A. Long distance interLATA, as I understand
9 it.

10 Q. Okay. And you said 20 percent belong to
11 others. Was the 80 percent the currently Big Four?

12 A. Eighty percent was AT&T, WorldCom, Sprint,
13 and at the federal -- and that's it, at the federal
14 level, and 20 percent is all other.

15 Q. Okay.

16 A. Actually, I think Excel is listed in the
17 FCC reports now as a separate column, Teleglobe, so
18 that would be --

19 Q. And are those others primarily or almost
20 all resellers or are there others that are not
21 resellers?

22 A. Well, we know that Qwest and IXC Broadwing
23 have retail sales. Williams, I think, is primarily a
24 carrier's carrier. Level 3, I think, is primarily an
25 ISP's carrier, focusing on the Internet services. So

00190

1 it's probably the predominant number of carriers that
2 are included in that would be resellers.

3 Q. But you were including in -- but included
4 in that 20 percent are the eight carriers that you
5 mentioned?

6 A. Yes, ma'am.

7 Q. That are not resellers?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. Well, AT&T is listed separately.

11 Q. Yes, right.

12 A. Right.

13 Q. And then you had a fairly lengthy exchange
14 with Mr. Thompson, and I think he was trying to get
15 at -- I thought he was trying to get at the
16 penetration of WorldCom with, I think, self-owned
17 facilities. There was some talk about which way to
18 measure it, in route miles, et cetera.

19 Would a good measurement be in how many or
20 in what percent of exchanges does WorldCom have
21 self-owned facilities? Is that -- you were also
22 discussing POPs versus self-owned facilities. I was
23 trying to get at what the issue being discussed was
24 and maybe get at a measurement to measurement, and is
25 that something you know, in how many exchanges do you

00191

1 have self-owned facilities?

2 A. Well, as I recall the discussion, there
3 were two aspects. One was the long distance
4 question. And we own long -- own or lease long
5 distance facilities that allow us to get to each LATA
6 so that we can deliver, both originate or receive and
7 terminate long distance calls in each LATA. So you
8 would see, for example, that we have a way to reach
9 Spokane and Coeur d'Alene and down in Portland, as
10 well as Seattle. But the question -- I don't recall
11 that he asked me the question of in what exchanges do
12 we have local facilities.

13 Q. And maybe I jumped over to exchanges.
14 Maybe I should be asking in what percent of the
15 LATAs, all of which you are in --

16 A. Yes, ma'am.

17 Q. -- do you have self-owned facilities?

18 A. About two-thirds.

19 Q. Okay.

20 A. Population-wise, the percentage is higher,
21 but LATA-wise, it's about two-thirds.

22 Q. So it's two-thirds of all LATAs, and it
23 would be -- do you know what the percent of the
24 population would be?

25 A. I don't know, but knowing where we have

00192

1 facilities from other people that are relatively
2 rural areas, my assumption is that our percentage of
3 population served by direct facilities would be
4 higher than that.

5 Q. Okay.

6 A. But no, ma'am, I don't have a direct
7 calculation.

8 Q. Well, I think that measurement gets at your
9 self-owned footprint, so to speak?

10 A. Yes, ma'am, that's correct.

11 Q. Okay. Do you know the comparable figure
12 for Sprint?

13 A. I don't know, but I know that about -- as I
14 believe I mentioned, that about half of their network
15 goes to places where we don't.

16 Q. Right.

17 A. And about a third of our network goes to
18 places where they don't, so order of magnitude, my
19 guess is that they will be picking up access to
20 roughly a third to perhaps a little bit more of the
21 LATAs from us. By merging with us, they'll get a --
22 or the combined entity will have a footprint that
23 will cover with owned facilities probably a third
24 more than Sprint covers by itself.

25 Q. Okay. Actually, I was going to ask you

00193

1 about that, but it came later in your testimony, but
2 let's go to it right now. It's Exhibit T-4.

3 A. Yes, ma'am.

4 Q. Page 10. And I was trying to -- I think I
5 was trying to figure out the converse of this
6 statement on lines 11 and 13, or maybe it's the
7 contrapositive or something in logic, but all right.
8 You say half of Sprint's network and one third of MCI
9 WorldCom's network consists of routes not duplicated
10 by the other petitioner's network. Now, first of
11 all, we're talking about the self-owned physical
12 facilities. Not where you serve, but what you own?

13 A. Yes, ma'am; that's correct.

14 Q. Okay. So is the implication of this
15 sentence that half of Sprint's network is duplicated
16 by WorldCom and two-thirds of MCI's network is
17 duplicated by Sprint? Is that going to be correct?

18 A. Roughly, yes, ma'am. If you think of three
19 routes going across the United States, and just for
20 the sake of the argument, a north, a south -- a north
21 a central, and a south, we own the south and the
22 central and they own the north and the central.

23 Q. I see.

24 A. So we have overlap in part of our networks,
25 and part of our networks are not overlapping.

00194

1 Q. So primarily your overlap is in the central
2 band of the United States?

3 A. Yes, ma'am, Interstate 80. I mean, excuse
4 me, Interstate --

5 Q. Seventy?

6 A. No, the one that goes through St. Louis,
7 Kansas City, Colorado.

8 Q. Seventy.

9 A. Okay, that's 70. The major, the backbone
10 route.

11 Q. For someone who's made 13 cross-country
12 trips in college, I know that route.

13 A. That's the one. It's not literally on the
14 on the interstate right-of-way, but that's the route.

15 Q. All right. So we're concentrating for a
16 minute on where you do overlap, doesn't the merger
17 mean that, for those areas, customers will have less
18 choice, rather than more, because those areas are now
19 served by two companies, not one?

20 A. Well --

21 Q. Physically. I'm talking about the
22 physical.

23 A. Yes, ma'am.

24 Q. Right. And we talked about some of the
25 advantages of the physical ownership before.

00195

1 A. Yes, ma'am. In some small measure, yes,
2 but that also happens to be the quarter that
3 everybody else is building in. Not exclusively. In
4 fact, I apologize, I probably should have brought it
5 with me. I have a commercially-available map that
6 shows the deployment of fiber optics, inter-city
7 fiber-optic routes in the United States, and it's
8 very much wherever you see an interstate, there's a
9 route nowadays, but the heaviest density is across
10 the middle part of the country. I don't have --

11 sorry, I don't have a spare copy of the map, but --
12 Q. Okay. But your point is that even though
13 the merger will collapse two owners into one, there
14 are others on that route, so that there's still
15 choice to be had on that particular route?

16 A. Order of magnitude, this is not -- I don't
17 have precise numbers with me, but order of magnitude,
18 there are 12 national fiber-optic networks today and
19 roughly two dozen significant regional networks. So
20 that's part of what has led to the reverse in the
21 percentage of fiber route miles, from 70 percent
22 owned by AT&T, WorldCom, Sprint three years ago to 70
23 percent owned by other carriers probably at the end
24 of this year.

25 Q. Well, that was actually my very next

00196

1 question.

2 A. Yes, ma'am.

3 Q. We talked about going from the 70 percent
4 to the 30 percent, and the 70 percent is AT&T's,
5 WorldCom and Sprint?

6 A. Yes, ma'am.

7 Q. Am I right on that? We're talking about
8 long distance now?

9 A. Yes, ma'am.

10 Q. And that was based on 1998 figures?

11 A. As I recall the FCC report, yes, ma'am.

12 Q. Whereas the 30 percent is, I heard you say,
13 based on, I think, existing or planned facilities?

14 A. Yes, ma'am.

15 Q. I guess I wanted to talk to you a little
16 bit about what does that mean, because that's not
17 now; that's planned. But what's the time frame for
18 that plan and how firm are the plans? This is based
19 on somebody else's report, I recognize.

20 A. For example, it includes all of the Qwest
21 network, 33,000-mile network that is anticipated, at
22 least Qwest says will be finished at the end of this
23 year. But it includes other carriers that may not be
24 finished until next year. It's not a guarantee, but
25 it is a significant amount of capacity.

00197

1 The Qwest, Level 3, Williams, GTE,
2 Broadwing networks are all in existence today, and
3 they weren't three years ago, two years ago. Some of
4 the others, like Global Crossing, there's one that
5 I've not heard of -- several others are going into
6 the ground now, but not as far along as the half a
7 dozen we just mentioned.

8 So it is fair to say, Okay, when will all
9 that capacity be in the ground. And my expectation
10 is within the next 18 months in the scope of the
11 report, but it wasn't my report, so I can't affirm
12 that.

13 Q. Well, and I think this leads to my broader
14 question, which is, I suppose, one of past facts
15 versus future speculation in general.

16 A. Yes, ma'am.

17 Q. I'll paraphrase what I think your case is,
18 and then you can correct me, but it seems to me that
19 you are saying that if you look realistically into
20 the next two years or at the end of the next two
21 years, we all will see the RBOCs in the long distance
22 business, and therefore able to offer bundled
23 services that consumers want, and therefore, in order
24 to compete with that formidable competition, MCI and
25 WorldCom really need to merge in order to be a big

00198

1 player with those other big players. Is that roughly
2 right?

3 A. Roughly, yes, ma'am, because as we learned
4 -- well, WorldCom and Sprint, but as WorldCom learned
5 with the MCI acquisition, first, the deal is unlikely
6 to close for another several months. And then it
7 takes a year to a year and a half to begin to capture
8 the benefits of actually having gotten together,
9 compared plans, executing the plans and getting the
10 synergies and services that you expected to get out
11 of the merger, actually achieving those benefits.

12 In that same time frame, US West, perhaps a
13 little later than some of the others, but depending
14 on how your work goes, it may be more quickly, but
15 certainly other of the bell operating companies will
16 be in the market within the two years, I suspect most
17 of them will be.

18 But one of the points we didn't discuss, of
19 course, is that in the interexchange business, as
20 opposed to intrastate business, excuse me, interstate
21 business, we have the Telecommunications Act that
22 says that we have to provide nationwide average
23 rates. And so if Bell Atlantic comes in with a
24 service offering that we respond to on an interstate
25 service, the law requires that we offer that service

00199

1 nationwide.

2 It's not the same as your requirement in
3 Washington, but it is a discipline that even a remote
4 bell entry has to the benefit of your customers or,
5 excuse me, your citizens. That same requirement is
6 not precisely, as I understand it, or is not an
7 intrastate requirement, but we do anticipate that US
8 West will get into the market here, interLATA market,
9 by probably not 12 months, in my opinion, probably
10 within 24 months. But I don't have any -- you have a
11 better way of judging that than I do.

12 Q. Well, that actually is another of my
13 points. There are these natural segues in this
14 conversation. I think you testified that you thought
15 that if the merger goes through, there's a better
16 chance that US West will get in -- will pass its 271
17 test earlier if they don't merge, because you think
18 that there may be a change in the corporate
19 motivations?

20 A. Yes, ma'am. You mean the Qwest-US West
21 merger?

22 Q. Correct.

23 A. Yes, ma'am.

24 Q. But here's a fact where we sit in judgment
25 of that merger, as do others?

00200

1 A. Yes, ma'am.

2 Q. And determine whether that merger's in the
3 public interest. We sit on the 271. So these
4 dynamics, which I think, from your company's point of
5 view, may be beyond your control aren't really beyond
6 our control. So that there's a sort of dependent
7 variable going on here.

8 A. Yes, ma'am.

9 Q. Which is maybe regulatory commissions; not
10 just us, but others, as well?

11 A. We're dependent on you; yes, ma'am.

12 Q. Well, so that when this Commission sits
13 looking at these dynamics, it's not looking at, you
14 know, exogenous or external events necessarily; it's
15 also looking at events it has some degree of
16 influence on?

17 A. Yes, ma'am; that's correct.

18 Q. And I think probably it's just a difference
19 in the vantage point. You can testify as to what you
20 think the dynamics are, but when we sit looking at
21 it, we have something to do with those dynamics.

22 A. You definitely do, but recognizing that you
23 have a lot more to do with those dynamics than we do,
24 I still think that Mr. Nacchio has an incentive to
25 encourage US West to meet the 271 requirements more

00201

1 quickly than they otherwise might. But that's a
2 judgment that you're in a much better position to
3 make than I am.

4 Q. That's if there's a merger?

5 A. That's correct.

6 Q. I mean, one of the problems here is you're
7 asking us to look to dynamics or, you know, future
8 facts, which future facts we are not, at least in a
9 position today, to assume, because we sit in judgment
10 on them. Now, maybe by the time a decision is made
11 on your merger, some of those facts will or won't be
12 in existence, although not all. For example, 271 has
13 a longer timetable than that.

14 A. Well, may I propose a hypothetical to
15 respond to you? Let's assume for the moment that US
16 West never gets in the long distance market and that
17 we end up with US West continuing to hold its
18 significant position in local, with all of us
19 chipping away at it as best we can, and we hope to
20 become better at doing that, with AT&T offering some
21 variation -- or cable companies offering some
22 variation of local service to the residential
23 customer. I don't know whether unbundled network
24 elements and the unbundled network element platform
25 and US West OSS would get to the point that we could

00202

1 use that vehicle to serve residential customers using
2 US West services prior to their being able to get
3 into 271.

4 I would, in fact, assume that not having
5 that ability might be one of the reasons that they
6 don't get into 271. So if that vehicle for us to
7 serve local customers isn't available and if AT&T
8 continues with -- or the cable companies continue
9 with their apparent predisposition not to offer open
10 access, then the only other viable way that seems
11 anywhere even on the horizon to get residential
12 competition is the kind of a proposition that I'm
13 trying to offer you today with the Sprint-WorldCom
14 merger.

15 So rather than draw the conclusion that I
16 -- that might have been a conclusion you were leading
17 to, that if we don't have US West in the market, some
18 of what we've discussed earlier today doesn't seem
19 intuitively obvious. It would seem to me that you
20 would have a greater reason to want us in the market
21 if US West doesn't get 271 relief than if they do.

22 Because if US West gets 271 relief,
23 carriers other than us could also use the unbundled
24 network element platform, carriers like Southwestern
25 Bell, for example, or Bell Atlantic. The question

00203

1 that I was attempting to address from the other side
2 of the coin was whether or not there was enough long
3 distance capacity to discipline us. And my opinion
4 is, even without US West, there is, but as I have
5 just attempted to explain, I think it would be even
6 more in your interest for us to be offering local
7 service with some other vehicle if US West never does
8 get around to offering UNEP and OSS.

9 Q. All right. You've just made the point that
10 if US West does not get into long distance, you would
11 still urge this Commission to find a way to help
12 somebody get into the local business, and the merger
13 is one way to do it?

14 A. Yes, ma'am.

15 Q. But then, on the other hand, one of the
16 justifications -- under that scenario, one of the
17 justifications for the merger, which was --

18 A. Goes away.

19 Q. -- which is the long distance, not only
20 goes away, but don't we then have a higher
21 concentration in the long distance, which presents
22 some of its own problems. And maybe this is all a
23 matter of trying to look simultaneously at both local
24 market and the long distance market, but recognizing
25 that some of the dynamics that assist one don't

00204

1 assist the other, or some of the scenarios that play
2 out --

3 A. Yes, ma'am.

4 Q. -- don't all work to the benefit of
5 competition or one or the other?

6 A. I think that's precisely what you have to
7 balance. If I may offer one other observation -- I
8 haven't done the math yet, so this may not come out
9 right. As I understand the market generally, using
10 FCC statistics, and I think we could do this again
11 with Staff statistics, but I haven't done it yet, the
12 toll market order of magnitude is 50 percent
13 interstate, 50 percent intrastate, roughly, on a
14 national basis. Within the state of Washington, the
15 numbers may be -- may well be different, but I don't
16 know those numbers.

17 Then, if you take a look at the intrastate
18 toll, which is 50 percent of the total toll market,
19 and assume -- and here, I think, actually the numbers
20 will be higher than this, but if you assume it's
21 50/50 intraLATA and interLATA, and as I recall the
22 numbers, it's a higher percentage intraLATA than
23 inter within the state of Washington, but assume for
24 the moment it's 50/50.

25 So we're now talking about 25 percent of

00205

1 the market that is intrastate interLATA. I think
2 that number is high, but for the moment, let's use
3 that as a number, and Sprint has five percent of that
4 market. So we're talking of one percent of the long
5 distance market, which is the intrastate interLATA
6 market, that will become perhaps less competitive
7 because of this merger.

8 But in the intrastate intraLATA, where US
9 West already has 25 percent of the market, and in the
10 interstate market, where we've discussed the number
11 of carriers that exist, 99 percent of the market, of
12 the long distance market, I think -- I'm not trying
13 to put words in Staff's mouth, it's not my job, but I
14 think we would have some reasonable agreement that
15 the intrastate intraLATA and the interstate markets
16 are competitive. I believe the intrastate interLATA
17 is, but if it isn't, we're talking one percent of the
18 toll market using what I believe are generous
19 proportions to divvy up the market.

20 Q. How did you get to that one percent of the
21 toll market is intrastate interLATA?

22 A. Owned by Sprint, served by Sprint today,
23 because they have roughly five percent of the
24 intrastate market. So what the merger affects is the
25 movement of five percent of the intrastate interLATA

00206

1 market, which represent about -- controlled by
2 Sprint, which represent about one percent of the
3 total toll market, and in trade-off for that, we're
4 trying to put together a resource that we think will
5 give you a viable competitor for local service
6 whether or not US West gets 271 relief, and it's
7 probably more important to you if they don't get it
8 than if they do get it.

9 I think -- I hope it will be very important
10 to you either way, but that's what I think is the
11 really positive of this merger. I don't personally
12 think that we will have an adverse effect on the
13 interLATA intrastate toll market. But what I'm
14 trying to suggest is if you assign to us all sorts of
15 nefarious intent, which I'm attempting to assure you
16 we don't have anyway, but even if you assigned it to
17 us, the only part of the market that we can adversely
18 affect is the one percent that we're acquiring.

19 And on the other hand, we have the
20 potential for offering both fiber facility in major
21 metropolitan areas and MMDS and PCS in less
22 metropolitan areas, a capability that together we
23 think we can offer much more efficiently than we
24 could apart. And I'm hopeful that you will, upon
25 reflection, think that that's a pretty good deal. In

00207

1 my opinion, that's the real win for the citizens of
2 Washington, but we've spent the majority of our time
3 talking about this other piece of the market.

4 Q. Okay. And I want to talk to you a little
5 bit about that, that you are able to do this together
6 better than you can apart.

7 A. Yes, ma'am.

8 Q. What I heard you say is that if there is no
9 merger, then it's pretty much eat or be eaten out in
10 that world, and you're going to get eaten by
11 somebody?

12 A. I'm not proposing that WorldCom would get
13 eaten as quickly as Sprint, with no offense to my
14 Sprint colleagues, but we have had a very credible
15 counteroffer on the table that Sprint management had
16 to choose between back in October. And there's no
17 reason -- there's no reason to think that BellSouth
18 would immediately jump back with the offer, but there
19 was a credible offer. And we know that there are
20 other carriers who are interested in getting into the
21 domestic market.

22 So I think the proposition of Sprint
23 remaining independent in the long-term, or even in
24 the short term, in my opinion, is low. The question,
25 then, of what happens to WorldCom is more

00208

1 speculation. We're a larger company, a little more
2 difficult to acquire, but there are quite a number of
3 assets we would no longer have that we would have to
4 find somewhere else in order to replace the benefits
5 that we see coming from the Sprint merger.

6 Q. So I'd like to follow-up those scenarios,
7 because, from the point of view of the company, you
8 might want to control your own destiny and so you
9 would see being eaten by somebody else over your
10 objections as a negative thing, but we are looking at
11 the public interest.

12 A. Yes, ma'am.

13 Q. So the question I have is, well, all right,
14 supposing Deutsche Telekom acquires one of you, and
15 you named a couple others; right?

16 A. Well, let's say BellSouth takes Sprint and
17 Deutsche Telekom takes us.

18 Q. Yeah.

19 A. Let's not say that, but as a hypothetical

20 --

21 Q. All right. As a hypothetical, though, of
22 course, we haven't looked at those companies or those
23 dynamics at all, but wouldn't it be case that at
24 least if those dynamics occurred, you don't also have
25 this long distance question that -- you don't have

00209

1 the concentration, and wouldn't it be the case, or I
2 should ask you, would it be the case that if two
3 other giants acquired each of you or pretty big guys
4 acquired each of you, might that not set up a
5 scenario of not a Big Three, but a Big Four, two of
6 which might have MMDS? I mean, couldn't that be
7 better?

8 I recognize this is very speculative, but
9 it seemed to me your analysis of what would happen
10 without a merger kind of stopped at the level of,
11 well, we might get bought by somebody.

12 A. Yes, ma'am.

13 Q. And that, to me, doesn't end the
14 questioning, because in the end we have to decide is
15 the merger, compared to not merger, consistent with
16 the public interest. And for that exercise, I think
17 we have to look at -- since your proposition for the
18 merger is based on essentially speculating on what
19 dynamics will occur in the future, as opposed to what
20 facts we have in the past, don't we have to also
21 speculate what would happen in the future without the
22 merger? And I'm not sure that you made a case that
23 it's a really negative thing.

24 A. Fair point.

25 Q. Compared to with the merger.

00210

1 A. Yes, ma'am.

2 Q. And maybe you could address yourself to
3 that. Why is the merged company more effective in
4 the future with these future dynamics than the
5 non-merged companies, with whatever may happen to
6 them --

7 A. Yes, ma'am.

8 Q. -- less a factor?

9 A. That's a fair question. In the first
10 place, I would hope that I can correct the impression
11 that what we would like to do as a merged company is
12 totally speculative. We have today --

13 Q. I really meant the future dynamics are
14 somewhat speculative, not what you would do, but the
15 world that you would be in, you can't completely know
16 for sure.

17 A. Yes, ma'am. No, you're right. As you
18 pointed out, perhaps one of the biggest single things
19 is the US West 271. I'm setting that aside, because
20 we've talked about that already. This merger is, in
21 my opinion, a good merger for you to approve, because
22 it will take advantage of the assets that both of us
23 have today separately in Washington, for example, our
24 fiber networks, our local switches here in the
25 greater Seattle-Tacoma metropolitan area, Sprint's

00211

1 PCS licenses, the MMDS licenses, and the fact that
2 we're already competing for and are known by long
3 distance customers here in the state, I think gives
4 us a better chance of succeeding and competing with
5 US West and the cable companies than it would
6 necessarily give someone like, for example,
7 BellSouth, who doesn't have any local network here,
8 does not yet have a local presence. I think, or
9 Southwestern Bell, although I think both of them will
10 be welcome into the marketplace.

11 I think they will find, as we have found,
12 that getting in and starting from scratch is a
13 challenge. It's doable, we've done it. But the
14 merger that we're offering you gives you the
15 opportunity of letting two companies who you can see,
16 you've seen what we've done, we've been before you
17 before, we've said, This is what we're going to do,
18 and we did it, to get together and try to offer a
19 viable competitive alternative to US West.
20 Unfortunately, we won't be able to offer it to every
21 potential customer.

22 As we discussed MMDS, I'm not trying to
23 represent that we have sufficient assets to cover the
24 entire state, but we can make a pretty good shot at
25 getting started, and we may be able to acquire more

00212

1 MMDS spectrum than we have now.

2 But I'm trying to offer a business
3 proposition from these two companies that I think
4 would be attractive to you because of what we can do
5 regardless of what the future other combinations are.
6 The question of whether or not this is the best of
7 all possible combinations kind of staggers my mind,
8 because I don't know what all possible combinations
9 are.

10 If we wait, for example, until US West gets
11 in the market and then we come back and ask for
12 permission, we'll be 18 months behind, because
13 they'll be able to get in the long distance business
14 as soon as you and the FCC say yes. It will take us
15 18 months to get up to speed, putting the two
16 companies together, during which time they and AT&T
17 will have had that kind of a head start.

18 Our expectation is that if you were to
19 approve this merger reasonably promptly and that the
20 Department of Justice and the FCC were to act, and I
21 think we still have the European Union that we have
22 to convince, as well, and for that matter, there are
23 about a dozen other states remaining that we're still
24 in proceedings in, that by the time we get that done
25 and get the deal closed, it will be late third

00213

1 quarter, maybe fourth quarter of this year, and then
2 we face the task of actually getting the companies
3 together and accomplishing what we think we can do.

4 We have experience doing it. Bernie's not
5 -- Mr. Ebbers is not new at acquiring companies and
6 achieving his business objectives. But this is a
7 company that's equal in size to the company that
8 exists, as far as employees, smaller in the long
9 distance, a whole local operation that we've never
10 done before, and of course, the wireless assets. So
11 I think it's a real good fit.

12 We've talked about the wireless, the MMDS,
13 the PCS, the benefits of using the PCS sites as MMDS
14 sites, we've talked about the international, we've
15 talked about the domestic long distance networks, and
16 we think these things in combination give us a set of
17 assets that will allow us to be an effective
18 competitor in the local market. But you're right,
19 it's -- we have not investigated all other possible
20 combinations.

21 Q. And I didn't mean to be saying that only
22 the most ideal merger should be approved. I meant to
23 say that we're looking at --

24 A. Well, I think this comes pretty close, but
25 --

00214

1 Q. -- comparing scenarios.

2 A. Yes, ma'am.

3 CHAIRWOMAN SHOWALTER: That's all the
4 questions I have.

5 THE WITNESS: Thank you very much.

6 JUDGE CAILLE: Commissioner Hemstad.

7 E X A M I N A T I O N

8 BY COMMISSIONER HEMSTAD:

9 Q. Well, I have only two or three. I believe
10 it's your testimony that the -- and forgive me, this
11 is probably overlapping with some of the questions
12 that have been asked. The degree of large company
13 concentration is 70 percent, but that you see it
14 dropping to 30 percent. Is that a fair
15 characterization?

16 A. In the long distance fiber-optic networks;
17 yes, sir, that's correct.

18 Q. And that's a result of the projected entry
19 of these new wholesale providers of interstate
20 network capacity?

21 A. Both the projected entry and the actual
22 entry of carriers like Qwest and IXC and GTE and
23 Frontier, and it doesn't include the existing fiber
24 networks of the existing bell companies.

25 My understanding is, and you all may have a

00215

1 better appreciation of this than I do, that companies
2 like US West in-region have built significant
3 fiber-optic networks for official purposes. I don't
4 mean official, funny; I just mean, under the law,
5 they're able to consolidate some operations
6 centrally, and they built networks to support those
7 operations. None of that network capacity is
8 reflected in the numbers that we've talked about
9 today. So yes, using those assets, for example.

10 Q. Do you make any distinction between retail
11 providers and wholesale providers? In other words --
12 or you just lump them all together?

13 A. No, there is a distinction. And in fact,
14 that was part of the discussion of the utility or of
15 the markets that the resellers serve. Not all of the
16 facility-based fiber-optic providers are retailers.
17 Some of them are wholesalers.

18 Q. But the decline from 70 to 30 is then a
19 projection of the total wholesale capacity in the
20 marketplace?

21 A. The total facility-based capacity; yes,
22 sir. Without regard to whether -- for example, our
23 capacity, which is used significantly for retail, as
24 well as wholesale, is included in the number, so it's
25 the total network capacity of inter-city fiber

00216

1 networks.

2 Q. Well, Dr. Blackmon emphasizes the impact of
3 this merger applying the Herfindahl Hirschman Index.

4 A. Yes, sir.

5 Q. Do you agree with his analysis or his --
6 call it just simply the arithmetical application that
7 he's gone through to conclude that there will be a
8 greater concentration?

9 A. I agree that if all you look at is the
10 impact of this transaction by itself, and you don't
11 look at the capacity that's coming into the market,
12 that -- I apologize, but as I recall, you were using
13 1998 market data, that the calculations that he made
14 -- I'm not contesting that they are incorrect, but
15 they generate a number that is useful as a point for
16 beginning further investigation.

17 And what I've attempted to discuss today is
18 some of the things that I believe -- for example,
19 this new capacity, and the results of the marketplace
20 in 1999, which at least I don't have the numbers yet,
21 I don't know if you do or not, would give you a
22 different picture. But even using the numbers that
23 Dr. Blackmon used, as I understand your testimony,
24 the testimony is that the HHI, using 1998 data and
25 assuming the merger, still gives you a Herfindahl

00217

1 Hirschman Index that is lower than the index was in
2 1996, as I recall your testimony.

3 So even using year and a half-old data and
4 not including the new entrants in the market and not
5 doing an 18-month to two-year forward-looking view,
6 which I understand is perhaps a next step that you'd
7 do if a current Herfindahl caused you some concern,
8 even without all of that, which I think would change
9 the analysis, and not including US West's entry, we
10 still have, after this merger, if I'm remembering
11 your testimony correctly, Doctor, we have a
12 Herfindahl Hirschman Index based on 1998 data that is
13 lower than the one was in 1996.

14 So I respectfully propose that while you
15 have to have that investigation, you have to give
16 that some consideration, you also have to consider
17 these other factors.

18 Q. So if we could, with confidence, with your
19 projection of the market, look forward to say 2001,
20 then would it be your testimony that the Herfindahl
21 Hirschman Index then applied would be dramatically
22 lower?

23 A. Well, it would be lower in 19 -- excuse me,
24 in 2001, but I believe the place where you'll see a
25 dramatic drop is if and when US West succeeds in

00218

1 meeting its 271 requirements and you endorse its
2 entry into the long distance market. The reason I
3 say that is based on a sample of one. It's Bell
4 Atlantic New York first quarter experience post-271,
5 and my understanding of what happened there was that
6 in the first quarter, they gained slightly under a
7 half a million long distance customers, 460,000 long
8 distance customers in one quarter.

9 Sprint, in the course of 15 years, had, as
10 I recall, the number somewhat under 400,000
11 customers. So in one quarter, they captured a share
12 of the market bigger than Sprint. But more
13 importantly, it appears that they captured most of
14 that market from the largest carrier in the long
15 distance business, AT&T. And as Dr. Blackmon would
16 explain, if you take market share away from the
17 largest share in the market, it doesn't matter where
18 that share goes, the Herfindahl will fall, because
19 the square of a bigger number is geometrically
20 larger.

21 I think it's logical to expect that here,
22 but you propose 2001, and based on my prior
23 conversation with the Chairwoman, it may well not be
24 that US West is in in 2001. But yes, I think the
25 other competitors, ignoring US West, will continue to

00219

1 take market share. That's what's been demonstrated
2 in the last three years of FCC data, where, as I
3 believe I mentioned earlier, WorldCom or MCI WorldCom
4 and Sprint have basically held even on market share
5 or increased very slightly, AT&T has come down, and
6 the other carriers have gone from order of magnitude
7 10 or 11 percent market share to 20 percent market
8 share. So they have been succeeding in the
9 marketplace and taking share, and we expect they'll
10 continue to do that.

11 Q. Just so I understand, the drop from 70 to
12 30, does that assume 271 approval?

13 A. No, sir. No, that's fiber deployed or
14 planned by carriers other than the RBOCs.

15 Q. So your point is that if we assume 271
16 approval, it would be something dramatically less
17 than 30 percent?

18 A. I don't know how large or how comprehensive
19 the RBOCs' official networks are. I believe they're
20 significant, but I don't know that. You may have
21 access to that through your local regulation, but, to
22 my knowledge, that's not public record. I believe it
23 would be significant, sir, but I don't know.

24 Q. Do you know, of your knowledge, has any
25 other state commission disapproved this merger?

00220

1 A. No, sir, not yet.

2 Q. Has any other state commission staff
3 recommended disapproval?

4 A. So far, we have approval -- about half of
5 the states require approval, and about half of the
6 states are notification states. We have approval,
7 express approval, as opposed to a notification, from
8 New York State, Pennsylvania, Ohio, Mississippi,
9 Louisiana -- it's nine states that have finished the
10 process. I'm sorry, I can't -- it's 10 states that
11 have completed the process, according to Counsel. I
12 know we also had got Utah approval yesterday.

13 And then the remaining -- I think there are
14 13 states -- 14 states, thank you. I apologize, sir.
15 I don't -- they keep me on the road. In the
16 remaining 14 states we have proceedings underway, we
17 have a staff recommendation in a couple of those
18 states where we're waiting for orders, we have
19 hearings in several of the states, and there are a
20 couple of states where proceedings haven't begun yet.

21 Q. But narrowly, my question is do you know --
22 have the staff in any of those other states that have
23 not yet issued an order recommended disapproval?

24 A. No, sir. To my knowledge, none have
25 recommended disapproval. We have a number of states

00221

1 where we have discussed stipulations, where we've had
2 adversarial discussions -- excuse me -- yeah,
3 adversarial discussions, but we have no commission
4 proceeding where we have had an adverse decision.

5 COMMISSIONER HEMSTAD: That's all I have.
6 Thank you.

7 THE WITNESS: Yes, sir. Thank you.

8 E X A M I N A T I O N

9 BY COMMISSIONER GILLIS:

10 Q. I wanted to explore briefly with you your
11 advocacy on the bottom of page 15 of your direct
12 testimony.

13 A. Yes, sir.

14 Q. Your response to will the new company offer
15 any services, it's characterized -- what I think
16 you're saying is that one of the benefits of the
17 merger would be the ability to offer one-stop
18 shopping for customers. Is that a fair
19 characterization?

20 A. I probably should have said that. Yes,
21 sir, that's a fair characterization.

22 Q. Would you explain just how that advances
23 the public interest?

24 A. Yes, sir. It appears, and certainly some
25 of the Bell Atlantic New York experience, while it's

00222

1 very brief, are very, very current, that there are
2 still a significant number of customers -- or maybe
3 still's not the right word -- always have been a
4 significant number of customers who would like to
5 obtain their services, local, long distance, perhaps
6 Internet, perhaps wireless, from one source, instead
7 of three or four sources.

8 In response to that, some companies have --
9 particularly local exchange companies have been
10 offering local service and Internet service, for
11 example, or paging companies offering local and long
12 distance as a bucket of use-them-anyhow-you-want-them
13 minutes. The market seems to be reacting favorably
14 to that.

15 Not necessarily 100 percent of the market.
16 Certainly, business customers will undoubtedly
17 continue to shop and get the best deal for each
18 different piece part they can, but in the mass market
19 it appears pretty strongly that customers would
20 prefer both to have competition, which is good news,
21 and to have a single source, which is kind of an old
22 bell system standard, but hopefully from more than
23 one provider. And what we're trying to do is to
24 become one of the more than one providers.

25 I understand there are a number of

00223

1 marketing studies that demonstrate that. That's not
2 my area of expertise, but that's my general
3 understanding of the marketplace, and you may want to
4 ask Ms. McMahon that same question tomorrow. That is
5 her area.

6 Q. Yeah. Well, maybe that might be the best
7 approach, since the questions are more of a marketing
8 kind of a question.

9 A. But, again, one of the ways we hope to be
10 able to do that is by offering, for example, the MMDS
11 and the PCS and the long distance services, which
12 this merger will allow us both to do, rather than
13 individually having to go find other resources to try
14 to come up to the critical mass.

15 Q. I think I'll just save my questions,
16 because they were more along the lines of marketing.

17 A. Thank you.

18 JUDGE CAILLE: Any redirect?

19 MS. KIDDOO: Yes, Your Honor, I will have
20 some questions.

21 R E D I R E C T E X A M I N A T I O N

22 BY MS. KIDDOO:

23 Q. Mr. Porter, I just have a couple of
24 questions, because I think we've certainly covered a
25 lot of territory today. Earlier this morning, Mr.

00224

1 Thompson had a number of questions for you about the
2 status of MMDS and the status of the technology and
3 the roll-out and the likelihood of that technology
4 coming to the marketplace, and you mentioned some
5 trials that WorldCom has. Can you tell me what the
6 status of those trials are and where they are?

7 A. Yes, ma'am. The technology is up and
8 working in Jackson, Mississippi, Baton Rouge,
9 Louisiana, Memphis, Tennessee, and we recently
10 announced, I believe I mentioned this, with the
11 president and his attack on the digital divide,
12 MMDS-based services in four schools in rural
13 southeast America.

14 I understand that -- I have not seen it,
15 but I understand that Sprint has announced commercial
16 service in Phoenix, I believe this week, and has also
17 announced its intent to offer commercial service in
18 Seattle. And I believe they have other trials
19 planned, including, I'm told I may say, a trial --
20 actually, not a trial, but a commercial offering in
21 Yakima Valley within a year of the merger.

22 But the business plans of Sprint MMDS and
23 WorldCom MMDS are not yet coordinated, so I can't
24 really discuss -- I simply don't know the details of
25 the rest of Sprint's plan.

00225

1 Q. Okay. In your opinion, are there any
2 significant doubts about the usefulness or viability
3 of MMDS for the provision of advanced
4 telecommunications services?

5 A. There are -- go ahead.

6 Q. Such as broadband access?

7 A. No. The radio technology is well-known,
8 the spectrum that we're proposing to use is right
9 above the spectrum that's currently being used for
10 PCS. What's not known is simply the FCC licensing
11 process hasn't been completed. We have to do
12 engineering studies, get tower locations, coordinate
13 frequencies among the other users of the spectrum,
14 but all of those are, pardon the expression,
15 mechanical questions. They're work that needs to be
16 done, but they're not a question of will the
17 technology work or not. We know the technology will
18 work.

19 Q. Has WorldCom and Sprint already made
20 significant monetary investment in MMDS as a
21 technology to provide those services?

22 A. My recollection is that both companies have
23 spent over a billion, my recollection is about a
24 billion and a third apiece in acquiring the rights to
25 the licenses that we have so far. We need to perfect

00226

1 those licenses, we need to do the other things that
2 I've talked about, get tower locations, frequency
3 coordinations, engineering studies, but yes, we have
4 both made significant investments that we don't
5 intend to let lay fallow.

6 Q. With respect to the Sprint announcement of
7 the service development by the end of the year in
8 Seattle, I think you mentioned that that was a trial
9 service. Is that your understanding, or is that a
10 commercial service, as opposed to a trial?

11 A. I'm only -- I have not seen the article.
12 My understanding is that if the Phoenix trial is a --
13 excuse me, the Phoenix operation is commercial, that
14 the Sprint -- the Seattle operation will be
15 commercial. But I'm telling you more than I know.
16 I'm trying to be honest about this.

17 Q. You mentioned also a willingness to commit
18 to MMDS commercial service in Yakima Valley. Was
19 that subject to approval of the merger and completion
20 of the merger?

21 A. Well, it's a good question to ask Sprint,
22 but it would be subject not only to that, but to
23 getting tower locations and frequency coordination
24 and the engineering studies, the things that I
25 discussed a minute ago that we'd have to do to

00227

1 perfect any license.

2 Q. And so subject to completion of the merger,
3 obviously, would WorldCom commit to make that service
4 available in Yakima Valley following the merger?

5 A. Subject to a completion of the merger, to
6 consummation of the merger, yes. We don't have that
7 ability absent the merger.

8 Q. My question, Mr. Porter, I want to make
9 sure that WorldCom, as the acquiring company, would
10 support such a commitment subject to approval of the
11 merger?

12 A. Yes, ma'am.

13 Q. Mr. Porter, there was some questions from I
14 think Mr. Thompson this morning about whether or not
15 the companies needed the merger to achieve the
16 benefits and improvement in the development of MMDS,
17 or whether or not one company could have purchased
18 the MMDS services of the other company and,
19 therefore, not had any impact on other markets. Do
20 you recall those questions?

21 A. Yes, ma'am.

22 Q. Do you know whether either Sprint or MCI
23 WorldCom would have been willing to sell the MMDS
24 licenses to the other company absent the merger?

25 A. We competed against each other to buy them.

00228

1 I don't know, but my expectation is no, neither one
2 of them would have sold the licenses to the other.

3 MS. KIDDOO: Just give me one moment. I
4 think that's all I have, but if I could just take one
5 minute.

6 JUDGE CAILLE: Certainly.

7 MS. KIDDOO: I have no further redirect
8 questions.

9 JUDGE CAILLE: Thank you. Is there any
10 re-cross?

11 MR. THOMPSON: I would like to ask a couple
12 of questions of re-cross, if I may.

13 JUDGE CAILLE: Go ahead.

14 R E C R O S S - E X A M I N A T I O N

15 BY MR. THOMPSON:

16 Q. Mr. Porter, you're not suggesting that
17 share of fiber capacity is an equivalent concept to
18 market share, are you?

19 A. No, sir.

20 Q. Okay. Those may, in fact, differ widely;
21 isn't that so?

22 A. In fact, I believe the numbers we discussed
23 would suggest that they do differ widely at this
24 moment; yes, sir.

25 Q. Okay. So you're not at all suggesting that

00229

1 the Big Three carriers have only 30 percent of the
2 market share in long distance at present?

3 A. I'm not suggesting that they have 30
4 percent of the long distance share at present. My
5 recollection is the opposite of -- based on 1998
6 data. What I was trying to suggest is that there's
7 -- a lot of additional fiber capacity has come on the
8 market in the last couple of years, and how that gets
9 used, when that gets filled, is not reflected in the
10 market share data that we're using based on 1998
11 data.

12 MR. THOMPSON: That's all I have. Thanks.

13 THE WITNESS: Thank you.

14 CHAIRWOMAN SHOWALTER: I have -- oh, I'm
15 sorry.

16 MR. CROMWELL: I'd defer to the Chairwoman
17 if she has follow-up questions.

18 CHAIRWOMAN SHOWALTER: Well, I may follow
19 up with your --

20 MR. CROMWELL: Oh.

21 R E C R O S S - E X A M I N A T I O N

22 BY MR. CROMWELL:

23 Q. Just briefly, Mr. Porter, is it true that
24 the companies' respective efforts to acquire MMDS
25 licenses occurred substantially before merger

00230

1 discussions began?

2 A. Substantially before --

3 Q. I'll strike the question and restate it.

4 When did MCI WorldCom begin acquiring MMDS licenses,
5 if you know?

6 A. We actually closed the acquisitions of some
7 of the companies after the merger announcement. The
8 earliest close was probably simultaneous with the
9 merger announcement, so the negotiations and
10 acquisition began well before that.

11 Q. Just so that we're clear, my question was
12 when did MCI WorldCom begin acquiring MMDS licenses?
13 When did your company begin that process?

14 A. I don't know precisely when the
15 negotiations began. The initial announcements of
16 acquisitions were in the late first half of last
17 year.

18 Q. And it would be reasonable to assume that
19 the efforts were underway prior to that?

20 A. Yes, sir.

21 Q. And when did you begin discussions with
22 Sprint on this merger, you collectively?

23 A. Yeah, as a matter of fact, I don't know
24 precisely, but my expectation is that it would have
25 been just a few weeks before the announcement.

00231

1 That's the type of information that's very hard to
2 keep confidential and usually gets acted on very
3 quickly.

4 Q. Last fall?

5 A. Last fall.

6 Q. And is it also true, then, that effective
7 roll-out of MMDS technology by either or both of
8 these companies is not dependent on this merger?

9 A. It is true that the companies acquired the
10 assets separately and that if we do not merge, my
11 expectation is that both companies will continue to
12 endeavor to roll out the technology; yes, sir. I
13 believe --

14 Q. So your answer is yes?

15 A. Yes, sir.

16 MR. CROMWELL: Thank you. I have no
17 further questions.

18 THE WITNESS: Thank you.

19 JUDGE CAILLE: Anything from SBC?

20 MR. PASCARELLA: I have two questions, if
21 you don't mind.

22 R E C R O S S - E X A M I N A T I O N

23 BY MR. PASCARELLA:

24 Q. I wanted to clear up something you said
25 earlier on. Did you mean to imply in your testimony

00232

1 that a reaction by a -- that Bell Atlantic's entry
2 into the market in New York, into the long distance
3 market, was sufficient competitive pressure on an MCI
4 or Sprint to cause them to react and change their
5 national rates in a way that that would benefit
6 Washington?

7 A. On an interstate basis, if Bell Atlantic
8 were to make a commercial offering in New York to
9 which we felt we had to reply, we would have to make
10 that offer, as I understand, I think it's Section
11 254(G), but I'm not positive, as I understand that
12 section of the federal law, we would have to offer
13 whatever our competitive response was nationwide, but
14 I tried to be clear that that was on an interstate
15 basis, not on an intrastate basis.

16 Q. Are you aware of your own expert's
17 testimony as to how many states would have to have
18 interLATA relief, 271 interLATA relief before there
19 was sufficient pressure on an IXC, such as MCI or
20 Sprint, to react to that rate nationally?

21 A. As a matter of fact, no, I don't recall.

22 Q. Okay. Then we don't need to talk about it.

23 A. Okay, thank you.

24 Q. One last question. Your testimony seemed
25 to imply that it was economically rational to combine

00233

1 the MMDS licenses with these two companies. I think
2 you testified a minute ago that if the merger wasn't
3 permitted to go through, neither company would sell
4 the MMDS license to the other company. I was
5 wondering if you had a view as to which of these two
6 companies would be the one to act irrationally?

7 A. No, I believe if the companies do not
8 merge, both companies will continue to pursue using
9 MMDS as a way of entering the markets where they have
10 MMDS licenses. But one of the benefits of the merger
11 is that we would be able to take advantage of each
12 other's other assets to make the MMDS entry more
13 viable. For example, we don't have PCS towers
14 anywhere in the country. Sprint does. We could use
15 those towers, at least in some cases, as towers to
16 use both PCS and MMDS. We have fiber networks in
17 order of magnitude in 100 major metropolitan areas.
18 Sprint doesn't. We can use those fiber networks both
19 as backhaul between the PCS towers and MMDS towers,
20 and we can also use those assets to help deploy other
21 Sprint advanced services that they're considering.

22 So I'm not trying to tell you that either
23 company would not develop the service. I'm trying to
24 say that together we can do a better job of
25 developing the service.

00234

1 MR. PASCARELLA: Thanks.

2 THE WITNESS: Thank you.

3 E X A M I N A T I O N

4 BY CHAIRWOMAN SHOWALTER:

5 Q. I just have one follow-up question. I was
6 a little confused on the commitment about Yakima.

7 A. Yes, ma'am.

8 Q. Is that a new commitment you're making or
9 is it in your testimony or does this have to do with
10 Sprint, and you'll back what Sprint's going to do?
11 Can you clarify what you meant?

12 A. The last.

13 Q. Okay.

14 A. I believe Sprint is willing to develop MMDS
15 in Yakima and has suggested that they would be
16 willing to do that within a year of the close of the
17 merger, and I'm saying we will back that.

18 Q. Okay. So you're saying that the merger
19 doesn't affect -- or in your -- as far as you're
20 concerned, it will not affect --

21 A. It's not our spectra.

22 Q. -- MMDS in Yakima?

23 A. I don't know what Sprint would do absent
24 the merger.

25 Q. Okay.

00235

1 A. So all I'm trying to say is, yes, ma'am, we
2 will support that.

3 CHAIRWOMAN SHOWALTER: All right. Thanks.

4 THE WITNESS: Yes, ma'am. Sir?

5 E X A M I N A T I O N

6 BY COMMISSIONER HEMSTAD:

7 Q. I just wanted to pursue one more time the
8 application of the Herfindahl Hirschman Index. And
9 in view of Mr. Thompson's question, if at present
10 this proposed merger will have the consequence, using
11 1998 data, of increasing, in degree of concentration
12 and a higher HHI, and assuming that US West does not
13 receive 271 approval and taking into account the
14 increasing wholesale availability of fiber capacity,
15 do you have any view as to what a calculation of the
16 HHI in 2001 would show?

17 A. I have not -- no, sir, I have not done that
18 kind of a calculation, but one of our witnesses
19 tomorrow, Dr. Kelley, who is our economist, may have
20 done that kind of a calculation.

21 My expectation is that if you were to do a
22 Herfindahl based on anticipated activity within the
23 -- as I understand the merger guidelines, it's within
24 two years, that you would attempt, you would estimate
25 -- it would require a judgment -- the impact of other

00236

1 carriers entering the market, including the new
2 entrants, what would Qwest do, what would Level 3 do,
3 what would US West do if US West were allowed in the
4 market in computing a forward-looking Herfindahl.

5 If you look only at static data, 1998 data,
6 for example, when you combine any two producers,
7 you'll get a higher Herfindahl.

8 Q. Sure.

9 A. So what I was trying to suggest, as a
10 non-economist, was that I believe these other
11 activities are likely in the marketplace, and I
12 respectfully request that you consider those in
13 addition to current market shares of the established
14 players. I also attempted to suggest that the piece
15 of the market that Staff seems most concerned about,
16 not the intraLATA toll or the interstate toll, but
17 the intrastate interLATA toll, that Sprint's share of
18 that market is small and in aggregate represents
19 about one percent of the market, and I respectfully
20 suggest that the other benefits of the merger
21 outweigh the concern over that one percent of the
22 market.

23 COMMISSIONER HEMSTAD: Thank you. That's
24 all I have.

25 THE WITNESS: Thank you, sir.

00237

1 JUDGE CAILLE: Anything further for this
2 witness? No. Then the witness is excused. Thank
3 you for your testimony, Mr. Porter.

4 THE WITNESS: Thank you all for your
5 patience.

6 JUDGE CAILLE: I'd like to find out who
7 will be testifying tomorrow. There's -- Mr. Porter
8 has mentioned a couple of people, and I just want to
9 make sure I've still got the correct order of the
10 witnesses.

11 MS. KIDDOO: Tomorrow morning we would
12 expect to lead off with Mr. Kapka, on behalf of
13 Sprint. Following Mr. Kapka, Dr. Kelley. Following
14 Dr. Kelley, Ms. McMahon.

15 JUDGE CAILLE: Okay, thank you. Let's go
16 off the record, and we'll be adjourned to tomorrow
17 morning at nine a.m.

18 (Discussion off the record.)

19 JUDGE CAILLE: I think what we'll do, is
20 Mr. Kapka here? Mr. Kapka, if you'll take the stand,
21 I will swear you in.

22 Whereupon,

23 EMERIC W. KAPKA,
24 having been first duly sworn, was called as a witness
25 herein and was examined and testified as follows:

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1 JUDGE CAILLE: And perhaps we could just
2 take care of the introduction of his testimony.

3 MS. KIDDOO: Mr. Heath will take care of
4 that.

5 JUDGE CAILLE: Thank you. Mr. Heath.

6 MR. HEATH: Sure.

7 D I R E C T E X A M I N A T I O N

8 BY MR. HEATH:

9 Q. Mr. Kapka, could you please state your name
10 and business address for the record, please?

11 A. My name is Emeric W. Kapka. Business
12 address is 8140 Ward Parkway, Kansas City, Missouri,
13 64114.

14 Q. And what is your title with Sprint?

15 A. I'm the director of regulatory policy.

16 Q. Thank you. And are you the same Mr. Kapka
17 that filed or caused to be filed 17 pages of question
18 and answer direct testimony, marked as Exhibit T-61
19 with the Commission?

20 A. Yes.

21 Q. And are you also the same Mr. Kapka that
22 caused to be filed exhibit -- an exhibit to that
23 testimony, EWK-1, marked as Exhibit Number 62?

24 A. Yes, I am.

25 Q. And if I were to ask you the same questions

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1 that are represented in your direct testimony today,
2 would your answers be substantially the same?

3 A. Yes.

4 MR. HEATH: Okay. I guess I would move
5 that the direct testimony of Mr. Kapka be entered
6 into the record, along with Exhibit 1, or Exhibit 2.

7 JUDGE CAILLE: Were you going to offer the

8 --

9 MR. HEATH: I was going to do the rebuttal
10 next, but if you'd like, I will do them at the same
11 time.

12 JUDGE CAILLE: Why don't you go ahead.

13 Q. Okay. Mr. Kapka, are you also the same
14 person who filed or caused to be filed seven pages of
15 rebuttal testimony?

16 A. Yes, I am.

17 Q. And if I asked you the same questions today
18 as are set forth in that testimony, would your
19 answers be the same?

20 A. Yes, they would.

21 MR. HEATH: Okay. Then I'd like to move
22 Exhibits T-61, 62, and T-63. That is the direct
23 testimony, exhibit to direct testimony, and rebuttal
24 testimony of Mr. Emeric Kapka into the record.

25 JUDGE CAILLE: Is there any objection?

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1 MR. CROMWELL: No objection, Your Honor.

2 MR. THOMPSON: None.

3 MR. PASCARELLA: None, Your Honor.

4 JUDGE CAILLE: Then Exhibits T-61, 62, and
5 T-63 are admitted into the record. Is there anything
6 more that we need to discuss on the record?

7 MS. HOPFENBECK: Yes, Your Honor. This
8 morning, when we started the hearing, I discussed the
9 stipulation as to admissibility of certain exhibits,
10 which were those documents that MCI WorldCom and
11 Sprint had provided to the opposing parties during
12 the course of discovery in this matter.

13 It does seem appropriate to actually go
14 through the exhibit numbers that we are talking
15 about, so that the record is clear as to which
16 exhibits have been admitted by stipulation.

17 JUDGE CAILLE: That would be great. Could
18 you please do that?

19 MS. HOPFENBECK: I don't need to itemize
20 them all, because most of them are in, but it's
21 Exhibit Numbers 5 through 28, 31, 34 through 36.

22 MR. CROMWELL: I'm sorry, could you step
23 back a second? Thirty-one alone?

24 MS. HOPFENBECK: Yes. Thirty-four through
25 36, 38 through 52, 64 through 79, 82 through 88, 100

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1 through 108, 110 through 113, and 120 through 122.
2 Now, many of those exhibits are confidential and have
3 a C that preface them. I left that out, just for the
4 sake of ease.

5 JUDGE CAILLE: All right. The last one you
6 mentioned was 120 through 122?

7 MS. HOPFENBECK: Yes.

8 JUDGE CAILLE: Thank you. All right. Are
9 there any other matters that we need to put on the
10 record today?

11 MR. CROMWELL: Your Honor, on that issue, I
12 thought we had also agreed to the two McMahon -- did
13 you want to do those separately?

14 MS. HOPFENBECK: Oh, I may have missed one.

15 MR. CROMWELL: 177 and 181, I also had as

16 --

17 MR. THOMPSON: Could we just maybe clarify
18 that if there happened to be any omissions in there,
19 that the intention was that all of the data requests
20 from both applicants were --

21 MS. HOPFENBECK: Actually, I think what
22 happened is that I stopped my list at 122, and I
23 should have gone forward. And let me just add to the
24 list. And then I'll address your suggestion, Mr.
25 Thompson, but I'll add to the list. One-seventy-nine

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1 through 181. So 178 is not admitted at this point in
2 time.

3 JUDGE CAILLE: All right.

4 MR. CROMWELL: 177?

5 MS. HOPFENBECK: And then 177, that's
6 right. So 177, 179 through 181. That would do it.
7 Thank you.

8 JUDGE CAILLE: All right. Were you going
9 to address Mr. Thompson's --

10 MS. HOPFENBECK: Oh, with respect to -- Mr.
11 Thompson, with respect to your suggestion about an
12 agreement, I think the better procedure would be that
13 if, after looking at your list, I've left something
14 out that you think should be in, I'm sure that you
15 and I can talk about it or any party can talk about
16 it and we can announce tomorrow that there was an
17 exhibit that was missing.

18 I tried my best to identify all those
19 documents that were produced in discovery, but as Mr.
20 Cromwell pointed out, I left out one or two.

21 MR. THOMPSON: It actually occurred to me
22 that I neglected to move admission of one of my
23 documents.

24 JUDGE CAILLE: Well, why don't we do that
25 right now.

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1 MR. THOMPSON: Okay. It was Exhibit 37, or
2 Proposed Exhibit 37, I guess, which was a direct mail
3 solicitation to Dr. Blackmon.

4 JUDGE CAILLE: Is there any objection to
5 the admission of Exhibit 37?

6 MS. KIDDOO: No objection.

7 JUDGE CAILLE: Then Exhibit 37 is admitted.
8 Are there any others that anyone forgot?

9 MR. CROMWELL: Your Honor, respectfully, I
10 was only looking at my own. I wasn't looking at
11 anyone else's.

12 JUDGE CAILLE: All right. Thank you very
13 much. We'll be adjourned till tomorrow morning at
14 9:00. I would request Counsel to be here at, I
15 think, 8:45. I'm assuming there's not going to be
16 any motions to be argued or any extra exhibits. If
17 there are extra exhibits, please come earlier and
18 I'll be here.

19 MR. CROMWELL: Your Honor, are you
20 contemplating the Commissioners being on the bench at
21 9:00?

22 JUDGE CAILLE: Yes, they want to start at
23 9:00. And one more thing, could I check with you on
24 times for cross-examination for tomorrow? For Mr.
25 Kapka, I have two hours from Staff. Is that

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1 accurate?

2 MR. THOMPSON: I suspect it will be closer
3 to one hour.

4 JUDGE CAILLE: And for Public Counsel, you
5 said less than two hours?

6 MR. CROMWELL: How long did I take today
7 with Mr. Porter? It was, what, about 40 minutes?
8 I'd say it would probably be about the same. Say 45
9 minutes, just to be safe.

10 JUDGE CAILLE: Okay. And SBC, one hour?

11 MR. PASCARELLA: One hour or less.

12 JUDGE CAILLE: Okay, all right. That's
13 good enough for now. I don't know how many of you
14 folks are going to be here for the public meeting
15 tonight, but it does begin at 6:00, so I'd like to
16 let you go as quickly as you can now.

17 MS. KIDDOO: One other thing, Your Honor.
18 Each set of these exhibits takes up an enormous
19 amount of space. Can we leave our boxes with this
20 stuff in here overnight?

21 JUDGE CAILLE: Let's go off the record.

22 (Proceedings adjourned at 4:58 p.m.)

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24

25