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BEFORE THE WASHINGTON UTILITIES AND

2

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 V  
 ) Pages 265-533  
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 17, 2000, at 9:04 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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2 Kiddoo, Attorney at Law, Swidler, Berlin, Shereff,  
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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.

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14 Houston Street, San Antonio, Texas, 78205, and Judith  
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18 THE COMMISSION, by Jonathan  
19 Thompson, Assistant Attorney General, 1400 S.  
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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.

2 This is the second day of proceedings in the  
3 MCI-Sprint merger, Docket Number UT-991991. And we  
4 are ready for the cross-examination of Mr. Kapka.  
5 And Mr. Thompson, would you like to begin?

6 MR. THOMPSON: Yes, thank you.

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

8 BY MR. THOMPSON:

9 Q. Good morning, Mr. Kapka.

10 A. Good morning, Mr. Thompson.

11 Q. I want to start off this morning asking you  
12 some questions about pricing in these matters. You  
13 indicated in your testimony at page five that long  
14 distance prices offered by Sprint to its residential  
15 customers in Washington have declined far in excess  
16 of any access rate decreases over the last several  
17 years.

18 Have you read Dr. Hausman's testimony where  
19 he characterizes Sprint as leading the downward trend  
20 in pricing?

21 A. I did read Dr. Hausman's testimony, so I'm  
22 familiar with what he said, yes.

23 CHAIRWOMAN SHOWALTER: Mr. Thompson, I'm  
24 still lost. Page five, what lines? And is it the  
25 direct or rebuttal?

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1 MR. THOMPSON: It would have been the  
2 direct testimony, I apologize, and it was page five,  
3 lines 10 through 12.

4 CHAIRWOMAN SHOWALTER: Thank you.

5 Q. And again, I was just asking about how Dr.  
6 Hausman characterizes Sprint as leading the downward  
7 trend in pricing. What I'd like to know from you,  
8 Mr. Kapka, is if you agree with Dr. Hausman on that  
9 point?

10 A. On the point that Sprint has led the  
11 downward trend in pricing? No, I wouldn't  
12 characterize it quite like that. I think there are  
13 multiple carriers out there, and some of them lead  
14 the trend sometimes and others lead the trend at  
15 other times. So there's not one carrier that's the  
16 price leader in long distance.

17 Q. Would you agree, however, that between MCI  
18 and Sprint, Sprint tends to lead the way with pricing  
19 plans that MCI has historically followed suit to, to  
20 something similar to what Sprint is offering?

21 A. No, I wouldn't. I would not reach that  
22 conclusion. Again, as with other types of pricing  
23 innovations, there are multiple carriers out there.  
24 Sometimes MCI WorldCom is a price innovator, other  
25 times it's Sprint, other times it's AT&T. In New

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1 York, Bell Atlantic is showing their pricing  
2 innovation by offering pre-paid long distance  
3 service. That's something Sprint, as far as I know,  
4 or WorldCom has not offered to date.

5 So I would not reach the conclusion that  
6 either Sprint or MCI is a pricing leader or an  
7 innovator.

8 Q. I want to turn to lines six through 10 of  
9 your testimony on that same page, page five, and ask  
10 you to please read the two sentences starting, Sprint  
11 has been a leader.

12 A. Sprint has been a leader in offering  
13 customers alternatives to long distance products that  
14 were based on complicated mileage bands and rates  
15 that made sense only to economists. That sentence?

16 Q. And the next one, too, please?

17 A. Sprint has pioneered rate plans for  
18 residential customers that are simple and easy for  
19 customers to understand and appreciate.

20 Q. Thanks. Would you please turn to Exhibit  
21 Number 81?

22 MR. HEATH: I think it's in Volume Eight.

23 THE WITNESS: Eight? Thanks.

24 Q. Sorry about that. There's several volumes.  
25 It's going to be difficult today, I think, to find



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1 the right book to look in.

2 A. Yes, I'm there.

3 Q. Okay. And do you recognize this as  
4 Sprint's Washington price list, as filed with this  
5 Commission?

6 A. Yes.

7 Q. I'd like to ask you to please turn to page  
8 two of this exhibit, where the price for Sprint  
9 Nickel Nights Anywhere is set out. It's correct,  
10 isn't it, that this price list indicates that as of  
11 February 10th of this year, Sprint offered a  
12 companion to its Sprint Nickel Nights for interstate  
13 calls called Nickel Nights Anywhere, which is  
14 depicted here, I guess, for which, for an additional  
15 \$3 per month, the customer is able to obtain the same  
16 rate for state-to-state calls as for in-state calls.  
17 Does that accurately state the plan?

18 A. The rate being the per-minute charge? Is  
19 that what you're referring to by the rate?

20 Q. Well, I guess I'm referring to the  
21 per-minute charge that's beyond the monthly charge.

22 A. Yes, the way the product works is it's sold  
23 on an interstate basis with a monthly recurring  
24 charge of 5.95. And then, if the customer desires  
25 in-state usage at the same nickel night or 10-cent

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1 off-peak rate, there's a supplemental charge. In  
2 Washington, that charge is \$3 per month.

3 Q. Okay. So the rate is -- the per-minute  
4 rate is the same whether it's in-state intraLATA or  
5 in-state interLATA or interstate. It's essentially,  
6 I guess, 10 cents peak and five cents off-peak;  
7 correct?

8 A. Yes. Sprint has found it easier to price  
9 services intrastate for these kinds of products  
10 without having a differential. In answer -- and let  
11 me explain that a little bit. In answer to my  
12 previous question regarding innovation, Sprint's  
13 innovation has been trying to simplify the pricing.  
14 That's one form of pricing innovation. Others have  
15 tried other alternatives to innovation. For example,  
16 MCI was the company that introduced Friends and  
17 Family, which was the first basic discount plan. As  
18 I said earlier, Bell Atlantic now is offering  
19 pre-paid service. So many, many different types of  
20 innovations. Sprint is trying to -- has been an  
21 innovator in terms of simplifying price.

22 Q. Why do you think Sprint has taken that role  
23 of moving towards simplification?

24 A. Why?

25 Q. Yes.

00275

1           A.    Well, I think part of it has to do with it  
2 has been Sprint's belief that that's the way to grow  
3 market share, simplifying pricing and having  
4 customers respond positively to that.

5           Q.    You indicate in your testimony that the  
6 assets of Sprint include not only innovative product  
7 offerings, but also award-winning customer service.  
8 I think you said that on page three of your  
9 testimony, at lines six through nine.  What did you  
10 mean by award-winning customer service?

11          A.    J.D. Power, which measures customer service  
12 in many industries, awards -- recognizes quality  
13 service, and there is an award for  
14 telecommunications.  And Sprint has won that award  
15 five years running for the segment of the consumer  
16 segment that spends more than \$50 a month on long  
17 distance.

18          Q.    Would you agree that Sprint's successes in  
19 customer service might be explained by a strong  
20 customer service culture in Sprint?

21          A.    Yes, I think that's partly responsible.  
22 Certainly Sprint has, both in our local division and  
23 in long distance and in other services we offer,  
24 including PCS, has been very focused on satisfying  
25 customers' needs.

00276

1 Q. Would you agree that if this merger is  
2 consummated, there's no guarantee that WorldCom's  
3 customer service culture, and not Sprint's, will  
4 predominate?

5 A. Would you re --

6 Q. Would you agree that if this merger goes  
7 through, there is no guarantee that WorldCom's  
8 customer service culture, and not Sprint's, would  
9 predominate?

10 A. Well, there's no guarantee of anything.  
11 Presumably, the merged company will pick the best  
12 practices of either company and employ those.

13 Q. All right. What does the term churn mean  
14 in long distance industry parlance?

15 A. Churn refers to the propensity for  
16 customers to change long distance carriers.

17 Q. Okay. I'd direct your attention, please,  
18 to Exhibit C-76, please.

19 MR. HEATH: Number Seven.

20 THE WITNESS: Thanks. Okay.

21 Q. Now, this is obviously a pretty thick  
22 document, but I really only want to direct your  
23 attention to one page. So the next step is to go  
24 about an inch into this two inches of paper here and  
25 try to find what has been Bates stamped as

00277

1 SP-53-1091. So I think 1091 is the page number  
2 you're looking for.

3 Now, can you -- I guess a few pages prior  
4 to this one is the start of that particular study.  
5 And are you familiar with this type of study, at  
6 least, or --

7 A. I have not seen this study.

8 Q. Okay. But it was -- you'd agree it was  
9 provided to us in response to a data request about  
10 competition issues?

11 A. Yes.

12 Q. Okay. Looking at page 1091 at the top --  
13 well, first of all, it appears to be a study, just  
14 from the title, a disconnect tracking study. And I  
15 gather, from page 1091, that this is an attempt to  
16 determine where customers of Sprint that discontinued  
17 business with Sprint, where they went, to what  
18 competitors they went. Would you agree with that?

19 A. Well, I haven't read the study, but if --

20 Q. Okay. Well, if you could just -- I mean,  
21 just looking over the page I'm referring to there,  
22 I'm particularly interested in the first couple  
23 paragraphs on that page.

24 This is a confidential document. I don't  
25 know if the company would have an objection to my

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1 talking about the substance of this out there.

2 MR. HEATH: I think this is  
3 highly-sensitive information that we would object to  
4 disclosing here on the record, or at least as far as  
5 here at the hearing publicly. So I don't know if you  
6 can talk around --

7 MR. THOMPSON: I think we can. I mean, I  
8 won't mention numbers. How about that?

9 MR. HEATH: I think -- yeah.

10 Q. Okay. It discusses, does it not, Mr.  
11 Kapka, the share of Sprint customers that were  
12 captured by AT&T in that first paragraph; correct?

13 A. It appears to refer to a segment of Sprint  
14 customers, consumer customers.

15 Q. Okay. Do you know what the term core  
16 disconnects refers to?

17 A. I suspect it means customers who purchase  
18 Sprint services.

19 MR. HEATH: I'd like to interpose an  
20 objection here. I think it's clear Mr. Kapka is not  
21 familiar with the document, and Mr. Thompson's  
22 requesting him to speculate as to the interpretation  
23 of the data that's contained herein, so I don't know  
24 that it's proper for cross-examination.

25 MR. THOMPSON: Well, I mean, it's a little

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1 difficult. We were provided quite a number of  
2 documents through discovery, and I understand that  
3 they were gathered and prepared for us by a lot of  
4 different people, but this is the witness that the  
5 company has presented, and I really don't have a very  
6 subtle point to make, other than the fact that the --  
7 you know, what the general churn is of Sprint  
8 customers to other companies.

9 MR. HEATH: I would suggest that the  
10 document speaks for itself as to the point Mr.  
11 Thompson's trying to elicit from the witness.

12 CHAIRWOMAN SHOWALTER: Could I just  
13 interject here? I'm not sure it does. I don't know  
14 what -- I personally don't know what core disconnects  
15 means. I don't know if that's a subgroup or a big  
16 group, and I don't know that this witness can explain  
17 it, but it is an exhibit before us, and if somebody  
18 can explain it or we can put something in writing  
19 about what group or what universe we're looking at on  
20 this page, I'd find it helpful.

21 THE WITNESS: Could I go ahead and explain  
22 it? Core disconnects -- Sprint has customers who are  
23 pre-subscribed to Sprint and use Sprint for as many  
24 services as they can. Those would be core customers.  
25 For example, they purchase Sprint and use Sprint for

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1 pre-paid cards, for other kinds of services besides  
2 just one plus long distance.

3 Other customers use Sprint just for a  
4 subset of services. For example, you might be  
5 pre-subscribed to WorldCom and use Sprint phone card  
6 service. That would be a customer that isn't a core  
7 customer. So that's the distinction. Core customers  
8 refer to one-plus customers who buy a bundle of  
9 services, long distance services from Sprint.

10 Q. Well, okay. In any case, this appears to  
11 indicate that of those core customers you mentioned,  
12 that a certain percent of them are going to AT&T.  
13 Would you agree with that?

14 A. Yes.

15 Q. And I also -- I take it, within the second  
16 sentence there, that there's a comparison made  
17 between those customers that are lost to AT&T versus  
18 those that are lost to MCI, within the parentheses?

19 A. Yes.

20 Q. And finally, in the last sentence of that  
21 first paragraph, there's a statement made about the  
22 number of core customers lost to other smaller  
23 carriers; correct?

24 A. Yes.

25 Q. Okay. Based on those numbers, do you have



00281

1 any knowledge whether that's -- recognizing that this  
2 is sort of a snapshot for apparently one month, do  
3 you have any idea whether that's representative of  
4 what occurs generally with Sprint customer  
5 disconnects?

6 A. No, I don't know if this is a fair  
7 representation of an annual kind of migration from  
8 Sprint service or not.

9 Q. You don't have any knowledge about what the  
10 -- which companies Sprint disconnects go to?

11 A. Well, here they're categorized as either  
12 AT&T, MCI, or all other.

13 Q. Okay. But you don't personally have any  
14 knowledge about how many -- what the share is that  
15 each of those companies captures?

16 A. No, I don't.

17 Q. Okay. Do you have any reason to believe  
18 that this wouldn't be typical?

19 A. I don't have any reason to believe that  
20 this wouldn't be typical, although there are -- I  
21 know there are cyclical events. For example,  
22 companies do advertising at certain times of the year  
23 that attracts customers or they do promotions,  
24 tie-ins with all kinds of products that, in any  
25 quarter, some event might be occurring that would

00282

1 change these numbers from what they are.

2 Q. Okay. Would you agree that one of the  
3 savings that would be attained by this merger is the  
4 fact that the combined company will not have the  
5 expense of marketing to each other's customers that  
6 the separate firms now have?

7 A. I believe Mr. Porter talked yesterday about  
8 synergies and savings. Presumably, there would be  
9 some savings in marketing and selling to each other's  
10 customers, but I can't speak to the level or -- I  
11 have no idea what that savings amount might be.

12 Q. But you acknowledge, don't you, that that  
13 would be a savings resulting from the combination of  
14 the two firms?

15 A. Well, there are many benefits to this  
16 merger, including savings on selling long distance  
17 customers and all kinds of other customers.

18 Q. Okay. My question just goes to the savings  
19 resulting from this particular factor. That's all.  
20 Similarly, do you believe that one of the savings  
21 that will occur is that the companies will no longer  
22 lose customers to each other?

23 A. Yes, I believe if the two companies  
24 combine, they will be one company, and they will not  
25 lose customers to each other by definition.

00283

1 Q. Do you believe these savings were  
2 considered by the companies in terms of what the  
3 overall advantages of this merger would be?

4 A. I'm sure they were at some level.

5 Q. Do you believe that this merger is  
6 necessary to Sprint's survival in long distance  
7 markets?

8 A. Yes and no. And let me explain what I mean  
9 by that. In the latest FCC statistics that were  
10 referenced yesterday that show residential market  
11 share by state, Sprint is the number four long  
12 distance carrier in 12 states. Excel is number three  
13 in those 12 states. In 1996, Excel was not on the  
14 list. I would say that in 2000, the next time we see  
15 a list, Qwest will be number three or number four in  
16 several states.

17 Q. What do you base that conclusion on?

18 A. The fact that Qwest has been growing market  
19 share in a number of states.

20 Q. In mass markets?

21 A. In many markets, yes.

22 Q. Including mass markets?

23 A. I'm sure that Qwest's mass market growth is  
24 positive, yes.

25 Q. Okay.

00284

1           A.    So in answer to your question, there's no  
2 guarantee that Sprint will survive in long distance.  
3 We will do everything possible, if this merger is not  
4 approved, to be successful.  The fact is, it's a very  
5 competitive market.  It's very dynamic, with many  
6 players exiting and entering, and there's no  
7 guarantee at all that Sprint will survive.

8           Q.    Okay.  I want to switch to --

9           A.    Can I make one more point about this, and  
10 in answer to your question about Sprint's survival in  
11 long distance?  This merger is really about opening  
12 up local markets to competition.  And the combined  
13 company --

14          Q.    Well, I think that actually goes outside  
15 the scope of my question.  And I'd actually like to  
16 move on to a different topic.  And perhaps this is  
17 related, but you made a statement on page seven of  
18 your testimony, at lines five through eight.  You  
19 indicated that once US West complies with Section 271  
20 of the act and other legal and regulatory  
21 requirements, given its pending merger with Qwest, it  
22 can be expected very quickly to become a formidable  
23 long distance competitor in Washington.

24                    Would you agree that there are currently no  
25 legal impediments, such as Section 271 approval, that

00285

1 stand in the way of GTE offering interLATA service in  
2 Washington?

3 A. Yes, I would agree that GTE isn't subject  
4 to 271.

5 Q. Okay. And do you know what GTE's share of  
6 long distance market in Washington is currently or  
7 recently?

8 A. No, I don't know. I do know that, from  
9 Sprint's perspective, GTE is growing. GTE long  
10 distance is growing their market share in GTE local  
11 territories. We have seen a decline in Sprint's  
12 market share in GTE territories, which I suspect is a  
13 result of GTE's long distance growing share in those  
14 areas.

15 Q. Do you know if GTE's share is less than  
16 Sprint's?

17 A. On a national basis?

18 Q. In Washington?

19 A. Do I know that? No, I don't know one way  
20 or the other.

21 Q. Okay. I want to change subjects a little  
22 bit. I ask you to look, please, at page 14 of your  
23 testimony, and particularly at lines 12 through 17.  
24 Would you please read the two sentences starting, Not  
25 only does Sprint's local division?

00286

1           A.     Certainly.  Not only does Sprint's local  
2 division have the needed expertise; it also has a  
3 substantial number of personnel who are available to  
4 provide service and train others.  This will enable  
5 the new company to more readily enter and expand its  
6 efforts in multiple local markets simultaneously and  
7 will accelerate the new company's entry into local  
8 markets throughout Washington.

9           Q.     Okay.  What assurance can you give this  
10 Commission that Sprint United service would not be  
11 adversely affected by the use of its employees to  
12 support the merged company's CLEC entry efforts  
13 elsewhere in the state?

14          A.     The existing rules and regulations would  
15 continue to be in effect and would support and  
16 control any attempts to degrade service in Sprint  
17 local territories.  And there would be no impact at  
18 all in terms of Sprint's local operations.

19                 What I'm referring to here is that the  
20 capabilities that Sprint's local folks have, both in  
21 Washington and nationally, can be used to help the  
22 effort to enter CLEC markets out of territory.  That  
23 means that for postings of jobs, for example,  
24 internally, we can recruit people who have experience  
25 working in the local area to move into the CLEC area.

00287

1 Q. Okay. But you can't make us any specific  
2 assurance that there's not going to be some sort of a  
3 brain drain of Sprint United's organization?

4 A. I can't make that specific assurance. In  
5 this market, people leave companies all the time. We  
6 have employees at Sprint who leave and go work for  
7 public utility commissions in many states, so we have  
8 brain drain.

9 Q. Interesting. I would have thought the flow  
10 would be --

11 A. It goes in both directions.

12 Q. Okay. I want to ask you now to turn,  
13 please, to page seven of your reply testimony this  
14 time.

15 JUDGE CAILLE: That is Exhibit T-63.

16 MR. THOMPSON: Thank you, yeah.

17 Q. Could you please -- well, I'm looking for  
18 you to read a rather large passage here. Could you  
19 please read, starting at line one, where it begins,  
20 Price differences, and read through line nine,  
21 please?

22 A. Certainly. Price differences between  
23 in-state and state-to-state calls in Washington are  
24 entirely attributable to differences between state  
25 and interstate access costs. Intrastate access costs

00288

1 in Washington are approximately three and a half  
2 cents higher than interstate access costs per long  
3 distance minute. The average price of an in-state  
4 long distance minute within Washington is  
5 approximately three and a half cents greater than a  
6 state-to-state long distance minute because of this  
7 differential.

8 Certainly, there are other cost  
9 differences, but on the margin, the major cost  
10 difference between providing an in-state long  
11 distance minute and a state-to-state long distance  
12 minute is the access cost differential.

13 Q. Thank you. In its intrastate long distance  
14 plans, does Sprint generally charge the same or  
15 different rates for inter and intraLATA?

16 A. For inter --

17 Q. Well, I apologize. Does Sprint generally  
18 charge the same or different rates for in-state and  
19 interLATA?

20 A. Sprint generally, in its plans, offers the  
21 same price for intraLATA and interLATA intrastate  
22 service.

23 Q. Okay. And Washington doesn't have  
24 different access charges for intraLATA and interLATA;  
25 correct?



00289

1 A. Yes. Yes, I agree with you; correct.

2 Q. Okay. Would you say there's a major  
3 difference in cost between intrastate interLATA and  
4 intraLATA calls?

5 A. There's no access cost differential.

6 Q. Are there other cost differentials?

7 A. Between intraLATA and interLATA intrastate?

8 Q. Right.

9 A. Probably other cost differentials other  
10 than access.

11 Q. Are they significant costs?

12 A. From Sprint's perspective, probably there  
13 are no significant cost differences between intraLATA  
14 and interLATA intrastate. And if there are, again,  
15 Sprint's pricing is designed to not reflect any  
16 underlying differentials in our prices. So there  
17 might be cost differences. We've chosen not to  
18 reflect those in our prices.

19 Q. Can you give me some --

20 A. Let me give you an example why there might  
21 be cost differences. IntraLATA calls might be --  
22 proportionately, a higher percentage of them might be  
23 between higher-cost local exchange companies than  
24 interLATA calls, so that would drive up the  
25 underlying access cost differential for intraLATA

00290

1 calls.

2 Q. Okay.

3 A. I don't know that to be the case.

4 Q. So you're suggesting that intraLATA might  
5 be more expensive than interLATA?

6 A. Yes, because there might be a higher  
7 proportion of higher-cost local exchange companies  
8 providing both the originating access and the  
9 terminating access for intraLATA calls, as opposed to  
10 interLATA calls.

11 Q. All right.

12 A. I have noticed those differentials in other  
13 states. I have not looked at Washington  
14 specifically, but we've observed that elsewhere.

15 MR. THOMPSON: Okay. I don't have any  
16 further questions. Thanks, Mr. Kapka.

17 THE WITNESS: Sure.

18 JUDGE CAILLE: Mr. Cromwell.

19 MR. CROMWELL: Thank you, Your Honor.

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

21 BY MR. CROMWELL:

22 Q. Good morning, Mr. Kapka.

23 A. Good morning.

24 Q. Just to start off, in your direct  
25 testimony, you state that Sprint has been a leader in

00291

1 long distance pricing, do you not?

2 A. On what page are you referring to, please?

3 Q. You could refer to page five of your direct  
4 testimony, lines five through 17, if you want to  
5 refresh your recollection. I'm not asking you to  
6 read from it; just asking you to confirm that you did  
7 make that statement?

8 A. Sprint has been a leader in simplifying --

9 Q. Excuse me, Mr. Kapka. I didn't ask you to  
10 read the statement; I just asked you to confirm that  
11 you had made it?

12 A. I want to clarify what statement I made.  
13 Sprint has been a leader --

14 Q. Mr. Kapka, you can answer my question. If  
15 you want to make a statement, I'm sure that Mr. Heath  
16 would be very gracious enough to offer you that  
17 opportunity. Are you able to answer the question  
18 now?

19 A. Would you restate the question?

20 Q. Certainly. In your direct testimony, you  
21 state that Sprint has been a leader in long distance  
22 pricing, do you not?

23 MR. HEATH: That's not what his testimony  
24 says.

25 THE WITNESS: That's not what I said.

00292

1 Q. Okay. If this merger is consummated,  
2 Washington consumers would lose any leadership that  
3 Sprint may or may not have provided in the long  
4 distance area, would it not?

5 A. Can I answer with an explanation?

6 Q. Well, I guess I'm asking a fairly  
7 straightforward question. Do you need to make an  
8 explanation to answer the question?

9 A. Absolutely, yes. The answer is Sprint has  
10 been an innovator in simplifying pricing and long  
11 distance. There's no reason to believe that  
12 post-merger, the merged company will not continue to  
13 be an innovator in all kinds of areas of pricing  
14 services.

15 Q. Has MCI and/or MCI WorldCom engaged in the  
16 same nature of simplified pricing leadership that  
17 you've stated Sprint has in the past?

18 A. I think you need to ask that to somebody  
19 from MCI WorldCom. MCI WorldCom has offered other  
20 kinds of pricing innovations. I referred earlier to  
21 Friends and Family, which we think was very  
22 innovative.

23 Q. But as to the simplified pricing you  
24 referred to earlier, is your answer to my question  
25 no?

00293

1 A. My answer to your question is I think you  
2 need to ask somebody from WorldCom.

3 Q. So you're not familiar with their pricing  
4 strategies or policies?

5 A. Not enough to answer your question.

6 Q. In discussing competition in the long  
7 distance market in your testimony, you also discuss  
8 Qwest, do you not?

9 A. Yes.

10 Q. And you assert that even though it's a  
11 relatively small carrier, that it can influence  
12 prices, do you not?

13 A. Yes, I do.

14 Q. And do you know what Qwest's share of the  
15 Washington long distance market is?

16 A. No, I don't know what the market share of  
17 Qwest is.

18 Q. In your testimony, you also discussed  
19 Qwest's Countdown product, did you not?

20 A. Yes.

21 Q. Do you know whether they're still making  
22 that offer?

23 A. As far as I know, yes, they're still making  
24 that offer.

25 Q. And to your knowledge, Qwest does not have

00294

1 a television or mass media advertising campaign in  
2 Washington supporting that product, does it?

3 A. I don't know.

4 Q. Do you know if Qwest has any television or  
5 mass media advertising campaigns in Washington  
6 supporting any of its mass media products -- or I'm  
7 sorry, its mass market long distance products?

8 A. I don't know if it does or doesn't.

9 Q. To your knowledge, do any interexchange  
10 carriers, other than AT&T, MCI WorldCom and Sprint,  
11 have television and mass media advertising campaigns  
12 supporting their mass market long distance offerings?

13 A. Well, I tell you, I just read in USA Today  
14 this morning there was a company offering one cent a  
15 minute long distance. If USA Today is a mass media  
16 tool, then I'd say there's a company right there  
17 that's offering one cent a minute long distance.

18 Q. Do you know which company that was?

19 A. Not something. I don't remember the rest  
20 of it. It didn't leave a strong impression. The one  
21 cent a minute left a strong impression.

22 Q. Suffice it to say it was not a sufficiently  
23 provocative ad to establish that brand identity?

24 A. Well, I'm loyal to Sprint service, but --

25 Q. I think we all would certainly understand

00295

1 your loyalty. As opposed to Sprint, in your opinion,  
2 how often has AT&T been an innovator in pricing long  
3 distance products for the mass market?

4 A. I have not looked at AT&T's -- a history of  
5 AT&T's innovations. I remember, just in the  
6 mid-'80s, AT&T, in response to competitive entry from  
7 MCI, Sprint and others, started offering discount  
8 plans, calling plans of all different types. I just  
9 don't know what AT&T is doing.

10 Q. Do you remember anything from the -- I  
11 guess middle -- early, middle or late '90s regarding  
12 AT&T's plans?

13 A. Well, I don't -- I've seen their  
14 advertising on TV, I must confess, a seven-cent a  
15 minute calling plan. I'm trying to remember the  
16 details, but they escape me.

17 Q. That's all right.

18 A. So I would say that's an innovation on  
19 AT&T's part.

20 Q. In your opinion, is AT&T a leader or a  
21 follower in this area?

22 A. In the area of pricing innovation, again,  
23 there are leaders and followers, and sometimes you're  
24 a leader and sometimes you're a follower. I don't  
25 think there's any clear indication that one

00296

1 particular firm is a price leader and others are  
2 price followers. It's more whimsical than that.

3 Q. And would you be surprised to learn that  
4 there may be different conclusions drawn by other  
5 people in your organization or entities contracted to  
6 your organization to assess those markets?

7 A. I don't think it would be surprising to me.

8 Q. You stated in your testimony, did you not,  
9 that you expect US West to very quickly become a  
10 formidable long distance competitor in Washington?

11 A. Yes, once they comply with Section 271.

12 Q. And when would you expect them to receive  
13 that approval?

14 A. Our projections vary by state in US West's  
15 territory. I believe our -- I don't recall exactly,  
16 but I'm saying -- I'm thinking mid-2001 in some  
17 jurisdictions. Based on -- and I say they'll be  
18 formidable based on what we've already seen in Bell  
19 Atlantic New York.

20 Q. I understand the comparison of the programs  
21 in New York in that regard today. So it's your  
22 understanding that Sprint's making a -- or has made  
23 an assessment that US West is likely to gain entry in  
24 mid-2001, but you don't have a specific recollection  
25 for any company prediction as to Washington?



00297

1           A.    I don't recall what our prediction is or  
2 our expectation is for Washington, although I heard  
3 the conversations yesterday regarding the schedule  
4 and suspect that Washington will be one of the latter  
5 states in US West's territory.

6           Q.    Have you ever stated an opinion on this  
7 question, either formally or informally?

8           A.    I'm sure I have.

9           Q.    What is your personal opinion?

10          A.    Of?

11          Q.    Of when 271 approval is likely to be  
12 received by US West in Washington territory?

13          A.    Well, again, based on the information I  
14 gleaned from the conversation yesterday, it appears  
15 that it will be at least 18 months out from now. So  
16 we're talking, you know, late 2001, early 2002.

17          Q.    In the company's joint petition, a number  
18 of market share estimates for when the RBOCs begin  
19 offering long distance were provided, were they not?

20          A.    Yes.

21          Q.    And do you have an estimate for the share  
22 of the long distance market US West is likely to  
23 acquire when it obtains Section 271 approval from  
24 this Commission and the FCC?

25          A.    I think the numbers we are saying are 25,

00298

1 30 percent within three years, but we will have to  
2 continue to evaluate that. That's obviously  
3 speculation. Bell Atlantic is adding 100,000  
4 customers per month in New York, so that's the only  
5 real factual information we have. The rest is  
6 conjecture.

7 Q. So the company's estimates are based upon  
8 the Bell Atlantic New York experience?

9 A. The estimates we've made have been  
10 estimates that have publicly been made by the bell  
11 companies to their shareholders and other interested  
12 parties.

13 Q. And are you aware of whether the companies  
14 have made any internal investigation or hired outside  
15 firms to investigate that issue and prepare reports  
16 for the company?

17 A. Whether the bell companies have made --

18 Q. I'm sorry, whether the petitioners, Sprint  
19 and WorldCom.

20 A. It wouldn't surprise me if we've hired  
21 outside consultants or experts to guide our thinking  
22 on that.

23 Q. How long do you think it would require for  
24 US West to obtain the level of market share you just  
25 related here in Washington?

00299

1       A.    How long?  Well, again, what we're saying  
2 is that in three years, they can achieve 30 percent  
3 market share.  So you know, it could be faster than  
4 that.  Obviously, it could be slower.  I think that's  
5 a reasonable kind of number.

6       Q.    In your testimony you state, do you not,  
7 that the merger will have little, if any, impact on  
8 United?

9       A.    Yes.  What page specifically, just so I can  
10 --

11       Q.    Yes, if you'd like to refer to your direct  
12 testimony, I believe it's at page 12, lines 19  
13 through 24.  Does that refresh your recollection?

14       A.    Yes, thank you.

15       Q.    And was that your statement?

16       A.    Yes.

17       Q.    I was curious that you said little, instead  
18 of none.  What kind of impacts can you foresee if  
19 there were to be impacts on United?

20       A.    Well, one way there could be an impact, and  
21 Mr. Porter talked a little bit about MMDS deployment  
22 yesterday, Sprint has a plan to deploy MMDS in  
23 several markets.  In fact, we plan to make it  
24 available in Seattle commercially this year.  It will  
25 be used for high-speed Internet access.  It's

00300

1 currently offered in Phoenix, and Yakima is a market  
2 that is on our list, although we will not offer  
3 service in Yakima for several years.

4 With merger approval, WorldCom is permitted  
5 or is offering to accelerate the deployment of MMDS  
6 in Yakima, will make it commercially available within  
7 12 months of closing, pending approval.

8 Q. So I'm --

9 A. Assuming all the licensing and other  
10 constraints can be overcome, as mentioned by Mr.  
11 Porter yesterday. My point I'm trying to get back to  
12 is that the deployment of MMDS initially for  
13 high-speed Internet access, eventually for services  
14 like ION, will be accelerated with the merger.

15 The positive for the Sprint local telephone  
16 companies is that they also can take advantage of  
17 that expertise and that service delivery and bring  
18 services, broadband services, to the rural markets  
19 they serve much faster than otherwise would be the  
20 case.

21 Q. So it's your opinion, sir, that the impacts  
22 on Sprint's local United operations in Washington  
23 would be uniformly positive?

24 A. They would be positive, yes.

25 Q. And there would be no negative impacts?

00301

1 A. There would be no negative impacts.

2 Q. In your testimony, you also discussed the  
3 availability of United's personnel to share their  
4 expertise in providing quality local service and to  
5 train others, do you not?

6 A. Yes.

7 Q. And it is your opinion that this use of  
8 United's personnel in serving WorldCom's CLEC and  
9 other operations would not affect the quality of  
10 service United's current customers receive?

11 A. Yes.

12 Q. And how would you propose that United's  
13 ratepayers be held harmless from the use of these  
14 employees who are serving nonregulated entities?

15 A. Well, I would propose that the existing  
16 cost allocation rules, which United adheres to and  
17 would continue to adhere to in the future, would be  
18 used. So that any United resources that were  
19 deployed in a non-United business would be  
20 compensated for, just as they are today.

21 MR. CROMWELL: Thank you, Mr. Kapka. I  
22 have no further questions.

23 THE WITNESS: Thanks.

24 MR. CROMWELL: Thank you for your time.

25 JUDGE CAILLE: Next. Mr. -- is it

00302

1 Pastarella?

2 MR. PASCARELLA: Pascarella.

3 JUDGE CAILLE: Pascarella, I'm sorry.

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

5 BY MR. PASCARELLA:

6 Q. Good morning, Mr. Kapka. My name's Pat  
7 Pascarella. I'm an attorney with SBC.

8 A. Good morning.

9 Q. On what I guess is the second page of your  
10 direct testimony, you say that the purpose of your  
11 testimony is to show how the proposed merger between  
12 MCI WorldCom and Sprint is consistent with the public  
13 interest. What does consistent with the public  
14 interest mean to you?

15 A. It means that the public interest is met if  
16 customers pay prices for services that are closer to  
17 marginal cost in the long run. Public interest is  
18 served when the price consumers pay is reflective of  
19 the cost of providing service. In this case, the  
20 area where the public has not been served is in the  
21 area of local services, where the ILECs, especially  
22 the RBOCs, maintain monopoly positions.

23 This merger would give -- would provide the  
24 wherewithal for the combined companies to be a viable  
25 broad-based competitor in those markets. The public

00303

1 interest would be served because these companies  
2 would provide competitive pressure on the incumbent  
3 LECs.

4 Q. Sprint's an ILEC in some areas, isn't it?

5 A. Eighteen states.

6 Q. Is it maintaining a monopoly position in  
7 those 18 states?

8 A. It is the incumbent local exchange company.  
9 In many areas, Sprint's market share is close to  
10 monopoly levels.

11 Q. I was just wondering if, when you referred  
12 earlier to the fact that ILECs were maintaining  
13 monopoly positions, were you referring to Sprint's  
14 ILEC operations, as well?

15 A. I was referring to -- yes, in general, yes.  
16 The difference is that Sprint ILECs don't serve large  
17 markets like SBC serves and has monopoly position in  
18 Chicago, Los Angeles, Houston and Dallas, for  
19 example.

20 Q. You distinguish between large and small  
21 markets?

22 A. Absolutely, as does the Department of  
23 Justice.

24 Q. Markets that are more or less important to  
25 Sprint from a business perspective?

00304

1       A.    They're all important markets from a  
2 business perspective.  The question is are the  
3 markets large enough that a monopolist can leverage  
4 its monopoly position and harm the consumer welfare.

5       Q.    Well, I get to do the questions.

6       A.    I was just -- I was answering your  
7 question.

8       Q.    I understand.  What I meant with important  
9 and less important is isn't Sprint's strategic  
10 planning in their marketing -- do they rank markets  
11 in terms of the importance of that market in terms of  
12 Sprint's ability to penetrate the market to gain  
13 customers, to have share there, the importance of  
14 that relative to Sprint as a company, or do they just  
15 say here's 500 states or 500 cities, they're all  
16 equally important to us?

17       A.    I'm sorry, I misunderstood.  Yes, we would  
18 rank markets in terms of potential customer take or  
19 whatever the measure is, yes.

20       Q.    Would you rank New York above or below  
21 Washington?

22       A.    Washington, D.C.?

23       Q.    State.

24       A.    Oh, I'm sorry.  New York State above or  
25 below Washington State?



00305

1 Q. Yes.

2 A. Well, actually, I'm not familiar with  
3 rankings by state. What I see are rankings by  
4 metropolitan areas.

5 Q. Okay. Would you rank New York City above  
6 or below Seattle?

7 A. In terms of what?

8 Q. Importance to Sprint. In terms of what  
9 we've just been talking about, which is whether or  
10 not Sprint views some markets as more important to  
11 its business than other markets?

12 A. Well, I don't -- I mean, the ranking of  
13 markets would depend on what the potential payoff was  
14 and what the service we were ranking. I can tell you  
15 that, for example, we've --

16 Q. Mr. Kapka, if I can interrupt you, you  
17 don't know need to answer that question. That's  
18 okay. Why don't we move on. You talked earlier  
19 about a definition of core customers.

20 A. Yes.

21 Q. I noticed, in some of the documents I was  
22 looking through, there was a second category that was  
23 referred to a lot that were golden customers. Do you  
24 know what category of customers golden customers  
25 refers to?

00306

1 A. Not precisely, but I can speculate.

2 Q. Well, let's speculate.

3 A. It probably refers to higher  
4 revenue-generating customers than not.

5 Q. So you would speculate that that's a subset  
6 of the core customers?

7 A. Yes.

8 Q. Okay. Look at page, if you would, five of  
9 your direct testimony. You use the term in the  
10 second sentence, I guess third sentence there,  
11 leader. Could you define that term for me?

12 A. Yes, again, what I'm referring to is  
13 Sprint's offering of specific products. Sprint Sense  
14 in 1996 or 1995, which we've --

15 Q. Let me stop you there. What do you mean  
16 when you use the term leader?

17 A. What do I mean by the term? That leader  
18 means -- in this context, what leader means is that  
19 we introduced a product in a specific pricing concept  
20 before anyone else in the market did.

21 Q. So what you meant by this sentence was that  
22 in one particular instance, you introduced one  
23 particular pricing plan ahead of everyone else?

24 A. The Sprint Sense product.

25 Q. So that's all you meant by this. You

00307

1 didn't mean generally or on the whole, Sprint was a  
2 leader; you simply meant that in this one particular  
3 instance we're talking about, Sprint somehow got out  
4 ahead of MCI in terms of introducing a pricing plan?

5 A. Well, it's a little bit more than that. I  
6 think Sprint -- in this particular instance that I  
7 referred to, Sprint has been a leader in simplifying  
8 pricing through the Sprint Sense product. Then, over  
9 time, Sprint leveraged that simplifying --  
10 simplification and product and has used it to  
11 continually offer refinements to that simplification.

12 For example, Sprint introduced Sprint  
13 1,000, 1,000 minutes at a flat price. Again, the  
14 idea is that the customer really doesn't have to  
15 think about what does it cost. It's simple. In that  
16 area, I think Sprint has been a pricing leader.

17 Q. You talked earlier, and I don't want to  
18 characterize your testimony, so feel free to correct  
19 how I characterize it, about Sprint responding to  
20 other competitors' pricing plans. Can you list for  
21 me any pricing plans for long distance service that  
22 were introduced into the market by a competitor other  
23 than AT&T, MCI, or Bell Atlantic, NYNEX, that Sprint  
24 has had to respond to in the last 18 months?

25 A. Can I list any?

00308

1 Q. Identify one.

2 A. That Sprint has had to respond to. Well, I  
3 guess I would answer your question this way. I can't  
4 specifically say that Sprint has responded to  
5 anyone's pricing plan, although I am aware of our  
6 analysis of Bell Atlantic's pre-paid calling, and we  
7 expect to introduce a product designed to combat Bell  
8 Atlantic's pre-paid product. I'm aware of the  
9 thinking and the analysis that's going on.

10 Q. Well, maybe -- let me try to rephrase the  
11 question, then.

12 A. Can I answer?

13 Q. Sure.

14 A. The other way I'm aware of how we're  
15 responding to competitors' pricing is, as I mentioned  
16 earlier, in 12 states, Excel has higher residential  
17 market share than Sprint, according to that FCC  
18 report we referred to yesterday. I sent a copy of  
19 that to our marketing department and asked them, you  
20 know, what's going on here. Their response to me  
21 indicated that they are aware of Excel's ability to  
22 penetrate the residential market and win market share  
23 from Sprint.

24 Now, I don't know specifically how they are  
25 responding in terms of offering a pricing plan. I'm

00309

1 aware, though, that they are very concerned about  
2 Excel's ability to win market share.

3 Q. How did they make you aware of their  
4 concern?

5 A. Well, the response to the e-mail started  
6 with an expletive, but --

7 Q. Let me ask you another question. You  
8 talked about, a minute ago, the New York pricing  
9 plan. You said you're aware that Sprint's  
10 undertaking an analysis of that plan and expects to  
11 introduce a product to respond to that plan, okay?

12 A. Yes.

13 Q. Are you aware of that process occurring  
14 with regard to any other carrier plan, other than  
15 AT&T, MCI, and NYNEX?

16 A. Sprint -- and I have the responsibility for  
17 filing long distance intrastate tariffs at Sprint.  
18 Last year, we filed 7,500 changes to our tariffs and  
19 pricing in the United States. Many of those, I  
20 guarantee you, were responses to other services being  
21 offered. I can't tell you specifically what they  
22 are, but I'm absolutely certain that several of those  
23 are responses to specific offerings of other  
24 interexchange carriers.

25 Q. Tell me the basis for your certainty?

00310

1           A.    Well, because if we were just innovating  
2 ourselves, we wouldn't have to make 7,500 changes per  
3 year. Our products sit out there and they have a  
4 shelf life of three months or six months. And  
5 somebody responds to our product and then we have to  
6 respond to theirs. That's how the dynamics of the  
7 competitive market work.

8           Q.    So I'm clear, you changed your long  
9 distance rates 7,500 times last year?

10          A.    We made 7,500 domestic tariff change --  
11 intrastate domestic tariff changes in 1999. Some of  
12 those were price, some of those were terms and  
13 conditions, sometimes we changed the phone card  
14 price, but there's all kinds of different changes  
15 that occur.

16          Q.    But sitting here today, can you tell me any  
17 specific instances in which you changed a price or  
18 introduced a product in response to a carrier  
19 offering made by a carrier other than AT&T, MCI or  
20 NYNEX, a specific example in the last 18 months?

21          A.    A specific example. I can't give you a  
22 specific example, although I can guarantee you that I  
23 could go back and provide many hundred examples for  
24 you.

25          Q.    Subject to your Counsel's approval, I would

00311

1 welcome you to do that. You talked about these 12  
2 states. Do you know the 12 states that Excel's moved  
3 ahead of Sprint?

4 A. I haven't committed it to memory. I have  
5 the FCC report, though.

6 Q. Is it your belief that the reason Excel has  
7 taken over their position from Sprint is its pricing?

8 A. I'm not sure what the reason that loss of  
9 market is to Excel. Probably pricing has something  
10 to do with it.

11 Q. And what's the product category we're  
12 talking about here, long distance or --

13 A. Residential long distance service.

14 Q. On pages eight and nine, you talk about --  
15 of your -- sorry, of your direct testimony. You're  
16 responding to a question, and the question was, To  
17 what extent have Sprint's CLEC service roll-out plans  
18 been realized. And you go on for a few pages there  
19 and talk about Sprint's experience.

20 You say on page nine, at line eight,  
21 starting at line eight, quote, While Sprint's  
22 experience with GTE and Pacific Bell resulted in  
23 valuable learning experiences, Sprint found that  
24 neither company had the necessary operational support  
25 systems in place to facilitate broad local market

00312

1 entry, either on a resale or a UNE basis.

2 Does Sprint's ILEC operation have in place  
3 the necessary operational support systems to  
4 facilitate broad local market entry on either a  
5 resale or UNE basis?

6 MR. HEATH: I'd like to object as to  
7 relevance of that in this proceeding.

8 MR. PASCARELLA: Well, I'm trying to get a  
9 handle on what it is -- what the necessary  
10 operational support systems are. So I was hoping  
11 that if he could point me to a network that had the  
12 necessary operational support systems, we could do  
13 that, rather than going through all the operational  
14 support systems and asking Mr. Kapka whether or not  
15 this particular operational support system at this  
16 particular performance level is adequate to support  
17 market entry.

18 Q. Could you answer the question, Mr. Kapka?

19 MR. HEATH: I don't know --

20 JUDGE CAILLE: Just a moment. Do you have  
21 something further to say?

22 MR. HEATH: I think we can talk about  
23 whether or not US West has met the 271 checklist in  
24 the context of -- but as far as Sprint's ILEC is  
25 concerned, they're not subject to 271, and I guess I



00313

1 just don't understand what Mr. Pascarella's getting  
2 at here.

3 MR. PASCARELLA: Well, it was a simple  
4 question. Do you want to instruct the witness not to  
5 answer it? I mean, has Sprint, in its ILEC  
6 operations, is it providing the necessary operational  
7 support systems to facilitate broad local market  
8 entry? It's a yes or no question.

9 JUDGE CAILLE: I'm going to overrule the  
10 objection and ask the witness, if he can, to answer  
11 the question.

12 THE WITNESS: Yes. What I was referring to  
13 here was in the mid-1990s, when we tried to enter as  
14 a reseller in California, at that point in time,  
15 neither Pacific Bell, nor GTE had the necessary  
16 support systems in place to facilitate local entry.  
17 And I could give you examples of what I mean by that.  
18 For example, we would enter a service order for a  
19 customer, and the response to our service order entry  
20 would be sent to MCI, for example.

21 So we had a very, very difficult time,  
22 worked extensively with both local exchange companies  
23 in California to improve the systems. Frankly,  
24 neither one of them are up to snuff and we cannot  
25 enter as a local player in those markets.

00314

1 Q. But the --

2 A. In answer to your question, I can tell you  
3 that --

4 Q. Answering my yes or no question? I'm  
5 sorry, Mr. Kapka.

6 A. Well, I think we need to --

7 Q. No, I'm sorry. Please go ahead.

8 A. -- set a basis for the answer. In Nevada,  
9 for example, we have more than 20 CLEC entrants in  
10 that market. We were in a hearing just in the last  
11 couple weeks in Nevada, and I understood from the  
12 hearing that the CLECs' entrants in Las Vegas believe  
13 that Sprint is providing the necessary support to  
14 facilitate their entry into Las Vegas.

15 I can't speak specifically for Washington  
16 State. I don't believe there are any CLECs entering  
17 Sprint local territory in Washington State.

18 Q. With regard to the sentence here that we  
19 read, lines eight through 11, I guess, on page nine,  
20 this is a reference to an experience that Sprint had  
21 in the mid-'90s, yes or no?

22 A. The market entry began in 1996. We still  
23 have 10,000 or so customers in Pac Bell and GTE  
24 territory in California. So it's an ongoing  
25 situation. We no longer offer resell service in

00315

1 California, mostly because of the problems we've had  
2 with provisioning and serving those customers. So we  
3 still have customers in place. We have stopped  
4 offering resold services in California. So it's  
5 ongoing.

6 Q. When did you stop offering that service in  
7 California?

8 A. Probably about third quarter '98.

9 Q. Would you look on page 12 of your  
10 affidavit, please? Starting on line seven, there's a  
11 paragraph there. I guess the easiest way is to --  
12 why don't I read it and you can read along with me,  
13 if you'd like, and I have a question about something  
14 you say in there.

15 It says, The proposed merger would enable  
16 Sprint to utilize the same kind of access  
17 alternatives that MCI WorldCom utilizes, including  
18 its own local fiber-based transport rings and  
19 customer-connected facilities. This would increase  
20 Sprint's supplier choices, leading to less reliance  
21 on US West, and would enable Sprint to remain  
22 competitive on prices, especially to the large  
23 customer segment.

24 And what I didn't understand, I guess, is  
25 why is that especially to the large customer segment,

00316

1 as opposed to all segments?

2 A. Okay. Because, for the large customer  
3 segment, that customer group especially can be served  
4 by alternatives to ILEC facilities. Sprint has  
5 signed long-term access arrangements to serve the  
6 special access customer segment with ILECs, including  
7 SBC, because Sprint's market share really forced it  
8 to use ILEC facilities to serve that customer  
9 segment. We could not justify financially building,  
10 constructing our own CLEC access facilities, so we  
11 have been almost financially required to use ILEC  
12 facilities, as I said, including SBC.

13 This merger would enable us to use  
14 alternative access facilities as a combined company.  
15 We are cost disadvantaged serving those large  
16 customers because we are reliant on ILECs who charge  
17 higher prices for special access than the CLECs do.  
18 And this merger, just to summarize, would enable us  
19 to move that traffic from the ILEC facilities to  
20 WorldCom's facilities in the hundred markets or so  
21 that WorldCom has facilities, local facilities.

22 Q. And that would be desirable as a way of  
23 enabling you to be a better competitor in which  
24 markets? I don't mean geographic; I mean which  
25 service product markets are you talking about?

00317

1           A.    The customer segments served by dedicated  
2 access.   The traditional business, large business  
3 market.

4           Q.    You talk in your rebuttal testimony, and I  
5 could point you to it, but I don't think it's going  
6 to be in dispute, about all-distance services and  
7 about bundles of services.   Could you define those  
8 two terms for me, as you use them there?

9           A.    Yes, the all-distance service refers to the  
10 idea that you just connect independent of how  
11 proximate connecting parties are, so that the  
12 customers are connected and -- or parties are  
13 connected without reference to being in another  
14 country, another state, another city, or next door.

15                And the idea is that, over time, customers  
16 who will have that kind of access that they will be  
17 connected telecommunications -- via  
18 telecommunications without reference to being  
19 distant.

20                In the bundled product, what we're  
21 referring to is the idea that you combine existing  
22 services, for example, local service with long  
23 distance, perhaps with Internet service.   What I'm  
24 referring to there is the kind of product offering  
25 that SBC plans to introduce in Seattle.

00318

1 Q. Could you identify for me all of the  
2 all-distance service offerings that Sprint currently  
3 has available in the market today?

4 A. We are in the process of rolling out a  
5 product we call ION that we would like to make  
6 all-distant. All distance, all the time.

7 Q. Is it all-distance today?

8 A. No, because -- it is not all-distant today,  
9 because of mostly regulatory distinctions between  
10 local service, long distance service, international  
11 service. What we would like to do with ION and where  
12 we see the market evolving, and I can't tell you  
13 when, is the idea, as I alluded to earlier, that  
14 space becomes not important between  
15 telecommunicators.

16 Q. Could you expand a little bit on the -- you  
17 said that one of the problems with making an  
18 all-distance service were regulations, that there  
19 were regulatory distinctions between local and long  
20 distance. Could you explain what you meant by that?

21 A. Yes. We are in the process of trying to  
22 get ION tariffed in several states, and ION is a  
23 substitute for existing local service, it's a  
24 substitute for existing long distance service, it's a  
25 substitute for Internet service, it's a substitute

00319

1 for all kinds of services today that are discrete and  
2 offered via state tariffs or federal tariffs or  
3 offered as a nontelecommunications service.

4           In order to comply with various state  
5 Commission mandates, we have to carve out ION and  
6 make it look like a local service, because it is a  
7 substitute for local service. So that means that  
8 certain local parameters affect ION, things like  
9 notification of customers on whether or not you're  
10 changing prices, whether or not a subscriber line  
11 charge applies to every voice grade equivalent.

12           There are all kinds of impediments to  
13 taking a conceptual type of service and implementing  
14 it. One of those impediments are the existing rules  
15 and regulations that govern local service provision.

16           Q.    Could you explain to me how this merger is  
17 going to help you accelerate the deployment of ION?

18           A.    Yes. I mentioned earlier that we want to  
19 use the WorldCom facilities, the merged company would  
20 use the WorldCom facilities, which exist, as I  
21 understand it, in a hundred markets or so. ION would  
22 tap into those existing facilities and make it  
23 economical for the merged entity to deploy ION where  
24 today it isn't economical.

25           An example would be -- here in Washington

00320

1 would be Spokane. Current ION plans are to introduce  
2 ION in 2001, and that's partly driven by the  
3 prioritization that you referred to in an earlier  
4 question. Spokane is after much larger markets.  
5 Because it's difficult to justify Spokane given the  
6 market share that Sprint would have, the merger helps  
7 in two ways. We have a larger base of customers to  
8 sell the product, which means that you could provide  
9 it at a lower unit cost, which increases the  
10 acceleration of deployment of the service. So it's  
11 both the fact that we have a larger base of  
12 customers, higher demand for the service, and it's  
13 the capability of using the existing WorldCom  
14 facilities to help facilitate the introduction of the  
15 product.

16 Q. If you don't have a combination of those  
17 two things, is it not economically viable, or you  
18 choose the term, to deploy ION in that area?

19 A. The economics of deployment increase with  
20 merger, and what you end up doing is accelerating  
21 deployment and enabling you to deploy in much -- in  
22 central offices that you otherwise would not deploy  
23 in, because you have a bigger base of customers.

24 Q. And that base of customers is the existing  
25 MCI customers?



00321

1 A. The existing -- right, the existing  
2 WorldCom customer group, yes.

3 MR. PASCARELLA: That's all I have. I  
4 appreciate it.

5 JUDGE CAILLE: Why don't we take our  
6 morning break and come back at 20 minutes to 11:00.

7 (Recess taken.)

8 JUDGE CAILLE: We're back on the record  
9 after our morning recess. And at this point, do the  
10 Commissioners have any questions of Mr. Kapka?

11 CHAIRWOMAN SHOWALTER: Was he finished?

12 MR. PASCARELLA: Yes.

13 E X A M I N A T I O N

14 BY CHAIRWOMAN SHOWALTER:

15 Q. Well, I have just one kind of line of  
16 inquiry, I guess, and it has to do with the merger  
17 enabling the merged company to provide local service,  
18 either through ION or MMDS or something like that.

19 And I think the trouble I'm having is how  
20 to evaluate qualitative statements. And I'll just  
21 give you an example that occurs to me, but, you know,  
22 if I say I'm going to give my daughter some money so  
23 that she'll be better able to buy a car, well, that's  
24 sort of true, but if I give her \$1,000 and she only  
25 has \$500, maybe she's in a better position to buy a

00322

1 car, but she's a long way from buying a car. On the  
2 other hand, if she already has \$14,000 and I give her  
3 \$1,000, she's in a better position to buy a car, but  
4 maybe she had enough money to buy one anyway. But if  
5 it's \$5,000 I give her, and she has 10,000, well,  
6 then, that might make the difference.

7           And I think what you have provided here are  
8 qualitative statements about the merger, you know,  
9 making the merged company able to take advantage of,  
10 you know, MCI on the one hand or Sprint on the other,  
11 all of which I think are true, but how do you -- how  
12 do we evaluate that in real terms?

13           Now, with respect to Yakima, the parties,  
14 or WorldCom, has made a promise of an outcome, so I  
15 don't know if it would be faster -- more accelerated  
16 or not from your plans, it sounds like it would be,  
17 but at least there's a statement that the merged  
18 company will provide Yakima with MMDS, assuming all  
19 those other qualifications that you threw in there.

20           So if all we were looking at is local  
21 service, I'd say, Well, all right, it's going in the  
22 right direction for this company to be able to  
23 provide that, but, of course, that isn't all we're  
24 looking at. We're looking at long distance  
25 interstate, long distance intrastate, interLATA,

00323

1 intraLATA. We're looking at a number of dynamics, so  
2 in the end, we're going to want to weigh the effects  
3 of the merged company on these different elements.

4 So my question to you is with respect to  
5 being poised for local service, to better provide for  
6 local service, how do we get beyond just the  
7 qualitative statement that it's moving in that  
8 direction?

9 A. Very good question, Chairwoman Showalter.  
10 Let me start by just giving some backdrop to why this  
11 merger needs to take place. This merger is a  
12 strategic merger between two companies that want to  
13 provide all-distance, all-the-time service. This  
14 isn't about two long distance companies merging. So  
15 let's keep in context what this merger is about.  
16 This is about two companies that want to provide all  
17 telecommunications service, domestically and  
18 internationally.

19 So these two companies have strengths and  
20 weaknesses, and this merger is designed to compensate  
21 those weaknesses by enabling these two companies to  
22 leverage their respective strengths. In answer -- so  
23 that's the context of what's happening here. Sprint  
24 and WorldCom have to be all-distance providers in  
25 Washington, in California, everywhere.

00324

1           And I just happen to have this  
2 advertisement from yesterday's Seattle paper, which  
3 shows US West offering one bundled little service,  
4 one neat little bundle. They wouldn't want me to  
5 refer to it as one little bundle. One neat little  
6 bundle, which is a package, a suite of services that  
7 US West is offering today in Seattle.

8           WorldCom and Sprint individually can't  
9 offer this service in the way that US West does. We  
10 need to be able to compete with US West in Washington  
11 and SBC in Texas and Illinois and California and  
12 everywhere else.

13           This merger, again, enables the two  
14 companies to leverage their strengths to do that. We  
15 talked yesterday about the MMDS licenses. MMDS holds  
16 tremendous potential to provide high-speed broadband  
17 service to areas that otherwise won't have it, and we  
18 used Yakima as an example. There's hundreds of  
19 Yakimas in the United States that are never going to  
20 get RBOC-provided high-speed broadband services.

21           The two companies, by combining their  
22 resources, can deliver that type of service, not only  
23 to Seattle and San Francisco, but to the Yakimas of  
24 the nation. In Washington specific, again, I'll  
25 reiterate what we said yesterday. We will accelerate

00325

1 the deployment of MMDS in Yakima as an outcome of  
2 approval for this merger here in Washington.

3 The local market entry plans that we have  
4 are such that Sprint, by itself -- our local entry  
5 plan in Washington is to offer ION in Seattle  
6 sometime mid-this year, and that's it for year 2000.  
7 We don't plan to provide any local services in  
8 Washington State. This merger, though, will enable  
9 us to make decisions to offer local service in  
10 Washington, because it improves the economics of  
11 offering local service.

12 Now, you know, is that still back to your  
13 question of some money or is that a more precise  
14 answer to your question? I can tell you that we will  
15 accelerate -- the new combined company will  
16 accelerate its local entry plans here in the state  
17 and elsewhere. I can't tell you by how much, but I  
18 know we have not done joint planning and we can't  
19 reach that kind of definitive prioritization  
20 schedule, but I'm certain that by combining the bases  
21 of customers, it's going to make a lot more sense to  
22 enter local markets. I don't know if I answered your  
23 question adequately or not. If not, please let me --  
24 ask me a follow-up.

25 Q. Well, I think, generally speaking, you were

00326

1 still answering in qualitative terms, and you may not  
2 be able to do any more than that, but why are you  
3 able to give a specific assurance about Yakima, which  
4 is a different kind of statement to make? You say  
5 that this is an outcome we can promise, and yet, with  
6 the other aspects, you are not able, and because I  
7 guess you can't look at each other's business plans,  
8 but then why are you able to say it with Yakima?

9 A. We can't share information on our business  
10 plans. We talked yesterday, and Yakima is a market  
11 that's on our list and WorldCom, as the acquiring  
12 company, have committed that they will accelerate the  
13 deployment, commercial deployment of MMDS in Yakima.  
14 That's why we can make a specific statement referring  
15 to Yakima. I can't -- we have not done the joint  
16 planning necessary to get -- to address your other  
17 questions about when are we going to be in these  
18 markets, when are we going to be there, and are we  
19 going to serve residential customers in Vancouver,  
20 Washington any time soon. We have not done the  
21 detailed planning that we need to to get to that --  
22 answer those specific kinds of questions.

23 Q. You also began your statement by saying  
24 this merger's not about merging two long distance  
25 companies, but you do agree it is a proposal to merge

00327

1 two companies who are long distance; you're just  
2 saying that's not your primary motivation?

3 A. Exactly. Our motivation is not to combine  
4 our market shares in the domestic long distance  
5 market. That's not what this merger is really about.  
6 It's about two companies that recognize the future  
7 being bundled, all-everything services, that want to  
8 compete with the two Goliaths, the RBOCs, on the one  
9 hand, and AT&T and their cable affiliates on the  
10 other hand.

11 We want to provide consumers with a third  
12 choice. We believe, separately, we will not be able  
13 to do that. Combining our resources enables us to be  
14 a viable third choice to consumers.

15 CHAIRWOMAN SHOWALTER: Thanks.

16 COMMISSIONER HEMSTAD: I don't have any  
17 questions.

18 E X A M I N A T I O N

19 BY COMMISSIONER GILLIS:

20 Q. One, just to follow up, you mentioned an  
21 FCC order that came out yesterday a couple times.  
22 What is the reference you're referring to on that?

23 A. The FCC listing of residential market share  
24 by state; is that what --

25 Q. Yeah.

00328

1 A. Yes. I referenced it in my testimony. I'm  
2 just going to see what the exact reference is.

3 Q. Well, I can find it. It was a report that  
4 came out yesterday, you're saying?

5 A. Oh, no, I'm sorry. It did not come out  
6 yesterday. What I was referring to was it was  
7 mentioned yesterday in the cross-examination of the  
8 witness.

9 Q. Oh, all right. That's what I missed.  
10 Speaking of Mr. Porter, I had confirmed with him that  
11 his view was that one of the benefits of the merger  
12 is to be able to offer customers one-stop shopping,  
13 an integrated set of services, and your testimony  
14 seems to be consistent with that; is that correct?

15 A. Yes, Commissioner Gillis.

16 Q. I'd like to start with you -- I think you'd  
17 be able to -- I can explore my interests with you  
18 probably more ably, because of your particular  
19 background and position, but I want to begin with the  
20 same question of why is that in the public interest  
21 to be able to offer a broader range of services?

22 A. It's in the public interest because that's  
23 what consumers want. Being able to provide services  
24 consumers want is in the public interest. And maybe  
25 I can use an analogy. I stop on my way to work when



00329

1 I'm in Kansas City at the coffee place at the corner  
2 of my street and I pick up a coffee, and I'd really  
3 like a glazed donut in the morning. They don't carry  
4 glazed donuts in the coffee place. I like the  
5 coffee, but I don't like scones or bagels. I want a  
6 glazed donut.

7 I can't buy a bundled service at the coffee  
8 place, so it requires me to stop at the donut shop,  
9 where I can't drink the coffee, but I really like the  
10 glazed donut. I'm a consumer disadvantaged because  
11 this particular coffee shop won't offer a bundled  
12 product, coffee and glazed donut.

13 And I think if we can use that analogy in  
14 this case, there are consumers out there that really  
15 like Sprint long distance service, and there's  
16 consumers out there that really like WorldCom long  
17 distance service, and those consumers really don't  
18 like US West local service, and they would like to  
19 buy their bundled product from one particular  
20 provider of service. There's a market there, and if  
21 we can provide that service, consumer welfare is  
22 enhanced.

23 Q. Yeah. I'm a father of a couple of  
24 toddlers, and have come to believe that everything  
25 you need to know about being successful in American

00330

1 enterprise you can learn from McDonald's, but I have  
2 an 18-month old that barely has any vocabulary, but  
3 she can advocate very well for herself when she sees  
4 the golden arches.

5           One of the geniuses of McDonald's is their  
6 value meal. You're quite familiar with that, where  
7 they have nine different offerings. You have with  
8 each one a range of drinks you can choose and you  
9 have with each one a different menu item that  
10 simulates a known food product, hamburger, but what's  
11 constant with each is french fries.

12           I thought about this, because I spent so  
13 much time in McDonald's playroom on rainy Olympia  
14 days, but the french fries are constant, and it  
15 really is all about french fries, which, by the way,  
16 Washington sells five million tons of french fries  
17 each year. Eighty percent of it goes to fast food,  
18 so I guess we benefit.

19           But I guess the point is that I can tell  
20 you from experience, driving up to the McDonald's  
21 window when I have my kids or whatever, if I want to  
22 pay for an overpriced soda and order a  
23 quarter-pounder and cheese, they'll come back to me  
24 and say, Well, we can save you money by giving you  
25 the value meal. You get the fries, also. So not

00331

1 only are they giving the fries away -- they're not  
2 only giving the fries away free, they're actually  
3 paying me to take them in that context.

4 But you know, interestingly enough, if I  
5 just want to buy the fries, it costs me \$1.45 for  
6 those fries, but the other observation is if I go to  
7 Big Tom's Burger Joint out on the other end of town,  
8 where they don't sell the bundled product and they  
9 just sell all those things separately, the fries cost  
10 about two-thirds of that, and it's a bigger bag of  
11 fries.

12 Now, I don't mean to draw too many  
13 conclusory remarks. I'm not privy to the marginal  
14 cost for McDonald's versus Big Tom's, but, you know,  
15 there's certainly academic literature that suggests  
16 that the trend in the industry is to -- that the  
17 fries of the industry are access to the network, and  
18 that firms will give away access to the network  
19 essentially free if you buy all these bundled  
20 services.

21 I guess the first part of the question is  
22 do you see that as the trend, and is that consistent  
23 with, well, maybe the way you might price ION?

24 A. Yes. Let me preface by saying there is  
25 life after McDonald's for your kids. I can remember

00332

1 those days, too.

2 In answer to the more substantive point you  
3 made, I think that what we'll have is competitors  
4 offering various bundles and giving away various  
5 components of their package to attract customers. In  
6 the example, Tom's, you know, you can buy the fries  
7 there at a lower price than you can at McDonald's.  
8 Tom's might respond by offering a bundle of services  
9 to try to get you if they see it's in their interest  
10 in doing that. I think over time, as the market  
11 develops, various providers will offer to give away  
12 components of their network to get customers to buy  
13 their bundle of services.

14 With ION, we have some technical issues  
15 associated with ION that we are working out. We were  
16 hoping to be able to offer commercial availability of  
17 ION the first quarter of this year in Seattle, which  
18 is one of our test markets. It hasn't happened as  
19 quickly as we were hoping.

20 I think you're right, though. I think, you  
21 know, potentially we will give the network away in  
22 order to sell something else to keep customers, and I  
23 think that's the beauty of a competitive marketplace  
24 playing itself out, is that you'll have many -- some  
25 providers, at least more than three providers, with

00333

1 different approaches to trying to provide services to  
2 consumers.

3 Q. Well, I mean, it's not an academic  
4 question, and in fact, academics don't often address  
5 this, as a matter of fact, but the question of -- the  
6 Consumer Federation of America a couple years ago  
7 came out with a report that estimated that  
8 approximately half of the American population just  
9 simply wants access to the network. In other words,  
10 they aren't big consumers of long distance, they  
11 don't buy the Internet, they don't by the premium  
12 channels on the cable, they have cell phones they get  
13 for emergency services and don't use it much, those  
14 kind of things. There's a lot of argument about  
15 whether that number's high or low, but there's still  
16 a significant part of the population that just wants  
17 access to the network.

18 And how is their interest, that  
19 population's interest advanced or harmed by a trend  
20 of industry structure merging in a way that it  
21 provides bundled services?

22 A. Well, I think as long as there's no  
23 barriers to entry or insignificant barriers to entry,  
24 providers can enter the long distance market, for  
25 example, to serve those particular customers by

00334

1 offering them just long distance service, if that's  
2 what they want. I don't think, necessarily, that  
3 those customers are going to have to pay higher  
4 prices.

5           But as you know, it's not about prices  
6 going down; it's about prices reflecting marginal  
7 cost that enhances consumer welfare. So I think, you  
8 know, again, there will be long distance providers  
9 providing basic long distance service. I alluded to  
10 the USA Today at one cent a minute. That particular  
11 provider is just providing long distance service.  
12 I'm sure they are not providing anything else.

13           I suspect there will be a market for the  
14 Consumer Federation Study respondents who want just  
15 plain long distance or plain local and don't want  
16 Internet access and don't want all this other stuff,  
17 and there will be providers willing to provide it to  
18 them.

19           Q. I mean, the genius of McDonald's is that  
20 they don't price their multiple products at their  
21 marginal cost, and they shouldn't. I mean, if  
22 they're a for-profit firm, responsible for  
23 shareholders, they base it on various elasticities  
24 and what would make the most profits. And french  
25 fries, I mean, I have no idea what the margin of cost

00335

1 is, but I'd be very surprised if those french fries  
2 are priced at their marginal cost.

3           So you know, I don't know quite what you're  
4 going at there, but the concern that's raised  
5 sometimes is that, again, access is the essential --  
6 access of the network, whether local or long  
7 distance, is the essential service. And in fact,  
8 generally, I think is viewed as probably the most  
9 inelastic of the set of services that might be  
10 offered in a bundle.

11           And I would think, as a responsible  
12 profit-oriented firm to shareholders, that if you're  
13 offering more product range, you're going to want to  
14 charge more for that as a stand-alone service or you  
15 wouldn't be being responsible.

16           A. For providing just the access component?

17           Q. Just the access to the network. Customers  
18 that just want to access the network versus those  
19 that might purchase it bundled?

20           A. Yes, I think you're right. That would be  
21 the rational way to price the service. Of course,  
22 there's institutional constraints and so forth that  
23 require network providers to price services much  
24 lower than marginal cost.

25           Q. And that's the precise point. I mean,

00336

1 we're here considering a merger on market structure,  
2 and ultimately, I think most of us want to get out of  
3 the business of having to impose those institutional  
4 constraints, in other words, economic regulation.  
5 And the concern I raised to you to respond to is is  
6 it in the public interest if -- given the goal is to  
7 have a competitive market certainly for the most  
8 essential services, which is access to the network,  
9 is it in the public interest to continue to endorse  
10 combinations of companies offering bundles of  
11 services, a la McDonald's and Burger King, versus Big  
12 Tom's? I mean, I guess the real question is can Big  
13 Tom's survive in that environment to offer the  
14 alternative?

15 A. Yeah, I think that's the question, the most  
16 important question, can Big Tom survive, and that's  
17 the question for Sprint. Sprint is the Big Tom. Can  
18 Sprint survive as others expand and -- you know,  
19 that's the debatable question.

20 Q. But I mean, what's before us is that Sprint  
21 is the Big Tom, and what we're considering here is a  
22 merger to turn Sprint into McDonald's. And are there  
23 enough Big Tom's behind Sprint that are going to be  
24 there to provide for these customers that only want  
25 access to the network?





00338

1 BY MR. HEATH:

2 Q. Mr. Kapka, Mr. Thompson, in his  
3 cross-examination, pointed to testimony that Sprint  
4 is a pricing leader, that reference in your  
5 testimony. I just want to clarify, is it your  
6 testimony that Sprint is always a pricing leader or  
7 innovator?

8 A. No, Mr. Heath. I think I made it clear  
9 that, in circumstances, other long distance companies  
10 take the lead in being innovators or leaders.

11 Q. And is it your testimony that a company has  
12 to have significant market share to be a leader or  
13 innovator?

14 A. No, the company -- market share is not a  
15 requirement in this competitive market to be a  
16 pricing leader. And the example I used was Bell  
17 Atlantic, which entered with zero interLATA market  
18 share, and introduced products that lead the way.  
19 And they have proven to be somewhat successful in  
20 their four months or five months of entry.

21 Q. And what about the ability to have mass  
22 marketing? Is that necessary to be a leader or an  
23 innovator?

24 A. To have --

25 Q. Mass marketing, television?

00339

1           A.    No, that's not a requirement to be an  
2 innovator or a price leader in a competitive market.  
3 Mass market advertising is not essential.

4           Q.    Could you give us an example?

5           A.    Of a pricing innovator that doesn't rely on  
6 --

7           Q.    Yes.

8           A.    -- mass market? Well, I used the example  
9 this morning of pricing innovation from -- and I  
10 don't even remember what the name of the carrier was.  
11 But mass market advertising is not essential to be an  
12 innovator.

13          Q.    Okay, thank you. Mr. Cromwell asked you a  
14 question concerning Sprint's continuing viability in  
15 long distance as a stand-alone company. Does  
16 Sprint's survival in mass market in the future  
17 require long distance service? Or maybe I should  
18 say, does Sprint's survival in the mass market in the  
19 future require more than long distance service?

20          A.    Well, we believe that many customers are  
21 going to demand one-stop shopping for a suite of  
22 services, including local, long distance, Internet  
23 access, wireless, whatever. We would like to compete  
24 in that marketplace and provide service to that  
25 customer segment. As I answered Commissioner Gillis

00340

1 earlier, there will be customers that don't want  
2 bundled products, that don't want all-in-one  
3 products, and whether or not Sprint can survive to  
4 serve those customers is an open question. But there  
5 will be providers who will focus on those subsets of  
6 customer groups.

7 Q. And what does the merger give Sprint that  
8 it wouldn't have in that respect, absent the merger?

9 A. Well, the merger, again -- I mean, you  
10 know, I prefaced my response to Chairwoman Showalter  
11 by talking from a strategic level what this merger's  
12 about. It's about two companies that have a vision  
13 of a future in which customers demand a suite of  
14 services, and that company can provide it in  
15 competition with the RBOCs and AT&T and their cable  
16 affiliates.

17 This merger gives Sprint the wherewithal to  
18 participate in that future by leveraging and  
19 combining the respective assets of the two companies.

20 Q. And what does this merger give Sprint that  
21 a BellSouth or Deutsche Telekom or anyone else, for  
22 that matter, would not offer?

23 A. The specifics of this merger, and Mr.  
24 Porter talked about them yesterday, the MMDS  
25 capabilities are very important and significant.

00341

1 WorldCom has a significant international presence.  
2 Sprint doesn't. WorldCom has local and access  
3 facilities in 100 markets. Sprint has no local  
4 facilities. Sprint is required, for special access  
5 connections, to use the incumbent local exchange  
6 company, such as Southwestern Bell. This merger  
7 would enable Sprint to use alternatives, SBC, for  
8 example, which is a very positive result of the  
9 merger.

10 Q. Thank you. Turning back to Mr. Thompson's  
11 cross-examination, he asked questions about savings  
12 due to the elimination of marketing to each other, so  
13 elimination of Sprint marketing to WorldCom's  
14 customers and WorldCom not marketing to Sprint's  
15 customers. Does this apply to mass market cost  
16 savings or only direct marketing?

17 A. I'm not sure of what the specific savings  
18 might be of a combined long distance company and  
19 whether they might be in mass market or somewhere  
20 else.

21 Q. And do you know if it was a purpose or a  
22 goal of the merger to eliminate long distance  
23 competition between the two companies?

24 A. No, I don't think this merger was about  
25 long distance companies being eliminated. This

00342

1 merger is about getting two companies together that  
2 can participate in the future of telecommunications  
3 and provide services to a broad range of customers.

4 Q. Okay. I think it was also Mr. Thompson  
5 that asked questions about the impact of the merger  
6 on Sprint's customer service. And do you know of --  
7 and you mentioned that the merged companies would  
8 probably adopt best practices of, you know, each  
9 other, and that the combined company would do that.  
10 Do you have any specific experience in that?

11 A. Yes. My experience with Sprint, in my 16  
12 years, we've seen Sprint long distance company  
13 combine and merge with GTE long distance, and more  
14 recently, I've seen Sprint local operations merge  
15 with Centel local operations. And in those two  
16 cases, what we saw were that the combined company  
17 would adopt the best practices, in terms of customer  
18 service, in terms of everything else.

19 So I would expect that WorldCom will adopt  
20 the best practices of customer service, wherever  
21 those might come from.

22 Q. Thank you. One last question. Chairwoman  
23 Showalter mentioned the need to balance the local  
24 entry of the merged entity versus the impact on the  
25 long distance market. And I'm wondering if you could

00343

1 maybe give some perspective to some of the concerns  
2 about the long distance -- or the merger impacting  
3 the long distance market?

4 A. Yes, I can. I've looked at what Sprint's  
5 long distance sources of revenues are. That is to  
6 say, Washington consumers are billed in such a way  
7 that about 80 percent of their long distance usage is  
8 interstate. Of the 20 percent that's intrastate,  
9 let's say -- I can't say exactly, but let's say, for  
10 purposes of illustration, half of it is intraLATA and  
11 half of it is interLATA intrastate.

12 What's being considered here by the  
13 Commission is the 10 percent of that hundred percent  
14 that's intrastate interLATA. If one assumes that  
15 Sprint's market share is 10 percent, which it isn't,  
16 that means that what we're considering here is one  
17 percent of all Washington consumers' billings for  
18 long distance service.

19 So on the one hand, we're saying that  
20 Sprint will disappear in the provision of one percent  
21 of all expenditures by Washington consumers as part  
22 of this merger. I think that needs to be weighed  
23 against the positives of this merger in Washington  
24 State, and I've talked about those, competitive  
25 entry, MMDS, and so forth.

00344

1 MR. HEATH: Thank you. I have no further  
2 questions.

3 E X A M I N A T I O N

4 BY CHAIRWOMAN SHOWALTER:

5 Q. Can I ask just a follow-up to that? You've  
6 just cited a statistic that 80 percent of Washington  
7 customers' long distance revenues?

8 A. Revenues.

9 Q. Are interstate?

10 A. Yes.

11 Q. Aren't we to be concerned with that fact,  
12 too? You seem to be suggesting that all this  
13 Commission should be concerned about is intrastate  
14 long distance, but our Washington customers are  
15 users, in a big way, of interstate long distance, so  
16 isn't that -- aren't the interstate long distance  
17 dynamics also a concern to this Commission?

18 A. Yes, they're a concern. And those issues  
19 are being addressed by the FCC in their review of the  
20 merger. So they're reviewing the impact of  
21 interstate long distance on -- the impact of this  
22 merger on the interstate long distance market. I  
23 think it's a concern --

24 Q. They are looking at it from a national  
25 point of view, but from -- our job is is the merger



00345

1 in the public interest, which at least is the public  
2 interest of Washingtonians, which include a whole  
3 range of issues, but it seems to me including, as  
4 well, interstate long distance?

5 A. Yes, I think that's a concern. It was not  
6 -- I didn't imply that this Commission shouldn't be  
7 concerned with the impact on interstate long distance  
8 markets of which Washingtonians participate. As I  
9 read Staff's recommendations against the merger, I  
10 read the concern being the intrastate interLATA  
11 market, not the interstate market.

12 CHAIRWOMAN SHOWALTER: Thanks.

13 JUDGE CAILLE: Is there any re-cross for  
14 Mr. Kapka?

15 MR. THOMPSON: Yes, I have a couple of  
16 questions.

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

18 BY MR. THOMPSON:

19 Q. Mr. Kapka, Mr. Heath asked you if you could  
20 provide an example of -- I'm not sure precisely how  
21 this was, but if you could provide an example of a  
22 firm that is able to compete in long distance without  
23 engaging in mass market advertising. I think you  
24 mentioned the company Net something, that you  
25 couldn't remember, but wouldn't you agree that USA

00346

1 Today is mass marketing?

2 A. Yes. Yes, I would agree.

3 Q. Okay. Can you name a major contender in  
4 mass market long distance that does not advertise in  
5 the mass media?

6 A. Well, somebody earlier asked me if I'd seen  
7 any advertising for Excel. And you know, I don't  
8 follow the market that closely, but the point I was  
9 trying to make was that I'm not sure that -- or I  
10 don't believe national mass media advertising is a  
11 requirement to sell long distance service.

12 Q. Is some other -- I take it there needs to  
13 be, however, some --

14 A. What are we talking about? What do we mean  
15 by mass media advertising? I mean, obviously a  
16 company has to reach customers somehow and -- you  
17 know, what are we referring to?

18 Q. Well, frankly, I don't know, because I'm  
19 following up on Mr. Heath's question, but I  
20 appreciate your comment that there needs to be some  
21 way for the customers to -- or excuse me, the company  
22 to reach the customers, and I imagine you'd agree  
23 that if there is no advertising in mass media, such  
24 as newspapers, television, and so forth, that there  
25 would at least need to be either direct marketing,

00347

1 general marketing, something of that nature?

2 A. Yes, I would agree with that. I mean, you  
3 look at this advertisement here for US West, which  
4 presumably this is mass media advertising, and it's  
5 encouraging customers to buy their bundled service.  
6 They have a very high market share, probably, in  
7 intraLATA. Not probably. They have a high market  
8 share in intraLATA, and they're using that, through  
9 this advertising, to get customers to buy other  
10 services. So this is an example, I guess, of mass  
11 media advertising.

12 Q. What is your basis for the statement that  
13 US West has a high share of intraLATA service in  
14 Washington?

15 A. Well, higher than Sprint's share. It seems  
16 -- and I have seen analysis provided by Staff that  
17 lists intraLATA market share by carriers, and as I  
18 recall, the number for US West was significantly  
19 higher than Sprint's number, for example. So I --

20 Q. Do you recall what it was, specifically?

21 A. I can't remember if this is confidential  
22 information or not. I suspect it might be.

23 Q. Well, actually, I think we had asserted the  
24 confidentiality, but I don't believe -- are you  
25 referring to Dr. Blackmon's HHI analysis?

00348

1 A. Yes.

2 Q. And it was your understanding that Dr.  
3 Blackmon's HHI analysis contained a discrete  
4 intraLATA market analysis?

5 A. No, that's not my understanding. I can't  
6 remember -- you know, in answer to your question, I  
7 can't remember exactly where I saw the information  
8 that showed US West's intraLATA percentage of  
9 revenue. I thought it was in the HHI analysis.  
10 Perhaps it was somewhere else.

11 Q. Okay. Exactly where in Staff's testimony  
12 did you see the claim that there was no concern about  
13 the loss of competition in the intraLATA market?

14 A. Exactly where? As I recall, and I'm not  
15 looking at Staff's testimony right now, the Staff's  
16 position was that US West was a significant player in  
17 intraLATA markets in Washington with a high enough  
18 market share such that one didn't need to be  
19 concerned about the intraLATA market effects.

20 Now, where did I see that? Well, for  
21 example, on page nine, line 21, the last sentence  
22 there, The WUTC had, even before the merger was  
23 announced, been particularly concerned about the  
24 paucity of competition in the interLATA market  
25 segment, as opposed to the intraLATA market segment.

00349

1 Q. So you're drawing an inference from that?

2 A. That's one place where I drew an inference.

3 Q. Could you read the sentence that precedes  
4 that one?

5 A. The state long distance market is -- I'm  
6 sorry, Moreover, the artificial division of the  
7 market into interLATA and intraLATA components  
8 restricts the effectiveness of competition. And then  
9 WUTC --

10 Q. That's okay. That's the one you already  
11 read. Thank you. Is there another place? If it's  
12 just a matter of an inference from that sentence and  
13 that's your answer, I'm happy to --

14 A. That's one inference. It seemed that there  
15 was -- and I can't place my fingers on it, but I had  
16 inferred that the intraLATA market in Dr. Blackmon's  
17 -- from Dr. Blackmon's perspective was much more  
18 competitive than the interLATA intrastate market.

19 MR. THOMPSON: Okay. I don't have any  
20 further questions.

21 JUDGE CAILLE: Mr. Cromwell.

22 MR. CROMWELL: Thank you, Your Honor.

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

24 BY MR. CROMWELL:

25 Q. Mr. Kapka, you stated in -- I believe it

00350

1 was in response to a previous question, that mass  
2 media advertising is not necessary to sell long  
3 distance services; is that correct?

4 A. Not necessary to sell long distance  
5 services.

6 Q. I seem to recall you saying that. Is that  
7 true?

8 A. Well, again, in answer to Mr. Thompson's  
9 question, presumably, in order to attract new  
10 customers, you have to communicate some proposal to  
11 them. One way of doing that is through mass media  
12 advertising, whatever that is. Somehow you need to  
13 communicate some kind of proposal to get customers to  
14 buy a product.

15 Q. Would you agree that a necessary element to  
16 doing so is having a recognizable brand name?

17 A. Well, I wouldn't -- no, I would not agree  
18 with that. I think what's required is some way to  
19 get customers to notice you, whatever it is you're  
20 selling.

21 Q. So you're saying, then, that Sprint's brand  
22 name is not relevant?

23 A. No, I didn't say that. Sprint has a brand  
24 name that's recognizable in the marketplace.

25 Q. And it has value to the company?

00351

1 A. It has value to the company, yes.

2 Q. Why does it have value to the company?

3 A. Because customers recognize the brand name.

4 It's got certain attributes associated with it that

5 enables Sprint to sell customers products. I mean,

6 your question was is it necessary to have a

7 recognizable brand name to sell a product, and my

8 answer is no. And --

9 Q. Well, let me ask you a further refined

10 question. Is it necessary to have a recognizable

11 brand name to sell long distance services

12 effectively?

13 A. Well, I don't know what effectively means.

14 Is it necessary to have a recognizable brand name to

15 be successful in the marketplace? It's necessary to

16 have a value proposition that people like, that

17 you're selling something of value and you're able to

18 convey that, so people purchase the product. In

19 doing that, you can create a brand recognition, and

20 customers will respond to that.

21 Q. So you would agree, then, that customers do

22 rely on brand names in making purchasing decisions?

23 A. Customers rely on brand names in making

24 decisions, certainly.

25 Q. And --

00352

1 A. Customers also buy and purchase products  
2 routinely without any knowledge of what the brand is.

3 Q. I think you answered my question. Thank  
4 you. Ultimately, customers will be losing a choice  
5 of a branded carrier if this merger is consummated;  
6 isn't that true?

7 A. Actually, I don't know the specifics, and I  
8 don't think anyone does, of whether or not the new  
9 WorldCom will continue to brand products under the  
10 Sprint name. I don't know that. I don't think that  
11 decision has been made.

12 Q. Mr. Kapka, are you aware of any  
13 telecommunications provider who has either high  
14 single or double-digit market share in the long  
15 distance market that doesn't have a brand name that  
16 is recognizable in that mass market?

17 A. Well, let's look at SBC here. SBC has a  
18 brand name that's very recognizable in Kansas City,  
19 but has probably no recognition in Seattle. SBC --

20 Q. Would you associate, then, that their  
21 market share would probably be lower, related to the  
22 recognition value of their brand?

23 A. They haven't entered the market yet, but  
24 they're going to enter the market in Seattle as a  
25 condition of their merger with Ameritech, they're



00353

1 going to try to sell products, and they're going --  
2 they hope they're going to be very successful.  
3 They're going to create --

4 Q. Would you agree --

5 MR. HEATH: He can answer the question.

6 MR. CROMWELL: I think he's not answering  
7 the question. But to avoid getting into the  
8 strike/don't strike discussion that occurred  
9 yesterday, I was attempting to move this along. But  
10 I'm happy to stay as long as Mr. Kapka would like.

11 JUDGE CAILLE: Let's let the witness  
12 complete his answer.

13 THE WITNESS: They're going to create a  
14 brand name in Seattle and elsewhere that recognizes,  
15 hopefully, from their perspective, the positive  
16 attributes associated with SBC. They have no brand  
17 name, no brand recognition today in Seattle. They  
18 hope to achieve that over some period of time.

19 Q. And would you agree that, in order to do  
20 that, they will have to undertake marketing efforts  
21 to create that brand recognition value in this  
22 market?

23 A. Well, they'll have to do something, yes.  
24 They'll have to create some brand recognition.  
25 Perhaps that's through -- however they do that,

00354

1 whether that's mass media advertising, offering  
2 successful products through word of mouth, people buy  
3 SBC, whether transients to Seattle, who have been  
4 very successful in Dallas, are very happy with SBC's  
5 service, demand SBC in Seattle. However they do  
6 that, I think that's their goal.

7 Q. And of the options you've just described,  
8 which of them do you believe is most effective in  
9 acquiring market share?

10 A. Of the options I gave you, I think some  
11 kind of advertising is probably the most effective  
12 way.

13 MR. CROMWELL: Thank you. Your Honor, I  
14 have a -- well, let me make a foundational question.

15 Q. Mr. Kapka, you discussed with Mr.  
16 Pascarella, I believe it was, 7,500 intraLATA price  
17 list type changes that you supervised or had filed  
18 last year?

19 A. Yes, intrastate.

20 Q. I'm sorry, intrastate. And that was over  
21 Sprint's entire territory, I would assume, not just  
22 Washington?

23 A. All 50 states.

24 Q. Do you know how many of those were long  
25 distance mass market price-specific offers that the

00355

1 company has been supporting by television or mass  
2 media advertising?

3 A. No.

4 MR. CROMWELL: Okay. Your Honor, I'd like  
5 to make a records requisition request, and I would  
6 like to know your preference, whether I should put  
7 one under one number, with subparts to it, or if you  
8 would like separate specific requests, or if the  
9 companies have a preference.

10 MS. KIDDOO: What's the request?

11 MR. CROMWELL: For data. I can make this

12 --

13 JUDGE CAILLE: Is this all in reference to  
14 the 7,500 tariff changes?

15 MR. CROMWELL: Yes, there's a number of --

16 JUDGE CAILLE: Why don't we just do it as  
17 one record request.

18 MR. CROMWELL: Thank you, Your Honor. Your  
19 Honor, as Records Requisition Request Number One, I  
20 believe, in this proceeding, I would ask that Sprint  
21 produce the number of intrastate changes that Mr.  
22 Kapka has described that were directed to the mass  
23 market.

24 Part B, which of those were, in fact,  
25 supported by Sprint by television or mass media

00356

1 advertising.

2 Part C, which of those -- not being a  
3 subset of Part A or B, but rather going back to the  
4 entire set, which of the changes of the 7,500 changes  
5 he made were made in response to offers by other  
6 telecommunication providers, excepting AT&T, MCI and  
7 NYNEX.

8 I would ask further that, as subparts D, E  
9 and F, that that the same data be produced  
10 Washington-specific. In other words, for the  
11 intrastate changes that were filed only to  
12 Washington, with the same data produced.

13 JUDGE CAILLE: Will the witness be able to  
14 provide that?

15 THE WITNESS: I don't know. The earlier  
16 offer was, as I recall, was to give 100 rate changes  
17 we made in 1999, in response to somebody else's  
18 pricing promotion. This request would require going  
19 through every price change we made in 1999, and then  
20 understand what was the driver for that price change,  
21 segment it by interexchange carrier. I think that's  
22 a reach. I mean, we could probably do it sometime in  
23 the next 24 months, but what's the time frame for --

24 MR. CROMWELL: I suppose briefing.

25 MR. HEATH: This is an enormous request,

00357

1 and to the extent that the pricing changes that are  
2 sought nationwide for all the intrastate changes, I  
3 think Mr. Kapka's estimation of 24 months --

4 THE WITNESS: Your Honor, I would be  
5 willing to focus on Washington.

6 MR. CROMWELL: Why don't we do that, then,  
7 if that meets the company's concerns?

8 JUDGE CAILLE: Focus on Washington?

9 MR. CROMWELL: Yeah, the records request be  
10 made specific to Washington, assuming Ms. Judy can  
11 assist.

12 THE WITNESS: I mean, it's not a -- we  
13 don't have a system in place that's going to tell us  
14 to do this, so we're going to have to go through  
15 item-by-item to determine what was the motivation,  
16 which means going back to the business unit and  
17 having them identify why they made this change.

18 MR. CROMWELL: Initiated the change. So  
19 then, perhaps just to reiterate that the data request  
20 will be specific to Washington, which of -- well, I  
21 guess the first predicate would be how many changes  
22 were made last year by Sprint in Washington, how many  
23 were directed towards the mass market, how many were  
24 supported by the company with advertising, how many  
25 of the changes that they made were responsive to

00358

1 offers made by other companies, and for simplicity's  
2 sake, excluding AT&T and MCI, although I don't  
3 believe NYNEX operates here, so that's perhaps  
4 easier, who the changes were in response to. I think  
5 that recaps it.

6 MR. HEATH: Your Honor, I'd like to object  
7 to the request, that at this late date in the  
8 process, I believe this has been going on since --  
9 how long has discovery been going on? Months. And  
10 Public Counsel and everybody has had the opportunity  
11 to conduct discovery. They have even asked questions  
12 along these lines previously, to which we have  
13 responded.

14 The enormity of this request is exceedingly  
15 burdensome, I would suggest to the point of being  
16 punitive, and I don't think it is reasonable, in  
17 light of the present schedule and the circumstances  
18 under which we are conducting the hearing and  
19 providing evidence into the record, that this is a  
20 reasonable request.

21 MR. CROMWELL: May I respond, Your Honor?

22 JUDGE CAILLE: Certainly.

23 MR. CROMWELL: I believe that, first, we  
24 have not asked this question before. Second, in the  
25 spirit of the Commission's records requisition

00359

1 request process, this request is specifically in  
2 response to Mr. Kapka's testimony here this morning  
3 regarding his supervision of intrastate tariffs,  
4 these 7,500 he supervised last year.

5 I have voluntarily willingly limited my  
6 request to Washington-specific. Perhaps Mr. Kapka  
7 can inform us of how many, if he knows, did occur in  
8 Washington last year?

9 THE WITNESS: Well, it would be reasonable  
10 to take 1/50th of 7,500, just as an approximation. I  
11 don't know how many specific tariff changes, language  
12 changes, terms and condition changes we made in  
13 Washington, but this is an enormous project. We  
14 don't routinely keep or store this sort of data, so  
15 it's an ad hoc effort to go back, review every change  
16 we made in Washington in 1999, and then explain,  
17 which means going back to the business unit and try  
18 to identify what was the motivation.

19 MR. HEATH: Your Honor, if I may, on that  
20 point, indicate that Mr. Kapka's not testified to the  
21 analysis that went into the actual changes made in  
22 the tariff filings. And therefore, I would object  
23 that the request seeks information outside the scope  
24 of Mr. Kapka's testimony and calls for new analysis  
25 to be performed.

00360

1 JUDGE CAILLE: All right. We will take  
2 this under advisement and come back with a ruling  
3 after lunch.

4 MR. CROMWELL: Thank you, Your Honor. I  
5 have further questions on re-cross.

6 JUDGE CAILLE: No further questions?

7 MR. CROMWELL: No, I do.

8 JUDGE CAILLE: Okay. Go ahead.

9 Q. Mr. Kapka, you also discussed accelerating  
10 the company's combined local entry, assuming that the  
11 merger is consummated; is that correct?

12 A. Yes.

13 Q. And do you know whether it is contemplated  
14 that that local entry would be targeted towards  
15 business markets or towards residential markets?

16 A. I think it's targeted towards both. I  
17 don't -- that's about all I know in specifics.

18 Q. I believe you also discussed, I believe  
19 with one of the Commissioners, potential combinations  
20 with other corporations were this merger not to be  
21 consummated.

22 Are there other potential combinations that  
23 either the company has officially considered or, in  
24 your opinion, the company would be likely to consider  
25 that would not result in the same concentration in



00361

1 the long distance markets that we've been discussing  
2 this morning?

3 A. Well, I'm not sure what kind of merger  
4 discussions Sprint has had. We've publicly said that  
5 we had considered a merger with BellSouth and I  
6 believe with Deutsche Telekom.

7 Q. Would the -- sorry.

8 A. Deutsche Telekom operates domestically, but  
9 probably with very, very minute market share.  
10 BellSouth is the predominant ILEC in the Southeast,  
11 of course, but doesn't operate as a long distance  
12 entity elsewhere. So presumably a merger with  
13 BellSouth would have had zero impact on Washington  
14 market share.

15 Q. And the same would be true of Deutsche  
16 Telekom?

17 A. Yes, Mr. Cromwell.

18 Q. Or any of the other, say, European-based  
19 telecommunications companies?

20 A. Yes. There would be no impact on  
21 Washington intrastate market share. I would add that  
22 there probably wouldn't be much of an emphasis with  
23 Deutsche Telekom on providing the kind of  
24 all-distance service that two merged companies --  
25 merging companies would like to offer.

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1 Q. I think we can probably agree that Deutsche  
2 Telekom and WorldCom probably have different  
3 priorities. Finally, I think in response to a  
4 question of whether -- a redirect question of Mr.  
5 Heath's, whether the goal of this merger was to  
6 eliminate long distance competition, you said that it  
7 was not; is that correct?

8 A. Yes.

9 Q. Would you agree, though, that a consequence  
10 of this merger is to concentrate long distance market  
11 share and decrease the effective competition, at  
12 least in the short term?

13 A. No, I would conclude -- the first part of  
14 your question, I would agree with, that the market  
15 share of the combined company will be larger than  
16 WorldCom's existing market share is. But the second  
17 part of your question, I would not reach the  
18 conclusion that competition will be harmed either in  
19 the short run or the long run because of this merger.

20 Q. So in your opinion, there is no correlation  
21 between market concentration and a decrease in  
22 competition?

23 A. No, there's a correlation -- I didn't say  
24 that. I just said in the long distance marketplace,  
25 as it exists today, and I expect it to continue

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1 existing in the future, there's sufficient  
2 competition that this merger will not harm long  
3 distance competition.

4 Q. Just so I'm clear, it's your opinion that  
5 there is sufficient competition, viewing the  
6 competitive landscape today and assuming that the  
7 merger occurred today, that that combination with the  
8 competitive landscape we have today would not  
9 effectively harm competition?

10 A. Yes, on this point, I agree with Dr.  
11 Blackmon. There's sufficient competition in long  
12 distance. It's a competitive market.

13 MR. CROMWELL: Thank you, Mr. Kapka. I  
14 have nothing further.

15 JUDGE CAILLE: Mr. Pascarella, any cross?

16 MR. PASCARELLA: I have one question, Your  
17 Honor.

18 JUDGE CAILLE: All right.

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

20 BY MR. PASCARELLA:

21 Q. Sort of follow-up of what you were just  
22 talking about. Mr. Kapka, do you know whether, in  
23 assessing the desirability of this merger, whether  
24 either WorldCom or Sprint undertook any effort to  
25 quantify the value to the combined company of the

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1 elimination of a long distance competitor, that  
2 elimination of a long distance competitor being the  
3 fact that two current long distance competitors were  
4 combining?

5 A. I'm not familiar with any analysis. I have  
6 no idea whether or not that analysis was performed.

7 MR. PASCARELLA: Thank you.

8 JUDGE CAILLE: Is there anything further?

9 MR. HEATH: If I may ask a few follow-up  
10 questions?

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

12 BY MR. HEATH:

13 Q. Mr. Kapka, if you could please turn to the  
14 testimony of Glenn Blackmon on page four, and if you  
15 could look at lines seven through 11. I'll just give  
16 everybody a moment to read that. And then I would  
17 ask you if there's any inference that you might draw  
18 from the listing of WorldCom and Sprint as the number  
19 two and number three providers of long distance in  
20 Washington?

21 Maybe to clarify, the testimony reads,  
22 Staff has conducted a thorough review of the proposed  
23 merger, and based on the legal standards established  
24 by state law and prior Commission decisions, Staff  
25 has concluded that the merger, as proposed, is not

00365

1 consistent with the public interest. MCI WorldCom  
2 and Sprint are the number two and number three  
3 providers of long distance to Washington State  
4 consumers. Mr. Kapka, do you see US West listed  
5 anywhere?

6 MR. CROMWELL: Your Honor, I'm going to  
7 object. Mr. Blackmon will be available for  
8 cross-examination by Mr. Heath, and he would seem to  
9 be, under the Rules of Evidence, the best witness to  
10 address his own testimony.

11 MR. HEATH: The question was raised by Mr.  
12 Thompson as to where Mr. Kapka might have drawn the  
13 inference that US West had a large market share in  
14 the state of Washington, and that the focus was  
15 inter, not intraLATA.

16 MR. CROMWELL: I'll withdraw my objection.  
17 I didn't know that that's where he was going.

18 THE WITNESS: No, I don't see US West  
19 listed.

20 Q. Thank you. And on that same page, if you  
21 could please look to lines 12 through 15, and I'll  
22 just read that into the record. The merger of these  
23 two companies would reduce consumer choice and  
24 competition. The long distance market already offers  
25 consumers few alternatives, particularly after

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1 WorldCom and MCI merged in 1997. Indeed, there are  
2 today only three well-established brand name long  
3 distance companies: AT&T, MCI WorldCom and Sprint.

4 I would ask you, Mr. Kapka, if you see US  
5 West listed anywhere?

6 A. No, I don't see US West listed there.

7 Q. And is there any inference you could draw  
8 as to what Mr. Blackmon's concern is from this  
9 testimony?

10 A. Given that US West is not included, and I  
11 believe US West is the predominant intraLATA provider  
12 in Washington, the focus of his analysis would seem  
13 to be the intrastate interLATA market, given that he  
14 did not include US West here.

15 Q. Thank you. Mr. Kapka, you mentioned Excel  
16 as having replaced Sprint as the number three  
17 provider of residential long distance in several  
18 states. I believe it was 12, if I'm not mistaken.

19 A. Yes.

20 Q. Do you know if Excel employs mass media  
21 advertising to market their service?

22 A. No, I don't.

23 Q. Mr. Kapka, would BellSouth or -- excuse me.  
24 Would a merger with BellSouth or Deutsche Telekom  
25 have had any of the benefits that this merger has for

00367

1 the state of Washington?

2 A. As I outlined the merger benefits, the  
3 MMDS, the local entry plans, the ability to avail  
4 Sprint of the WorldCom local and access facilities,  
5 none of those benefits would have been possible with  
6 the merger of BellSouth or Deutsche Telekom.

7 Q. And does BellSouth own any portion of any  
8 long distance company participating in the market  
9 today?

10 A. As I understand it, BellSouth has an  
11 interest in Qwest.

12 MR. HEATH: Thank you.

13 JUDGE CAILLE: Is there anything further  
14 for this witness?

15 E X A M I N A T I O N

16 BY CHAIRWOMAN SHOWALTER:

17 Q. Well, I just have follow-up. This last  
18 exchange, I had thought that the way these statements  
19 of inferences, et cetera, got going was not a  
20 discussion of in-state intra versus interLATA, but  
21 in-state versus interstate, and maybe I missed part  
22 of the later questions.

23 But am I correct that a discussion of  
24 interLATA market share in-state is simultaneously a  
25 discussion of interstate interLATA market share of

00368

1 Washington customers, because the provider is the  
2 same?

3 A. Yes, that's true for interLATA services. I  
4 think the distinction we were making was between  
5 intraLATA intrastate, where US West retains its  
6 dominant position --

7 Q. Right.

8 A. -- versus intrastate interLATA.

9 Q. And I had thought we got going on this  
10 discussion when I started making the reference to the  
11 80 percent of the revenue that was generated of  
12 state-to-state calls. Maybe that wasn't the genesis  
13 of your inferences, but if it was, I'm not sure that  
14 the intraLATA really gets at the issue that started  
15 the discussion.

16 A. What I had assumed was that Staff's concern  
17 was with the interLATA market. Given that the  
18 interLATA interstate market is being reviewed by the  
19 FCC, from that, I assume that what Staff was really  
20 concerned about was intrastate interLATA.

21 MR. HEATH: And Your Honor, on page four at  
22 the bottom there, at line 19, sort of the caption or  
23 the title of the discussion of the testimony of Dr.  
24 Blackmon is -- or at least of this piece is a  
25 description of the Washington State long distance



00369

1 market.

2 CHAIRWOMAN SHOWALTER: Well, we have to  
3 wait for Mr. Blackmon to get on the stand to get his  
4 intentions.

5 MR. HEATH: I recognize that.

6 CHAIRWOMAN SHOWALTER: And looking through  
7 this, it's not exactly clear that it's limited to  
8 in-state versus state-to-state, because you can look  
9 at it two ways. But in either case, it's Washington  
10 consumers who are buying the product.

11 JUDGE CAILLE: Mr. Cromwell.

12 MR. CROMWELL: Your Honor, just one  
13 follow-up question for Mr. Kapka, if I may.

14 R E C R O S S - E X A M I N A T I O N  
15 BY MR. CROMWELL:

16 Q. Mr. Kapka, does Sprint approach -- let's  
17 just focus for a moment on the mass market,  
18 residential, small business. Does Sprint approach  
19 that market for intrastate interLATA long distance in  
20 any way different than Sprint approaches the  
21 interstate interLATA long distance market?

22 A. Does it approach?

23 Q. Well, let's say from a marketing  
24 perspective?

25 A. Well --

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1 Q. Do you have separate advertising campaigns  
2 that are state-specific interLATA ads?

3 A. At some level, we have national  
4 advertising. There are regional and state-specific  
5 advertising tagalongs or approaches to a broad-based  
6 national advertising plan.

7 Q. Does Sprint charge differently for  
8 intrastate interLATA than it does for interstate  
9 interLATA on its mass market plans?

10 A. On some of them, yes.

11 Q. What percentage?

12 A. Well, you know, when you say does it charge  
13 different, we talked earlier about the Nickel Nights  
14 program, and Mr. Thompson had asked me about the  
15 specifics of the rates. The per-minute charges are  
16 identical for the interstate and intrastate version  
17 of Nickel Nights. There is a state-specific charge  
18 associated with the product that enables the customer  
19 to get those interstate rates per minute. That  
20 charge varies by state based on access charge  
21 differentials by state.

22 So for example, in North Carolina, which is  
23 a high access cost state, the charge for that product  
24 is higher than it is in a small or lower access cost  
25 state.

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1 Q. So essentially, you're -- I'm just trying  
2 to get us to lunch here. You're saying that that  
3 plan has a state-specific access charge rate that may  
4 vary state-to-state, depending on the rates,  
5 obviously, that Sprint has to pay the local providers  
6 to get the origination and termination?

7 A. Right, it's the monthly recurring charge  
8 that varies by state with that specific product.

9 Q. But with the exception of that, the  
10 product's marketed evenly?

11 A. Yes.

12 MR. CROMWELL: Thank you.

13 JUDGE CAILLE: Anything further of Mr.  
14 Kapka? Then you are excused. Thank you for your  
15 testimony.

16 MS. KIDDOO: Your Honor, before we break  
17 for lunch, Mr. Kapka and Mr. Porter yesterday both  
18 referred to an FCC report that shows some market  
19 share information nationwide and by states. It's the  
20 FCC report entitled Trends in Telephone Service,  
21 dated March 2000. That document is available on the  
22 FCC's web site, and I think it probably might make  
23 the record clearer if I could ask the Commission to  
24 take administrative notice or we could designate it  
25 as an exhibit, if you would prefer. I can give a

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1 citation to the report location for the record, if  
2 that's the way you want to handle it.

3           Also, specifically, I think Mr. Porter  
4 yesterday, in talking about the breakdown of total  
5 toll service revenues and market shares, was  
6 referring to Table 11.3, although there were some  
7 other tables also referenced with respect to  
8 Washington State-specific shares. The report can be  
9 found on the web site of the FCC, which is  
10 www.fcc.gov/ccb -- which stands for Common Carrier  
11 Bureau -- /stats.

12           JUDGE CAILLE: Perhaps the company could  
13 make that -- we could designate that as an exhibit.

14           MS. KIDDOO: Okay.

15           JUDGE CAILLE: And we can discuss that  
16 before we go on the record.

17           MS. KIDDOO: The other thing that I think  
18 is another housekeeping matter. I'm sorry to keep  
19 everyone from going to lunch, but I'll forget after  
20 lunch, is that Exhibits 80 and 81, which are Sprint  
21 tariffs, I believe were not admitted into the record.

22           JUDGE CAILLE: Are those Staff's exhibits,  
23 Staff Cross Exhibits, 80 and 81? Yes.

24           MS. KIDDOO: MCI tariffs. They're both --

25           MR. THOMPSON: Oh, right. I neglected to

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1 offer those into the record.

2 JUDGE CAILLE: Is there any objection to  
3 the admission of Exhibits 80 and 81?

4 MR. HEATH: No, Your Honor.

5 JUDGE CAILLE: Then those exhibits are  
6 admitted into the record. Thank you. And we are  
7 adjourned till 1:30. Let's go off the record.

8 (Lunch recess taken.)

9 JUDGE CAILLE: Let's go on the record. We  
10 are back from our luncheon recess. And Mr. Cromwell,  
11 you have requested to put something on the record  
12 with respect to your record request.

13 MR. CROMWELL: Yes. Thank you, Your Honor.  
14 Mr. Heath, of Sprint, and I have consulted over the  
15 lunch hour and reached an agreement to further refine  
16 my records request to make it more feasible for the  
17 company to respond in a reasonable time frame.

18 And I've agreed to further limit our  
19 records requisition request to the first four months  
20 of this year, January 1 through April 30, with the  
21 assumption that Mr. Heath and I think are both  
22 making, that that would be more feasible for the  
23 company to take a bite of in a timely fashion than  
24 trying to go through all of last year's data.

25 JUDGE CAILLE: And so -- but the records

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1 request will still encompass your -- is it three  
2 subparts or is it four?

3 MR. CROMWELL: I think, as Mr. Heath and I  
4 just discussed, it was four, with the extra one being  
5 the clarification of, since we're focusing only on  
6 Washington, how many are there or were there filed in  
7 Washington during the now applicable time period of  
8 the first four months of the year; two, how many of  
9 those changes were directed towards the mass market,  
10 which we are defining as residential and small  
11 business; how many of that group of mass market  
12 changes were supported by television or print  
13 advertising; and then, finally, of all the changes  
14 that they filed, how many of those were responsive to  
15 other company offerings by companies other than MCI  
16 and AT&T. I believe that correctly states what Mr.  
17 Heath and I discussed.

18 MR. HEATH: That's correct, although is  
19 there -- well, that is what we've agreed to.

20 JUDGE CAILLE: Thank you. And we commend  
21 the parties for working this out. Mr. Kelley, if you  
22 will stand and raise your right hand, I will swear  
23 you in.

24 Whereupon,

25

A. DANIEL KELLEY,

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1 having been first duly sworn, was called as a witness  
2 herein and was examined and testified as follows:

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

4 BY MS. HOPFENBECK:

5 Q. Dr. Kelley, can you state your full name  
6 for the record, please?

7 A. My name is A. Daniel Kelley.

8 Q. On whose behalf have you presented  
9 testimony in this proceeding?

10 A. On behalf of WorldCom.

11 Q. Directing your attention to -- actually,  
12 before I start there -- and where are you employed?

13 A. I'm employed at HAI Consulting in Boulder,  
14 Colorado.

15 Q. Thank you. Directing your attention to a  
16 document that has been pre-marked for identification  
17 as T-95, your reply testimony filed on April 21st,  
18 2000, do you have that before you?

19 A. I do.

20 Q. Does that contain the questions and answers  
21 that were filed by MCI WorldCom in this proceeding?

22 A. They do.

23 Q. Do you have any corrections to those?

24 A. I have one. On page 11, line seven, it  
25 currently reads, Uswestdex.com lists 59 long distance

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1 carriers, and I'd like to change the 59 to 46. And  
2 this was noted in our response to Staff Data Request  
3 Number 30.

4 CHAIRWOMAN SHOWALTER: What page was that?  
5 You said page 11?

6 THE WITNESS: Yeah, I notice the Staff data  
7 request referred to page 10, lines 17 through 19, and  
8 the copy I have is page 11, so I imagine the one I  
9 have is different.

10 CHAIRWOMAN SHOWALTER: The one I have is  
11 page 10, line 17.

12 MS. HOPFENBECK: I must say that I think  
13 this is a function of the fact that we converted --  
14 in order to file this testimony, it was converted  
15 from Word to WordPerfect, and I don't believe that  
16 anyone on our side of the table probably has the same  
17 version that you have. And I didn't realize that  
18 until just now.

19 CHAIRWOMAN SHOWALTER: By the way, just for  
20 your information, this agency is going to Word in a  
21 period of months.

22 MS. ENDEJAN: Yes, yes.

23 MR. CROMWELL: Mr. Gates thanks you.

24 MS. ENDEJAN: My entire IS department  
25 thanks you.



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1 MS. HOPFENBECK: So the record is clear, I  
2 was wondering if anyone here would have an extra copy  
3 of Dr. Kelley's testimony, because I think, during  
4 your cross-examination, it's likely to be clearer if  
5 he is using a copy -- the same copy that you are  
6 using.

7 MR. THOMPSON: I'd agree, but I don't know  
8 that we have an extra copy.

9 MR. CROMWELL: Your Honor, just for speed,  
10 I can loan Ms. Hopfenbeck my copy, and we can swap  
11 off as necessary, but I don't think too many of my  
12 questions key off it.

13 MR. THOMPSON: Well --

14 THE WITNESS: Thank you.

15 JUDGE CAILLE: Could you please repeat what  
16 the change was, Mr. Kelley?

17 THE WITNESS: Sure. Well, let me find it  
18 on this version.

19 JUDGE CAILLE: It should be page 10, line  
20 17.

21 THE WITNESS: Yes, we're just changing 59  
22 to 46.

23 Q. Dr. Kelley, can you briefly describe the  
24 reason for that change?

25 A. Yes. As has been indicated in response to

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1 the data request, we counted the listings of long  
2 distance carriers in Uswestdex.com, which is harder  
3 to say than you would think, and there are 59 there.  
4 But going back and reviewing it after we got the  
5 Staff data request, I realized that certain carriers  
6 have multiple entries, and I wanted to not count  
7 carriers more than once.

8 Q. Thank you. Did you also cause to be  
9 prepared in this proceeding exhibits that have been  
10 pre-marked for identification as Exhibits 96, 97, 98  
11 and 99, which are described in your testimony as  
12 ADK-1, ADK-2, ADK-3, and ADK-4 respectively?

13 A. Yes.

14 Q. Are those exhibits all correct?

15 A. Yes.

16 Q. Now, if I were to ask you today these same  
17 questions that are contained in your reply testimony,  
18 Exhibit T-95, would your answers be the same?

19 A. They would.

20 MS. HOPFENBECK: I'd now move the admission  
21 of Exhibits T-95, 96, 97, 98, and 99.

22 JUDGE CAILLE: Is there any objection to  
23 the admission of these exhibits?

24 MR. THOMPSON: No objection.

25 MR. CROMWELL: No, Your Honor.

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1 JUDGE CAILLE: Then they are so admitted.

2 MS. HOPFENBECK: Dr. Kelley is available  
3 for cross-examination.

4 JUDGE CAILLE: We're ready for  
5 cross-examination. Would you like to begin, Mr.  
6 Thompson?

7 MR. THOMPSON: Yes, thank you.

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

9 BY MR. THOMPSON:

10 Q. Good afternoon, Dr. Kelley.

11 A. Good afternoon.

12 Q. I'm glad you have a copy of your testimony  
13 with the same page numbers. The first thing I want  
14 to do is refer you to page seven of your testimony,  
15 which is marked as Exhibit T-95. And at lines seven  
16 through 10 there, you state that, in its advertising,  
17 GTE reports that a 1999 survey by J.D. Power revealed  
18 that more than half of all consumers wanted to obtain  
19 their telecommunications services from one provider  
20 through a bundle.

21 Did you take this, the number, from the  
22 original survey by J.D. Power or are you just  
23 reporting what you saw in the advertisement from GTE?

24 A. Just reporting what we saw from GTE. I  
25 think we had a data request from you and we provided

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1 the GTE release.

2 Q. Okay. Have you consulted and analyzed the  
3 original report?

4 A. No more than looking at it before we turned  
5 it over to you.

6 Q. Well, why don't we take a look at the data  
7 request response, which is Exhibit 108.

8 A. I have it.

9 Q. Okay. Under MCI WorldCom response -- well,  
10 first of all, Staff's request says, does it not,  
11 Please provide a copy of the advertising and a copy  
12 of the referenced survey. And could you read the  
13 company's response, please?

14 A. See attached copy of GTE press release,  
15 dated April 3rd, 2000. Dr. Kelley does not have a  
16 copy of the J.D. Power Survey. The reference in Dr.  
17 Kelley's testimony was to the GTE press release in  
18 which the survey was --

19 THE REPORTER: Sorry, could you slow down,  
20 please?

21 THE WITNESS: Oh, I'm sorry. The reference  
22 -- for the reporter, The reference in Dr. Kelley's  
23 testimony was to the GTE press release in which the  
24 survey was cited.

25 Q. Okay. And so we weren't provided with a

00381

1 copy of the survey; correct?

2 A. That's right.

3 Q. But I take it your testimony today is that  
4 you have consulted and analyzed the original report;  
5 correct?

6 A. The original survey?

7 Q. The survey, rather, excuse me.

8 A. No, I reported what GTE reported.

9 Q. Oh, okay. So you have not looked at the  
10 report to determine whether there are any  
11 methodological flaws or concerns that may call this  
12 data into question?

13 A. In the J.D. Power survey?

14 Q. Correct.

15 A. That's correct. I would add that the  
16 survey is consistent with what I've observed in the  
17 industry, and that is that carriers are providing  
18 bundles of services, as we saw from Mr. Kapka this  
19 morning, and customers -- and carriers are reporting  
20 that customers are interested in them.

21 Q. Okay. So it's more an observation based on  
22 what's being provided, rather than information from a  
23 survey of customers as to their preference?

24 A. Well, this survey was conducted with this  
25 result, and consumers are voting with their feet by

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1 buying packages of services.

2 Q. But you don't know, for example, if this  
3 survey attempted to gauge the importance to consumers  
4 of overall price, for example, versus one-stop  
5 shopping, as issues of importance to them?

6 A. I do not know specifically what the survey  
7 did in respect to that. I do believe that consumers  
8 are also interested in price, certainly.

9 Q. Okay. So you wouldn't know, for example,  
10 whether there has been any research into how much of  
11 a premium consumers would be willing to pay for the  
12 convenience of a single provider of  
13 telecommunications services?

14 A. I assume that research such as that has  
15 been done, but I have not seen it.

16 Q. Okay. I'd like to ask you now, please, to  
17 take a look at page 23 of your testimony in Exhibit  
18 T-95.

19 A. Okay.

20 Q. And on lines nine through 14, there's a  
21 passage there that I'd like to discuss with you.  
22 Could you please read the -- I guess it's one  
23 sentence, starting, Data demonstrate?

24 A. Those data demonstrate that nearly one-half  
25 of all households that use MCI WorldCom or Sprint as

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1 their main vendor at any point in time shift to  
2 another carrier within 12 months, more than one-third  
3 of households used an emerging carrier as their main  
4 vendor for at least one month during the 12-month  
5 period, and nearly 40 percent did so over an 18-month  
6 period.

7 Q. Okay, thank you. Could I -- let's see.  
8 Let me ask you to turn, please, to Exhibit 102.

9 A. Yes.

10 Q. Okay. This represents the company's  
11 response to Staff's data request to please provide a  
12 copy of all reports from which this data was  
13 originally drawn, referring to the sentence you just  
14 read for us; correct?

15 A. Correct.

16 Q. Okay. Attached to this are, well, three  
17 tables. And could you please tell me which of the  
18 tables supports the assertion made in I guess the  
19 first portion of your sentence there, prior to the  
20 semicolon?

21 A. I believe it would be the first table  
22 presented, which shows persistence. So that the  
23 statement is nearly one-half of all households that  
24 use MCI or Sprint as their main vendor at any point  
25 in time shift to another carrier as their main vendor

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1 within 12 months.

2 If you look at the table, the persistence  
3 table, you see the persistence where Sprint starts,  
4 in the last column, to make it easier, Sprint starts  
5 at basically all the customers are Sprint customers,  
6 and by the end of the 12th month, 53 percent of the  
7 customers are Sprint customers.

8 Q. Fifty-three percent are Sprint customers?

9 A. This is a persistence table.

10 Q. Uh-huh.

11 A. So at the end of 18 months, you know, 39  
12 percent are Sprint customers.

13 Q. Well, this represents -- the table depicts  
14 loss of customers over time, roughly speaking;  
15 correct?

16 A. Yes, that's correct.

17 Q. And they're customers of which carrier at  
18 the outset of the time period?

19 A. Well, there are four columns there. One is  
20 AT&T, and it says Lucky Dog and emerging. What that  
21 means is Lucky Dog is AT&T's dial-around service,  
22 10-10 service, and what that indicates is Lucky Dog  
23 is not included in this column. MCI Telecom USA and  
24 MCIW means that MCI's dial around, 10-10 services,  
25 are included in that column. In the next column,



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1 they're not included. And then, the final column, we  
2 have Sprint.

3 Q. Okay, thank you. Now, which -- as to the  
4 second portion of your statement, that more than  
5 one-third of households used an emerging carrier as  
6 their main vendor for at least one month during a  
7 12-month period?

8 A. Right, and I think what we'll need to do is  
9 go to the next -- to table three, the third table  
10 that's listed as table three.

11 Q. Right.

12 A. Percentage of households using as a main  
13 vendor an emerging carrier or a service without an  
14 MCI -- without an AT&T, MCI WorldCom or Sprint brand  
15 name, and percentage using service of an emerging  
16 carrier, and then you have the percentages there over  
17 the number of months. And then I'm just checking  
18 back to see exactly which numbers I used. More than  
19 one-third of the households used an emerging carrier  
20 for at least one month during the 12-month period,  
21 you know, 36.2 percent.

22 Q. All right. Does main vendor refer to  
23 pre-subscribed carrier?

24 A. No, it does not. It refers to the carrier  
25 that carries the most minutes in any given month.

00386

1 Q. Okay. Looking at the bottom line of this  
2 graph, where it indicates the rate, I guess, of  
3 switching after 18 months, doesn't this data also  
4 indicate that over 60 percent of customers never  
5 used, as their main vendor, a carrier other than the  
6 Big Three carriers within that time period? The  
7 converse, in other words, of the 38 and a half  
8 percent?

9 A. Yes.

10 Q. Okay, all right. Let's turn, if you would,  
11 to C-110.

12 A. Okay.

13 Q. Now, this is actually a confidential  
14 document, but it hasn't been copied on blue paper, as  
15 it should have been, but I guess I can make reference  
16 to what it is. It indicates that it's apparently  
17 discussion papers on residential telecommunications  
18 by WorldCom's president for mass markets.

19 And I would ask you to turn, please, to  
20 page 10 of that report, and it's actually a pretty  
21 bad copy, I'm afraid. I'd be happy to hand you the  
22 original, maybe, so you can fill us in on what it  
23 actually says within the darkened areas. Could I  
24 hand a copy to the witness?

25 JUDGE CAILLE: Certainly.

00387

1 MS. HOPFENBECK: I'd like to say at this  
2 point that the percentages that are reflected here  
3 are highly-confidential percentages. This is  
4 disconnect summaries and it's similar to the  
5 information that you were questioning Mr. Kapka  
6 about, although this is MCI WorldCom's study, as  
7 opposed to Sprint's.

8 So what I'm thinking is that if the record  
9 does not have a copy that allows you all to read the  
10 percentage -- actually, I mean, you can do the math,  
11 it's 100 percent in the blackened area. Where you  
12 can't read the percentage, you could derive at that,  
13 but I just wanted to offer or provide a copy to you  
14 that's readable.

15 JUDGE CAILLE: That would be fine. Do you  
16 have a copy now that we can --

17 MS. HOPFENBECK: Actually, I have one copy  
18 right now.

19 JUDGE CAILLE: We can do the math. Never  
20 mind.

21 CHAIRWOMAN SHOWALTER: But the record, the  
22 official record should have a good copy.

23 MS. HOPFENBECK: It's not our exhibit, but  
24 I will make sure that you have one tomorrow.

25 Q. Okay. This essentially represents, does it

00388

1 not, for the year 1999, where customers went who left  
2 WorldCom; correct?

3 A. I should say that this is not my document  
4 and I have never seen it until it was put in the  
5 exhibit book, but, you know, it purports to be what  
6 it purports to be.

7 Q. All right. Well, based on this, at least  
8 --

9 CHAIRWOMAN SHOWALTER: Mr. Thompson, are  
10 you on page 10?

11 MR. THOMPSON: That's correct.

12 CHAIRWOMAN SHOWALTER: Can you be referring  
13 to either the left-hand or right-hand side of the  
14 page?

15 MR. THOMPSON: Okay. I guess I'm referring  
16 to the right-hand side of the page.

17 CHAIRWOMAN SHOWALTER: Thanks.

18 MR. THOMPSON: Thanks for that  
19 clarification.

20 MS. HOPFENBECK: Let me just interject at  
21 this point that Ms. McMahon is going to be our next  
22 witness, Mr. Thompson, and if Mr. Thompson wants to  
23 ask questions about this document about a person who  
24 actually has knowledge of this document, she does  
25 have knowledge of this document. Mr. Huyard is her

00389

1 boss.

2 MR. THOMPSON: Actually, that's probably  
3 not a bad idea.

4 MS. HOPFENBECK: All this witness can say  
5 is that the document says what it says, and can draw  
6 no conclusions from it or interpret it in any way.

7 MR. THOMPSON: Okay. I'm happy to move on,  
8 actually, if that's the case, and I will bring it up  
9 later with Ms. McMahon. Thank you.

10 Q. Instead, I will refer you, please, to page  
11 15 of your testimony. And in particular, I'm looking  
12 at lines eight through 10.

13 A. Yes.

14 Q. Okay. You state there that by the year  
15 2003, MCI WorldCom and Sprint combined will have less  
16 than one percent of the supply of bandwidth provided  
17 by only 10 carriers. What is the source of this  
18 statement?

19 A. It's my Exhibit ADK-2, which is from a  
20 Credit Suisse - First Boston analyst report.

21 Q. Okay. Can you explain how bandwidth  
22 differs from route miles as a measure of network  
23 capacity?

24 A. I will try. Mr. Porter could probably  
25 explain it correctly, being a technical person.

00390

1 Bandwidth just explains how much information, how  
2 many bits, can be pushed over a pipe. And as we all  
3 know, from listening to Mr. Porter yesterday,  
4 bandwidth is increasing enormously for lots of  
5 reasons, one of which is that many carriers are  
6 putting in fiber, including new carriers who are  
7 recent entrants in the telecommunications market.

8           And because technology is changing to allow  
9 more bits to be pushed through a fiber pair than  
10 historically has been the case with, Mr. Porter  
11 explained, dense-wave multiplexing and the ability of  
12 the manufacturers to come up with electronics that  
13 allow bits to go over different colors in the  
14 spectrum on the same fiber, so that the same fiber's  
15 being used to produce more and more bits, to the  
16 point where we now measure it in terabits, which is,  
17 oh, gosh, 110 gigabits, I think, or 100 gigabits, or  
18 whatever it is.

19           But there's a lot of bandwidth that can go  
20 through the fiber now, a lot of information. Miles  
21 refers to the distance, route miles is the length of  
22 the fiber legs on carriers' networks.

23           Q. It seems to me that bandwidth would refer  
24 to the capacity of a single, say, fiber, is that an  
25 incorrect understanding, or a single point in the

00391

1 system, as opposed to the system as a whole? How  
2 does that -- maybe you can clarify that for me?

3 A. Shall we go to the exhibit?

4 Q. Okay.

5 A. Estimated supply of bandwidth in terabit  
6 miles. So we have miles of the network.

7 CHAIRWOMAN SHOWALTER: What exhibit?

8 THE WITNESS: Oh, I'm sorry, ADK-2.

9 CHAIRWOMAN SHOWALTER: Is that one of our  
10 exhibits?

11 MS. HOPFENBECK: It's Exhibit 97.

12 CHAIRWOMAN SHOWALTER: Thank you.

13 THE WITNESS: And what Dan Reingold has  
14 done here is he's -- from reports from the companies,  
15 he knows how many miles they have and he knows what  
16 kind of electronics they've announced they're putting  
17 on their network over time and what their routes are  
18 going to look like over time, and he's estimated the  
19 total terabit miles of capacity that these carriers  
20 are going to be able to carry at various points in  
21 time.

22 Q. Okay. But it's really a different concept  
23 than the footprint, is it not?

24 A. Yes.

25 Q. Okay.

00392

1           A.    Yes, it combines, if you will, footprint  
2 with the electronic carrying capacity of a fiber with  
3 a footprint.

4           Q.    Okay.  So it could be that a particular  
5 carrier would have a great deal of capacity in one  
6 part of the country, say, and not necessarily a large  
7 expanse in the total number of miles, but would  
8 register a high total bandwidth?

9           A.    I would say that would not be true for this  
10 particular table.  If you look at the carriers that  
11 are in this table, they've got Qwest, Global  
12 Crossing, GTE, Broadwing, Level 3, Touch America and  
13 Williams, and all those companies are building  
14 expansive networks, serving, you know, major  
15 population areas.

16                The work I've done, which I refer to in my  
17 testimony, I've identified over 30 carriers that are  
18 putting in fiber networks.  And it is true that one  
19 of the smaller carriers maybe has fiber, you know, a  
20 few hundred miles of fiber between cities it serves,  
21 and can push a lot of information through there.  But  
22 those carriers aren't even included in here.  We're  
23 just talking about the large carriers with more or  
24 less national networks.

25           Q.    But it is true, isn't it, that bandwidth



00393

1 and long distance market share are not equivalent  
2 concepts?

3 A. Well, not necessarily. I mean, you can  
4 measure market share in many different ways.  
5 Sometimes analysts will look at a market and think  
6 it's important to look at the capacity in the market  
7 and what shares of capacity are. So I would note  
8 that if you were to do an HHI analysis on this data,  
9 it would show that the HHI of the industry is much  
10 smaller than it would be if you did an HHI analysis  
11 based on customers or revenues or some other measure.

12 Q. Have you ever known an HHI analysis to be  
13 done on anything other than revenues?

14 A. Yes. I've done them myself on capacity.

15 Q. Okay.

16 A. But the point of that, obviously, would be  
17 if capacity is there and it's easy to bring to  
18 market, if you just do the HHI on the basis of  
19 revenues, you're understating the competitive  
20 significance of carriers out there who have capacity  
21 and are ready to step in and compete, you know,  
22 should the need arise.

23 Q. Let me ask you a hypothetical question. If  
24 there were a company, one of these companies with a  
25 national network that had surplus capacity along the

00394

1 I-5, Interstate 5 corridor of Washington State, in  
2 other words, say running from Seattle to Portland,  
3 but it had no facilities east of the mountains, in  
4 the Spokane LATA, in other words, it would have to  
5 incur some cost to begin competing in mass market  
6 phone service in Eastern Washington, would it not?

7 A. Well, what do you mean by incur some costs?

8 Q. Could it just immediately begin selling  
9 phone service to customers who reside in Eastern  
10 Washington?

11 A. With some very simple steps, it could. It  
12 could arrange to resell the service of carriers who  
13 do provide service in the eastern part of the state,  
14 put that together with its own capacity in the  
15 western side of the state and be in business.

16 Q. How would it make the -- who would it have  
17 to make the arrangements with to begin offering that  
18 service?

19 A. Any of a number of wholesale providers of  
20 service, AT&T, of the combined WorldCom-Sprint,  
21 Williams, Touch America's in the East, I believe,  
22 GTE. I don't know if they're a wholesale carrier  
23 yet, but they have a very large network that goes to  
24 a lot of places.

25 Q. Would you agree that network ubiquity is

00395

1 perceived to be important by interexchange carriers  
2 today, in that many of them are striving to attain a  
3 greater coverage with their networks?

4 A. Well, I would agree that many carriers,  
5 such as the ones on this page, are trying to build  
6 large nationwide networks. There are other carriers  
7 that are specializing in building regional networks  
8 and may not have plans in the next few years to go  
9 national. They're happy in their geographic niche.  
10 So yes, carriers are building large footprint  
11 networks and, yes, some carriers are building smaller  
12 footprint networks.

13 Q. Would you agree that generally these  
14 carriers are not yet on a par with the Big Three in  
15 terms of their presence in the LATAs, the number of  
16 LATAs around the country?

17 A. What do you mean by these carriers?

18 Q. The emerging carriers, I think, that are  
19 referred to either in your own testimony or that of  
20 others?

21 A. Generally, the carriers on this page, other  
22 than AT&T, MCI WorldCom, and Sprint, will be in a  
23 smaller number of LATAs. However, they're building  
24 out their networks in such a way that the LATAs they  
25 do cover cover a very substantial portion of

00396

1 households or of lines in the country.

2 Q. Okay. I want to go through an exercise  
3 with you to just try to identify which carriers are  
4 where within the state of Washington. So I would ask  
5 you, please, to turn to page 13 of your testimony.

6 A. Yes.

7 Q. It's actually a carryover, but it starts --  
8 well, just a moment. Let me look at it. Okay. If  
9 you could please read starting after the question,  
10 Please provide details on competitors in the state of  
11 Washington, to just the first carryover line in the  
12 next page there, please?

13 A. I identified 14 post-merger carriers that  
14 own or lease fiber in the Seattle LATA. Number 674.  
15 In addition to the merged MCI WorldCom-Sprint, these  
16 include AT&T, cable and wireless, Frontier, GST, GTE,  
17 Level 3, psi.net, Teleglobe, Worldwide Fiber, BTI  
18 Telecom Services, Touch America, Williams and Qwest.

19 Eight of these firms actually own fiber  
20 either directly or through shared ownership with  
21 another company. As I noted above, Qwest is selling  
22 its long distance business to Touch America.

23 Q. Okay, thanks. Now, can I ask you, please,  
24 to take a look at Exhibit 31. And it probably  
25 requires you to look at a different three-ring

00397

1 binder, I'm afraid.

2 MS. HOPFENBECK: Can you tell us which?

3 CHAIRWOMAN SHOWALTER: What exhibit did you  
4 say?

5 MR. THOMPSON: Thirty-one. Actually, make  
6 that 30. It's just in the same neck of the woods  
7 there.

8 MS. HOPFENBECK: May I ask leave to look  
9 over the witness' shoulder? We only have one copy of  
10 this exhibit.

11 JUDGE CAILLE: Certainly.

12 THE WITNESS: Okay.

13 Q. All right. This actually represents kind  
14 of a handy aggregation of a lot of information, and  
15 I'm going to try to explain what's here and you can  
16 let me know if you disagree. It represents a table  
17 of the facilities-based carriers who offer long  
18 distance services at retail in Washington State;  
19 correct?

20 A. No, that's not correct. It represents --  
21 well, it depends what you mean by facilities-based.  
22 It represents carriers with fiber. There could be  
23 other carriers that own switches that are not listed  
24 here.

25 Q. Okay.

00398

1           A.    And then, of course, there are carriers  
2 that don't own either fiber or switches and are just  
3 resellers.

4           Q.    Okay.  So with that correction, carriers  
5 with fiber who offer long distance services at retail  
6 in Washington?

7           A.    Right.

8           Q.    Right, okay.  I gather that, because we  
9 have asked for those who offer at retail, there are  
10 13 companies on this list, and I think there were 14  
11 in the quote that I asked you to read, and it appears  
12 to me that the company that has dropped out is  
13 Frontier.  Does that seem like that would be correct?  
14 Because I take it because it's a -- it does not offer  
15 services at retail; is that --

16          A.    Well, that doesn't sound quite right.  It  
17 may just be an error on our part that we missed  
18 Frontier on this chart.

19          Q.    Okay.

20          A.    Because they are with Global Crossings, a  
21 retail competitor.

22          Q.    Okay.  Maybe you can -- we can make that  
23 correction as we go through what's presented here.

24          A.    Okay.  We have to go back and look at that.

25          Q.    But let me see if I can make this make

00399

1 sense to people. You've got two columns, one of  
2 which indicates a Y, yes, if that company offers  
3 business service at retail, and then you've got a Y  
4 in the residential column if it offers residential  
5 service at retail; right?

6 A. Correct.

7 Q. Okay. So -- and then we've got the numbers  
8 in the far right column, indicating which LATA within  
9 the state of Washington that applies to; right?

10 A. Yes.

11 Q. Okay. So is it correct to conclude that at  
12 present we have, within the Seattle LATA, as well as  
13 the Portland LATA, that we have AT&T -- I'm speaking  
14 now to those firms that are offering residential  
15 service at retail -- AT&T, Sprint, MCI WorldCom,  
16 Qwest, Adelphia -- however, Adelphia is pending and  
17 has POPs under construction, and then the other firm  
18 is GTE; correct?

19 A. Okay. Just so I understand, why did we  
20 leave off Worldwide Fiber?

21 Q. Oh, because there's an N in the residential  
22 column.

23 A. Oh, I see. Okay. Sure.

24 Q. So in other words, there are -- following,  
25 if the merger were to occur today, I guess, following

00400

1 the merger, there would be AT&T, combined  
2 Sprint-WorldCom, Qwest and GTE, and possibly  
3 Frontier, Global Crossing, I guess you indicated?

4 A. Okay. Now -- and I guess I don't  
5 understand what implication we're trying to draw from  
6 that.

7 Q. I'm just trying to establish the number of  
8 carriers with fiber who offer long distance services  
9 at retail in each LATA at present?

10 A. Sure. I mean, just to make it clear,  
11 carriers who are not offering residential service at  
12 retail, I would venture to conclude, may well be  
13 selling their fiber to other carriers who are  
14 offering residential services at retail.

15 Q. Granted. So there may be resellers that  
16 sell over the facilities of wholesalers, in addition  
17 to this universe that we're talking about here?

18 A. Yeah.

19 Q. Is that your point?

20 A. Yeah, you said resellers, but the  
21 implication you're drawing is the resellers are just  
22 resellers. Resellers are very important in this  
23 market. They take retail services to consumers and  
24 provide them options. And particularly when they're  
25 taking those options from companies like Williams.



00401

1 Q. I intend to actually ask you about the  
2 importance of resellers a little later on, but for  
3 now I just wanted to go through the exercise of  
4 identifying the firms that I'm interested in knowing  
5 about.

6 A. Okay.

7 Q. So the firms I was talking about are in  
8 both, I gather from this, are in both Seattle and the  
9 Portland LATA. I want to look at the Spokane LATA  
10 now, which is identified here as 676. In the Spokane  
11 LATA, offering, again -- excuse me, fiber-based  
12 carriers who offer long distance services at retail,  
13 you've got AT&T, Sprint and WorldCom -- oh, excuse  
14 me, that's right, Sprint and WorldCom and GTE?

15 A. Right, with GST building into the LATA.

16 Q. Okay. And looking, finally, at the Coeur  
17 d'Alene LATA, which is 960, or excuse me --

18 A. It looks like we have a typo. It's 960 or  
19 906.

20 Q. Okay. It's 906 on the chart. That  
21 universe, again, using the same definition, is  
22 limited to AT&T, Sprint, and MCI WorldCom; correct?

23 A. Right, I noted that in the testimony.

24 Q. Right.

25 MS. HOPFENBECK: Just so the record is

00402

1 clear, I just want to state that the Coeur d'Alene  
2 LATA is number 960.

3 MR. THOMPSON: So it should be corrected on  
4 the table?

5 MS. HOPFENBECK: Yes.

6 Q. Okay. You mentioned Frontier/Global  
7 Crossing. Are you aware if they have a presence in  
8 either the Coeur d'Alene or the Spokane LATA at  
9 present?

10 A. They do not have a presence in Coeur  
11 d'Alene. They may in Spokane. I could check that  
12 for you at a break or now, if you'd like.

13 Q. Oh, that's okay. Why don't we -- how long  
14 would it take you to figure it out?

15 JUDGE CAILLE: Why don't we check it at a  
16 break.

17 MR. THOMPSON: Okay.

18 JUDGE CAILLE: I'm sure we'll still be --

19 MR. THOMPSON: We'll correct the record at  
20 some point. So excuse me just a moment.

21 Q. I want to turn now just to take a look at  
22 the -- I think we have a LATA map, which is  
23 designated as an exhibit, and it's number 109. So  
24 just while we're looking at the map, so everybody has  
25 in mind what areas the LATAs encompass, at present,

00403

1 in the Seattle LATA, I mean, subject to your  
2 correction later if you find that Frontier and Global  
3 Crossing are in this group, as well, carriers with  
4 fiber who offer long distance services at retail  
5 number five in the Seattle LATA, which encompasses  
6 Puget Sound area, as well as within the Portland  
7 LATA, which encompasses Vancouver, Washington,  
8 Longview, Kelso, Long Beach, Goldendale, et cetera;  
9 correct?

10 A. You said at retail. Do you mean  
11 residential or --

12 Q. Retail residential?

13 A. Yes, it does.

14 Q. Okay. And as for the Spokane LATA, which  
15 of course contains the city of Spokane, Yakima,  
16 Wenatchee, Tri-Cities, Walla Walla, et cetera, the  
17 number there currently totals four?

18 A. Yes, again, with GST building.

19 Q. Okay. And the Coeur d'Alene LATA, which  
20 includes Pend Oreille County, Washington, and  
21 interestingly, Pullman County -- or the Pullman area,  
22 I don't know if it's a county, of Washington, which  
23 includes Washington State University, that presently  
24 has three such carriers; correct?

25 A. Correct.

00404

1 Q. Based on this, would you agree that the  
2 rural areas of Washington State may be  
3 disproportionately impacted by the combination of  
4 these companies?

5 A. Well, no. If you mean impacted in the  
6 sense that competition would be reduced in rural  
7 areas, but not in other areas, I wouldn't agree with  
8 that. And the reason I wouldn't agree with that is  
9 that there are lots of reasons or mechanisms in the  
10 industry that ensure that rural customers get access  
11 to the same rates and plans as urban customers, one  
12 of which, for interstate calling, certainly, is the  
13 Telecommunications Act of 1996, which requires  
14 nationwide rate averaging.

15 So if a plan is at a certain price in  
16 Seattle, it's going to be at the same price from the  
17 same carrier in Spokane, or Pullman. So for example,  
18 if AT&T is offering their interstate services in  
19 Seattle and is facing lots of competition there and  
20 facing no competition in Pullman, the Pullman  
21 customers are still going to get the advantage of the  
22 competition. It gets leveraged, if you will.

23 In terms of intrastate rates, it's my  
24 understanding that the carriers typically have  
25 statewide averaged rates, so you'd get the same

00405

1 effect.

2 Q. But to the extent that customers who live  
3 in rural areas will have -- customers in those areas  
4 will have fewer alternatives post-merger, will they  
5 not, as far as companies that own their own networks  
6 and offer long distance services retail? I mean,  
7 that's undeniable, isn't it?

8 A. In terms of there will be fewer fiber-based  
9 carriers that are offering residential retail, yes.  
10 What are the competitive implications of that, which  
11 is the only question that's really interesting, the  
12 competitive implications are different.

13 Q. Okay. I appreciate that, but that's not  
14 the question I asked. But I do want to ask you about  
15 the topic of retailers and resellers, I should say,  
16 and their importance in the market. You mentioned  
17 them, I think -- well, sort of in passing, I guess,  
18 at page 10 of your testimony, at least I think that's  
19 where you're referring to them.

20 A. Thank you for this exercise, by the way.  
21 It's the only exercise I've gotten on this trip.

22 Q. Good for the biceps, I think.

23 A. Okay. I'm on page 10.

24 Q. Okay. You state there that the WUTC web  
25 site lists 500 carriers registered to provide long

00406

1 distance in Washington. First, do you believe that  
2 there are 500 carriers that are currently marketing  
3 and selling long distance service to residential  
4 customers in the state of Washington?

5 A. No.

6 Q. Okay. Would you agree that most of these  
7 companies may be currently selling services -- long  
8 distance services as resellers?

9 A. Yes, that would be correct.

10 Q. Whether as pre-paid calling card companies  
11 or --

12 A. There are lots of varieties or flavors that  
13 these companies could be in. Entry is easy and they  
14 can go into niches.

15 Q. Can you tell me roughly what the difference  
16 is between what a reseller pays for a minute of long  
17 distance, a minute is not the relevant measure, and  
18 what they sell it for? Do they buy it by the minute?  
19 Let me ask you that first.

20 A. I think there are lots of different ways to  
21 do it. The wholesale market provides resellers with  
22 opportunities. In some cases, resellers can, maybe  
23 to reach a LATA, a distant LATA that they don't want  
24 to contract for, can resell a tariff service to MCI  
25 or AT&T. In most cases, I would think a large

00407

1 reseller would enter into a contract with AT&T, MCI,  
2 Williams, Qwest, Level 3, any of these carriers, to  
3 provide service. And I've not seen those contracts,  
4 so I couldn't comment on what they look like, but I  
5 would suspect that the contracts are catered to the  
6 needs of the resellers.

7 Q. So you can't make any kind of  
8 generalization about what that difference or margin  
9 might be?

10 A. I don't have that data, no.

11 Q. Okay. Let me ask you, please, to look at  
12 page 26 of your testimony. Oh, first, I'm sorry,  
13 before moving on from that topic, though, do you know  
14 roughly what WorldCom and Sprint's combined share of  
15 the wholesale market is?

16 A. I don't. I'm trying to remember whether  
17 I've seen that number. I don't have it in mind right  
18 now.

19 Q. Would you agree it may be somewhere around  
20 60 percent?

21 A. Not having seen it, I wouldn't agree. I  
22 mean, you may be right, you may be wrong. I don't  
23 know.

24 Q. Okay. Let's take a look at -- I'm afraid  
25 I'm going to have to have you go to yet another

00408

1 three-ring binder. It's Exhibit 25. It may be in  
2 the same binder, actually.

3 A. Oh, I'm sorry. I'm sitting here letting  
4 everybody else do the work for me.

5 Q. Again, I'm referring you to a document, I  
6 guess, that you may not have any knowledge of  
7 yourself, but it was provided to us in response to a  
8 data request. But it does contain, on page three,  
9 the third page in, I guess it's not marked page  
10 three, a pie chart on the right side, showing the --  
11 purporting to show the market share or at least  
12 wholesale revenue market share of various firms for  
13 1999?

14 A. Correct. I would note 1998 and 1999.

15 Q. Right. But based on the numbers  
16 represented here, would you agree that it's pretty  
17 much --

18 A. I wouldn't agree that it's 60.

19 Q. Pretty much in the range of what I'm  
20 talking about? Okay.

21 MS. HOPFENBECK: Excuse me. That  
22 document's highly confidential, and I don't want the  
23 number in the record and I'm wondering if there's any  
24 way to --

25 THE WITNESS: I think there's some good



00409

1 points to be made from this graph, just looking at  
2 it. I mean, and I'll try to make them without  
3 referring to numbers.

4 MS. HOPFENBECK: I would suggest that the  
5 document -- this document does really speak for  
6 itself, in terms of what it represents as to those  
7 shares, and I would ask that the document has been  
8 admitted into evidence, and maybe we could just  
9 accept it for what it says. The witness, I don't  
10 believe, has personal knowledge of this particular  
11 document, and so is not really able to testify beyond  
12 what the document says anyway.

13 MR. THOMPSON: That's fine. Actually,  
14 that's all I needed it for.

15 COMMISSIONER HEMSTAD: I would just like to  
16 make a comment about confidential documents. I am  
17 concerned that we are becoming, I would call it,  
18 overly concerned about cross-examining witnesses on  
19 confidential documents. The parties are entitled to  
20 make their case, and if the document is confidential  
21 and it is sensitive information, it requires that  
22 we'll clear the hearing room and allow the witness to  
23 be questioned.

24 Counsel are perfectly entitled to be able  
25 to make their case, and with the understanding that

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1 they can couch their question in such a way as to try  
2 and minimize or to prevent the disclosure of  
3 confidential information. But I am concerned that we  
4 not constrain the ability of any party to make the  
5 case they wish to make merely because a document has  
6 been classified as confidential.

7 MS. HOPFENBECK: If I could respond  
8 briefly. Commissioner Hemstad, it would be -- with  
9 respect to that cross-examination that addresses  
10 confidential information, the petitioners have no  
11 objection to going into a closed session and allowing  
12 witnesses to be cross-examined on confidential  
13 matters.

14 In this particular case, it may be the case  
15 that Dr. Kelley could testify about the subject  
16 matter that Mr. Thompson was inquiring without  
17 revealing the confidential information, and if you'd  
18 like him to do that, I mean, he can do that right  
19 now.

20 COMMISSIONER HEMSTAD: That's up to counsel  
21 what kind of questions he wished to pursue.

22 MR. THOMPSON: Yeah, I'm afraid this may be  
23 much ado about nothing, because I had no other point  
24 than that.

25 THE WITNESS: I was going to, in response

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1 to your question, I was going to go on and explain  
2 what I take from this, because I think it's very  
3 useful. And I think I could do it in a way that  
4 doesn't reveal specific numbers here.

5 Q. Well, maybe you can handle that on  
6 redirect. I want to instead turn to a different  
7 matter, and that is page 26 of your testimony.

8 A. Okay.

9 Q. At lines 21 through 24 there, you state  
10 that MCI WorldCom proprietary data show a trend  
11 toward lower prices. Interestingly, these data also  
12 show wholesale volumes declining for a number of  
13 carriers, likely reflecting the build-out of  
14 competitive networks. First of all, what do you mean  
15 by build-out of competitive networks?

16 A. The fact that companies such as Qwest and  
17 Level 3 and Williams and Frontier have built  
18 extensive fiber networks, but they're not complete.  
19 And each year, more of their networks are completed  
20 or are built out.

21 Q. Okay. So in other words, they're less  
22 reliant on buying from WorldCom at wholesale. That's  
23 the point you're making?

24 A. Yes.

25 Q. To connect to -- to complete whatever

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1 footprint that they need to have in their networking?

2 A. Less reliant on whatever they were buying  
3 capacity from before they built out their networks,  
4 yes.

5 Q. Okay. So apparently, they've reached the  
6 conclusion that it's advantageous for them not to  
7 have to rely on a wholesaler?

8 A. They've reached the conclusion that it's  
9 advantageous for them to build networks and compete  
10 in the telecommunications business. And entry is  
11 easy, so they're doing it. And demand is growing, so  
12 they're doing it.

13 Q. Okay.

14 A. Those are all features you find in a  
15 competitive market.

16 Q. Okay. I'm going to send you to another  
17 exhibit, and that is Number 100.

18 A. Okay.

19 Q. Okay. This represents, does it not, the  
20 company's response to Staff's request for the data  
21 backing up this assertion; correct?

22 A. Correct.

23 Q. Okay. And it consists of apparently two  
24 sheets, even though there's four, for some reason, in  
25 the --

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1           A.    I think they're repeated.  I should say  
2 these are confidential, as well, even though they're  
3 not on blue.  I don't know why they're not on blue.

4           Q.    Well, okay.  I'm going to want to talk to  
5 you about these in some detail, so if the company  
6 would like to ask that the hearing room be cleared.

7                    JUDGE CAILLE:  I'll ask that the hearing  
8 room be cleared of anyone who has not signed a  
9 protective order.

10                   CHAIRWOMAN SHOWALTER:  We have to cut this  
11 off.

12                   JUDGE CAILLE:  And I'll direct the court  
13 reporter that we will now be going in camera.

14                            (The following portion of the proceedings  
15 is contained in a separate and confidential  
16 record.)

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