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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 MCI WORLDCOM, INC. and SPRINT ) Cause No. U-86-101  
6 CORPORATION, ) Volume VII  
 ) Pages 851-971  
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 19, 2000, at 8:20 a.m., at 1300 Evergreen  
19 Park Drive Southwest, Olympia, Washington, before  
20 Administrative Law Judge KAREN CAILLE, Chairwoman  
21 MARILYN SHOWALTER, and Commissioner RICHARD HEMSTAD.

22

23 The parties were present as

24 follows:

25

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

5  
6 SPRINT CORPORATION, by Eric S.  
Heath, Attorney at Law, 330 S. Valley View Boulevard,  
Las Vegas, Nevada 89107.

7  
8 SBC COMMUNICATIONS, INC., by  
Judith A. Endejan, Attorney at Law, Williams, Kastner  
& Gibbs, Two Union Square, 601 Union Street, Suite  
9 4100, Seattle, Washington 98101.

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

12  
13 PUBLIC COUNSEL, by Robert Cromwell,  
Jr., Assistant Attorney General, 900 Fourth Avenue,  
#2000, Seattle, Washington 98164.

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24 Barbara L. Nelson, CSR  
25 Court Reporter

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1 JUDGE CAILLE: We're on the record. Good  
2 morning. We are here today in Olympia for the fourth  
3 day of -- hopefully, only the fourth morning of  
4 hearings in the MCI-Sprint merger. Today is May  
5 19th, and all the parties have previously entered  
6 their appearances, so we will be underway. And  
7 before I swear in Dr. Blackmon, I understand that Mr.  
8 Cromwell has an issue.

9 MR. CROMWELL: Just, actually, a brief  
10 procedural request, whether the Commission might be  
11 willing to consider formally leaving the record open  
12 for comment by the parties regarding actions in  
13 parallel matters, thinking specifically of DOJ and EC  
14 review of this matter, for actions that might occur  
15 in those proceedings that would be relevant to the  
16 Commission's consideration of those issues, and  
17 simply for the parties to be allowed to comment on  
18 that issue if such an action occurs during the  
19 pendency of the case.

20 CHAIRWOMAN SHOWALTER: I just want to ask a  
21 question. Do you mean if the parties agree for DOJ  
22 to do something, then we ought to be able to take  
23 notice of it, or if the Staff of the DOJ recommends  
24 X, we ought to be able to look at that or you ought  
25 to be able to comment on it?

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1 MR. CROMWELL: The latter, Your Honor. I  
2 guess both your second and third questions, I would  
3 answer yes, that both you should formally be able to  
4 consider any actions DOJ or the EC takes as a matter  
5 of record in this case, and I believe the parties  
6 should be allowed to comment on those actions and  
7 their potential implication for the matter for review  
8 in front of the Commission.

9 MS. KIDDOO: To the extent that there are  
10 actions taken by other regulatory agencies, either  
11 federal or state, they will be a matter of public  
12 record. It would seem to me that this Commission  
13 could take administrative notice of those other  
14 matters. To the extent that there was something that  
15 a party thought warranted this Commission  
16 specifically reopening the hearing, then I think that  
17 it would be appropriate for that party to file a  
18 motion to reopen the hearing, rather than leaving the  
19 record open for some indefinite period of time.

20 MR. CROMWELL: Your Honor, I was only  
21 contemplating some form of written comment. I wasn't  
22 considering calling everybody back here.

23 COMMISSIONER HEMSTAD: Well, any action,  
24 any position taken by the Department of Justice would  
25 be simply a recommendation to the FCC, as I

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1 understand it. So it's not -- it would be an  
2 official position of the U.S. government, but it  
3 would not be a formal decision of any government  
4 agency having authority to make the decision.

5 MR. CROMWELL: Respectfully, Commissioner  
6 Hemstad, there are other possibilities, including  
7 antitrust suit and the issues that could arise in  
8 that context.

9 COMMISSIONER HEMSTAD: You mean the filing  
10 of such an action?

11 MR. CROMWELL: Right. And then the issues  
12 that are pled as a cause of action there.

13 COMMISSIONER HEMSTAD: I understand it.  
14 But what would we do with that information, other  
15 than that those would be allegations?

16 MR. CROMWELL: That's true, Your Honor. I  
17 guess what I'm asking the Commission to consider is  
18 leaving the door open to a written comment if, and  
19 I'll be frank, perhaps we have missed the boat on  
20 some very critical issue and perhaps those folks in  
21 D.C. caught something that we didn't in the material  
22 that we've both been reviewing. And if it appears to  
23 be significant enough to impact this Commission's  
24 consideration of the matter, then I think it would be  
25 appropriate for the parties to comment.

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1                   COMMISSIONER HEMSTAD: Well, there's a  
2 difference between commenting and, I suppose, a  
3 motion to reopen.

4                   MR. CROMWELL: True.

5                   CHAIRWOMAN SHOWALTER: I'm trying to  
6 analyze this. It seems that -- I mean, we have to  
7 deal with what's before us, which is is the merger  
8 consistent with the public interest. So we're not  
9 here, for example, to -- we're not an antitrust  
10 agency.

11                   MR. CROMWELL: Clearly.

12                   CHAIRWOMAN SHOWALTER: Although we have  
13 heard antitrust -- sort of quasi-antitrust issues in  
14 this case, I think for the purpose of determining the  
15 public interest. I would think that -- I'm thinking  
16 out loud, so that we have a proceeding before us, we  
17 set out a schedule for the evidence to be submitted  
18 to us that's relevant, and rather than having it  
19 open-ended with issues coming in and out, or in, I  
20 guess, if there is evidence, which I would say would  
21 be evidence that comes to someone's attention that we  
22 really should be considering, then wouldn't the right  
23 action be a motion to somehow get that evidence  
24 before us before we make a decision? And you would  
25 be justifying it on specific grounds, saying, you



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1 know, in our proceeding, we didn't have evidence of  
2 or didn't consider X, but here's some evidence that  
3 this Commission should consider.

4           And then, separate from evidence would be,  
5 I suppose, actions, but actions aren't -- you know,  
6 the Staff of the DOJ, for example, I'm not even sure  
7 an action is the Department of Justice deciding to do  
8 something.

9           MR. CROMWELL: I guess, again, just sort of  
10 brainstorming, I think really there's sort of two  
11 issues before the Commission, maybe I should say two  
12 sets of questions presented by any case, really.  
13 What is the evidence before you for consideration,  
14 and based upon your determination, what's the  
15 appropriate remedy or conclusion that the Commission  
16 will draw from that evidence in applying the law to  
17 these facts.

18           And there has been some discussion over the  
19 last few days about the appropriate remedies in this  
20 matter. If some agreement or remedy were reached at  
21 a different proceeding, I think it would be  
22 appropriate just to comment on the applicability of  
23 those remedies in the Washington context.

24           CHAIRWOMAN SHOWALTER: Is it to comment on  
25 them or would it be to bring before us -- I mean, it

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1 does happen in other -- some actions will be  
2 multi-state and then something will happen in another  
3 state that one or more of the parties thinks we  
4 should consider, as well, and usually they bring a  
5 motion saying we want you to consider this evidence  
6 that is occurring in another state, and we decide  
7 whether or not we should open up our schedule or open  
8 the record to consider it. I suppose sometimes we  
9 might and sometimes we might not. What do you think  
10 on that question?

11 COMMISSIONER HEMSTAD: Well, I don't think  
12 there's anything for us to decide here. If there's  
13 something that falls within the scope of the normal  
14 requests that we take administrative notice of some  
15 action, then those kinds of rules apply. If there's  
16 something that occurs that any party thinks requires  
17 additional evidence, then the process would be for  
18 you to file a motion to reopen the proceeding.

19 So I don't think there's anything that we  
20 can do here today to try to make those kinds of  
21 decisions in advance. That's up to you to decide or  
22 any other party to decide should the situation arise  
23 where you think that's important.

24 MR. CROMWELL: Fair enough.

25 JUDGE CAILLE: All right. Dr. Blackmon.

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1 Whereupon,

2 DR. GLENN BLACKMON,  
3 having been first duly sworn, was called as a witness  
4 herein and was examined and testified as follows:

5 JUDGE CAILLE: Mr. Thompson.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q. Dr. Blackmon, could you please state your  
9 full name and your address for the record?

10 A. It's Glenn Blackmon, 1300 South Evergreen  
11 Park Drive, S.W., Olympia, Washington.

12 Q. And you're employed by the Washington  
13 Utilities and Transportation Commission and are  
14 appearing on behalf of its Staff?

15 A. That's correct.

16 Q. Did you cause to be pre-filed in this  
17 docket exhibits that have been marked as T-246,  
18 T-247, and T-248?

19 A. Yes.

20 Q. And you have some corrections to make to  
21 your testimony; correct?

22 A. We've supplied revised pages six and seven  
23 to the pre-filed testimony reflecting some changes in  
24 the HHI numbers that were reported there, and then  
25 we've filed a replacement version of the two

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1 exhibits, the 247 and 248.

2 Q. And the two exhibits, I apologize, don't  
3 have a cover sheet on them, but our intention was to  
4 substitute everything behind the cover sheet on those  
5 two documents. The way to tell them apart is to look  
6 at the spreadsheet that's the first page on them  
7 both, and it says -- Exhibit 1 says, at the bottom,  
8 says Exhibit GB-1, and number two says Exhibit GB-2.

9 With those revisions, is the testimony true  
10 and correct, to the best of your knowledge?

11 A. Yes.

12 Q. And if I asked you those same questions  
13 today, would your answers, together with today's  
14 revisions, be the same?

15 A. Yes.

16 MR. THOMPSON: Your Honor, I would move the  
17 admission of Exhibits T-246, T-247, and T-248.

18 JUDGE CAILLE: Is there any objection to  
19 the admission of these exhibits?

20 MR. HARLOW: Well, Your Honor, and I've  
21 discussed this with Counsel for the Staff, although  
22 we did receive the revised GB-1 and GB-2 in the  
23 evening after the first day of hearing, we would have  
24 no objection to the revised exhibits being admitted,  
25 provided, however, that the original pre-filed

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1 exhibits also be admitted. And so we would request  
2 that the revised exhibits be renumbered as Exhibits  
3 260 and 261, and that, as a condition of entry of  
4 those late-served exhibits, that all four exhibits,  
5 the originals and the revised, be admitted.

6 MR. THOMPSON: I don't have an objection to  
7 that.

8 JUDGE CAILLE: All right. Then the  
9 original exhibits will remain as previously numbered  
10 and the revised exhibits will be -- the revised GB-1  
11 will be Exhibit 260 and revised GB-2 will be Exhibit  
12 261.

13 MR. HARLOW: Thank you, Your Honor. What  
14 were the numbers again?

15 JUDGE CAILLE: 260 and 261.

16 MR. HARLOW: Oh, okay. He was shaking his  
17 head.

18 MR. THOMPSON: I may have misunderstood  
19 what I was just agreeing to, actually.

20 JUDGE CAILLE: Oh, okay.

21 MR. THOMPSON: Did we just decide to make  
22 the revised portions a new exhibit, rather than -- my  
23 understanding was that we would make the revisions  
24 under the numbers as originally set out in the  
25 exhibit list, and then the parts that we're removing,

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1 in essence, would be new exhibits at the end of the  
2 numbering system.

3 MR. HARLOW: Well, it's just a matter of  
4 numbering, although I'll probably stumble over  
5 myself, since my notes have assumed them there.

6 MR. THOMPSON: Okay.

7 MR. HARLOW: But it doesn't really make a  
8 difference, as long as they're both in the record and  
9 the record's clear what the numbers are.

10 JUDGE CAILLE: I'd be glad to -- would you  
11 prefer that, Mr. Thompson?

12 MR. THOMPSON: Well, I just thought, for  
13 clarity's sake, it would be easier to have the final  
14 version of the testimony in one place, rather than go  
15 --

16 MR. HARLOW: That would be acceptable.

17 CHAIRWOMAN SHOWALTER: So the new one is  
18 now going to be revised original number and the old  
19 one is a later number?

20 MR. HARLOW: Right. The original GB-1  
21 would be 260.

22 JUDGE CAILLE: And the original GB-2 would  
23 be 261.

24 MR. HARLOW: Thank you, Your Honor, for  
25 that clarification.

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1 JUDGE CAILLE: Sorry, you're waiting for a  
2 ruling from me. The exhibits, as we marked them  
3 subject to the colloquy we had prior to identifying  
4 the exhibits, will be admitted into the record. And  
5 Dr. Blackmon is available for cross-examination.

6 MR. HARLOW: Thank you, Your Honor. Before  
7 we begin, I'd like to get admission of certain cross  
8 exhibits out of the way. And again, this is  
9 something we discussed with Staff, and I believe  
10 they're amenable, since these exhibits were produced  
11 by Staff. The exhibits we are offering are C-249,  
12 and just to make a note, that was a revised exhibit,  
13 C-250, 251, 254, 255, and 259.

14 JUDGE CAILLE: So my understanding is the  
15 ones that you've skipped will not be offered?

16 MR. HARLOW: We may offer an additional  
17 exhibit or two, but that would be at the conclusion  
18 of cross.

19 JUDGE CAILLE: Is there any on objection?

20 MR. THOMPSON: No objection.

21 JUDGE CAILLE: Then Exhibits C-249, C-250,  
22 251, 254, 255, and 259 are admitted into the record.

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

24 BY MR. HARLOW:

25 Q. Good morning, Dr. Blackmon.

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1 A. Good morning.

2 Q. I take it you're familiar with the Federal  
3 Trade Commission Department of Justice, which I'll  
4 refer to as FTC DOJ, or maybe just DOJ Horizontal  
5 Merger Guidelines?

6 A. In general, yes.

7 Q. And per the DOJ Guidelines, the  
8 establishment of the Hirschman Herfindahl Index, or  
9 HHI, is basically a first step in examining a  
10 horizontal merger; is that correct?

11 A. Yes, it's a first step.

12 Q. That's kind of a rough tool to determine  
13 whether there's a need for any follow-up steps?

14 A. I don't think I'd agree with that, no.

15 Q. Well, would you agree that the ultimate  
16 goal of the DOJ Merger Guidelines is to determine  
17 whether the companies that are proposing to merge can  
18 raise prices post-merger and sustain them profitably?

19 A. In general, yes.

20 Q. And the HHI Index standing alone does not  
21 provide an answer to that question; is that correct?

22 A. No, it doesn't.

23 Q. Other factors that the DOJ includes in its  
24 Merger Guidelines include things such as the ability  
25 of rival sellers to replace lost competition; is that



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1 correct?

2 A. Yes.

3 Q. And the DOJ will also look at the ease --  
4 am I going too fast for you? Somebody wanted to  
5 finish by nine, so I took them seriously.

6 Other factors that the DOJ will look at  
7 under the Merger Guidelines will be the ease of  
8 entry?

9 A. That's one factor, yes.

10 Q. And ease of entry includes a factor of  
11 timeliness of entry?

12 A. How quick you can get in, yes.

13 Q. And another ease of entry factor is the  
14 likelihood of entry?

15 A. Yes.

16 Q. And a third factor is the sufficiency of  
17 entry?

18 A. I believe that's true. I'll accept that,  
19 subject to check.

20 Q. And indeed, the DOJ Guidelines conclude  
21 that in markets where entry is that easy and passes  
22 those three subtests, that the merger raises no  
23 antitrust concern and requires no further analysis?  
24 Would you accept that, subject to check?

25 A. I will, with the important distinction that

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1 that's their guidelines and how -- you know, how they  
2 are going to use that information for a merger  
3 analysis.

4 Q. Did you do any study of these follow-up  
5 factors, such as the time or cost required to build  
6 inter-city fiber networks for facilities-based long  
7 distance competition?

8 A. Your question attempts to define what  
9 analysis of entry would be, and we certainly -- we  
10 wouldn't have done a study based solely on the sort  
11 of technical engineering entry into the market. That  
12 would be far too narrow. I also don't really  
13 understand from your question what you mean by a  
14 study. If you mean have we studied that question,  
15 the answer is yes.

16 Q. Well, in your deposition -- do you have a  
17 copy of your deposition, Dr. Blackmon?

18 A. I don't.

19 MR. HARLOW: Would the Bench like the  
20 witness to be presented with the original, which we  
21 have, or a copy?

22 JUDGE CAILLE: Original is fine.

23 MR. HARLOW: Okay.

24 Q. You can have the pleasure of unsealing it,  
25 Dr. Blackmon.

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1 A. Does this copy reflect the corrections that  
2 we submitted?

3 Q. I don't believe it does. I haven't seen  
4 the corrections, and this has been in my possession  
5 since the day after the deposition.

6 A. It says not to open, but --

7 JUDGE CAILLE: You can open it.

8 Q. If you'd turn, please, to page 91 of the  
9 deposition transcript. At line 14, I asked you, Do  
10 you know how long it takes companies to build large  
11 telecommunications networks, say the Touch America  
12 Network, Williams, Level 3? And your answer was, No;  
13 is that correct?

14 A. Yes.

15 Q. And then, at line 21, I asked you, Do you  
16 have any idea what it takes to -- what it costs to  
17 build those networks, say a nationwide network? And  
18 your answer was, No.

19 A. Is that a question?

20 Q. Is that the answer you gave?

21 A. That is the answer I gave, yes.

22 Q. And with regard to the factors of ease of  
23 entry, you did not address those factors in your  
24 testimony, did you, Dr. Blackmon?

25 A. Well, I did, with respect to the difficulty

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1 of establishing a brand name that customers would  
2 actually trust, which is really the key factor. It's  
3 not the physical capacity that already exists.

4 Q. We'll follow-up on that. Do you recall Dr.  
5 Kelley's testimony, when Dr. Kelley listed a number  
6 of facilities-based carriers in Washington?

7 A. Yes.

8 Q. And would you agree that those  
9 facilities-based carriers have excess capacity in  
10 Washington?

11 A. That's been widely reported. I don't know  
12 it as a fact, but I think it's a reasonable  
13 conclusion.

14 Q. And would you agree that interexchange  
15 carriers can buy off the shelf in part from these  
16 facilities-based carriers, as well as from other  
17 providers, the elements that they need to provide  
18 long distance services in Washington? For example,  
19 they can purchase billing and collection services and  
20 lease the necessary facilities?

21 A. Those are not all of the necessary  
22 components of being a viable long distance company,  
23 so I have to say no, I can't agree with that.

24 Q. Would you agree they can buy those  
25 components that I mentioned, for example, billing and

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1 collection, inter-city fiber facilities?

2 A. Yes.

3 Q. And can you think of any other element that  
4 they could not acquire in order to be able, from a  
5 technical perspective, to be able to provide long  
6 distance services in Washington?

7 A. As long as your question is limited to what  
8 you call a technical perspective, I'm not aware of  
9 anything. I really don't contest the notion that the  
10 physical ability to transmit calls and render bills  
11 for those calls is readily available.

12 Q. Now, do you recall in your direct  
13 testimony, at page nine, lines four to five, the  
14 statement that resellers, quote, cannot be expected  
15 to constrain prices of their own suppliers?

16 A. I do.

17 Q. And I believe we clarified in your  
18 deposition that you weren't intending by that  
19 statement to say that resellers in Washington are  
20 only buying from WorldCom and Sprint; is that  
21 correct?

22 A. That's correct.

23 Q. In fact, they are buying from a variety of  
24 underlying carriers in Washington; is that correct?

25 A. That's correct.

00872

1 Q. Some of them would be facilities-based?

2 A. I would have thought they would all be  
3 facilities-based.

4 Q. Some of them might be reselling resold  
5 services; isn't that correct?

6 A. I suppose that's possible.

7 Q. Now, turning your attention to the  
8 facilities-based carriers in Washington, I take it  
9 you would agree that the incremental cost of those  
10 facilities-based carriers increasing their capacity  
11 to carry additional traffic would be quite low; is  
12 that correct?

13 A. Well, most of the costs that they would  
14 incur would be the access charges, what they pay a  
15 local exchange company, which I would not  
16 characterize as quite low. In terms of the  
17 additional sort of interexchange carrier network  
18 costs, that part typically is quite low, either on an  
19 average or incremental basis.

20 Q. Okay. In fact, I think in your deposition  
21 your exact statement was, quote -- and this is found  
22 at page 54, if you want to check it -- within the  
23 limits of the capacity of that fiber, they're quite  
24 low. Do you recall that testimony?

25 A. That's not the complete answer, but that is

00873

1 part of it, yes.

2 Q. And you also agreed in your deposition, if  
3 you recall this, if not, I'll give you a cite, that  
4 nonbranded carriers do put competitive pressure on  
5 branded carriers; is that correct?

6 A. Yes.

7 Q. I'd like to go back to some earlier  
8 discussions with other witnesses regarding other  
9 potential merger candidates for WorldCom and Sprint.  
10 Do you recall some of that testimony earlier in the  
11 proceeding?

12 A. Testimony by other witnesses? Is that --

13 Q. Yes, questions to other witnesses?

14 A. I can't say I recall it all, but I know  
15 that it's been discussed.

16 Q. Do you recall a discussion of the potential  
17 of BellSouth or Deutsche Telekom to acquire or merge  
18 with Sprint?

19 A. Yes.

20 Q. Would you agree that BellSouth and Deutsche  
21 Telekom, neither of those companies have local  
22 facilities in Washington currently?

23 A. Yes.

24 Q. Would you also agree that neither  
25 BellSouth, nor Deutsche Telekom, have a significant

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1 or meaningful Washington customer base?

2 A. Yes.

3 Q. And do you recall the discussion regarding  
4 the possibility of WorldCom acquiring or merging with  
5 Nextlink or Voice Stream?

6 A. Yes.

7 Q. In fact, those were mentioned in your  
8 direct testimony, were they not?

9 A. That's correct.

10 Q. Would you agree that neither Nextlink nor  
11 Voice Stream would give WorldCom MMDS assets in  
12 Washington?

13 A. As those companies exist today, that's  
14 true, yeah. Yes.

15 Q. And would you also agree that neither --  
16 with regard to the voice -- mobile voice assets, that  
17 neither Voice Stream nor Nextlink have as extensive a  
18 national footprint as does Sprint PCS?

19 A. I think that's probably true. I'm not  
20 certain about that.

21 Q. All right. Let's turn to your HHI  
22 analysis, and in particular, Exhibits 247 and 248.  
23 From the opening questioning, I assume you're  
24 familiar with the provisions in the FTC DOJ Merger  
25 Guidelines with regard to calculation of the HHI



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1 Index?

2 A. I am.

3 Q. And was it your attempt to conduct your HHI  
4 analysis consistent with those guidelines, as best  
5 you could?

6 A. Not -- not necessarily. I think we were  
7 attempting -- the Department of Justice didn't invent  
8 the Herfindahl Hirschman Index, and just as the DOJ  
9 looked to economic theory to come up with a tool for  
10 measuring anticompetitive actions, we also looked to  
11 economic theory to come up with -- it's a great thing  
12 that the DOJ has used the same tool that we chose,  
13 but it's not that we did this because the DOJ did.

14 Q. Perhaps you misunderstood the question or  
15 perhaps I misphrased it. My question was -- and  
16 let's just simply focus on the HHI calculations and  
17 methodology, not the totality of the Merger  
18 Guidelines. With regard to the HHI methodology  
19 calculations, did you attempt to follow the  
20 methodology set forth in the DOJ's guidelines?

21 A. I think -- I don't see any need to change  
22 my answer. That's the way I understood your question  
23 originally.

24 Q. Let me ask a follow-up question, then. In  
25 what regard did you depart from the FTC DOJ Merger

00876

1 Guidelines in determining your HHI Index, as set  
2 forth in Exhibits 247 and 248?

3 A. I can't think of any ways in any  
4 substantive way that it changed, that we departed  
5 from the method they used.

6 Q. Can you think of any difference in the way  
7 you calculated the index, arithmetical portion of  
8 your work?

9 A. There may be a difference in the way the  
10 Other category is treated. There are different ways  
11 of handling the tail end of a list of companies. Do  
12 you group them all together and treat them as if they  
13 were one unit or do you multiply out each of those  
14 individual fractional shares and then add them up.  
15 There may be a difference there.

16 Q. There may be. Do you know whether or not  
17 there's a difference?

18 A. I know how we did it. I can't tell you how  
19 the DOJ likes to do it.

20 Q. Is there any support in any recognized  
21 guidelines or academic literature for doing it  
22 differently than the DOJ does it?

23 A. I think it's very commonly done to  
24 aggregate the tail and square it. Dr. Hausman did it  
25 yesterday on the stand.

00877

1 Q. Well, you say very commonly. Can you cite  
2 us to any recognized authority for doing it that way?

3 A. Well, I think, like, if you see in FCC  
4 reports where the HHI Index is reported, it's  
5 typically done by aggregating the tail. When this  
6 Commission uses the HHI in its performance measures  
7 that it submits to the state legislature, we do it  
8 aggregating the tail.

9 Q. But again, my question was, can you give us  
10 a cite to any authority for doing it that way?

11 A. I haven't looked for a cite, so the answer,  
12 since I haven't looked for it, is no.

13 Q. Well, the first step, if you'd accept,  
14 subject to check, under the DOJ Merger Guidelines is  
15 to identify, quote, All firms that -- and I'm  
16 omitting some language -- currently produce or sell  
17 in the relevant market. And that's, if you wish to  
18 check, Section 1.31 of the guidelines. Will you  
19 accept that, subject to check?

20 A. Yes.

21 Q. Actually, you know, I do have a copy of the  
22 Merger Guidelines, if you want to follow along as we  
23 go through this.

24 MR. HARLOW: May I approach the witness,  
25 Your Honor?

00878

1 JUDGE CAILLE: Yes.

2 Q. Do you need that cite again?

3 A. No, I have it. Yes, it says that's how the  
4 DOJ begins its analysis.

5 Q. And is that, again, consistent with the  
6 best data you had available to you? Was that your  
7 first step in developing Exhibits 247 and 248?

8 A. Yes. What we tried to do was, as best we  
9 could, using the data that are available to us, to  
10 identify firms that are in this market.

11 Q. Let me just back up for a minute. You  
12 mentioned a minute ago that you had done HHI analyses  
13 where you summed the tail, I think, as you referred  
14 to it, and then squared that. Does this Commission  
15 have any guidelines that adopt or approve that  
16 methodology?

17 A. No.

18 Q. Okay, all right. Getting back to where we  
19 were going here. I believe that, to identify all  
20 firms that produce or sell in the relevant market,  
21 you started with a list developed from your  
22 Commission's reports that carriers submit their  
23 annual reports; is that correct?

24 A. Yes, that's covered in my testimony.

25 Q. And then, from this initial list of

00879

1 approximately 500 companies, you eliminated a number  
2 of carriers; is that correct?

3 A. That's correct.

4 Q. And you did that based on your belief as to  
5 what type of carrier they were or are?

6 A. That's right.

7 Q. In other words, you tried to determine  
8 whether you believed a company was providing local  
9 versus long distance service?

10 A. That's right. If we had a company like  
11 Asotin Telephone Company that we knew was not  
12 providing long distance service, then we shouldn't  
13 count on them to constrain the prices of WorldCom or  
14 Sprint, so we excluded them from the list.

15 Q. I believe you excluded all of the incumbent  
16 local exchange carriers, with the exception of US  
17 West, GTE and Sprint United; is that correct?

18 A. That's sort of correct. We excluded all of  
19 the incumbent local exchange companies, and then US  
20 West, GTE and Sprint. Because those companies file  
21 their revenue information split out between local and  
22 toll and other types of service, we were able to  
23 include their long distance revenues where  
24 appropriate and exclude the rest of their revenues.

25 Q. And as to the other roughly 497 companies,

00880

1 none of them report -- actually, if you take out the  
2 incumbent LECs, you have roughly 470 companies that  
3 do not report on a separated basis their local versus  
4 their long distance revenues; is that correct?

5 A. That's correct.

6 Q. And it's correct, is it not, that you did  
7 no research in going through that list of the roughly  
8 470 companies to determine their breakdown between  
9 local and long distance revenues; is that correct?

10 A. We didn't do any go-into-the-library type  
11 research, if that's what you mean. We based it on  
12 our familiarity with the companies that do business  
13 in this state.

14 Q. But you didn't call any of the companies to  
15 ask them what their breakdown was, did you?

16 A. I don't recall calling any companies and  
17 asking them that question, no.

18 Q. Did you look at their registrations to  
19 determine whether they were registered to provide  
20 local versus long distance services?

21 A. Yes.

22 Q. I wonder if you could turn to page 37 of  
23 your deposition, about line 18. And initially, in  
24 development of Exhibits 260 and 261, you excluded a  
25 company called ICON; is that correct?

00881

1           A.    That's correct.  That's one of the  
2 revisions that we made, was to go back and include  
3 ICON.

4           Q.    Okay.  With regard to your familiarity of  
5 ICON, your answer, at line 20 to 21, was, quote, I  
6 don't remember one way or the other about ICON.  Do  
7 you see that?

8           A.    Yes.

9           Q.    And ICON has fairly substantial revenues,  
10 it looks like 8.4 million in 1998; is that correct?  
11 Or will you accept that, subject to check?

12          A.    I believe that's about correct, yes.

13          Q.    And then, if you would turn, please, to  
14 page 38, line 21.  With regard to -- I asked you the  
15 question, quote, With regard to ICON, for example, on  
16 what basis did you exclude ICON?  And your answer  
17 was, I don't recall.  I don't recall specifically  
18 making that decision.  Was that your testimony?

19          A.    Yes.

20          Q.    And then, if you'll turn, please, to page  
21 39, line 11, I asked you, What's your general  
22 awareness of the business of ICON?  And your answer  
23 was, on line 13, I don't recall one way or the other.  
24 Is that correct?

25          A.    Yes.

00882

1 Q. If you would, please, take a look at  
2 Exhibits, if you need to compare, 247 to 260. Which  
3 companies did you add into your analysis after the  
4 deposition and before this hearing, before this  
5 morning in this hearing?

6 A. Well, we can look at 247 by itself and see  
7 that it says at the bottom it was revised to exclude  
8 Nextlink. In other words, we had originally included  
9 Nextlink. When we went back, we dropped it from the  
10 calculation, and we included or added Excel, ICON,  
11 Fox and Qw, which is actually Qwest. And Qwest is  
12 actually several different companies. It's Qwest  
13 Communications, LCI, USLD, and Phoenix Networks.

14 Q. Did you obtain any additional data on which  
15 to base your decision to exclude Nextlink from the  
16 re-calculation?

17 A. No. In going back through it after the  
18 deposition, I noticed that it was there and realized  
19 it shouldn't have been, so I took it out.

20 Q. Again, based on your general understanding  
21 of their business?

22 A. Yes.

23 Q. Would you check Exhibit 247, 248, or if you  
24 need to, 249, and tell me whether or not you excluded  
25 Avista, A-v-i-s-t-a?



00883

1 A. Avista.

2 Q. Avista?

3 A. Yes, Avista. We excluded Avista Fiber,  
4 Incorporated.

5 Q. Did you exclude Avista Communications of  
6 Washington?

7 A. I don't know. The way I determined that on  
8 the last one was we have a list, an alphabetical list  
9 of companies that shows their revenues. Since the  
10 exhibit that's -- is this an exhibit now?

11 Q. It's Exhibit 249.

12 A. Okay. 249 is listed by order of revenues,  
13 and so Avista Communications is not in the  
14 alphabetical list that we're working off of. So  
15 usually I go to look up the revenues, and then, from  
16 that, I can jump to its spot on the revenue list.

17 Q. Did you exclude Claricom? Or would you  
18 accept, subject to check, that you excluded Claricom  
19 Networks, formally known as Clarity Telecom LD  
20 Network Services?

21 A. Yes, I'll accept that, subject to your  
22 check -- to my check.

23 Q. And would you accept, subject to check,  
24 Claricom is registered to provide long distance  
25 services?

00884

1           A.    Claricom Networks, Incorporated, is  
2 registered to provide both local and long distance  
3 service.

4           Q.    And you also excluded Intellicall, doing  
5 business as ILD, which is also registered to provide  
6 local and long distance services; is that correct?

7           A.    I'll accept that, subject to my check.

8           Q.    And similarly, you excluded Electric  
9 Lightwave, Inc., GST, Intermedia, Interwest,  
10 Nextlink, Shared Communications, and TCG, again, all  
11 of which are registered to provide both local and  
12 long distance services. Will you accept that,  
13 subject to check?

14          A.    No, I won't. I believe that GST Telecom  
15 Washington, Incorporated, is right there on the first  
16 page of Exhibit C-249.

17          Q.    If I modified the question to exclude GST,  
18 would you accept it, subject to check?

19          A.    You know, once I heard that one, I sort of  
20 stopped listening. I guess I would -- Nextlink --  
21 I'm sorry, not Nextlink. Electric Lightwave and TCG,  
22 we definitely excluded. We made a very deliberate  
23 decision about that. The others that you listed, I  
24 would accept, subject to check, that we excluded  
25 those.

00885

1 Q. All right. If you would please turn to  
2 Exhibit 252. Will you accept, subject to check, that  
3 this is a copy of the US West Seattle Yellow Pages  
4 issued in 1998, or at least portions of those Yellow  
5 Pages?

6 A. I don't know that I've got a copy of that  
7 that I could check.

8 Q. Do you have access to that in the library,  
9 perhaps?

10 A. I guess I'll check to see if I can check  
11 it.

12 Q. I guess, are you going to accept it,  
13 subject to check, or not?

14 A. Yes, I'll accept it, subject to check.

15 Q. All right. And if you would turn -- if  
16 you'd look at page 1855 of that Yellow Pages, look at  
17 the listing for Electric Lightwave, Inc.

18 A. Is the first page 1855? My copy's hard to  
19 read.

20 Q. Yes.

21 A. Yes, Electric Lightwave is there as a  
22 telecommunications company.

23 Q. Okay. Can you read where it says long  
24 distance in the little box advertisement?

25 A. Yes, they definitely provide long distance.

00886

1 Q. And if you look at the bottom right on the  
2 page, you see TCG. Can you read that they provide  
3 both local and long distance voice?

4 A. I'm sorry, TCG?

5 Q. In the bottom right-hand corner of the page  
6 of the exhibit.

7 A. Oh, the display, yes.

8 Q. Can you see that they also offer, quote,  
9 regional and long distance toll calling?

10 A. Yes.

11 Q. If you would turn a few pages to the page  
12 numbered -- it's the last page. And do you see the  
13 heading for the category, quote, Telephone Service -  
14 Long Distance, close quote?

15 A. Yes.

16 Q. And do you see that Electric Lightwave has  
17 asked to be listed in this portion of the Yellow  
18 Pages directory, as well?

19 A. I'm not sure I would use the verb ask, but  
20 they have paid to be in that listing, yes.

21 Q. And the previous listing was under the  
22 category Telecommunication Companies?

23 A. Yes.

24 Q. And sticking with the long distance  
25 category, do you see that Shared Communications

00887

1 Services is also listed in that category?

2 A. Yes.

3 Q. I wonder if you could turn back to Exhibit  
4 249, please. And why don't you turn to page 21 of  
5 that exhibit.

6 A. I have that.

7 Q. Okay. If you'd look in the third, I guess,  
8 box from the top, those apparently are intended to  
9 list the MCI companies?

10 A. Yes, that's correct.

11 Q. Or the WorldCom companies. And you  
12 apparently aggregated all of the WorldCom companies  
13 for purposes of calculating the HHI; is that correct?

14 A. Yes, the MCI companies, yes.

15 Q. Now, WorldCom Network Services, Inc., are  
16 you familiar with that company?

17 A. Not specifically, no.

18 Q. Are you aware that that company is a  
19 wholesale-only company?

20 A. I think I just said I'm not specifically  
21 familiar with them, so no, I'm not aware of that.

22 Q. Are you aware of how they're offering or  
23 holding out their services in the state of  
24 Washington, under what brand?

25 A. No.

00888

1 Q. What about BLT Technologies? Are you aware  
2 that that company is a pre-paid calling card company?

3 A. I'm not aware one way or the other of what  
4 they do.

5 Q. And what about Teleconnect Long Distance  
6 Services System? Are you aware that they offer 10-10  
7 service?

8 A. Yes, I am.

9 Q. And that brand that they market under is  
10 10-10-321; is that correct?

11 A. That's their access code. I don't know if  
12 they consider that their brand or not. Telecom USA  
13 is their d/b/a, doing business as.

14 Q. But in any event, the brand that they  
15 market under is not MCI; is that correct?

16 A. Right.

17 Q. What about Touch 1? Is that also a company  
18 that does not market and sell under the MCI or  
19 WorldCom brand?

20 A. I'm not sure.

21 Q. What about TTI?

22 A. That one I know does not use the MCI or  
23 WorldCom brand.

24 Q. Would you agree that if you're attempting  
25 to determine the market concentration of a brand, of

00889

1 branded carriers, that inclusion of revenues for  
2 companies that do not use the brands that you're  
3 tracking and developing indexes for would not be  
4 appropriate?

5 A. No, I don't agree with that. I think the  
6 HHI analysis is like anything else. It can be  
7 applied to more than one data set to try to get at  
8 different sides of a question. And what we tried to  
9 do here was look at long distance as best we could,  
10 comprehensively within the state, and it's  
11 appropriate to aggregate a no-name company like TTI  
12 National -- who has a very good calling card rate, by  
13 the way, that's what I use -- with the company that  
14 controls them, WorldCom.

15 One could also do a brand-name-only  
16 analysis and look at the specific revenues of the  
17 brand name companies. You'd come up with a higher  
18 concentration index if you did that. By us including  
19 the no-name revenues in here, you know, we have, in  
20 essence, allowed for the possibility that they will  
21 constrain the prices of the named brand carriers. So  
22 if I were going to exclude TTI National, I would also  
23 exclude ICON and Fox and other companies that tend to  
24 make the index lower by spreading out the market  
25 shares.

00890

1 Q. Did you say that taking them out would  
2 inflate the index, the HHI Index?

3 A. If we took out all of the no-name carriers,  
4 yes.

5 Q. But not if you put them into the Others  
6 category?

7 A. I wouldn't put them into the Others  
8 category. What I was saying was if we were to define  
9 the market as being brand name carriers only, in  
10 essence, if we were to say that there is absolutely  
11 no substitution between branded and unbranded  
12 services, then you would be left with three  
13 companies, and the Other category would be zero.

14 Q. Would you --

15 A. On the other hand, what we have here is a  
16 broader analysis, in which you have the branded and  
17 the unbranded carriers all together.

18 Q. Would you agree that customers who use  
19 10-10-321, for instance, do not do so because of the  
20 MCI brand name?

21 A. I'm sorry, could you ask that question  
22 again?

23 Q. Would you agree that customers who use  
24 10-10-321 service do not do so because of the MCI  
25 brand name?



00891

1 A. The 10-10-321 doesn't have the MCI brand  
2 name on it. Are you asking me if they use it --

3 Q. Is the negative throwing you?

4 A. Yes, it is.

5 Q. Let me just phrase it differently. Would  
6 you agree that customers who use 10-10-321 do so  
7 because of perceived price advantages, the lower  
8 price?

9 A. I think that's part of it.

10 Q. And they're not motivated by an MCI brand  
11 name, because, indeed, most of them don't even know  
12 that MCI provides that service; is that correct?

13 A. I mean, I think there are very few  
14 customers who do it because it is provided by MCI,  
15 and there are at least some customers who use it  
16 because they think it's not provided by MCI.

17 Q. Thank you. I think we got a little bit  
18 afield from reviewing your HHI calculations. I'm  
19 going to try and bring us back to that. Where we  
20 left off, and before we digressed, was determining  
21 the companies selling in the market.

22 And the next step, under the DOJ  
23 Guidelines, and I think this is what you tried to do,  
24 as well, after you identified the firms in the  
25 market, then you need a basis for measuring the

00892

1 market shares; is that correct?

2 A. That's correct.

3 Q. And would you agree that under the FTC DOJ  
4 Guidelines, there are three bases to calculate market  
5 shares, those being revenues, capacity, and units,  
6 which I assume, in this case, would be minutes?

7 A. Could be minutes, could be other physical  
8 -- well, could be on-peak minutes versus -- or  
9 off-peak minutes, but those are the three basic  
10 categories.

11 Q. And you did no analysis, in developing  
12 Exhibits 247 and 248 or your testimony, of units; is  
13 that correct?

14 A. That's correct, because we didn't have that  
15 information.

16 Q. Nor did you do an analysis of the capacity  
17 in the market; is that correct?

18 A. That's correct.

19 Q. You chose revenues, obviously, and after  
20 you did that, then the next step in the process is to  
21 gather the revenue data?

22 A. Yes.

23 Q. Okay. I'd like you to turn to Section 1.5  
24 of the FTC DOJ Guidelines. And if you'd just look at  
25 the second sentence, why don't you just read that

00893

1 into the record. Starts out, As an aid -- oh, excuse  
2 me, the third sentence. Starts out, The HHI.

3 A. Unlike the four firm -- I'm sorry, I must  
4 be in the wrong section.

5 Q. It's Section 1.5, labeled page one of two?

6 A. The first sentence starts, Market.

7 Q. Market concentration, the function.

8 A. Second sentence starts -- oh, As an aid?

9 Is that what you want?

10 Q. Yeah, but I'm asking you to read the third  
11 sentence.

12 A. Third sentence. The HHI is calculated by  
13 summing the squares of the individual market shares  
14 of all the participants.

15 Q. Thank you. And then you see it refers to a  
16 footnote 17, and if you could please to that footnote  
17 on the next page.

18 A. Yes.

19 Q. And it gives an example of a market  
20 consisting of four firms with market shares of 30  
21 percent, 30 percent, 20 percent, and 20 percent has  
22 an HHI of 2,600, and that's calculated in the  
23 parenthetical by squaring 30, and then adding the  
24 square of 30, and then adding the square of 20, and  
25 then adding the square of 20; is that correct?

00894

1 A. Yes.

2 Q. And that comes up with an index of 2,600?

3 A. Yes.

4 Q. Okay. So that is, and this is hard to keep  
5 track, but that is summing the squares. That's the  
6 accepted methodology per the DOJ Guidelines; correct?

7 A. Yes.

8 Q. What if you were instead to square the  
9 sums, the calculation would be 30, plus 30, plus 20,  
10 plus 20, which equals 100, and the square of that  
11 would be 10,000; is that correct?

12 A. That's the answer you would get, yes, if  
13 you squared the sum.

14 Q. All right. Let's go through your  
15 calculations. You started with the revenue database,  
16 which is Exhibit C-250; is that correct?

17 A. I'm sorry, C-250?

18 Q. Yes.

19 A. Yes.

20 Q. And then, from that, you created a  
21 spreadsheet, which is Exhibit C-249?

22 A. That's correct.

23 Q. And then your next step was to create  
24 separate spreadsheets, I guess, that are on the same  
25 file in the one you sent me Tuesday night. But,

00895

1 basically, they're separate spreadsheets for Exhibits  
2 247 and 248; is that correct?

3 A. Yes.

4 Q. And then, on 247 and 248, you have column  
5 headings for each company, with the exception of the  
6 smaller companies, which are all lumped together  
7 under Others; is that correct?

8 A. Yes.

9 Q. The next step to get from Exhibit 249 to  
10 250, in Exhibit 249, you calculated the market share  
11 percentages on the spreadsheet; is that correct?

12 A. They are calculated there for one  
13 definition of the market. We didn't necessarily use  
14 that column in the exhibit itself.

15 Q. But in your work papers, which Exhibit 249,  
16 C-249 is one of them, you actually calculated the  
17 percentage for each and every company. You didn't  
18 lump the smaller companies together in your  
19 worksheet; is that correct?

20 A. That's correct.

21 Q. And then, in creating 247 -- let's use 247  
22 for now. In creating Exhibit 247, you would have  
23 transferred the percentages for the larger companies,  
24 AT&T, Frontier, MCI and Sprint, over from Exhibit 249  
25 to 247, doing that year-by-year; is that correct?

00896

1 A. We transferred the market shares over; is  
2 that what you asked me?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. But for the smaller companies, you  
6 created a subtotal. And as an example, we can look  
7 at page 10 of Exhibit C-249, and that's '96. And so  
8 again, as an example, the total of all the, quote,  
9 Others, their percentage for 1996 was 7.97, which I  
10 believe you rounded to eight percent; is that  
11 correct? Let me just double check that. Actually,  
12 we have to compare that to Exhibit 248.

13 A. Which year are we looking at here, 1996?

14 Q. Yes.

15 A. We didn't round it to eight.

16 Q. Actually, I'm not getting -- the number's  
17 not tracking for me, either. Well, this is your work  
18 paper. Perhaps you can help us --

19 A. Sure.

20 Q. -- find out how you got the market share  
21 total for the others?

22 A. If you go back to one of the named  
23 companies, if we just take US West, they're the first  
24 one on Exhibit 249. Their share for 1996 is 40.36,  
25 et cetera, which then shows up on Exhibit 248 as

00897

1 40.37. You find the same sort of thing through --  
2 the only difference is in treatment of the others.  
3 When you round -- when you sum a lot of very small  
4 numbers, you can end up with a lot of differences due  
5 to rounding. And so that, essentially, is the reason  
6 why, on page 10, where the Other category shows up as  
7 7.97 percent. On the exhibit itself, it shows up as  
8 11.48.

9           So in the exhibit itself, we took actual  
10 numbers, the 30.73, et cetera, all the way across and  
11 then just subtracted those from 100, so for the Other  
12 column, we used it as the residual.

13           Q. Would you agree that your spreadsheet  
14 calculation of the others' market share is more  
15 accurate than Exhibits 248 and 249 calculations,  
16 because there was less rounding, maybe no rounding in  
17 your spreadsheet, and there was rounding in Exhibits  
18 247 and 248?

19           A. I don't think that it makes any meaningful  
20 difference, but I think that --

21           Q. Excuse me, Dr. Blackmon, that wasn't my  
22 question. We'll get to the difference in a minute.  
23 My question is which is more accurate, the  
24 spreadsheet or Exhibits 247 and 248?

25           A. I think they're equally accurate.

00898

1 Q. It looks like Exhibit 249, you took out to  
2 as many as eight digits to the right of the decimal  
3 place, just looking at the US West percentage on the  
4 first page of Exhibit C-249; is that correct?  
5 A. It's eight.  
6 Q. Eight digits. Did I say six?  
7 A. No, you said eight. You were right.  
8 Q. Okay, all right. Do you have in front of  
9 you Exhibits 248 and 249?  
10 A. I do.  
11 Q. All right. Let's just walk through these.  
12 The first 10 pages of Exhibit 249 are for the year  
13 1996. And if you would turn to page 10, the column  
14 for the percent of market share of the others'  
15 percent of market share, and that number is 7.97,  
16 roughly?  
17 A. Yes.  
18 Q. But on your Exhibit 248, that is shown as  
19 5.96?  
20 A. Right.  
21 Q. Excuse me, excuse me, we're looking at '96.  
22 On Exhibit 248, that number is shown as 11.148; is  
23 that correct?  
24 A. That's the proper comparison, yes.  
25 Q. Okay. So the discrepancy between your



00899

1 worksheet, your spreadsheet, and the exhibit that's  
2 been pre-filed is roughly -- well, it's in excess of  
3 five percent, five points; is that correct?

4 A. I think it's about three and a half  
5 percentage points.

6 Q. What do you get if you square 7.97 percent,  
7 or if you want to round that to eight, what do you  
8 get?

9 A. You get 63.52.

10 Q. So if you were to lump all those together,  
11 you'd get an HHI of 63.52, and that compares with the  
12 HHI Index that you show in Exhibit 248 of 132; is  
13 that correct?

14 A. Well, that's not the HHI Index; that's what  
15 the Other category contributes to the HHI Index. So  
16 in other words, what we've just gone through about  
17 how to treat the tail is, what, a 70-point difference  
18 in the calculation.

19 Q. All right. Let's do the same thing for the  
20 year 1994, which, on the spreadsheet, Exhibit 249,  
21 can be found on page 20.

22 CHAIRWOMAN SHOWALTER: Excuse me, can I  
23 just -- I'm just trying to follow this. Is it 70  
24 points out of 10,000?

25 THE WITNESS: Yes, that's correct.

00900

1 CHAIRWOMAN SHOWALTER: Thank you.  
2 Q. And do you see there that the others'  
3 percentage market share is 3.397, et cetera?  
4 A. I do.  
5 Q. Compared to Exhibit 248, of 5.96?  
6 A. Yes. And so in that one, it's a 25-point  
7 difference out of 10,000.  
8 Q. Thank you, Dr. Blackmon. Now, in order to  
9 create Exhibit 247, which omits GTE and US West from  
10 the calculations, all you'd have to do to Exhibit 249  
11 would be to take the revenue data for US West and GTE  
12 and change it to zero; is that correct?  
13 A. I think so, yes.  
14 Q. And then the spreadsheet will re-calculate  
15 the totals and the percentages; is that correct?  
16 A. I'm not sure if the spreadsheet will  
17 re-calculate it or not, but I mean, that's how you  
18 would do it.  
19 Q. Did you do the spreadsheet yourself?  
20 A. No, I didn't.  
21 Q. Are you familiar with it?  
22 A. Yes.  
23 Q. Okay. Then the spreadsheet should also  
24 re-calculate the market concentrations?  
25 A. The analyst should re-calculate the market

00901

1 concentration.

2 MR. HARLOW: May I approach the witness,  
3 Your Honor?

4 JUDGE CAILLE: Certainly.

5 MR. HARLOW: Thank you.

6 Q. I'll represent to you that I have taken  
7 your spreadsheet and replaced the revenue values for  
8 US West and GTE for all three years with zero. Will  
9 you accept that, subject to check?

10 A. I will. I note that, at least on the first  
11 line, it appears to be consistent with that.

12 CHAIRWOMAN SHOWALTER: Mr. Blackmon, can  
13 you use the microphone?

14 THE WITNESS: Yes.

15 CHAIRWOMAN SHOWALTER: Dr. Blackmon, sorry.

16 Q. All right. Going back through the process,  
17 and if you're still on Exhibit 248, we can use that.  
18 The next step you would have taken, it appears, would  
19 be to, for each year, take the percent market share

20 --

21 JUDGE CAILLE: Excuse me, there's a little  
22 confusion here. This is not a document we have that  
23 is before Dr. Blackmon?

24 MR. HARLOW: No, and we can make it an  
25 exhibit if it becomes necessary, but I don't think it

00902

1 will be.

2 JUDGE CAILLE: That's okay. Thank you.

3 Q. Your next step to get to the HHI numbers on  
4 Exhibit 248 would be to take the percent market share  
5 for each of the companies, as well as the others, and  
6 then you square that number; is that correct?

7 A. I'm sorry, could you ask that again?

8 Q. Your next step to calculate the HHI numbers  
9 for Exhibit 248 would be to take the market share  
10 percentages of each company in each year and then you  
11 square that number; is that correct?

12 A. I thought we were talking about Exhibit  
13 247.

14 Q. Well, it's the same process in either of  
15 them.

16 A. Yes, it is.

17 Q. And that's the process, is it not?

18 A. Yes.

19 Q. And you also did that in the Others column;  
20 is that correct?

21 A. Yes.

22 Q. Thus, for example, in Exhibit 248, 1994,  
23 the total market share of the others, nearly six, and  
24 when you square that, you get 36 for your HHI number;  
25 is that correct?

00903

1 A. In this non-exhibit document?

2 Q. No, in Exhibit 248?

3 A. I'm afraid I'm having trouble --

4 Q. Do you have Exhibit 248 in front of you to  
5 answer this question?

6 A. Okay. So you're asking me whether 5.96  
7 squared is equal to 36?

8 Q. I'm just trying to ask you if that's what  
9 you, in fact, did to derive that number of 36?

10 A. Yes.

11 Q. Now, Exhibit 248 includes US West and GTE,  
12 so I believe we ought to be able to turn to Exhibit  
13 C-249, and on page 20 of that exhibit, we ought to be  
14 able to find the corresponding HHI number. By  
15 corresponding, I mean corresponding to the -- what  
16 you show as 36 on Exhibit 248; is that correct?

17 A. No. I feel like we're -- either I'm  
18 missing something or we're doing the same thing over  
19 again. The number on page 20 of the Exhibit 249 is  
20 the number that is produced if you squared each of  
21 the tiny little market shares. So it is different  
22 from what is shown on 248.

23 Q. Indeed, the HHI number that you get in your  
24 work papers is 1.298, rather than 36; is that  
25 correct?

00904

1 A. No, I think number 1.298 was not used in  
2 the calculation and is -- it's not meaningful.

3 Q. Is that number, 1.298, the sum of the  
4 squares of the market shares of all the companies you  
5 categorized as others? Will you accept that, subject  
6 to check?

7 A. I'll accept that, subject to check.

8 Q. And would you agree that that number or  
9 calculation is consistent with the DOJ Guidelines  
10 that we just read, which were contained in Section  
11 1.5, in that Footnote 17?

12 A. Well, I agree that both of these  
13 calculations are consistent. And in fact, I would  
14 like to read the last sentence of Footnote 17, which  
15 you didn't ask me to read before. Although it is  
16 desirable to include all firms in the calculation,  
17 lack of information about small firms is not  
18 critical, because such firms do not affect the HHI  
19 significantly.

20 Q. But in this case, you had information from  
21 small firms; isn't that correct?

22 A. We had some information. Yes, we had  
23 information from small firms.

24 Q. And so rather than using that information  
25 consistent with the guideline, you chose to simply

00905

1 lump them all together; is that correct?

2 A. No, that's not correct. I mean, the  
3 Guidelines don't say that it's wrong to lump the  
4 small companies together into one number. They just  
5 don't speak to it one way or the other.

6 Q. Dr. Blackmon, if you would please turn to  
7 year 1996, which can be found --

8 A. Which exhibit?

9 Q. -- at page 10 of Exhibit 249.

10 A. I have that.

11 Q. All right. And do you see that, again, if  
12 you -- rather than squaring the sum of the market  
13 shares of the smaller companies, you sum the squares,  
14 that instead of the Figure 132 that you show on  
15 Exhibit 248, you would get the figure 7.62 for the  
16 HHI number?

17 A. Yes.

18 Q. And let's do the same for 1998, which can  
19 be found on page 30 of Exhibit 249. And do you see  
20 there that if you -- this is so hard to say it the  
21 right way. If you sum the squares, rather than  
22 square the sums of the market shares of the smaller  
23 companies, you get the number 13.04 for the HHI  
24 Index, rather than the number 153, which you show in  
25 Exhibit 248?

00906

1 A. Yes.

2 Q. And if we could turn to the unmarked  
3 spreadsheet. And I'd like to do the same, just for  
4 the record, put these numbers in. Looking at 1994,  
5 and these are actually stapled in sets, so you can  
6 turn to the last page more easily. Do you see that  
7 if you sum the squares, you get the number 4.455 for  
8 1994 HHI for others, rather than the number 122  
9 that's shown in Exhibit 247?

10 A. I see that that's what your sheet shows.  
11 We didn't produce this.

12 Q. Will you accept, subject to check, that  
13 that would be the HHI number that you derive if you  
14 followed the methodology of summing the squares,  
15 rather than the methodology of squaring the sums of  
16 the others?

17 A. Yes, I'd be glad to check that, and I'll  
18 accept it, subject to check.

19 Q. Thank you. And the same for 1996. The HHI  
20 number for others there compares at 21.48, rather  
21 than -- I'll give you a moment to turn to it.

22 A. I have it.

23 Q. Rather than 398, as shown in Exhibit 247;  
24 is that correct, or will you accept that, subject to  
25 check?



00907

1 A. I'll accept that, subject to check.

2 Q. And then, finally, for 1998, again, the sum  
3 of the squares results in an HHI number of 22.647,  
4 rather than 324, as shown in Exhibit 247?

5 A. Yes.

6 Q. If you could please turn to the Merger  
7 Guidelines again, Section 1.521.

8 A. I have that.

9 Q. I don't yet. It's headed Changing Market  
10 Conditions?

11 A. Yes.

12 Q. And you see that the first sentence reads,  
13 Market concentration and market share data of  
14 necessity are based on historical evidence. However,  
15 recent or ongoing changes in the market may indicate  
16 that the current market share of a particular firm  
17 either understates or overstates the firm's future  
18 competitive significance. Do you see that?

19 A. I do.

20 Q. And then, skipping a sentence, it goes on  
21 to state, the agency will consider reasonably  
22 predictable effects of recent or ongoing changes in  
23 market conditions in interpreting market  
24 concentration and market share data. Do you see  
25 that?

00908

1 A. I see that.

2 Q. Do you believe such consideration would  
3 include substantial recent sunk investments by other  
4 carriers in the inter-city fiber routes, such as  
5 those by Level 3, Qwest, Williams, Avista, and Touch  
6 America?

7 A. No, I don't.

8 Q. You do not agree with that?

9 A. No.

10 Q. Would you agree that those -- I think you  
11 agreed earlier that those carriers have capacity for  
12 -- they had a very low incremental cost to increase  
13 their capacity to carry additional traffic; is that  
14 correct?

15 A. Yes, but there was very low incremental  
16 cost capacity available in 1998, as well, so I don't  
17 see what the change is.

18 Q. Would you agree that there is much more  
19 fiber in the ground in the state of Washington today  
20 than there was in 1998?

21 A. I would agree that there is both more  
22 supply of fiber and more demand for fiber, and I  
23 don't know that there's any -- you know, once you  
24 account for the fact that there's a lot more demand  
25 for it for data, that there's really any more surplus

00909

1 around now than there was two years ago.

2 Q. You really don't know what excess capacity  
3 exists; isn't that correct?

4 A. That's correct.

5 Q. And in fact, you didn't even attempt to  
6 analyze or determine the amount of capacity that is  
7 available in Washington in your testimony; is that  
8 correct?

9 A. That's correct.

10 Q. Going back to Section 1.521, the  
11 considerations, would that also include the downward  
12 trend of market concentration, as shown in your  
13 Exhibits 247 and 248?

14 A. Well, I think it's reasonable to look at  
15 the trend and, though when you do that, we need to  
16 look at -- we need to understand the factors behind  
17 that trend, as well.

18 Q. Did you attempt to do any projections based  
19 on trends that are shown on Exhibits 247 and 248?

20 A. No.

21 Q. And just kind of some rough numbers. It  
22 looks like, between '94 and '98, Frontier more than  
23 doubled its market share; is that correct?

24 A. Yes, that's correct.

25 Q. And others increased from 11.06 percent to

00910

1 18 percent in that same time period; is that correct?

2 A. That's correct.

3 Q. I'd like to shift gears here for a few  
4 minutes and just take a look at some of the what-if  
5 scenarios. And I'd like us to examine just briefly,  
6 hypothetically, what might happen if this Commission  
7 were to accept your recommendation to deny the  
8 merger. Are you sufficiently refocused?

9 A. Can I put away the HHI materials?

10 Q. Yes, except for 247 and 248, we'll come  
11 back to.

12 A. Okay. I think I'm focused.

13 Q. And we, of course, discussed this in your  
14 deposition, and I believe you agreed that if this  
15 merger, hypothetically, were denied, but it were  
16 approved by other regulatory authority, such as  
17 Department of Justice, FCC and the EU, and  
18 hypothetically, the companies decided that they  
19 wanted to proceed with the merger notwithstanding  
20 this Commission's denial, do you recall that  
21 discussion in your deposition?

22 A. Yes, I recall that. I guess I wouldn't  
23 agree completely with -- I don't think you've  
24 completely characterized the discussion.

25 Q. I'm trying to, in the interest of time, to

00911

1 shorten it down from the deposition version. But we  
2 did discuss how people are able to select and access  
3 their long distance carriers, specifically by the use  
4 of a PIC, or a primary interexchange carrier  
5 selection. Do you recall that?

6 A. Yes, that's covered in my testimony.

7 Q. And PICs are done either on an intraLATA or  
8 interLATA basis; correct?

9 A. That's right. You have two PICs.

10 Q. And there is no way to pre-subscribe  
11 customers on an inter/intrastate basis; is that  
12 correct?

13 A. That's correct.

14 Q. And I believe you agreed at the deposition  
15 that the practical effect of -- I guess the choice  
16 that the petitioners would face if the merger were  
17 denied and they wanted to proceed would either be to  
18 -- assuming they didn't want to violate the order,  
19 that they would either have to stop serving  
20 intrastate customers, so they'd no longer be acting  
21 within the jurisdiction of this Commission, or,  
22 hypothetically, they could -- which means that they  
23 would have two options.

24 A. Hypothetically, they would either have to  
25 have their customers PICed to their service, but

00912

1 block intrastate calls, or, in the alternative, they  
2 would not have any customers PICed to their service,  
3 and they would have to try to market intrastate  
4 services only by means of dial-around codes; is that  
5 correct?

6 A. Are you asking me is it correct that that's  
7 what we discussed at the deposition?

8 Q. Yes.

9 A. Okay. That's not correct, because it's not  
10 complete. I don't think that you've fully stated the  
11 hypothetical under which you asked me that set of  
12 questions, because what we first went through was the  
13 fact that Staff is not recommending that the merger  
14 be denied and case closed, that's it, go away. We're  
15 recommending that the Commission determine that this  
16 merger, as proposed, is not in the public interest,  
17 and that the parties then come back with some new  
18 proposal.

19 You then said, Okay, well, hypothetically,  
20 let's assume that we go through that and we still  
21 don't get anything and, hypothetically, the DOJ  
22 actually approves this thing, then what happens. And  
23 I feel like those hypotheticals were not clearly  
24 stated enough in your question.

25 Having said that, we did talk about that

00913

1 possibility. One thing that I think we didn't cover  
2 sufficiently there was the fact that the way the PICs  
3 are done intraLATA versus interLATA is within our  
4 control. And if we had a major carrier who managed  
5 to merge in this way, but also exited the intrastate  
6 market, we could look at having our two PICs be one  
7 in-state and one out-of-state, so that we could  
8 accommodate that merger and still have a company like  
9 WorldCom providing interstate service, even if it  
10 weren't able to provide intrastate.

11 Q. Do you know if local exchange companies  
12 have the capability within their switches to  
13 accomplish another set of two-PIC options?

14 A. I think that the -- I'm not talking about a  
15 third PIC; I'm talking about redefining the two PICs  
16 that exist, and I'm not aware of any technical  
17 impediment to that. They're not programmed to do it  
18 today.

19 Q. If you were to do that, then how would US  
20 West be able to distinguish between inter and  
21 intraLATA traffic for purposes of the restrictions  
22 placed on them?

23 A. I seem to recall that their entry into long  
24 distance was just around the corner. If it turns out  
25 that's not true, then that would be a dilemma we

00914

1 would face. Do we shut US West out of the intrastate  
2 market through our choice of PICs, or do we try to  
3 accommodate the fact that WorldCom engaged in a  
4 merger that was not in the public interest, and  
5 therefore can't do intrastate business.

6 Q. But in any event, that would take some  
7 time. So for a time, the petitioners would be  
8 hobbled in their ability to provide service in the  
9 state under that hypothetical; is that correct?

10 A. Oh, I think they would definitely be  
11 hobbled, yes. Not just in the short term, but over  
12 the long run.

13 Q. Now I'd like to turn your attention back to  
14 the data you used that underlies Exhibits 247 and  
15 248, and it's correct that that data from 1998 is the  
16 most current data you had available?

17 A. Yes, it's from 1998. These are based on  
18 the annual reports that are filed on May 1st. We've  
19 now received most, but not all of the 1999 reports,  
20 but we don't have the 1999 information available yet.

21 Q. Is it your understanding that the FTC and  
22 the DOJ will have access to more accurate and more  
23 up-to-date data than you used when they do their HHI  
24 calculation?

25 A. I don't know that they'll have more



00915

1 accurate state-level information. This Commission  
2 also has more up-to-date national information. For  
3 instance, the MCI exhibit that was discussed a lot  
4 yesterday, Mr. Huyard's name is on the cover of it,  
5 has a pie chart that, just while we were sitting  
6 there yesterday, I calculated an HHI of about 3,000  
7 on it, and it's third-quarter 1999 residential  
8 national data.

9 Q. Would you please take a look at Exhibit 248  
10 again?

11 A. Okay.

12 Q. Would you agree there's a clear trend  
13 between 1994 and 1998, as shown on this exhibit,  
14 toward lower concentration?

15 A. Yes, I would. I think that's a great thing  
16 that -- if it didn't happen, though -- I think that  
17 just because there's that trend in the past, it  
18 doesn't mean that that will continue to happen in the  
19 future. Depends a lot on what this Commission does  
20 to open markets.

21 Q. You've labeled this exhibit and the pie  
22 charts, the final pie chart, as, quote, post-merger;  
23 is that correct?

24 A. The fourth row, yes.

25 Q. In fact, they aren't really post-merger.

00916

1 Rather, they are as if the merger had occurred in  
2 1998; isn't that correct?

3 CHAIRWOMAN SHOWALTER: What exhibit are you  
4 on?

5 MR. HARLOW: 248.

6 THE WITNESS: And the same would be true  
7 for 247, that it's 1998 restated to reflect the  
8 merger.

9 Q. So they would only accurately depict the  
10 market and the concentrations if the market has  
11 remained static from 1998 to today; is that correct?

12 A. No, the main purpose of that is to show the  
13 effect of the merger itself, and the merger --  
14 whatever year the merger happens in is going to have  
15 a certain effect. And so by looking at the  
16 difference in the two numbers, we can see what the  
17 effect of the merger itself is.

18 Q. So in other words, simply by the process of  
19 mathematics, if you simply combine two smaller  
20 numbers together and then square them, you come up  
21 with a much larger number; is that correct?

22 A. You don't necessarily come up with a much  
23 larger number, as we saw through the --

24 Q. Well, it's geometrically larger, isn't it?

25 A. Yes, so when you have, for instance, number

00917

1 two and number three combine, then yes, you can see a  
2 big increase in the number, which means there's a  
3 large decrease in competition.

4 Q. But one and a half-year-old data doesn't  
5 really depict where you are today in concentrations  
6 unless the market has remained static; isn't that  
7 correct?

8 A. I think for the -- no, it's not correct.  
9 For the purposes of measuring the effect of the  
10 merger using the most recent historical data, it is  
11 perfectly appropriate.

12 MR. HARLOW: Thank you, Dr. Blackmon. No  
13 further questions.

14 JUDGE CAILLE: Off the record just a  
15 moment.

16 (Discussion off the record.)

17 JUDGE CAILLE: Back on the record.

18 MR. HARLOW: Your Honor, I'd like to offer  
19 Exhibit 252.

20 JUDGE CAILLE: Is there any objection to  
21 the admission of Exhibit 252?

22 MR. THOMPSON: No.

23 JUDGE CAILLE: Exhibit 252 is admitted.

24 MR. HARLOW: Thank you, Your Honor.

25 JUDGE CAILLE: All right. Let's take a

00918

1 five-minute recess. Back at 10:05.

2 (Recess taken.)

3 JUDGE CAILLE: Let's go on the record. We  
4 are returned from our morning recess. And prior to  
5 the Commissioners' questioning of Dr. Blackmon, we  
6 are going to take up the admission -- the company's  
7 request to admit the deposition testimony of Dr.  
8 Hausman. And initially, I'd like to ask you on what  
9 ground, again, why you are asking for that admission.  
10 Is it for impeachment purposes, is it for other  
11 purposes, and if you could define what those purposes  
12 are, because our rule speaks to those.

13 MS. KIDDOO: Your Honor, the purpose was  
14 actually twofold. One is Mr. Epstein used portions  
15 of the deposition in cross-examining Dr. Hausman.  
16 Some of the statements that he made in his testimony  
17 were inconsistent, we think, with what was in the  
18 deposition, and some of his testimony on the stand  
19 yesterday was inconsistent with the deposition. We  
20 also -- Mr. Epstein used portions of the deposition  
21 in the cross-examination, did not read long answers  
22 into the record and the question, but referred the  
23 doctor to those excerpts.

24 It would certainly, in our view, make it  
25 clearer in the record to have the deposition

00919

1 available for the Commission to use in its review of  
2 the record.

3           Obviously, again, to the extent that there  
4 are portions of the deposition which were not used,  
5 the Commission could assign the appropriate weight to  
6 the deposition, in response to Mr. Pascarella's  
7 concern about the fact that there was no opportunity  
8 for redirect examination on those portions.

9           CHAIRWOMAN SHOWALTER: So are you  
10 proposing, then, to admit the whole deposition, not  
11 just the pages that you were reading from?

12           MS. KIDDOO: That was the offer yesterday,  
13 yes. We could go back and try to isolate those  
14 portions of it. However, that would be difficult to  
15 do until we get the transcript and be able to go and  
16 look at precisely what sections would need to be  
17 admitted. So we offered it to be put into the  
18 record. However, obviously, I don't think we would  
19 anticipate that the Commission would rely on parts of  
20 it that were not -- or give weight to parts of it  
21 that were not subject to cross-examination.

22           MS. ENDEJAN: Your Honor, just briefly,  
23 SBC's position yesterday was that, first of all, it  
24 shouldn't come in. But if it does come in --

25           CHAIRWOMAN SHOWALTER: Why shouldn't it

00920

1 come in? We didn't hear this argument.

2 MS. ENDEJAN: Oh, I'm sorry. I didn't  
3 realize you weren't present. My understanding of the  
4 use of depositions at trial when the witness is  
5 present is that the deposition, this is under  
6 standard civil procedures rules, is that the  
7 deposition is published and then it becomes -- the  
8 witness is questioned about it, but the testimony is  
9 not offered for any substantive purpose; it is only  
10 used for the purpose of impeaching the witness. And  
11 in light of that, we felt that it would be improper  
12 to admit the deposition as additional substantive  
13 evidence that the Commission could give weight to,  
14 for just sheer evidentiary reasons.

15 And then the second reason -- and actually,  
16 there are three reasons. The second reason was that  
17 would be viewed, in a sense, as additional prefiled  
18 testimony. When Dr. Hausman's deposition was taken,  
19 I mean, there was no redirect on the record, there  
20 was no opportunity for SBC to ask Dr. Hausman,  
21 perhaps, questions that might clarify possible  
22 ambiguities, because that's not how we understood a  
23 deposition is to be conducted or to be used. It's  
24 used for discovery purposes. It's not to be used for  
25 purposes of preparing additional testimony to be

00921

1 filed at the Commission. So we felt that it would be  
2 improper for that reason.

3 We'd offer, and to the extent that it  
4 assists the Commission in making the record clearer,  
5 when you're going back to the record to look at the  
6 record to see the pattern of cross-examination, if  
7 it's helpful to have the pages of the deposition that  
8 allegedly impeach Dr. Hausman's testimony here, SBC  
9 -- we don't have a problem with that, but we do have  
10 a problem with admitting the whole document as a  
11 substantive exhibit.

12 MS. KIDDOO: Your Honor, that's fine.  
13 We'll be happy to go back and identify those portions  
14 of the deposition that were used in that fashion. We  
15 offered the whole thing, because we thought it would,  
16 A, be more convenient for the Commission to have the  
17 deposition before it. Also, it has been my  
18 experience in the past that when a party offers  
19 portions of a deposition, the other party generally  
20 wants to admit the whole deposition, so that any  
21 inconsistencies or explanation can be offered.

22 Now, if SBC doesn't want to do that, that's  
23 fine with us. So we will identify those portions of  
24 the deposition that should be admitted.

25 JUDGE CAILLE: All right.

00922

1 CHAIRWOMAN SHOWALTER: Is that okay?

2 MS. ENDEJAN: That would be acceptable.

3 Thank you.

4 JUDGE CAILLE: All right. Then, after we  
5 conclude today, I'll assign a number to that exhibit.  
6 Let's proceed with the Commissioners' questioning of  
7 Dr. Blackmon. Chairwoman Showalter.

8 CHAIRWOMAN SHOWALTER: Just before we do, I  
9 understand peoples' schedule here, but I just want to  
10 say that Dr. Blackmon is giving significant testimony  
11 in a significant proceeding, and I want all Counsel  
12 and myself to have the ability to ask him all the  
13 questions that we want. If attorneys need to leave,  
14 they make their own choices, but we will understand  
15 if you think that you don't need to be here for the  
16 tail end of the questioning.

17 MS. ENDEJAN: Thank you, Your Honor. And I  
18 apologize for my behalf. If I didn't have to chair  
19 the meeting, I wouldn't want to -- I would gladly not  
20 leave.

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

22 BY CHAIRWOMAN SHOWALTER:

23 Q. Okay. Well, Dr. Blackmon, I think I'm  
24 going to ask you just some clarifying questions about  
25 this morning's questions, and then I may go back to



00923

1 your testimony and look at questions I had originally  
2 when reading it.

3       There was -- just a second. There was a  
4 lot of discussion about HHI, and I'm learning more  
5 about it. But am I correct that HHI is a calculation  
6 that -- it's an equation, in essence, that can be  
7 applied to any number of things, depending on what  
8 you want to learn. Am I right on that, that it's a  
9 mathematical calculation?

10       A. Yes, it's a measure of concentration. It's  
11 taking a pie chart and figuring out, you know, just  
12 as you can look at it and see how big are the wedges.  
13 It's a way to sum it up into one number.

14       Q. And I think we've heard from different  
15 witnesses that you can apply this calculation to any  
16 universe you want. It could be revenues, it could be  
17 capacity, it could be minutes. Am I right on that?

18       A. Yes.

19       Q. And for that matter, if I wanted to  
20 calculate HHI on, you know, parts per million  
21 pollutants in the water, could I do an HHI  
22 calculation on that and get a result?

23       A. As long as you have the shares. You need  
24 to first be able to characterize it in terms of --  
25 like if you said that one chemical, you know,

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1 constituted, you know, one percent of the pollutants  
2 in the air and another chemical was 20 percent, you  
3 might say, Well, how concentrated is the pollution in  
4 one particular type of chemical.

5 Q. So isn't the question for us what  
6 meaningful calculation of HHI should we be looking at  
7 in light of the purposes of our decision?

8 A. Yes, and it should only be one factor in  
9 your decision. And one of the things that I did in  
10 my testimony was try to give you a guide to what  
11 these numbers mean, how they translate back in terms  
12 of in real life, how many equal-sized firms would the  
13 -- you know, does that mean. Dr. Hausman did the  
14 same thing, gave you a shortcut to get to that.

15 Q. And speaking of Dr. Hausman, I think he, on  
16 questioning, said that if the HHI is somewhere around  
17 1,700 or 1,800, you start to wake up and look, but if  
18 it's sufficiently high, the other factors that may  
19 influence the big picture become relatively less  
20 important in light of a very high HHI. Do you agree  
21 with that statement?

22 A. Yes, I do. I mean, I think that in the  
23 range of numbers that we're seeing here, it becomes a  
24 very strong case that this is already a highly  
25 concentrated market.

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1 Q. And then, on the issue of DOJ looking at  
2 HHI and us looking at HHI, am I right that DOJ is  
3 making its calculation for purpose of determining  
4 legal thresholds for legal definitions of antitrust,  
5 and we would be looking at it for market  
6 concentration as one thing to consider for our public  
7 interest test. Do you agree with that?

8 A. I do. It's one factor in a broader public  
9 interest analysis. And for instance, the Department  
10 of Justice, I don't think, would give any weight to  
11 the argument that I make in my testimony, that even  
12 if you assume US West's entry into the market for the  
13 purposes of calculating concentration, that WorldCom  
14 shouldn't be allowed to use US West as the substitute  
15 for Sprint in the market, that the '96 Telecom Act  
16 promised consumers not the same level of competition,  
17 but actually to have an added player in that market.

18 That's something that the DOJ I would not  
19 expect to consider, but I hope that you will consider  
20 it in this case.

21 Q. Then there was a lot of discussion about  
22 the Other category, summing the squares or squaring  
23 the individual parts -- I don't know if I've said  
24 this right -- and adding the individual parts in  
25 Other and squaring them, versus squaring them

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1 individually and then adding them. Am I correct that  
2 the smaller the Other category is, in general, the  
3 less difference that -- those two ways of calculating  
4 will make to the ultimate HHI that you are looking at  
5 in terms of the upper end, who's got the  
6 concentration versus who doesn't?

7 A. I'm sorry, could you --

8 Q. I didn't say that too well. Let me begin  
9 -- when we are looking at HHI, aren't we most  
10 concerned not with the tail end others, but with the  
11 high-end larger shareholders, and that the ultimate  
12 HHI you're looking at is what is the HHI of the first  
13 or second or third or fourth companies in terms of  
14 market share?

15 A. Yes, both in terms of the calculation  
16 itself and the underlying economic theory, it's the  
17 big companies that matter.

18 Q. Okay. And then, so my question is, if  
19 ultimately what you're looking at is the HHI of the  
20 large companies, isn't it the case that the smaller  
21 the category that other comprises, the less  
22 difference it makes whether you square first or  
23 square later, in terms of the individual components  
24 of other?

25 A. Yeah, that's correct. The theoretical

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1 difference between squaring the sums and summing the  
2 squares, if you have a 10 percent market share in the  
3 Other category, there's a 100-point range over which  
4 that can make a difference. And if you have a 20  
5 percent market share, it can be up to a 400-point  
6 difference. So the smaller the Other category gets,  
7 the less theoretical possibility there is for there  
8 to be a difference.

9 Q. You were asked to look at a document that  
10 was not before the Commission, but it -- maybe that  
11 was the one that excluded US West. Was that what you  
12 were looking at there?

13 A. Yes, it's very similar to Exhibit 249, but  
14 it has zeroed out US West and GTE.

15 Q. And so I think you covered this in your  
16 testimony, but why would that be significant to the  
17 HHI calculation? Which way would it cut to exclude  
18 those companies?

19 A. Excluding them produces a higher  
20 concentration index, as you can see from Exhibits 247  
21 and 248. When you include US West and GTE, in 1998,  
22 it reduces the Index by about five -- 650 points.

23 Q. And just point me to what column or what  
24 page we're talking about, so I can --

25 A. In Exhibit 247, I was looking at the 1998

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1 row, the HHI for total, which is 2,766.

2 Q. Right.

3 A. Then I compared that to Exhibit 248, which  
4 includes GTE and US West. The corresponding number's  
5 2,113.

6 Q. Okay. You were asked several questions, I  
7 think, about what difference it would have made for  
8 individual others to have squared first versus  
9 squared later, and there were various calculations  
10 that -- one I remember was a 70-point difference, I  
11 think, and one was a 25-point difference. Do you  
12 recall that?

13 A. I don't remember the exact numbers, no.

14 Q. Well, when you were undergoing that  
15 question, I guess my question at that point was,  
16 well, what difference would that have made in the HHI  
17 of the merged company? Have you made that  
18 calculation, or could you? Fundamentally, my  
19 question is what difference does this make or how  
20 much of a difference does it make to do the squares  
21 later or before to the ultimate question -- as far as  
22 HHI is concerned, the ultimate question -- as to what  
23 the HHI will be of the merged company having done the  
24 squares one way for Other versus the doing the square  
25 another way for Other. Have you calculated that, or

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1 can you?

2 A. It does not make any difference to the  
3 numbers for the larger firms. In Exhibit 247, the  
4 number of 1,082 is the WorldCom number after the  
5 merger. It doesn't affect that number at all. What  
6 it would affect is the number in the Other column,  
7 which, depending on how you do it, where it's 324, it  
8 can be lower. It shouldn't actually be as low as  
9 what Mr. Harlow asked me, because the Other category  
10 -- the way he asked me the question overstated the  
11 difference.

12 But, anyway, there is a -- treating each of  
13 those small companies as an independent price cop  
14 against the big companies would produce a lower  
15 number. In other words, it would seem to be a more  
16 competitive market. I'm not even sure if that makes  
17 sense, but that's what the math would do for you.

18 Q. But doesn't the math -- if Other changes at  
19 all from 324 to something else, doesn't that mean  
20 that there will be some change in WorldCom and  
21 Frontier and AT&T? It doesn't?

22 A. No, because let's say that 18 percent that  
23 was other actually consisted of 18 firms, and each  
24 had one percent of the market. So we'd take that  
25 one, multiply it against itself, and we'd still have

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1 one, then we would add those together. We'd get 18.  
2 So the difference would be 324 versus 18. But none  
3 of the other numbers for any of the other companies  
4 change.

5 Q. So in your opinion, this discussion we had  
6 this morning of which way you square does not make a  
7 significant difference in the HHI of the merged  
8 company or the HHI of the merged company plus AT&T?

9 A. No, it doesn't, for two reasons. One,  
10 we're talking about a number after the merger that's  
11 above 3,000, and then also the -- we're not the DOJ,  
12 and we're not stopping our consideration at the  
13 factors that the DOJ uses.

14 So we're getting the HHI exactly right,  
15 which I would think would be really important to a  
16 company that's looking at is it 1,750 or is it 1,850.  
17 That could make a real difference in terms of whether  
18 the DOJ goes out and hires outside counsel.

19 But here, where we're looking at -- should  
20 be, at least, looking at a much broader set of  
21 considerations and the numbers are high, I just don't  
22 see the relevance at all.

23 Q. Okay. I want to switch gears now and just  
24 go back to some of the questions I had on reading  
25 your testimony or in light of the other testimony



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1 we've heard.

2           The petitioners posit a world in the not  
3 too distant future, although that's at issue, in  
4 which, with the merger, there could be three viable  
5 independent facilities-based providers of local and  
6 long distance bundled service, and they were the  
7 RBOCs, when they get into long distance, AT&T with  
8 its cable, and Sprint, MCI, with an MMDI-based  
9 system.

10           And my first question is, if that future  
11 scenario were immediately at hand or immediately  
12 possible, would you say that that would be a good  
13 thing? I'm sure you're going to ask relative to  
14 what, but relative to having only two, would it be  
15 desirable to have a third -- that is, a third in  
16 addition to the RBOCs and AT&T -- to have a third  
17 entity that could provide a locally-based bundled  
18 service?

19           A. It would definitely be a great thing to  
20 have a third path into the homes of consumers. I  
21 hope that MMDS works, I hope it takes off, and I hope  
22 that Sprint and WorldCom each deploy it and that they  
23 compete with each other for that -- for the customers  
24 for whom that technology is most suitable.

25           Q. So now I want to work backwards in time or

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1 practicality from that scenario. Another point that  
2 they make is that without merging -- well, maybe I  
3 should say by merging, the petitioners feel they have  
4 a much better shot at establishing that third  
5 alternative, because they have each other's  
6 customers, customer base, and -- I'm not sure I'd  
7 want to characterize all their reasons, but do you  
8 agree that together they have a better shot at doing  
9 that than separately?

10 A. I guess I first want to point out that I  
11 don't think those are the only two choices.

12 Q. Right. We can talk about that in a minute.

13 A. But I don't disagree with the notion that  
14 if they can merge, that they will be in a better  
15 position to succeed at something like MMDS. I think  
16 it's a fairly small difference, but it cuts in their  
17 favor.

18 Q. Well, but let's then compare it to --  
19 another alternative you alluded to was if there is no  
20 merger, they each have MMDS, so they each might get  
21 it going separately, either as independent companies  
22 or merged with somebody else potentially; is that --

23 A. Yes.

24 Q. If you're not looking at the long distance  
25 side of the equation at all for the moment and we

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1 were just looking at the universe of facility-based  
2 local providers, would you be neutral as to those two  
3 possibilities, that is, the merged company setting  
4 itself up for that possibility versus two, or do you  
5 think one way is better than the other, that is,  
6 merged versus unmerged?

7       A. I think that in general we should be pretty  
8 skeptical of a merger. I guess I was thinking of an  
9 example would be if Nextlink and Electric Lightwave  
10 were to propose to merge, that seems to be the  
11 comparable sort of an analogy. They don't use MMDS,  
12 but, you know, if you had sort of two MMDS CLECs out  
13 there, I think we'd be skeptical of it, but I don't  
14 know that we'd necessarily spend a lot of time  
15 opposing it.

16       You know, it's always a concern to me when  
17 customers lose choices, so that even the loss of  
18 choice between Nextlink and Electric Lightwave in  
19 Seattle would be a loss to competition, I think. But  
20 it's not -- you know, neither of them is going to be  
21 that important in the overall scope of that market.  
22 It would be a real shame if we lost both of them, but  
23 to have them combined is not going to be that big a  
24 loss of competition.

25       And I think a fundamental question in that

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1 analysis would be whether either company has the  
2 scale necessary to be successful at deploying, in  
3 this example, the MMDS technology.

4 Q. Either company, meaning which either  
5 company are you talking about now?

6 A. If we had the two MMDS CLECs. You know,  
7 the question would be, you know, do we even have the  
8 choice of having two independent providers, or will  
9 they both fail if we don't permit them to merge.

10 Q. So you do have a concern that, without the  
11 merger, neither MMDS possibility might get going?

12 A. I was saying that I would have that  
13 concern. I really don't with -- I mean, Sprint and  
14 WorldCom, neither of them are small companies, and  
15 that they both would be working with equipment  
16 vendors who will have a very strong interest in  
17 trying to deploy something in everywhere, regardless  
18 of who owns the frequencies.

19 Q. And then I wanted to ask you about what the  
20 scalability of MMDS means to enabling it to get  
21 going. It was Dr. Hausman, I think, and I believe  
22 another witness talked about MMDS being scalable,  
23 which I took to mean that there's more of a linear  
24 relationship between the equipment you have to  
25 install and the customers you get compared to some

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1 other technologies where you have to deploy a big  
2 network in order to get started. Is that what  
3 scalable means in this context?

4 A. That's the way I would use that, yes. For  
5 instance, you have, in any given area, 30 channels,  
6 so you don't have to start broadcasting on all 30  
7 channels at once. You also don't have to deploy  
8 everywhere in order to deploy anywhere. You can  
9 start service in Jackson, Mississippi, and Baton  
10 Rouge, Louisiana, without having any facilities in  
11 Yakima, Washington, so you can add cities as you go  
12 along.

13 Q. So does that mean, with respect to a  
14 scalable technology versus a not very scalable  
15 technology, that it's easier for separate or  
16 separated companies to start them up, or there's less  
17 advantage to merging in order to deploy a scalable  
18 technology than there is in a nonscalable technology?

19 A. Yes, and a good sort of counter example to  
20 that is satellites. If you have to -- if you were  
21 putting a hundred satellites up, you may need to do  
22 that in order to offer service anywhere. You're  
23 going to have to put a lot of them up so that you  
24 always have one overhead at any given time, and you  
25 really can't offer service in Yakima without also

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1 offering it in Baton Rouge. But we don't have that  
2 here, so it's easier for the companies to take part  
3 of the business and make a go at it.

4 Q. But on the other hand, in terms of being  
5 able to use each other's customer bases to market or  
6 perhaps a nationwide advertising campaign, that would  
7 be something that regardless of the scalability of  
8 the technology, there would be an advantage to  
9 merging, I take it, from the point of view of the  
10 company trying to deploy?

11 A. I think that's true. I mean, that same  
12 analysis would say that we should really only have  
13 one cereal manufacturer in the country, too. But  
14 yes, efficiency in advertising is going to always cut  
15 in favor of mergers.

16 Q. Then this scenario that we started with is  
17 a future scenario, It does not exist at this time.  
18 That is, the RBOCs are not in long distance and AT&T  
19 does not have deployed everywhere at this moment its  
20 cable local service, and MMDS is not deployed.

21 So one of the questions I have is how  
22 should we look at the future? If it's not available  
23 right now, we've got to at least take that into  
24 account, but this is a rapidly changing industry, and  
25 what is your view about how we should anticipate

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1 future dynamics in determining whether or not to  
2 place this company as a merged company versus  
3 unmerged company into that future? Do you at least  
4 agree that we ought to be making judgments about the  
5 future, not simply relying only on past data?

6 A. I agree that we should look at the future.  
7 I think we need to be careful not to overforecast,  
8 you know. It just amazes me to think back over the  
9 last 15 years about how many new things we were going  
10 to be seeing and how few of those have actually come  
11 about. Like I say, I hope MMDS works, but I think it  
12 would be a serious mistake to count on that and to  
13 think that that's worth it. You know, that the loss  
14 of competition in the long distance business was  
15 worth it because of this cool new technology that may  
16 or may not work.

17 And I also think that it's really important  
18 to look at whether the blocking of the two long  
19 distance companies is necessary in order to capture  
20 whatever sort of games there might be on the local  
21 side, because that part of it, the companies, in my  
22 view, just have not shown at all that it's necessary  
23 to have the long distance companies merge in order to  
24 make progress in local competition.

25 Q. You're leading to my next area of inquiry,

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1 which is -- so far we've really talked about the  
2 possible advantages to establishing local service of  
3 the merger, but much of your testimony has to do with  
4 the long distance market and the potential negatives  
5 of the merger on that. There's been a lot of  
6 questioning about intraLATA and interLATA, and I've  
7 been trying -- I've been following it, in terms of  
8 the arguments that have been made about intraLATA and  
9 interLATA, but I actually am having a little bit  
10 difficult of a time tying it into the pros and cons  
11 of the merger.

12           Would you just characterize, in your view,  
13 why it is significant to be looking at intraLATA and  
14 interLATA and what MCI is or isn't doing in intra or  
15 interLATA?

16           A. I think that at least what we've tried to  
17 look at is the intrastate market for toll services.  
18 And we've had to recognize that there are structural  
19 differences between the intraLATA part of that market  
20 and the interLATA part of it. One of those is the  
21 fact that we have an extra competitor in the  
22 intraLATA market. US West is to the intraLATA market  
23 sort of what AT&T is to the interLATA market.  
24 They're the line. And we have a much more  
25 competitive intraLATA market now than we did two



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1 years ago, when this Commission forced US West to  
2 open up that market so that companies like WorldCom  
3 and Sprint could compete against them. I think the  
4 prospects are good that we'll see less concentration  
5 there in the future, but we still have a concentrated  
6 market there. Again, US West is like AT&T. We still  
7 have the big four there.

8         The other structural issue that we have to  
9 think about is on the cross-state calls, the  
10 interLATA, intrastate ones. The companies have an  
11 advantage over their customers in that they can  
12 charge two prices, but the customers only get one  
13 PIC. They can only choose one carrier for all their  
14 interLATA calls, even if the companies charge a  
15 different price for some interLATA calls than other  
16 interLATA calls, and that structural problem makes it  
17 harder for competition to work. It makes it harder  
18 for customers to exercise the choice that would  
19 otherwise lead to low prices.

20         Q. And I follow that, but so what does that  
21 structural -- how is that structural problem to be  
22 taken into account in looking at this merger?

23         A. The way you take it into account is that  
24 you recognize that the level of competition that  
25 appears to exist is -- that it's probably not as high

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1 -- competition is not as strong as it would appear on  
2 first blush. If you simply look at the market  
3 shares, you would think that there was a certain  
4 level of competition or concentration. And you then  
5 would wonder, Well, okay, why is MCI charging 11  
6 cents in the interLATA market, given the fact that  
7 there are other choices out there and things like  
8 that. So it's just a thing that I keep in the back  
9 of my head to remind me that the market is not  
10 working as well as it could, and that we need to  
11 factor that in in terms of thinking about letting the  
12 market get more concentrated.

13 Q. So is this a fair characterization of your  
14 view. You'd say the interstate long distance market  
15 is already concentrated and would become more so with  
16 the merger. The intraLATA market is already  
17 concentrated with the addition of US West as a big  
18 player and would become more concentrated, and that  
19 concentration problem is, to some degree, aggravated  
20 in the intrastate interLATA situation simply because  
21 of the two-PIC dynamic?

22 A. That's correct. And that's a point where I  
23 disagree with Dr. Hausman, who says that you should  
24 essentially look at the national market. I think he  
25 misses the point that there's this defect with the

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1 in-state interLATA part that causes us to need to  
2 look at that separately.

3 Q. Then there's been discussion of the  
4 witnesses about price caps and whether that would  
5 offer some measure of protection, let's say if it  
6 were imposed for 18 months after the merger, as I  
7 think was potentially suggested. Do you agree that  
8 price caps don't operate to -- well, I can't think of  
9 the right verb -- avoid situations where otherwise  
10 the prices would have gone down? Price caps keep  
11 prices from going up, is that correct, from going  
12 above the price cap, whatever it is?

13 A. Price caps can cause prices to go down.  
14 It's just that the one that WorldCom's proposing  
15 doesn't. In fact, it doesn't even stop prices from  
16 going up. It would stop the average price from going  
17 up, but it wouldn't stop the company from increasing  
18 some prices if they decreased others. Even the  
19 efficiency gains that they say will result from this  
20 merger itself, I mean, not even talking about the  
21 long-term trends and efficiency, but even the merger  
22 specific cost reductions wouldn't be passed through  
23 to customers with the price cap that WorldCom has  
24 proposed.

25 Q. How do price caps -- how can they cause

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1 prices to go down, unless, of course, if the price  
2 caps themselves are marched down, then, of course,  
3 you can't go above the price cap. But how does a  
4 price cap ever affect a situation below that cap  
5 where otherwise the price would have gone down?

6 A. The cap doesn't have to stay where it is.

7 Q. Right.

8 A. When the FCC imposed price caps on  
9 interstate access charges, they set it up with -- to  
10 allow the caps to move over time, based on inflation  
11 and productivity, and the result of that has been  
12 that the caps have gone down over time. The  
13 increasing efficiency in the industry has been  
14 reflected in those caps, and it's amounted to  
15 billions of dollars of reductions, much to the  
16 chagrin of the RBOCs.

17 Q. Doesn't that just say no more than, of  
18 course, you can't go above a price cap, so if you  
19 reduce a price cap, you can't go above the new  
20 reduced level?

21 A. Yes.

22 Q. There was, I think in Dr. Hausman's  
23 testimony, a list of all of the times that AT&T, MCI  
24 or Sprint had -- I don't know about all of it, but a  
25 number -- a list of times they had reduced the

00943

1 prices. Would I be right in assuming that any of  
2 those reductions were already below whatever federal  
3 price cap existed?

4 A. There wasn't a federal price cap. That was  
5 done because they needed to do that in order to keep  
6 and win customers.

7 Q. All right. So they were not prompted by a  
8 price cap, I assume?

9 A. That's true. There was a price cap on AT&T  
10 at one time, as the dominant carrier.

11 Q. I think what I'm getting at is if that is,  
12 in fact, a dynamic that exists in this industry,  
13 where competitors, on occasion, lower their prices in  
14 order to be more competitive, a price cap can't  
15 affect that, can it, unless it cuts below an existing  
16 level of prices?

17 A. No, I mean the best we could do with the  
18 price cap would be to have it marched down over time,  
19 based either on projected or actual increases in  
20 efficiency. You wouldn't see from the price cap  
21 itself the sort of undercutting that competition  
22 produces.

23 Now, I don't want you to get the idea that  
24 I'm predicting that if this merger goes through, that  
25 there will never be another price reduction. I'm not

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1 saying that competition goes away completely with  
2 this merger, and we will still see some competition  
3 among these companies. It's just that it won't be as  
4 robust.

5 Q. Wasn't your point that Sprint, in  
6 particular, has been a leader in lowering prices that  
7 MCI and AT&T, on occasion, have responded to, and  
8 that that particular specific dynamic of Sprint  
9 leading and MCI and AT&T following would not be  
10 possible, because Sprint has now merged into MCI, the  
11 new company? Now the new company may or may not act  
12 in the same manner.

13 A. Yes, that was my point. And I think  
14 WorldCom can't take on that same role where  
15 essentially what Sprint has been is a brand name  
16 company with a much smaller market share than its two  
17 other competitors, that, because of that, if they cut  
18 their price a little bit -- well, any time a company  
19 cuts its price, it means your existing customers,  
20 you're going to get less money from them, and you  
21 hope that that's going to be more than offset by the  
22 new customers you'll win. But the smaller your base  
23 is, the less you have to worry about that first  
24 factor and the more potentially you're going to have  
25 to gain from the new customers from the larger

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1 competitors.

2 WorldCom will be up there with AT&T, so they  
3 will worry a lot more about the effect on their base  
4 from a price cut, and they'll have less to gain from  
5 their competitors with any given price cut.

6 Q. Well, then, what about Qwest or Excel or  
7 some of the others. If they put on a big campaign,  
8 why isn't there the possibility or likelihood that  
9 somebody will gain what is now the sort of Sprint  
10 posture?

11 A. It's a possibility. It's a very expensive  
12 and risky proposition to try to establish a brand  
13 name like that. Sprint didn't do it overnight. And  
14 there are companies that are trying to do that. I  
15 mean, Verizon hopes to be on everybody's lips, you  
16 know, within a few years. So there will be people  
17 who will try to fill that niche. But I think it's  
18 very speculative to count on that happening. And  
19 based on that, believe that this merger's a good  
20 idea.

21 Q. Are there conditions that you think would  
22 mitigate or somehow mitigate enough, in light of  
23 other potential benefits, the anticompetitive effects  
24 of this merger, or do you think that fundamentally  
25 that's what the merger would do, and there's really

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1 not much way around it?

2 A. There certainly are conditions that would  
3 mitigate the effect. We have really struggled to  
4 come up with a set of conditions that we thought  
5 would completely offset the negative effects of the  
6 merger. And the reason that we've struggled so much  
7 with that is that it is just really hard to come up  
8 with anything that's a substitute for independent  
9 companies beating the bushes, trying to come up with  
10 something better for customers. Customers just get  
11 so much benefit out of that rivalry that having  
12 people in this building come up with, you know,  
13 conditions and price caps and limits and things like  
14 that is hard.

15 I mean, we continue to work on those, and  
16 we're not at all satisfied with the conditions that  
17 WorldCom has proposed either in their written  
18 testimony or the modifications that Ms. McMahon made,  
19 but we're willing to try to come up with a tougher  
20 set of conditions, if that's the Commission's  
21 preference.

22 Q. You mentioned on page four, line two of  
23 your testimony, the possibility of a restructured  
24 transaction that would remove the combination of the  
25 company's long distance and wire line local services.



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1 If that were done, wouldn't it defeat one of the  
2 purposes or one of the advantages for which this  
3 merger is being proposed, that is, the ability to  
4 have this bundled local/long distance alternative?

5 A. I think you don't -- you change who gets to  
6 do the bundle. You know, WorldCom is experiencing  
7 regret at this point that it missed the wireless,  
8 that it was going to be so important to what  
9 customers would want. You know, they're offering  
10 wireless on a resale basis, they're able today to  
11 bundle that, but they apparently aren't satisfied  
12 with resold wireless, so they want to be able to add  
13 their own wireless network to their menu of services.  
14 Sprint already has that, along with their long  
15 distance service.

16 The two companies are, I think, about equal  
17 in terms of their potential to offer local service.  
18 So either way, you have Sprint as the bundled  
19 offering that you would lose in order for WorldCom to  
20 come up with a bundled offering, and so I think we  
21 can -- if the companies think it's worth it, they can  
22 merge or transfer things like wireless assets to a  
23 different owner. That doesn't require that the long  
24 distance businesses be merged.

25 CHAIRWOMAN SHOWALTER: I think that's all

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1 the questions I have. Thank you.

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

3 BY COMMISSIONER HEMSTAD:

4 Q. Well, there's been a lot of talk about the  
5 HHI. I'm sure we all agree it's a proxy; it's not  
6 reality in itself, or it's a tool to get to the issue  
7 of concentration. But the issue of concentration, in  
8 turn, the real issue is, as I understand it, the  
9 ability in a relatively concentrated market for a  
10 participant, here the merged company, to be able to  
11 raise prices and maintain that raised price over  
12 time. Isn't that ultimately what we're looking at?

13 A. I think that's what the DOJ ultimately  
14 looks at. I think the factors to be considered here  
15 under the public interest test are a little bit  
16 broader than that.

17 Q. Okay. But at least in the HHI context,  
18 that's what it's about?

19 A. Yes, that's the purpose of that, that  
20 analysis.

21 Q. Is it your view that this merged company,  
22 with its increased concentration, will have the  
23 ability to raise prices and maintain that raised  
24 price over time?

25 A. Yes, I think they have that ability

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1 already, to some extent, and that ability will  
2 increase with this merger.

3 Q. And they could do that in the context of  
4 AT&T's much larger dominant position?

5 A. I don't think AT&T's going to do much to  
6 push prices down if WorldCom seeks to increase them.

7 Q. In turn, what, AT&T would raise its prices?

8 A. Yes. Though I should note, often what  
9 we're talking about here is not raising prices,  
10 though we've seen more of that recently than I would  
11 like, but whether -- the dog that didn't bark,  
12 whether the prices actually decrease when they should  
13 have.

14 Q. In Exhibit 247, looking at what's happened  
15 over the time period there described, 1994, '96, and  
16 '98, the total HHI is -- the trend line is down,  
17 while still high, but measurably down. Then we have  
18 the merger, and it lips back up. Do you have any  
19 view as to whether -- speculating on will that trend  
20 line continue to fall or return to the trend line  
21 downwards, or is this merger halting that downward  
22 trend?

23 A. Well, the merger certainly cuts against the  
24 trend. To refer to it as a trend, I think there's  
25 more to be said about it than simply some exogenous

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1 force that's causing concentration to go down. I  
2 think there are some specific events that have caused  
3 that. For instance, this Commission's decision to  
4 open up the local toll market to companies other than  
5 US West. That helped reduce concentration, and it  
6 shows up here.

7           You know, whether the trend is going to  
8 continue or not, it's really hard to say. One of the  
9 things that we've noticed, we've gotten a little bit  
10 of 1999 information, and we've seen that, like  
11 Frontier, which has been increasing a lot, their  
12 revenues appear to be down in '99, compared to '98,  
13 and down relative to WorldCom, not just down in an  
14 absolute sense.

15           Some of the other carriers that were big  
16 among the Other category also were down significantly  
17 in '99, so I'm reluctant to just assume that this  
18 pattern is going to continue in the future.

19           Q. Perhaps this was addressed, and I may be  
20 covering new ground already covered, but I understand  
21 why you would not want to include US West in the  
22 analysis in your reference to Exhibit 247 and 248,  
23 but why would you exclude GTE?

24           A. GTE also is predominantly an intraLATA  
25 carrier. It's not entirely true. They have GTE

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1 Communications Corporation, though they are as much a  
2 reseller of local service, GTE Local Service, that  
3 they're a reseller than they are a toll carrier. I  
4 mean, they have toll revenues, but they also sell a  
5 lot of local service in their GTE unlimited plan.

6 Q. So you don't see them -- they're not a  
7 facilities-based long distance provider?

8 A. They are a facilities-based long distance  
9 provider, but they have -- with a company like that,  
10 we were -- well, to the extent we're talking about  
11 GTE Northwest, we included their toll revenue in  
12 Exhibit 248, but they don't offer -- GTE Northwest  
13 does not offer interLATA service. So they are not a  
14 competitor. They can't constrain the interLATA  
15 prices of WorldCom.

16 And then GTE Communications Corporation is  
17 the other part of GTE that we had to decide whether  
18 to include or not. And we decided not to include  
19 them, even though they do have some long distance  
20 service, because we perceived them to be primarily a  
21 reseller of a bundle of services that include local  
22 and long distance.

23 Q. Dr. Kelley at least suggested that the HHI  
24 should be applied against capacity, rather than  
25 revenues. What is your response to that?

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1           A.    I think that would be the wrong -- I'd love  
2 to see it and see what it looks like, but I don't  
3 think it would be nearly as informative as the  
4 revenue numbers, because I don't think that capacity  
5 is what determines market share or the ability to  
6 price above cost.

7            If we were looking at, you know, some  
8 market where brand names are important, then capacity  
9 -- well, for instance, if you had -- if you were  
10 looking at rivet manufacturers that supply Airbus and  
11 Paccar and Boeing, I think it would be fine to look  
12 at capacity. I'd still want to look at revenues  
13 there, too, but here, it's so much more important  
14 that you look at revenues.

15          Q.    Finally, we've had now rather extensive  
16 testimony and cross-examination, which I have  
17 certainly found interesting. As a result of all of  
18 this, have you changed your views at all from when  
19 you filed your testimony?

20          A.    Not in terms of the recommendation, no. I  
21 did want to note -- I mean, I would change, in the  
22 section on customer service, just to be fair to  
23 WorldCom, there on page 22, lines nine through 13,  
24 that was based on the first two months. If you  
25 include the first four months, MCI WorldCom has

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1 brought it back down so that they are on par with  
2 last year, in terms of their complaint levels. We're  
3 no longer seeing the 30 percent year over year  
4 increase that we were in the first two months. We  
5 still see them being about twice as bad as Sprint on  
6 a revenue adjusted basis, but that's one minor point  
7 that is worth noting.

8 COMMISSIONER HEMSTAD: Thank you. That's  
9 all I have.

10 CHAIRWOMAN SHOWALTER: Can I just ask one  
11 follow-up to --

12 JUDGE CAILLE: Certainly.

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

14 BY CHAIRWOMAN SHOWALTER:

15 Q. You were asked first whether the underlying  
16 purpose of the HHI or the DOJ Guidelines is to  
17 prevent the companies from raising prices for  
18 unconstrained, and then later you talked about the  
19 dog that didn't bark, which maybe was what I was  
20 looking for earlier. But do the DOJ Guidelines go to  
21 the dog that doesn't bark, as well as not -- as well  
22 as being worried about raising prices in absolute  
23 dollars? Are the DOJ Guidelines themselves focused  
24 also on failure to lower prices?

25 A. I don't recall whether that's specifically

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1 addressed, but I'm sure that they would think of it  
2 in that way. You know, again, are prices higher than  
3 what they otherwise would have been, not are they  
4 higher than what they are now.

5 CHAIRWOMAN SHOWALTER: Okay, thanks.

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

7 BY JUDGE CAILLE:

8 Q. Dr. Blackmon, I have three questions and  
9 one bench request, and the questions are on three  
10 unrelated areas. First of all, I'm not asking you  
11 for a legal opinion, but is it your understanding  
12 that MMDS is subject to WUTC jurisdiction?

13 A. I don't have an understanding about that  
14 one way or the other. That fixed wireless is a  
15 tricky area for me.

16 Q. All right. And referring to your testimony  
17 on the high level of MCI complaints, as compared to  
18 Sprint, which you have just adjusted, I'd like to ask  
19 you a clarifying question about Staff Cross Exhibit  
20 178. And I can show you that, if it would be  
21 helpful. In the row that's marked Total Complaints  
22 -- in the row marked Total, does that represent the  
23 complaints resolved in the favor of the customer or  
24 is it just the number of complaints lodged?

25 A. We don't, in any formal way, make that



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1 distinction between complaints. I mean, it is  
2 informally entered into the customer contact database  
3 about how it was resolved, so this number is the  
4 total complaints.

5       We've looked over time at the possibility  
6 of trying to measure performance based on, you know,  
7 an adjudicated result, and have been very suspicious  
8 of an approach like that. I mean, one thing is if a  
9 company -- if we set up a relationship in which the  
10 company is going to get either absolved or, you know,  
11 convicted based on that sort of thing, it's going to  
12 have to be a lot more than just a service examiner  
13 pushing one button or another on a screen at the end  
14 of a -- when it's time to close a complaint.

15       We also think that even if the complaint is  
16 resolved in favor of the company, that doesn't  
17 necessarily mean that there was good service  
18 provided, because that could mean, for instance, that  
19 the telemarketer misrepresented the price that was  
20 going to be charged under a plan.

21       When we get the complaint, you know, the  
22 customer that -- the company may say, well, that's  
23 what the price list says, and we'll have to say, Yep,  
24 that's what the price list says. Therefore, it's  
25 resolved in the company's favor, but that doesn't

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1 mean that the customer was treated right. So any  
2 type of complaint we think is a valid, if imperfect,  
3 measure of customer service.

4 Q. Thank you. Lastly, do any ILECs in  
5 Washington have different access charges between the  
6 intraLATA and interLATA markets?

7 A. No.

8 Q. And then, as our bench request, could you  
9 please provide an electronic copy of Exhibit C-249?

10 A. Yes.

11 JUDGE CAILLE: Thank you. Is there any  
12 redirect -- I mean, yes, redirect?

13 MR. THOMPSON: Yes, there is redirect.

14 JUDGE CAILLE: I had the wrong person.

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

16 BY MR. THOMPSON:

17 Q. Just a couple of questions. Dr. Blackmon,  
18 Mr. Harlow pointed out in his cross-examination of  
19 you a handful of firms that have been left out of  
20 your HHI calculation, and most significant among  
21 them, I guess ELI and TCG. Can you explain why those  
22 were excluded?

23 A. Yes. Electric Lightwave offers long  
24 distance service. There's no doubt about that. And  
25 they have a national, if limited, but its national

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1 footprint type of fiber network, but they are  
2 predominantly a local exchange carrier that offers  
3 long distance service to its local exchange  
4 customers. I mean, I'm sure they'd offer it to  
5 anybody else, too, but that's sort of what their  
6 business is about. And we felt that, based on that,  
7 it was more reasonable to exclude them.

8 TCG is in exactly the same situation, in  
9 terms of the type of service they provide. And I  
10 would point out that if we were to include them,  
11 they're owned by AT&T, so we would actually include  
12 them in AT&T category, which would then increase the  
13 HHI Index. In fact, if you included both Electric  
14 Lightwave and TCG, even though you're adding two sort  
15 of comparable type firms, the impact on that big AT&T  
16 number is going to be larger than the impact on the  
17 small others number.

18 Q. Okay. Another matter along the lines of  
19 your work on the HHI calculation. Mr. Harlow asked  
20 questions that -- I guess we're just attempting to  
21 point out there might have been a discrepancy between  
22 your work papers, I guess is a way to refer to them,  
23 which are designated as Exhibit 249, I believe; is  
24 that correct?

25 A. Yes.

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1 Q. And the total share percentages for the  
2 Others category on T-248, which is Exhibit Two to  
3 your testimony?

4 A. I think --

5 Q. Do you have an explanation for why those  
6 discrepancies might have -- how those discrepancies  
7 might be explained?

8 A. Well, we talked some about the part about  
9 squaring the individual shares and then summing them  
10 versus summing the other category and then squaring  
11 it, and Mr. Harlow compared the number that's on page  
12 10 of Exhibit 249 to the number that's in Exhibit 247  
13 under the Other category, and that's an incomplete  
14 comparison.

15 The reason, if you look on page one of --  
16 well, the reason being that this is a work paper,  
17 it's only a work paper, and the Other category is  
18 defined a little differently in the work paper than  
19 it is over here in the exhibit. And in the work  
20 paper, the Other, in 1996, doesn't include WorldCom  
21 Network Services, Incorporated. If you see on page  
22 one of the exhibit, there's a darker horizontal line  
23 and the companies that are above that horizontal line  
24 are not included in the other calculation on page 10  
25 of that work paper.

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1           But to make the comparison with the  
2 exhibit, one would need add any company that's above  
3 the horizontal line that's not listed separately in  
4 the exhibit. They'll need to add that to the Other  
5 category. In 1996, the only company that meets that  
6 requirement would be WorldCom Network Services,  
7 Incorporated. So their 3.5 market share or their  
8 12.8 contribution to the Herfindahl Index would need  
9 to be added to the number on page 10 to make a  
10 meaningful comparison to the exhibit.

11           That doesn't make the difference go away.  
12 There is a difference between squaring the sums and  
13 summing the squares, but it's not as large as what  
14 one might get the impression from that calculate --  
15 from the comparisons that were done earlier.

16           Q. So by adding the number from the firm above  
17 the line to the total at the bottom of the whole  
18 spreadsheet for that year, that's how you get to the  
19 figure that's on the exhibit to your testimony?

20           A. I don't think you're necessarily going to  
21 find the exact figure in the work paper and the  
22 exhibit, because the calculation was done  
23 differently. It's just that the difference is not as  
24 large as what was suggested.

25           Q. Mr. Harlow asked you if, basically, the

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1 arithmetical part of the HHI is just a first step,  
2 and I think you agreed with that, but I'm not sure  
3 you had an opportunity to explain what your  
4 additional steps were. What else did you look at?

5 A. Well, beyond looking at, again, at our own  
6 data set, and we did feel that it was important --  
7 you know, we knew that this revenue data were not  
8 perfect, but we felt that it was important, for a  
9 state proceeding, to look at the information that we  
10 had in-house as best we could. But we also -- I  
11 mean, it's reflected in the testimony, but we looked  
12 at FCC statistics, we looked at the claims being made  
13 by the companies, we interviewed representatives from  
14 the companies at great length, especially on MMDS,  
15 and we've looked at -- essentially based this on  
16 what, as I said in my testimony, is really quite a  
17 long series of cases in which we have sought to open  
18 these markets to competition.

19 MR. THOMPSON: Thank you, Mr. Blackmon.

20 CHAIRWOMAN SHOWALTER: Before Mr. Harlow  
21 does any re-cross, may I just ask a remedial  
22 question? And I'm referring to myself.

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

24 BY CHAIRWOMAN SHOWALTER:

25 Q. I asked, I think, some confusing questions

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1 earlier, because I was asserting that individual  
2 companies or combinations of companies would have an  
3 HHI, and I now realize, having been further educated  
4 in the last few hours, that there's only a final HHI,  
5 which is a measure of concentration, so that when I  
6 was asking questions about did a different  
7 methodology add 25 or 70 points, am I right that  
8 essentially it would add 25 or 70 points or whatever  
9 the case may be to an HHI of, say, 3,210, so the  
10 relevant thing to look at, am I right, is comparing,  
11 say, 3,210 to 20 points more than that or 70 points  
12 more than that to see the difference that squaring  
13 the sums versus summing the squares makes?

14 A. You're right, that the HHI is a final  
15 number, it's the index. The differences, in terms of  
16 method, can affect either the overall number, but  
17 there are some differences that can affect the  
18 contributions that individual companies make to the  
19 number, too. We've talked a lot here about how to  
20 treat the tail, but there's another question, again,  
21 as I pointed out in the Horizontal Merger Guidelines,  
22 about whether to include the tail in the analysis at  
23 all. If you exclude the tail, that affects not only  
24 the overall number, but the numbers that -- the  
25 contribution that each company makes to the overall

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1 result.

2 But what we talked about here on how to  
3 treat the tail, it only affects the value of that  
4 tail and not the individual contributions of the  
5 other companies.

6 CHAIRWOMAN SHOWALTER: Okay. Mainly, I  
7 wanted to let Mr. Harlow know that I think I now  
8 understand his line of questioning earlier, but it  
9 just took me a little while.

10 JUDGE CAILLE: Re-cross?

11 MS. HOPFENBECK: I would like to ask the  
12 Commission's leave to conduct the re-cross. It's  
13 going to be very brief, but we would have to take a  
14 break so I could confer with Mr. Harlow, because one  
15 area of cross involves some of the testimony of Ms.  
16 McMahon, where Mr. Harlow was not present, so I would  
17 like leave. I mean, there is going to be one area  
18 where he could do it, but in the interest of time, I  
19 just --

20 CHAIRWOMAN SHOWALTER: Save about five  
21 minutes, so Mr. Cromwell's not in trouble.

22 JUDGE CAILLE: Okay. Then let's take a  
23 five-minute recess.

24 MS. HOPFENBECK: So you'd rather do that  
25 than have me do the re-cross? I could do the



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1 re-cross right now, if you'd let me do it instead of  
2 Mr. Harlow.

3 JUDGE CAILLE: Oh, I understand what you  
4 mean. Go right ahead.

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

6 BY MS. HOPFENBECK:

7 Q. We're still morning. Good morning, Dr.  
8 Blackmon.

9 A. Good morning.

10 Q. You had a discussion with Chairwoman  
11 Showalter about the difference in MCI WorldCom's --  
12 or actually, MCI Communications' rates for interLATA,  
13 intrastate service and intraLATA service. Do you  
14 recall that discussion?

15 A. Yes.

16 Q. Were you present yesterday during Ms.  
17 McMahon's testimony when she indicated that over 60  
18 percent of the calling done by MCI Communications  
19 customers is intraLATA?

20 A. I believe she was referring to the  
21 intrastate calls, and that 60 percent are intraLATA.

22 Q. That's right. So you were present during  
23 that. Were you also present that the average  
24 effective rate paid by MCI Communications customers  
25 who subscribe to both their interstate and their

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1 intraLATA product is 8.7 cents, and that that is  
2 lower than the average effective rate paid by  
3 similarly-situated customers who subscribe to either  
4 Sprint or AT&T?

5 A. I don't recall that part. Sorry.

6 Q. Okay. Would you accept that, subject to  
7 check?

8 A. That the average of the eight cents and 11  
9 cents, weighted by minutes, is 8.7 cents?

10 Q. Mm-hmm.

11 A. And that that's lower than the similar  
12 weighted average for AT&T? Okay. But I'll only be  
13 able to check her testimony.

14 Q. I understand. That's --

15 A. We wouldn't be able to calculate that.

16 Q. Right, but you do accept that, subject to  
17 check, that was her testimony?

18 A. Sure.

19 Q. Thank you. Isn't it true that were -- if  
20 MCI WorldCom, you would have to agree, did reduce its  
21 intra -- interLATA rate and equalized that to a  
22 nine-cent rate for both intraLATA and interLATA, that  
23 that would have a negative impact, if you assume, on  
24 certain consumers, and in fact, quite a few  
25 consumers, if you assume that 60 percent of the

00965

1 calling is intraLATA?

2 A. Yeah, I don't think the percentage matters,  
3 even if it's one percent. The question is not how  
4 many minutes, but whether there are some customers  
5 who make more intraLATA calls.

6 Q. Right, and if some customers do that, there  
7 certainly would be an adverse impact to equalizing  
8 those rates; is that right?

9 A. Adverse and -- yes.

10 Q. Would you also agree that the average  
11 effective access charge rate in the state of  
12 Washington, due to the differences in rates between  
13 companies, is about seven and a half cents?

14 A. No. I don't have that calculation.

15 Q. Okay. So you can't agree or disagree,  
16 because you don't know what that calculation is?

17 A. Right. I know that MCI is selling long  
18 distance service for eight cents a minute and is  
19 doing so, you know, without being ordered to do so.

20 Q. And they're doing that in the intraLATA  
21 market?

22 A. Yes.

23 Q. Thank you. Now I'd like to turn your  
24 attention to your Exhibit C-249, Revised, and  
25 specifically page 21.

00966

1 A. Okay.

2 Q. Now, you had some discussion, also with  
3 Chairwoman Showalter, about the impacts of squaring  
4 the sums or summing the squares of revenues and how  
5 that would affect the ultimate HHI. I'd like to  
6 direct your attention to your inclusion in the  
7 revenues associated with WorldCom of the unbranded  
8 affiliates' revenues and ask you this question. If  
9 the revenues for the unbranded long distance  
10 carriers, and that would be BLT Technologies,  
11 Teleconnect Long Distance Service and System, which  
12 is the 10-10 provider that does business as Telecom  
13 USA, Touch 1 Communications, and TTI National,  
14 Incorporated, that would have the effect of reducing  
15 the market share associated with MCI  
16 Telecommunications Corporation, the branded carrier;  
17 is that true?

18 A. If we were to drop them from the MCI group;  
19 is that what you mean?

20 Q. Yes, if we were to take those revenues out  
21 of the total, which is now showing as a 106,911,000,  
22 that would have the effect of reducing the market  
23 share associated with MCI Telecommunications  
24 Corporation, the branded carrier, isn't that true, if  
25 you put them in with the -- if you reflect them as

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1 other unknown brands and include them in the total  
2 calculation?

3 A. Yes, it would.

4 Q. And it is also true that if WorldCom  
5 Network Services, Incorporated's revenues are not  
6 included or lumped together with MCI  
7 Telecommunications Corporation's revenues, that too  
8 would have the effect of reducing the market share  
9 shown on this document for MCI Telecommunications  
10 Corporation; is that fair?

11 A. Sure. Any number that you take out is  
12 going to reduce the percentage, and therefore the  
13 share. It's -- I mean, that's how the math works.  
14 That doesn't make it right, but that's how the math  
15 works.

16 Q. But you do agree that the purpose for --  
17 the purpose of the assessment of market concentration  
18 is really to determine what the impact of the merger  
19 will have on the market power that may be able to be  
20 exercised by the branded carriers, Sprint and MCI  
21 Communications; isn't that fair?

22 A. Yes. I like the way you put it, that it's  
23 the impact that the branded carriers have. So it's  
24 not just the impact of the branded services, but it's  
25 the impact of a company like WorldCom that controls

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1 both branded and unbranded products.

2 Q. And you were here during the testimony of  
3 Dr. Hausman, weren't you, when Dr. Hausman indicated  
4 that he included the 10-10 dial around products, in  
5 particular, 10-10-321 and 10-10-220, both MCI  
6 products, in his category Generic Carriers; isn't  
7 that fair? Were you here when he explained that?

8 A. I snuck out a little bit during the  
9 afternoon. Sorry.

10 MS. HOPFENBECK: Thanks. That's all the  
11 questions that I have.

12 JUDGE CAILLE: Nothing further?

13 CHAIRWOMAN SHOWALTER: I've got one  
14 follow-up on the averaging question.

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

16 BY CHAIRWOMAN SHOWALTER:

17 Q. Could you remind me, what did Sprint and  
18 AT&T do when they provided the same rate in-state as  
19 state-to-state? I know they added a fee and that the  
20 rate is the same interstate as in-state, but what did  
21 they do about intraLATA, if anything?

22 A. For the customer who subscribes to that  
23 plan, such as the Sprint Anywhere plan, they pay that  
24 state to state rate, all their in-state calls,  
25 including the interLATA ones.

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1 Q. For an additional fee?

2 A. For an additional fee.

3 Q. So there's no averaging there. It was  
4 just, for an additional fees, you get the same rate  
5 for state to state calls for that plan?

6 A. Yeah, that's right. Yeah, I think most  
7 customers today are still on the more widely  
8 advertised plan, which does have higher rates for  
9 in-state than state to state, though I believe that  
10 on their most common plans, both Sprint and AT&T  
11 charge the same rate for intraLATA and interLATA.

12 CHAIRWOMAN SHOWALTER: Thanks.

13 JUDGE CAILLE: Anything further?

14 MR. THOMPSON: Nothing further.

15 JUDGE CAILLE: All right. Thank you for  
16 your testimony, Dr. Blackmon. You're excused.

17 MS. HOPFENBECK: Thank you very much.

18 CHAIRWOMAN SHOWALTER: I would just like to  
19 say on the record, I thought that the witnesses and  
20 the lawyering in this hearing were just simply  
21 outstanding, and also the cooperative spirit was  
22 remarkable, and I think it was a very high-caliber  
23 substantive hearing that we had on an important  
24 topic. And we thank you, the Counsel and the  
25 witnesses.

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1 MR. CROMWELL: Thank you.  
2 MR. HARLOW: Thank you.  
3 MS. HOPFENBECK: Thank you.  
4 JUDGE CAILLE: If there's nothing more to  
5 come --  
6 MR. HARLOW: Well, I'd like to go off the  
7 record for a minute -- and the Commissioners don't  
8 have to stay for this -- to discuss how we're  
9 handling the transcript cites in relation to the  
10 jurisdiction brief.  
11 JUDGE CAILLE: Let's go off the record.  
12 (Discussion off the record.)  
13 JUDGE CAILLE: Let's go on the record. Mr.  
14 Harlow, would you explain what we decided about how  
15 we're going to handle the portion of Mr. Blackmon's  
16 testimony that you need expedited?  
17 MR. HARLOW: Yes, if I understood it  
18 correctly, which is we're going to expedite this  
19 morning's transcript. And since it will be prepared  
20 before Monday through Thursday's transcripts, it will  
21 be designated as excerpt's numbered page, page one  
22 through whatever, and it will be so referred to in  
23 the briefing.  
24 JUDGE CAILLE: Thank you. I also need to  
25 take up a housekeeping matter of assigning exhibit



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1 numbers to three items. One is the deposition pages  
2 that will be submitted. The deposition pages of Dr.  
3 Hausman's deposition will be designated Exhibit 236.  
4 And there was a supplemental exhibit that  
5 -- actually, two supplemental exhibits that were  
6 offered for coming in through Ms. McMahon. One is  
7 the re-balanced rates, and that's a chart, and that  
8 will be designated 182, and another chart for  
9 intrastate rates, and that will be Exhibit 183. Is  
10 there anything further from anyone?

11 MR. CROMWELL: Thank you, Your Honor.

12 JUDGE CAILLE: Thank you. And I also echo  
13 the Chairwoman's sentiments about the way you folks  
14 conducted yourselves during this hearing. It was a  
15 pleasure. Thank you.

16 MR. HARLOW: Thank you.

17 MR. CROMWELL: Thank you.

18 MR. THOMPSON: Thank you.

19 (Proceedings adjourned at 11:47 a.m.)

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