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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In the Matter of the Petition) Docket No. UT-991991
5 of) Volume I
6 MCI WORLDCOM, INC. and SPRINT) Pages 1-20
7 CORPORATION,)
8 for an Order Disclaiming)
9 Jurisdiction, or in the)
10 Alternative Approving the)
11 Transfer of Control of Sprint)
12 Corporation's Washington)
13 Operating Subsidiaries to MCI)
14 WORLDCOM, Inc.)
15 _____)

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12 A hearing in the above matter was
13 held on January 25, 2000, at 9:36 a.m., at 1300
14 Evergreen Park Drive Southwest, Olympia, Washington,
15 before Administrative Law Judge KAREN CAILLE.

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17 The parties were present as
18 follows:

19 MCI WORLDCOM, INC., by Ann E.
20 Hopfenbeck, Attorney at Law, 707 17th Street, Suite
21 3600, Denver, Colorado, 80202, and Clyde MacIver,
22 Attorney at Law, 4400 Two Union Square, 601 Union
23 Street, Seattle, Washington 98101.

24 SPRINT CORPORATION, by Eric S.
25 Heath, Attorney at Law, 330 S. Valley View Boulevard,
Las Vegas, Nevada 89029.

26 TELECOMMUNICATIONS RESELLERS
27 ASSOCIATION, by Andrew Isar, 3220 Uddenberg Lane,
28 Suite Four, Gig Harbor, Washington 98335.

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1 THE COMMISSION, by Gregory
2 Trautman and Jonathan Thompson, Assistant Attorneys
3 General, 1400 S. Evergreen Park Drive, S.W., P.O. Box
4 40128, Olympia, Washington 98504-0128.

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6 PUBLIC COUNSEL, by Robert Cromwell,
7 Jr., Assistant Attorney General, 900 Fourth Avenue,
8 #2000, Seattle, Washington 98164.

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Barbara L. Spurbeck, CSR

Court Reporter

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1 JUDGE CAILLE: We are here today for the
2 first prehearing conference in the proceeding
3 captioned In the matter of the petition of MCI
4 WorldCom, Incorporated, and Sprint Corporation for an
5 order dismissing jurisdiction, or in the alternative,
6 approving the transfer of control of Sprint
7 Corporation's Washington operating subsidiaries to
8 MCI WorldCom. This is Docket UT-991991.

9 My name is Karen Caille, and I'm the
10 presiding Administrative Law Judge in this
11 proceeding. With me on the bench this morning is Tom
12 Wilson, my policy adviser. The Commissioners had
13 indicated that they will be sitting on this
14 proceeding, but they will not be joining us today.
15 Today is January the 25th, in the year 2000, and we
16 are convened in a hearing room at the Commission's
17 offices in Olympia, Washington. This proceeding is
18 being held to determine whether the proposed merger
19 is in the public interest.

20 Our basic agenda for today will be
21 appearances, preliminary motions, including the
22 motion for consolidation, the motion regarding
23 briefing of jurisdictional issues, and any petitions
24 to intervene. That would be followed by discussion
25 of issues, setting a procedural schedule, and then

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1 any other business. Is there anything that anyone
2 would like to add to that agenda?

3 All right. Then let's begin with
4 appearances. I will ask you to please state your
5 name, spelling your last name, who you represent,
6 your street and mailing address, telephone number,
7 fax number and e-mail address, if you have one. And
8 for the purposes of distributing documents, I would
9 like you to just have one representative from each
10 party enter an appearance. All right. Shall we
11 begin with Public Counsel?

12 MR. CROMWELL: Robert Cromwell,
13 C-r-o-m-w-e-l-l, Assistant Attorney General, on
14 behalf of Public Counsel. Our address is 900 Fourth
15 Avenue, Suite 2000, Seattle, Washington, 98164. My
16 direct phone line is 206-464-6595, our fax number is
17 206-389-2058, my e-mail address is
18 Robertc1@atg.wa.gov. I will be lead attorney on this
19 case. Previously appearing and continuing to appear
20 will also be Simon ffitch.

21 JUDGE CAILLE: Thank you. Mr. Trautman.

22 MR. TRAUTMAN: I'm Greg Trautman, Assistant
23 Attorney General for Commission Staff. My address is
24 1400 South Evergreen Park Drive, S.W., Post Office
25 Box 40128, Olympia, 98504. My business phone is

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1 360-664-1187, my fax is 360-586-5522, and my e-mail
2 address is Greg@wutc.wa.gov. And also appearing with
3 me is John Thompson of Commission Staff.

4 JUDGE CAILLE: All right.

5 MR. THOMPSON: My telephone number is area
6 code 360-664-1225, and my e-mail address is
7 jthompso@wutc.wa.gov. Mailing address is the same as
8 Mr. Trautman's.

9 JUDGE CAILLE: Thank you. Mr. MacIver.

10 MR. MacIVER: Thank you, Your Honor, my
11 name is Clyde H. MacIver. My address is 4400 Two
12 Union Square, 601 Union Street, Seattle, Washington,
13 98101. My telephone number is 206-622-8484, my fax
14 is 206-622-7485, my e-mail address is
15 Maciver@millernash.com, and I am local counsel for
16 MCI WorldCom.

17 JUDGE CAILLE: Thank you.

18 MS. HOPFENBECK: Good morning, Your Honor.
19 My name is Ann Hopfenbeck, H-o-p-f-e-n-b-e-c-k. I am
20 senior attorney with MCI WorldCom. My address is 707
21 17th Street, Suite 3600, Denver, Colorado, 80202. My
22 telephone number is 303-390-6106, the fax number is
23 303-390-6333, my e-mail address is
24 Ann.Hopfenbeck@wcom.com.

25 JUDGE CAILLE: Mr. Heath.

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1 MR. HEATH: Thank you, Your Honor. Eric S.
2 Heath, appearing on behalf of Sprint. My address is
3 330 South Valley View, two words, Boulevard, Las
4 Vegas, Nevada, 89129. My phone number is
5 702-244-6541, my fax number is 702-244-7380, and my
6 e-mail address is Eric.S.Heath@mail.sprint.com. With
7 me today is Nancy Judy, Assistant Vice President,
8 External Affairs, and Nancy's address is 902 Wasco
9 Street, Hood River, Oregon, 97031, and her telephone
10 number is 541-387-9265. Her fax number is
11 541-387-9753. Nancy's e-mail is NancyJ@sprintnw.com

12 JUDGE CAILLE: And on the bridge line, Mr.
13 Isar.

14 MR. ISAR: Good morning, Your Honor. My
15 name is Andrew Isar, I-s-a-r. I'm appearing on
16 behalf of the Telecommunications Resellers
17 Association, as Director of State Affairs. My
18 business address is 3220 Uddenberg,
19 U-d-d-e-n-b-e-r-g, Lane, Suite Four, Gig Harbor,
20 Washington, 98335. Telephone number, 253-851-6700,
21 fax number is 253-851-6474, and e-mail address
22 Aisar@Harbor-Group.com.

23 JUDGE CAILLE: Thank you. Are there any
24 other appearances to be made on the bridge line?
25 Hearing none, then let the record reflect there are

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1 no other appearances.

2 Our next order of business will be to
3 entertain petitions to intervene. And Mr. Isar, as
4 far as I'm aware, you are the only person that has
5 intervened in this proceeding. Is there any
6 objection to the Commission granting this petition to
7 intervene?

8 MS. HOPFENBECK: No objection, Your Honor.

9 MR. TRAUTMAN: No objection.

10 MR. CROMWELL: No objection, Your Honor.

11 JUDGE CAILLE: All right. Then I will
12 recommend that the petition be granted. The next
13 motion is a motion for consolidation of this
14 proceeding, and that consolidation -- the joint
15 motion is on behalf of the Petitioners, Public
16 Counsel and Counsel for Staff. And it would
17 consolidate the reopening of U-86-79 and U-86-101.
18 The Commission had ordered the reopening of these
19 proceedings to determine whether waivers of the
20 statutory and regulatory provisions pertaining to
21 securities, transfers of property and affiliated
22 interests which were previously granted to MCI and
23 Sprint, whether those should be revoked.

24 I really don't need to hear argument on
25 this. I'm fairly certain that the Commission will be

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1 in agreement to consolidate these matters. I will
2 formally rule on each of these after consulting with
3 the Commissioners in the prehearing conference order,
4 just so you understand the procedure here.

5 And then we have a motion for leave to
6 address the filing date of memoranda on jurisdiction,
7 and there's a related issue of whether the review
8 should be limited to the impact of the merger on
9 United's ratepayers.

10 My sense has been that the Commissioners
11 would be content with carrying the jurisdictional
12 issues with the case, and they would also include the
13 issue of whether they should limit their review to
14 United. Does anyone want to be heard on that?

15 MS. HOPFENBECK: Your Honor, may I sit
16 down?

17 JUDGE CAILLE: Yes, you may.

18 MS. HOPFENBECK: Briefly, just to fill in a
19 little more from the perspective of MCI WorldCom and
20 Sprint, we would support a decision to carry the
21 jurisdictional issue with the case. We have
22 suggested to Mr. Trautman, and I believe he's spoken
23 with Mr. Cromwell, about our proposal that MCI
24 WorldCom and Sprint would file their opening brief
25 addressing the jurisdictional issues a few days

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1 following the close of hearing or the evidentiary
2 record in this case.

3 It is MCI WorldCom's view that, particular
4 with respect to that aspect of jurisdiction that goes
5 to whether or not revocation of the waivers should be
6 granted, that there may be some evidentiary basis for
7 our position that revocation is inappropriate, and
8 that that evidence on the degree of competition
9 present in that market, whether it's in the public
10 interest to revoke or whether the revocation should
11 not be granted, would well be addressed at the
12 hearing on the merits of the merger.

13 So for that reason, we would seek to file
14 our opening brief at that time, and then expect that
15 there would be a response brief filed and a brief
16 time provided for MCI WorldCom and Sprint to reply,
17 if that was appropriate and necessary.

18 JUDGE CAILLE: All right. Does anyone have
19 any comment on that?

20 MR. TRAUTMAN: Staff is in agreement with
21 that concept. We're still trying to get the specific
22 dates of -- the date that was suggested, I believe,
23 for their filing of the brief was May 19th, so that
24 the hearings are going May 15th to the 17th -- or,
25 well, with that proposed date in mind, and I have

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1 indicated to the parties, also, that I had tried to
2 get some hearings available -- dates from the bench
3 that worked for everybody, including Commissioners.

4 So if that were the assumption, then the
5 proposed date, I think, was May 19th on jurisdiction
6 and revocation of waiver, with a response then by
7 Staff, Public Counsel and Intervenors, and then a
8 reply. And I think -- and we can get into this
9 later, but I think on the other briefs, we were
10 intending simultaneous submission on the merits.

11 MR. CROMWELL: Your Honor, Robert Cromwell.
12 Mr. Trautman did inform me of this just prior to the
13 hearing, and we have no objection of the concept of
14 briefing jurisdiction separately, if that's how the
15 Commissioners would prefer to frame the issue.

16 JUDGE CAILLE: Anything from Mr. Heath?

17 MR. HEATH: No.

18 JUDGE CAILLE: All right. Mr. Isar?

19 MR. ISAR: I have no comments, Your Honor.

20 JUDGE CAILLE: Thank you. Just so that I'm
21 perfectly clear, what will happen is, shortly after
22 the hearing, there will be a jurisdictional -- briefs
23 on the jurisdictional issue. And included in that
24 will be -- I'm sorry, will that issue about the
25 revocation of waivers be a part of that

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1 jurisdictional argument?

2 MS. HOPFENBECK: Yes, it will, Your Honor.

3 JUDGE CAILLE: Okay. Then Staff and the

4 other parties will have an opportunity to file a

5 response, and then there will be a simultaneous

6 briefing of the merits?

7 MS. HOPFENBECK: Yes.

8 JUDGE CAILLE: Or do you have a response --

9 is there a response in there for -- do you have a
10 reply?

11 MS. HOPFENBECK: Let me just outline the
12 dates --

13 JUDGE CAILLE: Let's do that.

14 MS. HOPFENBECK: -- that we have proposed
15 to Public Counsel and Commission Staff Counsel, and
16 I'll also try to outline where we're still trying to
17 work things out. The suggestion was that MCI
18 WorldCom and Sprint would brief the jurisdictional
19 issue, including revocation of waiver, on May 19th,
20 assuming that we were in hearing the 15th through the
21 17th.

22 We have proposed that Staff Counsel and the
23 Public Counsel file a response to that jurisdictional
24 brief by June 9th, and that all parties file their
25 brief on the merits on the 16th or the 23rd. And

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1 that's what we're discussing, whether or not the 16th
2 would work. I mean, what we're really hoping for
3 here is that perhaps we could get this done so that
4 we could get -- so it was feasible for the Commission
5 to be able to rule before the end of July, is what
6 we're hoping for. We were actually hoping for June,
7 but due to the Commission's other calendar, it didn't
8 look feasible.

9 JUDGE CAILLE: Okay.

10 MS. HOPFENBECK: And that, at the time that
11 we, Sprint and MCI WorldCom, filed our brief on the
12 merits, we would also file any reply to the
13 jurisdictional issues. So that would be either on
14 the 16th or the 23rd, depending on what we could work
15 out between Commission Counsel and Public Counsel, or
16 I should say Staff Counsel, excuse me.

17 JUDGE CAILLE: Okay. You've done most of
18 the scheduling for me already. Just to put
19 scheduling aside for right now, because I think we'll
20 go off the record to discuss it more fully, are there
21 any other preliminary motions before we move on? All
22 right.

23 Then I note the parties have already been
24 engaging in some discovery. I assume that you will
25 want to invoke the discovery rule, which is WAC

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1 480-09-480?

2 MR. TRAUTMAN: Yes.

3 JUDGE CAILLE: Okay. And I am also aware
4 that the Commissioners entered a standard protective
5 order, and that was entered on January the 10th. If
6 there are any problems with discovery, please bring
7 it to my attention. Of course, by the rules, you do
8 have to try to work these matters out amongst
9 yourselves, but since we are trying to accomplish a
10 lot in a short amount of time, please, we can do it
11 over telephone or informally, so we move this along.

12 MR. TRAUTMAN: The one thing I had been
13 thinking about, Your Honor, and I haven't been --
14 generally, there's a ten-day turnaround on the
15 discovery rule. I don't -- I don't know. I think
16 that should be doable, but since we have a pretty
17 tight discovery timeline to get the things in, I had
18 been -- I guess I would suggest the possibility of
19 lowering that to five days, but I don't know what --
20 I don't know how doable that is.

21 MS. HOPFENBECK: As I interpret the rule,
22 the rule is ten business days. I would hope that we
23 could really leave it at ten days. I think that it
24 is very difficult for my client, MCI WorldCom, to
25 respond in less time. Unlike some of the incumbent

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1 local exchange carriers that do business in this
2 state, we do not have a group of people that -- whose
3 job it is to respond to data requests. I mean, it's
4 always a function of really going around the country
5 and pulling bits of information in response to
6 requests from others. So we were hoping, by starting
7 discovery early, that we could probably live with the
8 ten days.

9 MR. TRAUTMAN: Right. Well, yeah, I mean,
10 we even have current requests out that are taking
11 longer.

12 MS. HOPFENBECK: Longer, that's right.

13 MR. TRAUTMAN: And because we would want to
14 get our discovery done before we -- obviously before
15 we file our testimony, we would have to get our
16 responses in two weeks. Obviously, they'd have to
17 come in -- we don't have that much time, I guess is
18 what I'm saying.

19 MS. HOPFENBECK: We understand that. And
20 we are really -- we are trying to put things together
21 so that future discovery requests from here on are
22 answered within the ten-day time limit specified in
23 the rule. But I think trying to do it more quickly
24 than that would really be difficult, because we are
25 doing discovery in response to many jurisdictions

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1 simultaneously.

2 MR. TRAUTMAN: I guess all I would ask,
3 Your Honor, is for the moment I guess ten days we'd
4 try to live with. If we could reserve the right to
5 request a quicker turnaround, should that be --

6 JUDGE CAILLE: You can always request, Mr.
7 Trautman.

8 MR. TRAUTMAN: Right.

9 JUDGE CAILLE: So let's do it at ten days.
10 It's ten days, not ten business days, or are we
11 talking ten business days?

12 MS. HOPFENBECK: Ten business days. We'd
13 like to live with the rule.

14 JUDGE CAILLE: Okay. And if there does
15 seem to be a problem, please try to work it out.
16 Otherwise, please bring it to my attention. Why
17 don't we at this point go off the record and discuss
18 scheduling.

19 (Discussion off the record.)

20 JUDGE CAILLE: Let's go back on the record.
21 The parties have come to an agreement on scheduling.
22 MCI and Sprint have already filed their direct
23 testimony. I believe that was filed on January 21st.

24 MS. HOPFENBECK: Yes.

25 JUDGE CAILLE: Staff, Public Counsel, and

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1 Intervenors will file testimony on March 17th.
2 Rebuttal will be April the 14th. And this rebuttal
3 testimony is only by MCI and Sprint; correct?

4 MS. HOPFENBECK: Yes, Your Honor.

5 JUDGE CAILLE: And then the hearing will be
6 May 15th through the 17th. Then we will brief -- the
7 jurisdictional issue will be briefed first with the
8 opening brief, filed by MCI and Sprint, on May 19th.
9 And then, let's see, Mr. Trautman, I've lost my note
10 on when Staff and the other parties will --

11 MR. TRAUTMAN: June 9th, we would respond
12 on the revocation of waivers and jurisdiction.

13 JUDGE CAILLE: Thank you for reminding me.
14 The jurisdiction brief includes the revocation of
15 waivers issue. Then all the parties will brief the
16 merits, and that will be due June 23rd. And at the
17 same time, MCI and Sprint will file a reply on the
18 jurisdictional issues, jurisdiction, revocation
19 waiver issues.

20 There's also been a request that -- by Ms.
21 Hopfenbeck that they waive initial order. And I
22 explained that generally that's the way it is handled
23 when the Commission sits, we just go to the final
24 order, and there's been no objection by anyone else
25 regarding that.

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1 One thing I'd like to maybe lay the
2 groundwork for is the idea of a common outline for
3 the brief on the merits. That makes it a lot easier
4 for us to write the order.

5 And I will be -- we probably will have a
6 prehearing conference shortly before, maybe a week to
7 ten days before the actual hearings to mark exhibits
8 and determine the order of witnesses and any other
9 matters that may have come up.

10 Okay. That brings us to a discussion of
11 the issues. Who would like to go first?

12 MS. HOPFENBECK: Actually, I was going to
13 suggest that perhaps Public Counsel and Staff Counsel
14 go first, since they're the --

15 MR. TRAUTMAN: I guess I would say it's a
16 little difficult to get very detailed, since we
17 haven't seen anything, except for two -- we've seen
18 two pieces of testimony. We have yet to get all of
19 our DRs. I would assume there would be issues on
20 competition, certainly competition in the long
21 distance market, impact on United's customers, the
22 questions of how market share and how pricing
23 practices might be affected.

24 JUDGE CAILLE: Mr. Cromwell.

25 MR. CROMWELL: Yes, Your Honor. Public

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1 Counsel has essentially the same concerns, the degree
2 to which competition in the in-state long distance
3 markets would be affected by the merger, whether --
4 again, this is a factual question we'd need to get
5 information on, but whether there would be any
6 Washington-specific issues in that area that would
7 not be adequately addressed at the federal level, and
8 finally, any impacts on the merger upon
9 Sprint-United's local customers, whether or not there
10 is any potential for that to be an issue for them.

11 I suppose -- again, as Mr. Trautman said,
12 without more specific information, it's hard to
13 clearly articulate. I think other potential concerns
14 would be both Sprint and MCI's existing plans to
15 enter into a competitive status in local exchange
16 markets, how the merger would affect those plans, if
17 at all, and how that potential for decreased
18 competition might affect consumers here in
19 Washington. And there's, you know, a variety of
20 somewhat smaller miscellaneous concerns.

21 JUDGE CAILLE: All right. Mr. Isar, do you
22 have anything?

23 MR. ISAR: I would only note that the TRA's
24 interest in the merger is very narrowly focused on
25 the competitive impacts of the merger on long

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1 distance, and specifically on the impacts of merger
2 on the wholesale market. And that would be TRA's
3 anticipated interest in this proceeding.

4 JUDGE CAILLE: Thank you. All right. Mr.
5 Heath?

6 MR. HEATH: Other than those issues
7 articulated by Public Counsel and Staff Counsel, I'm
8 not sure that I have anything to add.

9 MS. HOPFENBECK: Nor do I, Your Honor.

10 JUDGE CAILLE: All right. I prefer to kind
11 of keep this broad, just because what we've
12 identified here today are not the only issues that
13 may come up, so I don't want you to walk away from
14 here thinking, Oh, these are the only issues. But
15 if, while we proceed, if there are other things that
16 do come to mind and that are revealed through the
17 discovery process, I'm sure we'll be seeing them in
18 the testimony.

19 Let's see. Is there any other business
20 that you wish to discuss this morning? If not, I
21 have a couple of reminders. I remind the parties
22 that fact stipulations are encouraged, and the
23 parties are also encouraged to consider alternative
24 dispute resolutions and settlement discussions. And
25 please keep the Commission apprised of any progress

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1 in that direction.

2 I will issue a prehearing conference order
3 that will include our procedural schedule and a
4 summary of what occurred today, and I remind you that
5 anything that you file must be directed to the
6 Commission's Secretary, and the address is 1300 South
7 Evergreen Park Drive S.W., Post Office Box 47250,
8 Olympia, Washington 98504-7250. You will need to use
9 both the post office box and the mailing address to
10 accommodate the needs of our state mailing
11 distribution system. And we will need an original
12 and 15 copies.

13 All right. Is there anything further?
14 Well, then, I thank you for coming today, and I
15 encourage you to please work cooperatively together,
16 and I'll see you at the next meeting.

17 MR. CROMWELL: Thank you, Your Honor.

18 MR. ISAR: Thank you, Your Honor.

19 MR. HEATH: Thank you, Your Honor.

20 JUDGE CAILLE: Thank you, Mr. Isar.

21 (Proceedings adjourned at 10:24 a.m.)

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