ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of merger of MCI Communications Corporation (Holder of AAV/ALEC Certificate 2986 in the name MCI Metro Access Transmission Services, Inc. and IXC Certificate 61, PATS Certificate 3080, and AAV/ALEC Certificate 3996 in the name of MCI Telecommunications Corp.) with TC Investments Corp., a Wholly-Owned Subsidiary of WorldCom, Inc.	Docket No. 971604-TP Filed: January 26, 1998

REPLY OF GTE CORPORATION AND GTE COMMUNICATIONS CORPORATION TO OPPOSITION OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION TO MOTION TO INTERVENE

On December 15, 1997, GTE Corporation and GTE Communications Corporation (collectively, GTE) filed their Petition to Intervene in this proceeding. On December 24, 1997, WorldCom and MCI (collectively, Petitioners) filed their Motion in Opposition to GTE's Petition to Intervene (Opposition). GTE hereby responds to that Motion.

I. GTE Has a Substantial Interest in this Proceeding as Both Customer and Competitor to the Merged Entity

GTE's "substantial interest" in this proceeding is founded on its status as both customer and competitor to the merged entity. Petitioners have offered no convincing rationale to deny GTE's intervention on these grounds and, in fact, barely even address GTE's asserted interests in this proceeding. Discussion of GTE's status as a WorldCom customer is relegated to a single footnote.

GTE's critical stake in this case cannot be so easily dismissed. GTE buys most of its long-distance transmission capacity from WorldCom. While the Petitioners have

provided no wholesale market data, GTE believes WorldCom may be the largest or second largest provider of wholesale capacity. Whatever its share of that market, WorldCom has aggressively pursued wholesale supply arrangements as a means of indirectly serving residential and small business customers. WorldCom's focus on the wholesale market saves it significant advertising and promotion costs that would otherwise be passed on to customers. GTE's experience as a consumer of long-distance service is that WorldCom has been far more price-competitive than its large rivals, AT&T, MCI, and Sprint. Moreover, WorldCom has committed to providing advanced features and capabilities to its wholesale customers--features that the other large interexchange carriers (IXCs) refuse to provide to resellers.[1] These advanced capabilities (e.g., 800 service, AIN, frame relay) are essential elements of the services that GTE and other carriers resell to business and residential customers. Without access to them, GTE would be seriously hampered in the marketplace.

The merger, if it is consummated, would predictably alter WorldCom's incentives

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[1] GTE's experiences in the resale market are not unique. For example, Bell Atlantic's FCC Petition to Deny the Application of WorldCom included an affidavit from the Company's Director of Business Product Marketing discussing the large long distance incumbents' refusal to provide Bell Atlantic Long Distance "the features and facilities necessary to provide service to large and medium-sized business customers." Bell Atlantic observed that the merger would make resale problems worse, as "WorldCom apparently was in the process of beginning to develop these high-end business features." (Bell Atlantic's Petition to Deny the Application of WorldCom or, in the Alternative, to Impose Conditions, Jan. 5, 1998 at 14 and App. B, Affidavit of Steven Au Buchon.) In its Petition to Deny the merger application, TMB, another reseller, complained about MCI's "treacherous and duplicitous business practices" and that MCI had "held back the competitive products from TMB that the reseller needed to preserve its customer base." TMB notes that its experience "is that of many resellers and other small businesses that have contracted with MCI." (TMB's Petition to Deny, filed Jan. 5, 1998, at 2, 5.)

and practices in the wholesale market. Rather than welcoming resellers as a distribution channel, WorldCom will realize that increased sales through resellers would diminish its profits by cannibalizing MCI's lucrative retail customer base. GTE, therefore, expects that WorldCom will increase its wholesale rates, limit the range of advanced capabilities offered to resellers and discontinue commitments to develop additional wholesale capabilities. GTE certainly has a substantial interest in preventing these unfavorable consequences for the wholesale market in which it operates. The Commission should share this interest, as most long-distance competition will develop first through resale channels.

Status as a reseller or other purchaser (even just a potential purchaser) of elements used to provide retail service is treated by the Commission as a patently sufficient entitlement to intervention in proceedings that might affect the market for the service at issue. See, e.g., Consideration of BellSouth Telecomm. Inc.'s Entry into InterLATA Service Pursuant to Section 271 of the Fed. Telecomm. Act of 1996, 97 FPSC 7:581 (1997) (granting intervention of American Communications Services of Jacksonville, Inc. (ACSI) as purchaser of BellSouth service elements ACSI uses to, in turn, provide service to its end users); Application of AT&T Comm. of the Southern States, Inc. for a Certificate of Public Convenience and Necessity, 85 FPSC 241 (1985) (granting intervention to Southland Systems, Inc. based on its substantial interest as a reseller of toll service); AT&T Comm. Application for Public Convenience and Necessity-WATS; Southern Bell Tel. & Tel. Post Divestiture WATS Service, 85 FPSC 197 (1985) (granting GTE Sprint Communications Corporation's intervention based on its interest as a "resale provider of

"telecommunications services"); Southern Bell Tel. and Tel. Co's Proposal for Provision of Post-Divestiture WATS Service, 85 FPSC 208 (1985) (granting Microtel intervention as WATS reseller); AT&T Comm. Application for Public Convenience and Necessity-WATS; Southern Bell Tel. & Tel. Post-Divestiture WATS Service, 85 FPSC 141 (1985) (granting intervention to U.S. Dial Corporation on the basis that its substantial interests as a WATS reseller "will be affected by the ultimate resolution of how intrastate WATS service will be provided"); Southern Bell Tel. and Tel. Co. Petition to Initiate Rulemaking re: Shared Tenant Services, 85 FPSC 201 (allowing intervention of two possible future providers of shared tenant services); Impact of ATT/DOJ Antitrust Settlement Upon Intrastate Tel. Service in Florida, 84 FPSC 18 (1984) (granting MCI intervention as an interexchange carrier obtaining "a variety of services and facilities from Southern Bell"); Application of AT&T Comm. of the Southern States, Inc. for Certificate of Public Convenience, 84 FPSC 97 (1984) (granting intervention to Florida Association of Concerned Telephone Companies, Inc. (FACT) as WATS resellers whose "substantial interests may be affected by a change or restructure of prices for WATS services" which might result from granting AT&T's application); Intrastate Tel. Access Charges for Toll Use of Local Exchange Services, 83 FPSC 60 (1983) (granting intervention to Teltec as WATS reseller); General Investigation into Local Exchange Tel. Pricing, 83 FPSC 26 (1983) (granting intervention to FACT as resellers); Application of GTE Sprint Comm. Corp. for a Certificate of Public Convenience and Necessity, 83 FPSC 182 (1983) (granting AT&T's intervention as "a future provider of interexchange telecommunications services and a subscriber in Florida to access services"); Intrastate Tel. Charges for Toll Use of Local Exchange Services, 83

FPSC 96 (1983) (granting intervention to Combined Network, Inc. as a potential future provider of intrastate toll and consumer of access services in Florida). Just like the intervenors in these cases, GTE has a substantial interest in the wholesale market changes that may occur if the transfer of control under review takes place.

Allowing reseller intervention is just one aspect of the Commission's longstanding practice of granting intervention to customers of the petitioning or principal parties in all manner of cases. These cases properly make no distinction based on the petitioning intervenor's status as individual consumer, private corporation, or governmental entity. See, e.g., Review of Nuclear Outage at Florida Power Corp.'s Crystal River Unit 3, 97 FPSC 27 (1997) (granting Florida Attorney General's intervention on behalf of State of Florida as significant purchaser of electricity from Florida Power Corp.); Investigation of Possible Overearnings in Manatee County by Keith & Clara Starkey, d/b/a Heather Hills Estates, 96 FPSC 12:226 (1996) (granting intervention of individual customers of the utility); Application for a Limited Proceeding to Include Groundwater Dev. and Protection Costs in Rates in Martin County by Hobe Sound Water Co., 96 FPSC 6:215 (1996) (granting intervention to Town of Jupiter Island as a customer of the water utility); Application for Rate Increase in Flagler County by Palm Coast Util. Corp., 96 FPSC 5:561 (1996) (granting intervention to the Dunes Community Development District as a customer of the utility); Application for Rate Increase by Southern States Util., Inc., 96 FPSC 4:291 (1996) (granting intervention to Citrus County as utility customer); Application of Southern States Util., Inc. for Increased Water and Wastewater Rates, 93 FPSC 2:865 (1993) (granting intervention to individual representing a condominium association); Application

for Rate Increase in Brevard, Charlotte/Lee, etc., 92 FPSC 10:244 (1992) (granting intervention to the Board of County Commissioners of Nassau County); Joint Petition for Supplemental Certification of Construction and Operation by Orlando Utils. Comm'n et al., 91 FPSC 8:533 (1991) (granting intervention of Sierra Club, some of whose members were customers of the petitioning utilities); Application for Approval of Transfer of Certificates from Twin County Util. Co. to Southern States Utils., Inc., 89-2 FPSC 89 (1989) (granting intervention to neighborhood association as customers whose service would be transferred to proposed new certificate holder); Southern Bell ESSX and Digital ESSX Tariff Filing, 88 FPSC 292 (1988) (granting AT&T's intervention); Petition of Gainesville Gas Co. for Increased Rates, 87-10 FPSC 234 (1987) (granting intervention of Gainesville Regional Utilities); Investigation into Earnings of Southern Bell Tel. and Tel. Co., 86 FPSC 236 (1986) (granting AT&T's intervention as a customer of Southern Bell's access services); Investigation into NTS Cost Recovery, 86 FPSC 287 (1986) (granting intervention of Florida Ad Hoc Telecommunications User Committee (Ad Hoc) as a group of major users of private line services); Implementation of Local Exchange Co. Toll Bill and Keep, 86 FPSC 241 (1986) (granting Ad Hoc's intervention as large users of interLATA toll FX and private line services); Intrastate Tel. Access Charges for Toll Use of Local Exchange Services, 85 FPSC 55 (1985) (granting Florida Attorney General's intervention on behalf of State of Florida as large telecommunications consumer); Impact of ATT/DOJ Antitrust Settlement Upon Intrastate Tel. Service in Florida, 84 FPSC 115 (1984) (granting intervention to the U.S. Department of Defense and all other Executive Agencies as a large user of telecommunications services).

Because changed conditions in the wholesale market will ultimately affect the prices and services offered to retail long-distance consumers, the reseller-customer perspective that GTE can offer is doubly important. And because it is larger and more experienced in Commission advocacy than the many other, smaller resellers in the State, GTE is uniquely able to represent a point of view that would otherwise be lost or ignored, despite its obvious importance.

The Commission itself has emphasized the need for a balanced presentation in granting disputed intervention requests in the past. For instance, in Petition to Establish Amortization Schedule for Nuclear Generating Units to Address Potential for Stranded Investment by Florida Power & Light Company, 95 FPSC 367 (1995), Florida Steel argued that a change in Florida Power & Light Company's depreciation practices might raise Florida Steel's electric costs and thus harm its ability to compete. The Commission rejected Florida Power & Light Company's arguments that Florida Steel's ability to compete was just an economic harm and that any prospective rate impacts were too speculative to justify intervention. In doing so, the agency observed that it "would benefit from full exploration of the policy issues to be addressed in this docket....Florida Steel's participation will provide a balance to the concerns of FPL. Having this information will permit the Commission to better assess how the public interest will be served in this docket." Id. at 367.

Likewise, in Petition of Continental Telephone Company of the South for Waiver of Rule 25-4.345(4), Florida Administrative Code, 83 FPSC 141 (1983), the Commission rejected Continental's argument that the status of intervenors North American Telephone

Company and Telecom Plus of Florida, Inc. as competitors was an insufficient basis upon which to grant intervention. The Commission stated:

> We are at the threshold of establishing under what circumstances a fully seperated subsidiary would be necessary to protect the public, both ratepayers and competitors, from possible cross-subsidization of non-regulated activities of telephone companies by regulated activities. NATA and Telecom, as competitors could be substantially affected by the manner in which we require a regulated utility to organize its competitive operations. We believe that NATA and Telecom as competitors, may be able to assist us in our determination of the issues in this case by their participation in this docket as a party.

The Commission in this case stands at a threshold for competitive markets at least as critical as that cited in the Continental Telephone Company decision. Congress has written new rules for competition in the telecommunications industry. One of the initial effects of those rules has been the move toward greater consolidation of that industry, such as the merger now before the Commission. (As Chairman Johnson commented, "this is a whole new ballgame." Jan. 7, 1998 Agenda Conference Transcript, Item 10 (Agenda Conf. Tr.), at 49.) It is certain that the proposed transaction--the largest merger ever--will affect telecommunications markets in Florida. GTE and the Petitioners agree on that fact. The dispute is whether those effects will be, on the whole, good or bad for competition and for consumers. This Commission must decide whether or not it is interested in obtaining an answer to this question. If it is, it will allow GTE to fully participate in developing a complete record in this case. It will, as it has done in the past, recognize that fundamental market development issues demand input from a competitor (as well as customer) perspective.

Based on MCI's own past intervention requests, MCI cannot in good faith dispute GTE's entitlement to intervene here. For instance, in Application of Centel Network Communications, Inc., d/b/a Centel Net for Authority to Provide Interexchange Telecommunication Services, 89-9 FPSC 284 (1989), MCI successfully argued that its substantial interests would be affected because granting Centel Network Communications, Inc. a certificate would "have an adverse impact on the competitive interexchange market as well as having an effect on MCI's ability to offer telecommunications services in the future." In this case--an event much more significant than certification of a competitor--GTE claims the same interest. That is, the merger will have an adverse effect on the competitive interexchange market as well as having an effect on GTE's ability to offer telecommunications services in the future.

In other cases, MCI's interests were more narrowly asserted, but no less acceptable to the Commission as a basis for intervention . See, e.g., Application of United Tel. Long Distance, Inc. for a Certificate of Public Convenience and Necessity as a Reseller, 87 FPSC 124 (1987) (granting MCI intervention in proceeding to certificate toll reseller, on the basis of MCI's status as an interexchange carrier); US Sprint Comm. Co.'s Petition for Hearing on Biiurisdictional WATS Access Line Policy, 87-11 FPSC 345 (1987) (granting MCI intervention); Southern Bell Tel. and Tel. Petition to Initiate Rulemaking Re: Shared Tenant Services, 85 FPSC 309 (1985) (granting intervention on the basis of MCI's argument that "since 'smart buildings' ordinarily operate to concentrate the interexchange traffic of unrelated customers, such action could affect the number and size of potential customers for MCI's interexchange services").

Indeed, the Commission has just as routinely granted intervenor status to competitors as to consumers, even in cases that do not present nearly the depth or breadth of issues that this merger application does. See, e.g., Petition by Subscribers of the Groveland Exchange for Extended Area Service (EAS) to the Orlando, Winter Garden, and Windermere Exchange, 96 FPSC 9:59 (1996) (granting intervention to Florida Interexchange Carriers Association on the basis that its members' substantial interests as providers of interLATA service would be affected); Request for Approval of Special Service Availability Contract with Lake Heron in Pasco County by Mad Hatter Utility, Inc., 95 FPSC 478 (1995) (granting Pasco County's intervention because its substantial interests as utility provider would be adversely affected by Mad Hatter's proposed system duplication); Application of United Tel. Long Distance, Inc., for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida, 87-8 FPSC 94 (1987) (granting intervention to FACT as "alternative long distance carriers"); Application of United Tel. Long Distance, Inc. for Authority to Provide Interexchange Telecomm. Service Between Points Within the State of Florida, 1987 Fla. PUC Lexis 873, Order No. 17742 (1987) (granting Metromedia Long Distance, Inc. leave to intervene based on its status as an interexchange carrier); Forbearance from Earnings Regulation of AT&T, 1987 PUC Lexis 109, Order No. 18507 (1987) (granting intervention of FACT "in that it appears that the substantial interests of the members of this association, who are minor interexchange carriers, may be affected and may be subject to determination in this proceeding"); Application of AT&T Comm. of the Southern States, Inc. for a Certificate of Public Convenience and Necessity, 86 FPSC 24 (1986) (Microtel intervention granted

because of its substantial interest on "the impact of [AT&T's] proposal on firms competing in the intrastate toll market and the pricing of [AT&T's] services"); Application of AT&T Comm. of the Southern States, Inc. for a Certificate of Public Convenience and Necessity, 85 FPSC 56 (1985) (GTE's substantial interests affected because of potential impact of AT&T's proposal "on firms competing in the intrastate toll market and on competition in general" and because "issues regarding the pricing of AT&T Communications' services" might have an effect on GTE); Petition of MCI Telecomm. Corp. for a Certificate of Public Convenience and Necessity, 84 FPSC 78 (1984) (granting AT&T's intervention because of its IXC status); Application of United States Trans. Systems, Inc. for a Certificate of Public Convenience and Necessity, 83 FPSC 195 (1983) (granting Microtel Inc.'s intervention because applicant's system "would be in competition with and duplicate the services provided by Microtel," an IXC); Application of Satellite Business Systems for a Certificate of Public Convenience and Necessity, 83 FPSC 40 (1983) (granting Microtel's intervention because proposed certificate holder would duplicate Microtel's services); Petition of Continental Tel. Co. of the South-Florida for Waiver of Florida Admin. Code Rule 25-4.345(4), 83 FPSC 184 (1983) (granting intervention of IXCs NATA and Telcom Plus on the basis of their status as competitors to the petitioner).

The Commission cannot, consistent with this wealth of precedent, deny GTE's intervention as either a customer or a competitor. The fact that GTE is both makes its intervention request that much stronger. GTE's participation in this proceeding will help give this Commission a balanced and more realistic picture of the post-merger markets than the Petitioners' vague, unsupported, and, as yet, unexamined claims of public

benefit. GTE's intervention cannot, therefore, be summarily dismissed as "unnecessary," nor does WorldCom's assertion that "the merger will not affect existing customer arrangements" undermine GTE's interest in this case. (Opposition at 2 n. 1.) Whether or not WorldCom continues to honor its existing wholesale commitments with GTE is not the issue prompting GTE's interest in this proceeding. GTE is primarily concerned--as this Commission should be--about the long-term market effects of the proposed merger, which would effectively eliminate competition from WorldCom's maverick wholesaling operation. The merger's effect of curbing WorldCom's innovative behavior will, as noted, ultimately harm retail long-distance consumers who will see higher prices and a reduced range of competitive service options.

Instead of having to prove--with facts and documentation--that the competitive benefits of the proposed merger will outweigh its detriments, Petitioners would prefer that this Commission merely accept their platitude that the "dynamic reality of competition" will forestall any anticompetitive effects. (Opposition at 2.) In fact, the reality of the long-distance market is cooperative, rather than competitive, pricing. The FCC acknowledged more than two years ago that AT&T, MCI, and Sprint may have been engaging in tacit price collusion, (Motion of AT&T to Be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3314-15 (1995)), and economic theory confirms that the long-distance market is characterized by conditions supporting coordinated interaction. For example, Robert Crandall and Leonard Waverman have concluded that "[t]he evidence presented establishes the existence of conditions under which firms, even in the absence of a single firm with 'market power,' or overt collusion, and even in the absence of any conscious

desire to coordinate prices, may discover that they are able to maintain prices above the competitive level."[2] Likewise, Professor Paul MacAvoy of Yale University has concluded that "[t]he dynamic behavior of [price-cost] margins in the early 1990s provides evidence that the three major carriers were able to establish coordinated strategies over that period in place of competition" and that "[t]heir coordination takes levels of price-cost margins toward higher levels than would result from independent price setting."[3] Further confirmation of this point comes from Professor Jerry Hausman, who has found that AT&T, MCI, and Sprint have engaged in "lock step price increases in long distance."[4]

The proposed merger of direct competitors with substantial market shares would further facilitate this coordinated interaction between the few dominant players in the long distance market. The merger will, of course, reduce the number of companies offering retail services to end users. Even today, the domestic long distance market is classified as "highly concentrated" under the U.S. Department of Justice guidelines. The proposed merger would cause the market concentration measure to jump by an amount well over the level sufficient to trigger a presumptive challenge by the Justice Department. If the merger takes place, two firms--AT&T and the combined MCI/WorldCom--would control at least

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[2] Affidavit of Robert Crandall and Leonard Waverman in Support of Ameritech's Section 271 Application for Michigan (filed May 21, 1997) at para. 85. Crandall is a Senior Fellow in Economic Studies at the Brookings Institution, and Waverman is a Professor of Economics at the University of Toronto.

[3] P. MacAvoy, THE FAILURE OF ANTITRUST 172.

[4] Declaration of Professor Jerry A. Hausman in Support of BellSouth's Section 271 Application for South Carolina, filed Sept. 30. 1997, at para. 30. Hausman is the MacDonald Professor of Economics at MIT.

74% of the national long distance market.

After hearing GTE's comments at the January 7 agenda, Commissioner Clark indicated that inquiry into market concentration and related, Florida-specific issues might be worthwhile: "I could foresee a situation where the FCC and Justice have no problem with [the merger], but it extremely concentrates a market in Florida, and it would be a concern to us." (Clark, Agenda Conf. Tr. 26.) This concern is well-founded, because GTE believes WorldCom's presence here is even more significant than its relative national standing.

Dividing the retail market into customer segments reveals even greater cause for concern. The Petitioners have not provided any market share data--by class of customer or otherwise--but GTE believes they have particularly high market shares among medium and large businesses. This factor compounds the market power problem.

Even the Petitioners acknowledge, albeit obliquely, the obvious market concentration issues raised by the merger. They dismiss these concerns, however, with the claim that, "in the interexchange market, entry barriers are relatively low and new competitors (including GTE itself) are constantly entering the market, offsetting any transitory increase in market concentration that may result from the merger." (Opposition at 3.) But, as GTE has pointed out, the potential new entrants to which WorldCom alludes would be almost exclusively resellers, because the capital investment required to enter the market as a facilities-based provider is very high. This fact alone rebuts Petitioners' argument that post-merger market concentration will only be "transitory."

In another example of a misleading argument, this time with regard to the local

exchange area, Petitioners contend that GTE's real concern is that the merger will increase competition, and that GTE's efforts here are designed to protect its own share of the local exchange market. Aside from the fact that GTE's local exchange company did not file the Petition for Intervention at issue, Petitioners fail to disclose that WorldCom and MCI compete head-to-head in providing facilities-based local exchange service in a number of major urban areas in Florida, including Orlando and Miami. The merger would thus eliminate an actual local competitor. This outcome is directly contrary to this Commission's avowed goal of increasing local entry.

Assuring market conditions that will enhance local competition is, predictably, a goal shared by consumer interests. The merger's potential to diminish competition in both the local and long distance markets has, therefore, prompted growing opposition from these sectors. For instance:

- The Washington, D.C. office of the Consumers Union has, by letter, informed FCC Chairman Kennard and the U.S. Justice Department that it has serious concerns about the merger and has asked the companies themselves (so far, unsuccessfully) for a written commitment that would help protect consumers from "'monopoly abuses.'" (Letter cited in Communications Today, Nov. 13, 1997.)

- The Utility Reform Network has urged regulators to "kill" the merger because it would "pull the plug on residential customers' best hope for real competition for local service." (Communications Today, Nov. 13, 1997.)

- The Communications Workers of America (CWA) have asked the FCC to deny the merger application, which they believe will "significantly delay the development of competition in the local exchange residential and small business market" and "hurt universal service." (CWA Comments, Jan. 5, 1998, at ii.) Based on MCI/WorldCom's business plan and statements by company officials, CWA has shown that the merged entity would slash local loop investments by a total of $5.3 billion over the next four years--investment that would otherwise have served residential customers. (Id. at 20.) CWA further emphasized public statements of WorldCom's Vice-Chairman and Chief Operating Officer John Sidgmore that MCI

would retreat from the residential consumer market and adopt a "'religious focus on the business customer.'" (Id. at 19-20, quoting John Sidgmore in "WorldCom Clarifies MCI Plans," Washington Post, Oct. 4, 1997.)

- Inner City Press/Community on the Move (ICP), a consumers' organization headquartered in New York, petitioned the FCC to deny the merger application because of its "substantial anticompetitive effects." (ICP Petition to Deny, Jan. 5, 1998, at 1.) ICP reiterated the announced MCI/WorldCom strategy of focussing on business, rather than residential, customers and concluded that the merger "(1) would bring few benefits to any residential consumers, and (2) would bring NO benefits to the lower income residents of lower income consumers that are a major focus of the universal service provisions of the 1996 Act." (Id. at 3, 12.)

- Reverend Jesse Jackson's Rainbow/PUSH Coalition has also asked the FCC to deny the merger application, noting that "[t]he merger has been presented to the Commission without any credible showing of how it will promote competition in the long distance market." (Rainbow/PUSH Coalition Petition to Deny, Jan. 5, 1998, at 16.) The Coalition concludes that the merger will have serious anticompetitive effects in both the local and long distance markets. Citing MCI/WorldCom's likely withdrawal from the residential consumer market, the Coalition expects the impact of the merger to be particularly negative for middle and low income customers. (Id. at 18-19.)

Without a comprehensive investigation of the merger--one that includes the voices of all interested parties, including GTE--the Commission will never be apprised of the merger's likely consequences for competition and for consumers. MCI cannot in good faith object to the request to develop a complete record in this case. In a recent merger proceeding before the New York Public Service Commission, MCI contended that the Commission had the duty to take a "hard look" at all aspects of such a proposed transaction. (The NYNEX/Bell Atlantic Merger Proceeding, Cases 96-C-0603 et al., Comments of MCI Telecomm. Corp., Aug. 23, 1996, at 2.) In particular, MCI urged the Commission to initiate an evidentiary hearing, after full and fair opportunity for discovery. Id. at 9-10. MCI asserted that "[a]nything less than a full evidentiary hearing" would result

in an inadequate record to evaluate the public interest ramifications of the transaction. Id. at 10. It is disingenuous of MCI to now suggest that its own transaction should proceed without the benefits of discovery, an evidentiary hearing, or the participation of customer-competitors such as GTE. If a regulator considering a combination of potential competitors should, in MCI's view, grant the opportunity for a full hearing, then certainly the same applies to this even larger merger of actual competitors.

At the agenda and in this Reply, GTE has demonstrated the value of its perspective in these proceedings and the importance of looking critically at the vague and thoroughly unsupported "public interest considerations" in the Petitioners' application. Indeed, Chairman Johnson observed that GTE's comments at the agenda had prompted her to consider more closely the potential effects of the proposed merger. (Agenda Conf. Tr. at 35-36, 49.) GTE's continued participation will assure that the effects of the merger are fully understood, and, if necessary, addressed by this Commission. Certainly, it is better to consider and address the potentially anticompetitive effects of the merger now than to try to "fix" markets later.

As noted, GTE's interest in these proceedings is patently "substantial." In fact, it is hard to imagine a more substantial interest than preservation of the kind of fair market conditions that will give GTE and other resellers a fighting chance--and consumers a reasonable range of competitive choices. GTE urges this Commission to join other state Commissions--including those in North Carolina, Oklahoma, West Virginia, and Colorado--that have recognized GTE's substantial interest in the merger review proceedings and granted GTE intervenor status. The Colorado Public Utilities Commission noted, for

instance, that its proceeding "shall be focused on whether the transfer of control of MCI to WorldCom is in the public interest and whether GTE's allegations that there are significant anti-competitive consequences to an approval of the transfer are meritorious." In the Matter of the Application of WorldCom, Inc. for Approval to Transfer Control of MCI Comm. Corp. to WorldCom, Inc., Decision No. C97-1398, Docket No. 97A-494T (Dec. 17, 1997).

If it is to fulfill its mandate to protect the public interest, this Commission should, likewise, investigate the issues GTE has raised with regard to the proposed transfer of control. As Commissioner Dawson observed, the merger "could be a win/win, who knows." (Agenda Conf. Tr. 37 [emphasis added].) That is precisely the point. The Commission cannot know whether the merger will further the public interest if it declines to review the proposed transaction; it should not be comfortable with a "who knows" resolution. Certainly, the Commission can do no meaningful public interest assessment on the basis of the application alone, which is nothing more than a letter, devoid of any data that would enable even the most superficial evaluation of the transaction. GTE can provide--and, indeed, already has provided--valuable input in directing the Commission toward areas of potential concern.

II. Petitioners Have Offered No Proper Grounds to Deny GTE's Intervention

As discussed, the Petitioners' Opposition does not effectively counter GTE's

showing of substantial interest and, in fact, avoids even discussing the core question of substantial interest. Rather than addressing the test for entitlement to intervene, Petitioners ask the Commission to deny GTE's intervention because it is "unnecessary," it will "unreasonably broaden the scope of the Commission's consideration of the proposed transaction", (Opposition at 1) and it will "impede and delay" the proposed transaction (Opposition at 3). These are not, of course, legitimate reasons for denying an intervention. There is no "necessity" criterion in the intervention rule; the requirement is, rather, the existence of a substantial interest. That interest, as shown above, is evident in GTE's status as a large customer of WorldCom and also as a competitor in the long distance market.

Nor does the Commission's evaluation of an intervention petition properly include speculation about what course the proceeding might take if the intervention is granted. Here in Florida, matters concerning the scope of a proceeding are resolved in the initial stages of a case, when specific issues are identified for resolution in the proceeding. The prehearing officer has the authority to eliminate matters he or she believes to be outside the scope of the docket, and to keep the subsequent case presentations narrowly focussed on the officially designated issues. If Petitioners believe that GTE is attempting to present inappropriate matters for the Commission's consideration, then that dispute is properly addressed at the time of issues identification--not in the context of an intervention petition.

Likewise, this is not the time to consider Petitioners' speculation about the nature of discovery GTE might file once it is granted intervention. Any discovery disputes will be handled as they always are--that is, after the discovery is served and through the

customary motions and orders. And Petitioners' overblown fears of disclosure of their confidential information can be addressed in the routine manner--with protective agreements and appropriate Commission orders.

Finally, Petitioners' claims that GTE is merely trying to delay or impede the merger are unsupported and untrue. GTE understands the need for reasonably quick review of corporate transactions. However, in this case, expedition should not be an end in itself, causing the Commission to forego any substantive assessment of the merger. GTE urges this Commission to disregard, as have other Commissions, Petitioners' claim that anything less than an expedited state proceeding would delay the closing of the proposed transaction. It is certain that this merger will be subject to review by other Commissions around the country, some of which have already initiated proceedings. Furthermore, the transaction is sure to receive close scrutiny from the U.S. Justice Department and the FCC, where, as noted, it has been opposed by consumer interests and others. Indeed, the Petitioners themselves have acknowledged that they do not expect federal review of the transaction to conclude before May 1998. (Transcript of Staff Conference, North Carolina Utils. Comm'n, Dec. 22, 1997, at 12.) Thus, while GTE's participation in this proceeding would help prevent this Commission from rushing to judgment on a $36 billion merger of direct competitors, it would not unduly delay closing of the proposed merger.

The Petitioners have given the Commission no legitimate, legally valid reason to deny GTE's intervention. They have not effectively rebutted GTE's rationale for participating in this proceeding, and have, in fact, all but ignored GTE's primary interest

as a WorldCom customer. Under the circumstances, the Commission is obliged to grant GTE's intervention.

III. The Commission Can and Should Address the Public Interest Concerns GTE Has Raised

Although Petitioners' claims that GTE will unreasonably expand the scope of this case are not germane to an evaluation of GTE's intervention request, they do deserve comment, if only because they are so ill-founded.

Petitioners would have the Commission believe that it is constrained by Florida Statutes section 364.33 to a "narrow scope" of review of the merger, (Opposition at 2), such that GTE's public interest concerns about the merger's threat to competition are "immaterial" to this case. Petitioners' view of the Commission's discretion in this proceeding has no foundation in the law. There is nothing in section 364.33 or elsewhere that restricts the range of issues the Commission can consider in evaluating a transfer of control. It is incredible to suggest that matters such as prices, service offerings, and the development of effectively competitive markets are not proper concerns for this Commission. These are precisely the kinds of things at the heart of the agency's mission, and that it has always considered in all manner of proceedings. There is no reason to ignore these public interest considerations now just because they arise in the context of a merger review.

Past Commission decisions confirm that the issues GTE has raised are, in fact, relevant to the agency's merger assessments. For instance, the Commission last year

found that a merger under review would, if approved, provide "improved services and lower rates, thereby promoting competition in Florida." Request for Approval of Merger of Shared Technologies Fairchild, 97 FPSC 10:320, 321 (1997) [emphasis added]. Similarly, in Petition for Expedited Approval of Indirect Change in Control of NYNEX Long Distance Company, 97 FPSC 1:55, 56 (1997), the Commission approved the proposed merger because the merged entity would provide "quality service at a reasonable price in a competitive environment and would therefore be in the public interest." [Emphasis added.] Even MCI has correctly observed that the standard the Commission has applied in the past "is what will be the impact on customers." (Agenda Conf. Tr. 11.) The Commission cannot, of course, evaluate the impact of the merger on consumers without assessing its impact on competition.

It is true that, in the past, the Commission has generally drawn its public interest conclusions about proposed mergers without much evidence or analysis of the transactions--probably because the vast majority have not been seriously challenged. This does not, however, mean that the Commission cannot choose to do a more thorough analysis in this case or that GTE is advocating a change in standards. Rather, GTE asks the Commission to use its existing public interest criteria as a basis to more closely evaluate the potential benefits and detriments of the merger before it. Since the Commission will use the same public interest standard it has employed all along, there is no issue of lack of notice to Petitioners. There has never been any presumption that this or any merger is in the public interest. Petitioners have to affirmatively prove that it is. There is nothing new about that, and Petitioners cannot complain about being asked to

justify the benefits they have claimed in association with the merger.

In any case, there are many reasons why the public interest evaluation of this transaction should be deeper than those the Commission may have done in the past. Most obviously, this merger is not likely to be matched in size and scope anytime soon. This $38 billion transaction has been described as the largest merger in U.S. history--not just the largest telecommunications merger. Further, it is a combination of direct, actual competitors. It will remove a competitor in both the local and long-distance markets. As explained above (and in consumer filings before the FCC), this aspect has more urgent public interest implications than transactions involving just potential competitors.

Moreover, this is the first major merger to come before the Commission since adoption of the Telecommunications Act of 1996 (Act). That Act, like the 1995 revisions to Chapter 364 in Florida, casts the Commission in the role of facilitator of competition, rather than direct regulator. As FCC Chairman Kennard has aptly recognized, both federal and state regulators have "reached the end of the beginning or our journey from monopoly regulation to competition." (Kennard remarks at Nov. 1997 NARUC meeting, cited in Warren's Cable Regulation Monitor, Nov. 17, 1997.) In this new era, the Commission is charged with ensuring that market conditions encourage competition and greater consumer welfare. This mandate is made explicit in Florida law:

> The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition....

Fla. Stat., Section 364.01(3).

The Commission has taken concrete actions to fulfill its new role. It has, for example, initiated industry workshops as a first step toward addressing the perceived lack of competition in local markets. But the pro-active actions the Commission has thus far taken will be just empty gestures if the Commission declines any substantive review of this merger, which--GTE and the Petitioners agree--is sure to affect the development of competition in local and long distance markets. GTE believes this Commission is obliged to determine whether those effects will be good or bad, and, if the latter is true, condition the transaction appropriately for Florida.

The Commission need not be concerned that its own review will undermine those of the FCC or the Justice Department. As Commissioner Clark explained at the agenda conference, the Justice Department does not approve mergers, it only reviews them for potential problems that may become subject to action if they are not remedied. (Agenda Conf. Tr. 20.) And both the recent past and present FCC Chairmen have, for their part, invited the States to become more active in merger assessment. Indeed, former Chairman Hundt observed that the commitments and conditions imposed in the Bell Atlantic-Nynex merger last year had been "drawn from the best practices of all the states in the region, that are not incompatible as I see it with the bulk of the actual decisions by these states, and that can be enforced either at the FCC or in the states." Chairman Hundt emphasized the urgent need for states to perform their own public interest analyses: "It is critically important that the states join us in promoting competition policies in connection with mergers." (Remarks by Chairman Reed Hundt to State Commissioners on the Bell Atlantic/Nynex Merger, delivered at Philadelphia, PA on Oct. 3, 1997). As Chairman

Johnson noted, present FCC Chairman Kennard has reiterated former Chairman Hundt's views about the need for active state involvement in substantive merger reviews. (Agenda Conf. Tr. 21-22, 25 ("Chairman Hundt was begging for help....these things are coming fast and furious and we need more input from the states."))

In any event, this Commission has never been bashful about taking the lead on difficult or complicated issues--issues on which other states have deferred to the FCC. So it is difficult to understand how the Commission could credibly rely on federal agencies to protect Florida's interests in this case, especially when other (in some cases, less pro-active) state commissions are forging ahead with their own merger review proceedings. Director of Communications D'Haeseleer's concern about the Commission's "national image" in this case is, GTE believes, well-founded. (D'Haeseleer, Agenda Conf. Tr. 48.)[5]

* * *

[5] Noting the magnitude of the merger, Mr. D'Haeseleer would have preferred to take the recommendation back to review it to "see if there is another alternative to these simple little tests we made." (Agenda Conf. Tr. 48.)

For all the reasons discussed in this filing, the Commission should grant GTE's intervention in this case and allow it to participate fully in a substantive review of the transfer of control proposed by MCI and WorldCom.

Respectfully submitted on January 26, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Reply of GTE Corporation and GTE Communications Corporation to Opposition of WorldCom, Inc. and MCI Communications Corporation to Motion to Intervene in Docket No. 971604-TP were sent via overnight delivery on January 23, 1998, to the parties on the attached list.

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