

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 18, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 99-C-1710 - Joint Petition of MCI WorldCom, Inc. and  
Sprint Corporation for Approval of the  
Transfer of Sprint Corporation's New York  
Operating Subsidiaries to MCI WorldCom, Inc.

ORDER APPROVING TRANSFER AND DENYING  
MOTIONS FOR DISCOVERY, HEARINGS AND INTERVENTION

(Issued and Effective May 12, 2000)

BY THE COMMISSION:

By petition filed December 10, 1999, MCI WORLDCOM, INC.  
(MCI WorldCom) and Sprint Corporation (Sprint), requested  
approval to transfer control of Sprint's New York operating  
subsidiaries to MCI WorldCom, pursuant to Section 99(2) and 100  
of the Public Service Law.

A Notice Requesting Comments was issued January 11,  
2000. Comments were filed,<sup>1</sup> with all of the parties opposing  
Petitioners' request. Reply comments were received from  
Petitioners and NEXTLINK on February 15, 2000.

Requests for discovery or additional information were  
made by ICP, LULAC, NEXTLINK, PULP, Rainbow/PUSH, and SBC.  
Requests for hearings were made by ICP, LULAC, NEXTLINK,  
Rainbow/PUSH and SBC.

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<sup>1</sup> Initial comments were filed by the NYS Attorney General's  
Office (AG) on January 11, 2000; by Inner City Press/Community on  
the Move (ICP), the League of United Latin American Citizens  
(LULAC), the Public Utility Law Project (PULP), the Rainbow/PUSH  
Coalition (Rainbow/PUSH), and SBC Communications, Inc. (SBC) on  
February 4, 2000; and by NEXTLINK New York, Inc. (NEXTLINK) on  
February 7, 2000.

SUMMARY OF PETITION

Petitioners

MCI WorldCom, a Georgia corporation with principal offices at 500 Clinton Center Drive, Clinton, Mississippi, offers inter-exchange telecommunications services in each of the 50 states and the District of Columbia. Through subsidiaries, MCI WorldCom has competitive local exchange carriers (CLECs) in all 50 states and the District of Columbia.

Sprint, a Kansas corporation with principal offices at 2330 Shawnee Mission Parkway, Westwood, Kansas, offers inter-exchange telecommunications services in each of the 50 states and the District of Columbia.<sup>1</sup> Sprint's local telecommunications Division serves approximately 7.9 million local access lines throughout 18 states nationwide. Sprint has CLEC subsidiaries in most states, including New York. These operations, along with product distribution and directory publishing, form Sprint's FON operating group, which has its own tracking stock.

Proposed Merger

On October 5, 1999, MCI WorldCom and Sprint Corporation entered into a merger agreement whereby Sprint will merge into MCI WorldCom. The proposed merger is a stock-for-stock transaction, not requiring either company to take on additional debt.<sup>2</sup>

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<sup>1</sup> Sprint Communications Company Limited Partnership was granted authority in New York to provide inter-exchange services in Case 99-C-0175 on November 29, 1988, and to provide all forms of telephone service on an intracity basis throughout New York State in Case 99-C-0590 on October 18, 1991. ASC Telecom, Inc., a subsidiary of U.S. Telecom, Inc., one of three partners in Sprint Communications Company L.P., was granted authority to resell all forms of telephone services in Case 95-C-1061 on February 1, 1996, as amended in Case 97-C-1478 on June 24, 1998. ASC Telecom, Inc. changed its name to ASC Telecom, Inc. d/b/a Alternatel on March 2, 2000.

<sup>2</sup> Under the Merger Agreement, Sprint's FON common stock will be exchanged for WorldCom group stock. In addition, each share of Sprint's PCS common stock will be exchanged for one share of WorldCom PCS group common stock and 0.1547 shares of WorldCom common stock.

Upon merger closing, Sprint's separate corporate existence will cease and the present wholly-owned operating subsidiaries of Sprint will survive as wholly-owned subsidiaries of MCI WorldCom. The merger does not involve any assignment of Sprint's certificates, or any change in the entities that hold such certificates. The same companies will continue to serve the public. Change in ownership will occur at the holding company level. WorldCom, as the merged company is to be known, will continue to hold wholly-owned subsidiaries of MCI WorldCom.

COMMENTS & RESPONSES

Seven parties filed comments regarding MCI WorldCom's and Sprint's proposed merger. All recommended that the petition be denied. The parties raised two principal questions (1) would the decrease in the number of telecommunications competitors in New York State create a market power problem, and (2) would sufficient public benefit result from the merger to outweigh any increase in market concentration?

1. Local Market Concentration

PULP maintained there was little evidence that the merged entity would enter and compete for local markets and no analysis of the merger's effects on local service. PULP recommended that the Petitioners be required to make a supplemental filing.

The AG asked whether consumers would receive benefits from the merger to the same extent that MCI WorldCom and Sprint would, given the reduction in the number of well-financed local competitors that would result.

SBC believed that, since MCI WorldCom and Sprint already compete in the local service market, consolidation of local service rather than expansion was more likely to result, leading to less competition, not more.

Petitioners responded that the merger would result in a more competitive market, that facilities-based service, or a combination of facilities-based service and unbundled network elements provided by Bell Atlantic-New York (BA-NY, BA) would

prove a successful competition strategy offering consumer benefits. Petitioners acknowledged that, while they could grow separately as CLECs, the merger would make them more effective competitors by expanding the breadth and scope of the services they could offer and this expansion would result in consumer benefits from a more competitive market.

2. Market Share

On a nationwide basis, the two companies rank as the second and third largest long distance companies.<sup>1</sup> The AG, ICP, LULAC and Rainbow/PUSH offered the following market share information:

National Total	Top 3 Companies MCI Sprint	84% 26% 11%
New York Total	Top 3 Companies AT&T MCI Sprint	84% 61% 18% 6%
New York Residential	% of lines % of revenues % of revenue, BA in	89% 84% 70%
Wholesale market	Top 3 Companies	70%
Business market	Top 3 Companies MCI WorldCom, Sprint	76% 44%
Data Services market	Frame Relay- MCI WorldCom, Sprint ATM - MCI WorldCom, Sprint	41% 56%

SBC and Rainbow/PUSH argued that competition in the long distance market has been the direct result of competition between Sprint and MCI, each a significant supplier of mass

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<sup>1</sup> Based on the FCC Trends in Telephone Service report, dated September 1999.

market long distance services. Sprint, for the past decade and a half, has competed with MCI WorldCom to provide service innovations, such as frame relay, virtual private networks, and enhanced 800 services, necessary to compete in the business market. According to SBC, by eliminating Sprint, MCI WorldCom's most significant competitor, MCI WorldCom eliminates long distance competition benefits to the consumer as well.

PULP agreed with SBC, noting that Petitioners did not address the consequences of eliminating Sprint as a potential competitor in local, toll, Internet, and wireless markets or assess the relative strength of the merging companies in New York's urban and rural markets.

a. Herfindahl-Hirschman Index

The Herfindahl-Hirschman Index (HHI) measures correlation between market concentration and the lack of market competitiveness. If the HHI for a market is greater than 1800 and a merger would increase the HHI by more than 100 points, the possibility of increased market power entails a thorough investigation of the proposed merger.<sup>1</sup>

The following summary of HHI's was calculated by the AG and SBC from 1998 annual reports:

Market	Pre-Merger HHI	Post-Merger HHI	Change
National	2600 points	3100 points	500 points
Wholesale	1800	2700	900
Large Business	2160	3000	840
New York	4050	4250	200
NY Residence	4221	4424	203

Petitioners argued that the high concentration ratios in the HHI summary above resulted from a mechanical application

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<sup>1</sup> Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, Issued April 2, 1992, Revised April 8, 1997 (Guidelines).

of the HHI, based on a single "snapshot" that disregarded other factors influencing the long distance market. Petitioners contended the measure of concentration under the HHI standards was merely a "starting point."<sup>1</sup> Petitioners also argued that the relevant market was local and long distance services combined and offered their own HHI analysis below:

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<sup>1</sup> Guidelines, ¶ 2.0 ("market share and concentration provide only the starting point for analyzing the competitive impact of a merger").

## 1998 New York Intrastate Revenues

Rank	Carrier	Revenues <sup>1</sup>	Market Share	Local and Toll HHI
1	BA-NY	\$5,669,713,000	72.8%	5297
2	AT&T <sup>2</sup>	711,109,275	9.1	83
3	MCI WorldCom <sup>3</sup>	543,406,000	7.0	49
4	Global Crossing/ Frontier	410,224,284	5.3	28
5	Citizens <sup>4</sup>	150,756,647	1.9	4
6	Sprint	96,351,432	1.2	1
7	Intermedia	48,008,762	0.6	0
8	Cablevision Lightpath	43,192,239	0.6	0
9	ALLTEL New York	39,237,109	0.5	0
10	Others in Top 25	78,053,418	1.0	1
	TOTAL	\$7,790,052,166	100.0%	5464

According to Petitioners, the merger evaluation should instead focus on whether the resulting firm would have the ability to increase prices in the relevant market.<sup>5</sup> The

<sup>1</sup> Based on New York Public Service Commission, Analysis of Local Exchange Service Competition in New York State, New York State's Top 25 Telecommunications providers, <http://www.dps.state.ny.us/top25.htm>.

<sup>2</sup> Includes AT&T of New York, Teleport Communications Group, ACC Long Distance, and ACC National Telecom.

<sup>3</sup> Includes MCI Telecommunications, WorldCom Network Services, WorldCom Technologies and MCI metro Access Transmission Services.

<sup>4</sup> Includes Citizens Telecom of New York and Citizens Communications.

<sup>5</sup> See, e.g., Guidelines, ¶ 0.2 "the ultimate inquiry in merger analysis [is] whether the merger is likely to create or enhance market power or facilitate its exercise.")

guidelines<sup>1</sup> provide that other market factors pertaining to competitive effects, such as ease or difficulty of market entry in the industry in question should be assessed.<sup>2</sup> In markets where entry is easy, "the merger raises no antitrust concern and ordinarily requires no further analysis."<sup>3</sup> Petitioners argued that their proposed merger presented such a case.

Petitioners also state that a second factor to be assessed is whether the proposed merger would produce efficiencies that would benefit consumers.<sup>4</sup> "Efficiencies generated through merger can enhance the merged firm's ability and incentive to compete, which may result in lower prices, improved quality, enhanced service or new products."<sup>5</sup> If a proposed merger would result in significant efficiencies that could not otherwise be achieved, such as economies of scale, lower production and distribution costs, and reduced overhead costs,<sup>6</sup> it should be allowed to go forward.

b. Market Impact

i. Single Carrier "Packaged" & All-Distance Market Impact

The ability to offer packaged multiple communications services was a primary impetus for the merger according to Petitioners. The AG contended no explanation had been offered as

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<sup>1</sup> Guidelines ¶ 2.0.

<sup>2</sup> Id., ¶ 3.0 ("A merger is not likely to create or enhance market power or to facilitate its exercise, if entry into the market is so easy that market participants, after the merger, either collectively or unilaterally could not profitably maintain a price increase above premerger levels.").

<sup>3</sup> Id., ¶ 3.0.

<sup>4</sup> Id., ¶ 4.0 ("mergers have the potential to generate significant efficiencies by permitting a better utilization of existing assets, enabling the combined firm to achieve lower costs in producing a given quantity and quality than either firm could have achieved without the proposed transaction.").

<sup>5</sup> Id.

<sup>6</sup> Guidelines ¶ 4.0.

to why, if each of these companies was able to offer packaged services and compete individually in all-distance market, it was essential for them to merge.

Petitioners responded that competitors must be able to offer a package of services or face the prospect of losing customers (since BA is now providing interLATA service).<sup>1</sup> BA already dominates the local and intraLATA toll markets, and expects to gain significant portions of the interLATA market quickly, by as much as 25 percent within two years. BA expects to gain one million customers by the end of 2000, with long distance revenues of \$2 billion by 2005.

Petitioners also pointed to AT&T, which now has the former TCG and ACC local operations, as the largest provider of interLATA toll services. Acquisition of TCI and Media One would further extend AT&T's reach to 27 million households.

ii. International Long Distance and Internet Competitive Impacts

Commenters raised various issues about the effects of the merger on international long distance and the Internet. International communications are outside the jurisdiction of this Commission.<sup>2</sup> Both the Communications Act of 1996 and this Commission's prior decisions discussing the Internet backbone demonstrate that public interest in the Internet is properly addressed by other authorities. To the extent there are concerns about international long distance and Internet backbone services, any arguments will be reviewed and addressed by federal authorities.

iii. Broadband Market Impacts

According to the AG, neither MCI WorldCom nor Sprint demonstrated how multi-channel multi-point distribution services

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<sup>1</sup> Petitioners stated, "while the new WorldCom will be able to bundle local, PCS, paging, international and broadband services in packages that consumers demand, customers that choose to buy services separately will continue to be able to do so."

<sup>2</sup> 47 U.S.C. § 2.

(MMDS) licenses would be used to deploy broadband services or how significant this would be in practice as an alternative to the incumbent local exchange carrier (ILEC) network in practice. Both the AG and NEXTLINK observed that the MMDS service appears to target primarily business customers and, therefore, would not benefit residential customers.

SBC's concern was that Petitioners' expressed hopes for the MMDS technology was misplaced since the MMDS industry has struggled since its inception, and even with booming broadband service demand, the number of subscribers fell by 18 percent between June 1998 and June 1999.

Petitioners responded that the development and deployment of MMDS will mean consumers, both residential and small commercial consumers,<sup>1</sup> would have an additional facilities-based choice beyond BA and AT&T.

While acknowledging the apparent market failure of MMDS noted by SBC, Petitioners believe that their merger and accompanying investment will allow development of new uses for MMDS. Three inputs - adequate finances, sufficient channels, and regulatory approval -- are needed to develop MMDS into a commercially viable alternative. Separately, MCI WorldCom and Sprint would have difficulty bringing the technology to market since neither company alone currently has enough MMDS licenses for nationwide deployment. By combining resources and MMDS radio frequencies that complement one another geographically, MMDS can be developed as an alternative technology likely to benefit both residential and business customers.

c. Specific Anticipated Harms Resulting from Merger

PULP expressed concern that red-lining, shedding of customers with credit risk, and service cut-offs would result with only two major long distance companies, AT&T and MCI WorldCom, remaining. According to PULP, affected groups would include customers in rural areas or low-income neighborhoods.

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<sup>1</sup> Petitioners stated, "As a wireless service, MMDS makes no distinction between business and residential customers."

LULAC and Rainbow/PUSH were concerned about the potential for collusion between AT&T and MCI WorldCom/Sprint and the adverse effect any such collusion would have on low-volume, low-income consumers.

LULAC and Rainbow/PUSH observed that fiber optic networks were constructed to serve businesses and merely skirt areas with low-income residents, minority residents, and minority-owned businesses. Rainbow/PUSH stated that when MCI merged with WorldCom, it promised that under-served consumers would be served by fiber optic networks, including New York City and this commitment has not been satisfied. Therefore, Rainbow/PUSH requested a demonstration that these networks now serve all areas, and identification by Petitioners as to how the merger would affect urban residential customers.

PULP argued that enhanced customer choice achieved through elimination of a competitor was counter-intuitive. PULP also noted that Petitioners did not address customer protection, universal service, and improvement of access afforded low-income and rural customers to basic and advanced services.

ICP and LULAC were concerned that the merger would result in degradation in the provision of residential local service.

Petitioners addressed these customer service concerns by noting that a low-volume customer is not necessarily also a low-income customer, e.g., a customer may be a low-volume caller because the phone is located at a second home or because the customer uses other services, and that no separate market exists for low-volume, low-income callers.

MCI WorldCom also noted that it currently offers low cost options for low-volume users. For example, programs such as "MCI One Savings," "MCI Everyday Savings," and "MCI Everyday Plus," offer low-volume callers per minute rates from 4 cents to 10 cents. Alternatively, through casual calling programs such as 10-10-321 and 10-10-220, low-volume callers can obtain per minute rates from 7 cents to 16 cents with monthly or minimum charges. For qualified low-income customers, "MCI Family Assist" provides

a per minute rate of 8 cents for the first 60 minutes per month. Finally, MCI WorldCom is introducing a new no fee/no minimum product in New York.

Regarding concerns of price collusion raised by LULAC and Rainbow/PUSH, Petitioners pointed to ease of market entry, abundant capacity, and BA entry into the long distance market as factors making any coordinated pricing scenario unlikely. These factors would ensure a competitive market.

MCI WorldCom stated that its local residential service is not limited to particular neighborhoods or customer income levels, MCI WorldCom's 200,000 local residential service customers are scattered throughout the state. MCI WorldCom claims that African-American and Hispanic neighborhoods in New York can now be served using the Bell Atlantic unbundled network platform.

Petitioners responded to ICP's and LULAC's service quality concerns by maintaining that since the merged entity will find itself in a highly competitive market for long distance service and an increasingly competitive market for local services, service quality must remain high. Petitioners stated they are committed to maintaining and improving the quality of their customer service. To this end, MCI WorldCom instituted new quality assurance practices and created a new organization responsible for monitoring new internal processes. The company is confident that these steps will enhance the quality of the customer service provided. Likewise, Sprint maintained that its strong reputation for quality customer care will not be weakened as a result of the merger.

d. Offsetting Considerations

i. Market Entry By BA-NY

The AG questioned whether BA-NY's long distance market entry offsets the proposed merger's increase in market concentration. Even with a 20 percent BA share in two years, based on the AG's figures, the merger would cause a HHI increase of 159 to 203 points, indicating that the long distance market

will still be unacceptably concentrated after the proposed merger.

SBC was concerned that BA would be less than a full competitor in the long distance market for two reasons. First, BA would operate primarily as a reseller,<sup>1</sup> so the competition provided would be restricted to the retail level. Because the wholesale market upon which BA relies would be more concentrated, its costs would rise and its ability to cut prices would decrease. Second, as a long distance competitor, BA-NY is disadvantaged by the structural separations requirements not imposed upon MCI WorldCom and Sprint. These requirements, according to SBC, raise the affiliate's costs and preclude it from using its own network on a facility basis, making it a less effective competitor.

Petitioners disagreed with these analyses, and argued that BA's recent entry in the long distance market would have a significant competitive impact. The FCC recognized that the Regional Bell Operating Companies' (RBOC) advantage as incumbents would make them formidable competitors in the long distance market and in the market for bundled local and long distance services. Petitioners noted that BA-NY predicted it would capture substantial market share in New York.<sup>2</sup>

ii. Second-Tier Carriers and Available Capacity

The AG stated the Petitioners' arguments about ease of entry and unused capacity must be carefully assessed since these factors normally produce a less, not more, concentrated market. In the wholesale market, new capacity alone does not offset adverse effects of merger, according to SBC. Established customer bases, geographic ubiquity, a full range of services,

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<sup>1</sup> Staff noted that BA has a three-year contract with Sprint for the use of its network in providing its retail long distance services. Sprint has committed to honoring that contract in full, with or without a merger.

<sup>2</sup> BA-NY reports approximately 428,000 residential long distance customers in the first three months of operation in New York and expects one million residential customers by the end of the year.

and brand recognition are some offsetting factors required. SBC contended that second-tier long distance carriers lack these factors.

Petitioners responded that low entry barriers lead to market entry by new facilities-based and resale competitors denying current carriers the ability to increase prices or restrict services. Available capacity was an undisputed fact and key to the FCC's approval of the MCI/WorldCom merger in 1998. Based on the capacity of four new entrants -- Qwest, IXC Communications, Williams, and Level 3 -- the FCC concluded "that the increase in transmission capacity provided by the[se]...new facilities-based firms should mitigate any increase in concentration resulting from the merger."<sup>1</sup> These four entrants have increased their competitive efforts since the 1998 FCC Order approving the MCI/WorldCom merger.

e. Other Comments

i. Carrier Billing Dispute

NEXTLINK asserted in its comments that Sprint was withholding payment of switched access charges, and consequently, the merger should not be approved.

Petitioners responded that NEXTLINK's comments, irrelevant to this proceeding, should be disregarded.

ii. Procedural Issues

Petitioners stated that the necessity of an evidentiary hearing to resolve factual disputes had not been demonstrated since only policy issues and arguments had been presented. Petitioners requested that the Commission, as it has done in most proceedings, rule on the policy issues and arguments without the need for evidentiary hearings or discovery.

Similarly, Petitioners asked that requests for leave to intervene made by ICP and PULP should be denied. Pursuant to the Notice Requesting Comments of January 11, 2000, Petitioners noted that all interested parties were permitted to participate in this proceeding. Consequently, formal intervention is not necessary

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<sup>1</sup> WorldCom/MCI Order, 13 FCC Rcd 18025, ¶ 29.

as this proceeding has already been opened for public debate and neither hearings nor discovery is necessary.

DISCUSSION

The focus of the merger analysis was the effect of the resulting market power change on local and long distance<sup>1</sup> competition and consumers. Of greatest concern was the possible effect of the merger upon competition in the long distance portion of the market.

1. Market Concentration

In evaluating the long distance markets, Staff used the most recently available Office of Communication's "1998 Competitive Analysis Report" to calculate market shares and HHI's relevant to the proposed merger. Three different markets were examined: (1) the New York State long distance and local exchange markets combined; (2) the New York State long distance market; and (3) New York State local markets. Below is a summary of the HHI calculations based on the Competitive Analysis Report:<sup>2</sup>

	<b>HHI Before Merger</b>	<b>HHI After Merger</b>
Combined LD & Local Market Definition	4526	4599
Local Exchange Market Only	7974	7974
Long Distance Market Only	2353	3021

<sup>1</sup> Both intrastate and interstate long distance figures were included in our analysis since jurisdictional boundaries are not recognized by the market, i.e. customers do not typically select a separate provider for intrastate and interstate long distance.

<sup>2</sup> Staff made two types of adjustments to the Competitive Analysis Report data. First, each company's revenues were separated into local service and toll service categories. Second, wholesale payments to other companies were removed (e.g., switched access payments) to prevent a double-count.

a. Combined Long Distance and Local Markets

The Commission previously decided in the MCI WorldCom Merger Order that the relevant market for analysis of telecommunication mergers is local and long distance markets combined. This is consistent with the evolution toward full service telecommunications offerings which the Commission has endorsed via its actions regarding unbundled network elements, total service resale, and BA-NY approval to enter the inter-LATA long distance market.

As the previous table listing pre- and post-merger HHI's for each of the markets indicates, pre-merger HHI's are well above the federal threshold of 1800. However, the HHI increases by only 73 points after the merger under for the combined local and toll market scenario.<sup>1</sup>

b. Local Market

The Staff HHI analysis indicated no change in the pre and post merger HHI for the local market and there are additional efficiency gains associated with the merger with respect to local market competition.<sup>2</sup> The merger creates a stronger competitor to BA-NY, and should quicken the erosion of anti-competitive concerns associated with BA-NY's dominant local market share.

As Petitioners noted, more than 70 binding interconnection agreements have been entered into with BA-NY. These 70 plus firms currently serve about 1.1 million of more than 13 million New York access lines. The fact that 70 firms share in less than 10% market penetration suggests that no one firm has yet broken out of the "competitive fringe." Merger will increase Petitioners effectiveness as a competitor to BA-NY.

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<sup>1</sup> The increase in the combined market HHI will remain less than 100 in the BA-NY 25 percent market share scenario under most assumptions. It could exceed 100 if (1) the wholesale adjustments are modified or eliminated, or (2) MCI WorldCom and Sprint gain significantly more local market share than they lose in the long distance market to BA.

<sup>2</sup> Sprint recently entered the local market but the associated effect upon local market HHI's should be negligible.

c. Long Distance Market

Although the proposed merger results in a large increase in the HHI for the long distance market (including intrastate and interstate), the degree of market concentration is reduced by BA-NY's entry into the interLATA long distance market in New York. BA-NY is expected to gain significant market share over the next two years at the expense of current long distance companies, including MCI WorldCom and Sprint.

Below is an alternative analysis that calculates before and after HHI's on the long distance market assuming that BA gains a 25 percent market share.

	<b>HHI Before Merger</b>	<b>HHI After Merger</b>
Long Distance Market Only	2483	2859

Under this assumption, a 25 percent BA-NY market share, the impact of the merger now results in a 376 point change in the long distance HHI, as opposed to the initial analysis which indicated a 668 point change in the HHI.

Concerns about the merged company's ability to negatively influence the long distance portion of the combined market are greatly lessened if the other participants and potential participants in the New York long distance market are considered. In addition to MCI WorldCom, Sprint, and BA-NY, firms currently competing in the long distance market in New York include AT&T, Global Crossing (Frontier), Qwest (recently merged with US West), and Intermedia. SBC is required, as a condition of the SBC-Ameritech merger, to compete within 30 months (as of October 1999) in 4 metropolitan areas in New York State (New York City, Albany, Buffalo, and Rochester). With the entry of SBC, three of the four remaining RBOC's, BA-NY, SBC, and US West, would have a presence in the New York long distance market.

Finally, entry of additional firms in the New York long distance market is facilitated by significant long distance transport capacity available from wholesale companies. These firms include IXC, Williams Communications, and Level 3

Communications, Inc. Long distance transport capacity will further increase since Teleglobe, Cable & Wireless, and NEXTLINK have announced fiber optic network construction plans.

Substantial long distance transport capacity is available to firms for entry in the long distance market in New York. This increase in long distance fiber optic transport capacity facilitates additional entry in the long distance market.

Based on the number of current competitors in the long distance market in New York, and the potential for entry, it is unlikely that the merged firm could profitably sustain a price increase in the long distance market. The presence of AT&T, BA, two additional RBOCs, Global Crossing, and other current and potential competitors is sufficient to provide competition in the long distance market in New York.

## 2. Stronger Competition in the Marketplace

Although the AG has correctly noted that the strength associated with either Sprint's or MCI's brand name will be lost, the importance of historical brands in the new and rapidly changing "one-stop shopping" marketplace is uncertain. Bell Atlantic/GTE/Airtouch/Vodafone's recent roll out of its new "Verizon" brand further highlights the resources that global alliances bring to the market. In short, the possibility of avoiding a dominant firm oligopoly by allowing two current smaller players to combine forces in this case takes precedence over the concern that, once merged, these two firms will be able to harm competition via anti-competitive behavior.

## 3. Quicker Deployment of Innovative Services

Combining the MCI WorldCom local market facilities with Sprint's Integrated Optical Network (ION) service and merging each company's MMDS licenses would allow Petitioners to serve the local exchange market more efficiently.

Petitioners contended that the MMDS would be a more viable alternative platform for accessing local customers if Petitioners were allowed to combine their multi-billion dollar investment in MMDS radio spectrum licenses. According to Petitioners, the combination of their mostly non-overlapping MMDS

license coverage would allow them to pool financial resources and spectrum allocations in order to achieve the viable commercial scale necessary to engage in a national rollout of MMDS technology and still realize a return on their investment. Although the AG and others have contended that the merger is not necessary for MCI and Sprint to be able to combine their respective MMDS resources, it must be recognized that the speed of an MMDS rollout would be greatly increased if the combination of licenses were to take place via merger. A commercially viable alternative to providing broadband access to customers (MMDS, as opposed to RBOC landlines and AT&T cable) would aid in the development of robust local competition.

Finally, the potential success of Sprint's ION service depends, in part, upon the availability of broadband access to consumers. Given that the merger would likely increase the rate at which alternative MMDS access could be deployed, the merger would also increase the potential success of Sprint's innovative ION service.

#### 4. Parties' Concerns

The parties' arguments in opposition to the merger, as set forth in the Comments and Responses section, were fully considered. Petitioners adequately addressed the concerns and issues raised by the parties. None of the objections raised provides a basis for rejecting the proposed merger.

MCI WorldCom and Sprint are both major providers of telephone service in New York. The proposed merger will result in a more capable company that should be able to meet the communications needs of New York customers, and also should be a worthy competitor to the remainder of the industry.

#### 5. Procedural Matters

LULAC, ICP, NEXTLINK, Rainbow/PUSH, and SBC moved for discovery and evidentiary hearings. PULP requested a supplemental filing. ICP and PULP also moved for leave to intervene and become active parties.

This matter presented issues of policy and required analysis of information in the public domain. In addition, the

proceeding was opened for the purpose of receiving input and the parties had an opportunity for public comment. Therefore, after considering the arguments made in support of discovery, hearings, and intervention, the motions are denied.

The Commission reserves the right to reconsider the approval of the merger should any other regulatory bodies take action which substantially modifies the proposed merger.

The Commission orders:

1. Acquisition of Sprint Corporation by MCI WorldCom as described in the text of this order, is approved, pursuant to Section 99(2) and 100 of the Public Service Law. Except where contrary to the provision of this order, the acquisition should be as prescribed in the Agreement and Plan of Merger, dated as of October 5, 1999.

2. The Commission reserves the right to reconsider the approval of the merger should another regulatory body take action that substantially modifies the proposed merger.

3. The motions for discovery, hearings, and intervention are denied.

4. The parties to this transaction should notify the Commission within 30 days of its completion that this approved transaction has taken place. If the merger authority granted by this order is not exercised within one year of the effective date of this order, the order may be revoked by the Commission without further notice.

5. This proceeding is continued.

By the Commission,

(SIGNED)

DEBRA RENNER  
Acting Secretary