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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 23, 2000

By Hand

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

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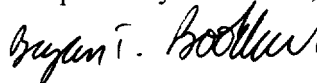
Re: Intermedia Communications Inc. - Application for Consent to Transfer Control of Corporation Holding Licenses and Federal Communications Commission Authorizations

Dear Ms. Salas:

Intermedia Communications Inc. ("Intermedia"), by its attorneys, hereby submits for filing, an original and four copies of an application for consent to transfer control of Intermedia's holding licenses and authorizations issued by the Federal Communications Commission to WorldCom, Inc. A copy of the transfer of control applications filed with the Wireless Bureau and Mass Media Bureau are also attached.

If you have any questions regarding this application, please contact the undersigned.

Respectfully submitted,



Bryan T. Bookhard

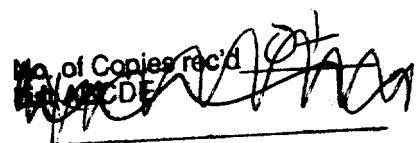
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of)
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INTERMEDIA COMMUNICATIONS INC.,)
Transferor,)
)
and)
)
WORLDCOM, INC.,)
Transferee,)
)
)
for Consent to Transfer Control)
of Corporations Holding Commission)
Licenses and Authorizations Pursuant)
to Sections 214 and 310(d) of the)
Communications Act and Parts 21,)
63, 90, 101)

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OFFICE OF THE SECRETARY
CC Docket No. 00-206

APPLICATION FOR CONSENT TO TRANSFER CONTROL

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Dated: October 23, 2000

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ATTACHMENT D	Declaration of David N. Porter
ATTACHMENT E	Agreement and Plan of Merger

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APPLICATION FOR CONSENT TO TRANSFER CONTROL

I. INTRODUCTION

WorldCom, Inc. (WorldCom) and Intermedia Communications Inc. (Intermedia) seek consent to transfer control of corporations holding licenses and authorizations issued by the Federal Communications Commission (Commission or FCC). Through this merger, WorldCom will acquire Intermedia and its controlling interest in Digex, a leading provider of complex, managed web-hosting services to business customers.¹ Digex does not provide telecommunications or other services regulated by the FCC. The combination of the complementary strengths of Digex and WorldCom in the website and web-enabled applications hosting businesses will create a stronger, more effective and more innovative competitor for

¹ Intermedia owns approximately 62% of all outstanding common shares and a 94% voting interest in Digex.

these services, offering a wider and more robust array of products. The merger also will provide Intermedia access to the funding that it needs to continue to provide local, long distance and other telecommunications services to its customers. WorldCom has announced that for business reasons it intends to sell all, or substantially all, of the Intermedia assets (excluding its Digex shares). However, regardless of whether, when or how the Intermedia business is sold, this merger does not raise any offsetting anticompetitive concerns. The addition of Intermedia's extremely small share of the domestic long distance market to WorldCom's share creates no plausible risk of harm to competition in that market. Similarly, the local telecommunications assets of the two companies for the most part do not serve the same geographic areas. In the few instances where they do, those areas are also served by several other new entrants. And, in any event, in every case, the local markets remain dominated by incumbent local exchange carriers that continue to control overwhelming market shares. Finally, the merger will not impair competition in the rapidly growing Internet services industry. In short, even if WorldCom were to retain all of Intermedia's assets permanently (which it does not plan to do), the combination of the two companies would not have an adverse impact on competition in any market in which the two firms provide service today. The Commission, therefore, should approve the proposed transfer of control expeditiously.

DESCRIPTION OF THE TRANSACTION

On September 1, 2000, WorldCom, Intermedia, and Wildcat Acquisition Corporation (Wildcat) entered into an Agreement and Plan of Merger (“Agreement”) whereby Wildcat, a wholly owned subsidiary of WorldCom, will merge with Intermedia, with Intermedia being the surviving company. A copy of the Agreement is attached hereto as Attachment E. The merger will be achieved through a stock-for-stock transaction and will not require WorldCom, Intermedia, or Wildcat to take on additional debt.

Under the terms of the Agreement, each share of Intermedia common stock will be exchanged for \$39 of WorldCom common stock, subject to a collar. In addition, each share of Intermedia preferred stock will be exchanged for WorldCom preferred shares that will have terms essentially identical to the existing Intermedia preferred shares, except that the issuer will be WorldCom. The actual number of WorldCom common shares to be exchanged for each Intermedia common share (the “Exchange Ratio”) will be determined based on the average trading prices prior to the closing, but will not be less than 0.8904 shares (if WorldCom’s average stock price exceeds \$43.80) or more than 1.1872 shares (if WorldCom’s average stock price is less than \$32.85). In the event the Exchange Ratio is higher than 1.0685, WorldCom may elect to pay the difference between the Exchange Ratio and 1.0685 in cash, rather than additional WorldCom stock. The total value of the transaction is approximately \$6 billion (\$3 billion in equity and \$3 billion in debt and preferred stock). The merger will be tax-free to shareholders and accounted for as a purchase.

This merger does not involve the assignment of any Intermedia licenses or authorizations, or any change in the licensees that currently hold such authorizations or licenses. The same companies will continue to provide service to the public.

Although WorldCom has announced that it intends to sell all, or substantially all of the Intermedia assets (excluding its Digex shares) for business reasons, the merger will have little or no effect on Intermedia's day-to-day operations. WorldCom's business plan is to maintain Intermedia as a subsidiary of WorldCom, separate from the company's MCI WorldCom, Inc. operating subsidiary.² Intermedia's network will not be integrated into WorldCom's network, Intermedia's customers will continue to be served from Intermedia's network and customer platforms, Intermedia's management team and employees will be encouraged to remain with Intermedia, and customer account teams and service support will be retained.³

In addition to FCC approval, this transaction is subject to notification and/or review by other governmental agencies, including federal antitrust authorities under the Hart-Scott-Rodino procedures, and approximately 24 state public utility commissions. This transaction does not require approval by any foreign governmental authority.

DESCRIPTION OF THE APPLICANTS

WorldCom is a global leader in "all-distance" communications services, operating in more than 65 countries encompassing the Americas, Europe, and the Asia-Pacific regions. WorldCom is a premier provider of facilities-based local, long-distance, international, Internet and Internet-related services. WorldCom's revenues in 1999 were \$37 billion.

Wildcat is a Delaware corporation and a direct wholly owned subsidiary of WorldCom. Wildcat was created as a vehicle for the acquisition and will not survive its merger with Intermedia. In 1999, Wildcat did not exist.

Intermedia is a leading provider of integrated data and voice communications solutions to business customers. Intermedia operates in two business segments. Through its Integrated

² See Declaration of K. William Grothe, Jr. (Grothe Declaration), attached as Attachment A.

Communications Services segment, it provides data and voice communications services, including enterprise data solutions (principally frame relay), Internet connectivity, private line data, local, long distance, international and systems integration services to approximately 90,000 business and government customers throughout the United States. This segment also provides wholesale carrier services and U.S. long-distance carriage and local termination and origination services for international telecommunications carriers. Digex, a publicly-traded subsidiary of Intermedia, is a leading provider of managed web-hosting services to businesses operating mission-critical, multi-functional websites. Intermedia's consolidated revenues in 1999 were \$906 million.

DESCRIPTION OF FCC AUTHORIZATIONS TO BE TRANSFERRED

Intermedia holds the following types of FCC licenses and authorizations, control of which will be transferred to WorldCom upon the closing of this transaction:

Common Carrier Point-to-Point Microwave (Part 101) (191 licenses)

Multipoint Distribution Service (Part 21) (1 license)

Private Radio Service (Part 90) (1 license)

International Section 214 Authorizations (Part 63) (10 authorizations)

Blanket Domestic 214 Authorization (Part 63)

WorldCom and Intermedia respectfully request that grant of the transfer of licenses and authorizations listed herein include the authorization for WorldCom to acquire control of any licenses or authorizations issued to Intermedia or to its subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following Commission approval.

³ *Id.*

II. THE MERGER IS IN THE PUBLIC INTEREST

This transaction is a key part of WorldCom's "Generation d" strategy to position itself as a provider of the next generation data services demanded by business customers.⁴ Those services include Internet-related services that the Commission does not regulate, such as web-hosting services that business customers require for e-commerce and other applications.

As part of its web-hosting business, WorldCom currently provides basic colocation services as well as web-hosting services.⁵ Over the past 18 months, WorldCom has focused its efforts on expanding its colocation business and has not developed the state-of-the-art systems needed to compete in the provision of complex managed web-hosting services to businesses. This transaction will greatly improve WorldCom's ability to compete in these lines of business by providing it with the support structure and automated systems it needs to increase its presence as a provider of mission-critical hosting products and services to mid- and large- sized companies. The transaction is also critical for Digex's future growth and development. Through this transaction, Digex gains access to WorldCom's capital, a worldwide sales force and a significant base of enterprise customers for cross-selling. Moreover, WorldCom will give Digex access to WorldCom's data centers, thus avoiding the need for redundant investments, and WorldCom's data centers will benefit from modernization reflecting Digex's experience.

The merger of the two companies also will benefit competition for telecommunications services that are subject to the Commission's Title II jurisdiction. By providing Intermedia

⁴ WorldCom's "Generation d" initiative encompasses five core service sets – including network and access, hosting, an e-business "toolkit," turn-key solutions, and custom solutions – designed to "facilitate e-commerce and e-business" and to enable a new data-centric economy. See Press Release, "MCI WorldCom Fuels the New Digital Economy" (April 13, 2000), <http://www.wcom.com/about_the_company/press_releases/display.phtml?cr/20000413>; See also <<http://www.wcom.com/generationd>>.

⁵ A more detailed description of these web-hosting services is provided *infra* at p. 18.

access to financing needed for capital expenditures and operating expenses, the merger will ensure that Intermedia remains an effective competitor in the provision of local and long distance services to business customers. In addition, Intermedia will be freed from the capital demands of supporting and expanding Digex. As a result, a financially stronger Intermedia will be better able to serve its core customers and ensure that they continue to enjoy the level of service to which they are accustomed.

III. THE MERGER WILL NOT IMPAIR COMPETITION FOR LONG DISTANCE SERVICES

By any measure, the domestic long distance industry today is robustly competitive. Consumers, both residential and business, have benefited from dramatic declines in prices in recent years accompanied by the introduction of innovative service offerings. Moreover, barriers to new entry remain low, as carriers continue to add fiber capacity to their long-haul networks and make this capacity available for purchase at wholesale rates. In these circumstances, there is no plausible basis for concern that the addition of Intermedia's extremely modest share of the long distance market to WorldCom will have an adverse effect on competition in that industry.⁶

⁶ The Applicants have followed the Commission's traditional approach of examining the impact of a merger on long distance and local telecommunications services as separate markets. The Applicants, however, do not agree that this remains a valid approach in today's marketplace. To the contrary, recent developments in the telecommunications industry, such as the pricing of wireless minutes of use on a non-distance sensitive basis and the bundling of local and long distance offerings, have eroded traditional service distinctions. In the Applicants' view, this trend toward "all distance" service offerings will become even more pronounced in the coming months. See Steve Koppman, "Local Competitive Update: CLECs No More?" *Gartner Group Competitive Analysis*, (Aug. 28, 2000) (noting that local competition is increasingly blending into an "all distance" market).

Domestic Long Distance⁷

The Commission typically uses the market share of the merged company as a starting point for its analysis of a merger's effect on the domestic long distance market.⁸ In this case, adding Intermedia's negligible long distance share to WorldCom's share cannot raise any plausible anticompetitive concerns.

Recent FCC statistics show that WorldCom's share of the domestic long distance market in 1999 declined to 23.8% based on the revenues of long distance carriers, and to 21.6% based on revenues of all long distance toll providers (including local exchange carriers).⁹ Intermedia's 1999 market share was approximately 0.5% under either measure.¹⁰ Thus, the combined market shares of the parties, amounting to 24.3% or 22.1%, respectively, would represent a *de minimis* increase in WorldCom's current market share.¹¹ By contrast, AT&T's share of the domestic long

⁷ The analysis of the effect on the merger on long distance is limited to the domestic arena because Intermedia provides international service exclusively on a pure resale basis, and does not use any of its own facilities to provide such service. *See* Federal Communications Commission, *Statistics of Common Carriers (SOCC)*, Aug. 11, 2000, at Tables 3.6. – 3.7 (showing that Intermedia did not report any revenues for facilities-based or facilities-resale international services). According to the most recent FCC statistics, Intermedia's international message telephone service (IMTS) resale revenues amounted to less than \$28.5 million, which is less than 0.6% of industry IMTS resale revenues. *SOCC* at Table 3.8. Intermedia also provides local origination and termination services for international carriers, including U.S. termination of international data services for Global One pursuant to a non-exclusive contract. WorldCom had a 26.7% share of the industry international services revenues in 1998 based on net revenues and 14% of the IMTS resale services revenues. *SOCC* at Tables 3.5, 3.8.

⁸ *See* Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control, 13 FCC Rcd. 18025 (1998) (“*WorldCom/MCI Order*”), ¶ 37. *See also, e.g.*, Applications of Teleport Communications Group, Inc. and AT&T Corp. for Consent to Transfer of Control, 13 FCC Rcd. 15236 (1998).

⁹ *SOCC* at Tables 1.4-1.6. WorldCom's share of the long distance market based on total operating revenues in 1998 was 25.6% (23% including LEC toll service revenues). Federal Communications Commission, *Trends in Telephone Service (“Trends Report”)* at Tables 11.2 and 11.3 (rel. March 2000).

¹⁰ Intermedia's market share was 0.53% compared to all long distance carriers and 0.48% of total toll service revenues. *See SOCC* at Table 1.4.

¹¹ *See* Declaration of A. Daniel Kelley (“*Kelley Declaration*”), attached as Attachment B.

distance amounted to 40.9%.¹² Further, newer long distance carriers are continuing to attract customers from the traditional carriers. According to the Commission's statistics, carriers other than AT&T, WorldCom and Sprint accounted for 32.2% of all long distance toll services revenues in 1999 (25.3% if local exchange carriers are excluded).¹³ In addition, 34 long distance providers in 1999 earned toll service revenues in excess of \$100 million, an increase of six providers from 1998.¹⁴ Thus, it is clear from these statistics alone that the merger will not have a material effect on concentration in the domestic long distance business.

Moreover, the merger will have virtually no impact at all on the residential long distance segment. Intermedia estimates that it currently serves approximately 47,000 residential customers, acquired as a result of prior mergers.¹⁵ Further, Intermedia does not market its local or long distance services to residential customers and has no plans to do so in the future.

Although the FCC does not report market share data for the business long distance segment, the Commission has recognized that this segment has been competitive for years. In the early 1990s, the Commission largely deregulated AT&T's provision of long distance service to these customers.¹⁶ More recently, in the *WorldCom/MCI Order*, the Commission observed that many carriers, including AT&T, Cable & Wireless, Sprint, Frontier (now part of Global Crossing), IXC, and Qwest, "have the capabilities to have a significant impact on competition for

¹² *SOCC* at 1.5. AT&T share of total toll service revenues was 37.1%. *Id.* at Table 1.6.

¹³ *Id.* at Table 1.5–1.6.

¹⁴ *Id.* at Table 1.4; *Trends Report* at Table 11.2. These 34 providers include: AT&T, WorldCom, Sprint, Qwest, Teleglobe, Global Crossing, Star, Cable & Wireless, IDT, GTE, VarTec, Pacific Gateway Exchange, Viatel, Broadwing, Intermedia, RSL, Talk.com, Worldxchange, NOS, Startec, Business Telecom, Primus, McLeod, Facilicom, UniDial, SNET, Williams, General Communication, ITC^Deltacom, Network Plus, Working Assets, Total-Tel, New Global Telecom, Americatel and ALLTEL.

¹⁵ Intermedia actually has fewer residential long distance customers, because this figure includes those residential customers that subscribe only to its local service offerings.

larger business customers.”¹⁷ In view of the Commission’s repeated finding that the market for domestic long distance services provided to business customers is robustly competitive, it is clear that the addition of Intermedia’s extremely small long distance assets to WorldCom will have no effect at all on competition for those customers.¹⁸

Aside from the *de minimis* effect of the merger on WorldCom’s domestic long distance share, it is also obvious that the proposed combination will have no effect on the trends that continue to make this market extremely competitive. The amount of long distance transmission capacity, for example, continues to increase significantly.¹⁹ The FCC reported that “[b]y year-end 1998, IXCs had deployed fiber networks exceeding 150,000 route miles, and we estimate their fiber mileage increased by more than 30% over previous levels.²⁰ Other recent reports have estimated that there are between 11.5 million and 40 million strand miles of total fiber capacity, with companies such as Sprint, Level 3, Qwest, Global Crossing and Williams, among others, laying millions of miles of fiber optic cable.²¹ One oft-cited study predicts that lit fiber capacity alone will expand by 79% a year over the next four years and estimates that there will be 400

¹⁶ See *In the Matter of Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd. 5880 (1991); *In the Matter of Competition in the Interstate Interexchange Marketplace*, 8 FCC Rcd. 3668 (1993).

¹⁷ *WorldCom/MCI Order*, 13 FCC Rcd. at ¶ 34.

¹⁸ As one analyst explained, “[w]hatever Intermedia can bring WorldCom in terms of network services, infrastructure and customers will be a drop in the bucket.” Carl Garland, “Intermedia Plays the Ugly Stepsister in WorldCom-Digex Deal,” *Current Analysis*, at 2 (Sept. 7, 2000).

¹⁹ Federal Communications Commission, *Fiber Deployment Update - End of Year 1998* at 9 (Sept. 9, 1999) (“*Fiber Report*”).

²⁰ *Fiber Report* at 9.

²¹ Kevin Maney, *Dot-com Carnage Opens Door to Brighter Future*, USA Today, June 22, 2000 at B1 (11.5 million miles in the ground in 1999, increasing to 26.7 million miles in 2002); Frank J. Derfler, Jr., *Infrastructure*, PC Magazine, Aug. 8, 2000 (“[c]ompanies like Global Crossing, Qwest and Sprint had installed about 40 million miles of optical fiber in the U.S. by 1999”); Michael Santoli, *Broadband’s Mantra: Ignore the Doomsayers; If You Build It, They Will Come*, Barrons, Sept. 11, 2000, at 17 (naming Level 3, Qwest and Williams and predicting an “80% annual increase through 2004” in fiber optic network capacity). Fiber capacity has at least

times more bandwidth capacity available in 2001 than there was in 1998.²² In addition, carriers' widespread use of technologies such as wavelength division multiplexing ("WDM") and dense WDM ("DWDM") "vastly increase the transmission capacity of existing and new fiber networks."²³

In sum, in view of the ready availability of huge volumes of long distance transmission capacity, it would be ludicrous to suggest that the merged company prior to the sale of the Intermedia assets could profitably raise price or restrict output.²⁴

An analysis of the markets where both WorldCom and Intermedia have deployed points of presence further buttresses the conclusion that this merger will not affect long distance competition adversely. As explained in A. Daniel Kelley's Declaration (attached as Attachment B), even after the merger, all of the LATAs in which Intermedia currently has intercity long haul fiber will continue to be served by at least eight fiber carriers, and over half of those LATAs will be served by at least 13 fiber carriers.²⁵ In addition, there are at least nine other carriers (not including incumbent LECs) with switches in the LATAs in which WorldCom and Intermedia both have switches, and at least 20 carriers have switches in the vast majority of those LATAs.

tripled since 1998. *See Fiber Report* at 10 (estimating that there were 3.6 million miles of fiber capacity in 1998).

²² Renaissance Worldwide Strategy, Inc., *Surviving the Carrier Commoditization Wave* (Q2 2000), <<http://www.rens-strategy.com/index.html>> (predicting a glut in bandwidth capacity as supply far outstrips demand); *see also, e.g.*, Lee Bruno, *The Broadband Era*, Red Herring, Feb. 2000, at 201962 (citing Renaissance Worldwide); Michael Santoli, *Too Much Fiber*, Asian Wall Street Journal, Sept. 15, 2000 at P2 (citing Renaissance Worldwide study).

²³ *WorldCom/MCI Order* at ¶ 64; *see also id.* at ¶ 45. WDM is a means of "increasing the capacity of an optical fiber by simultaneously operating at more than one wavelength." Harry Newton, *NEWTON'S TELECOM DICTIONARY* at 944 (16th ed. 2000). DWDM is "a higher-capacity version of WDM." *Id.* at 286.

²⁴ *See WorldCom/MCI Order* at ¶¶ 29, 64.

²⁵ The methodology used by Dr. Kelley in conducting this analysis is explained in his Declaration.

Even in those areas where Intermedia and WorldCom both provide long distance service using their own facilities, customers can subscribe to service from a variety of other carriers.

Frame Relay and ATM Services

The Commission has previously recognized that frame relay and asynchronous transfer mode (“ATM”) services make up part of the larger long distance market.²⁶ As the Commission correctly has explained, “owners of transmission capacity provide all the same services, and production substitution among these services is ‘nearly universal.’”²⁷ Even if these services were examined separately, however, it is clear that post-merger, business customers of all sizes will continue to have plenty of choices for ATM and frame relay.²⁸

Intermedia currently provides virtually no ATM services; its estimated annual revenues from its few customers amount to less than \$60,000.²⁹ Consequently, the merger will not have any significant impact on competition for ATM services.

According to published reports, Intermedia accounted for only 1.9% of U.S. frame relay revenues in 1999.³⁰ Although Intermedia ranks as the fourth largest *national* provider of frame relay services, several regional providers – including Bell Atlantic (now Verizon), US WEST,

²⁶ See *WorldCom/MCI Order* at ¶¶ 26-27 (declining to sub-divide the mass market and larger business markets).

²⁷ *Id.* at ¶ 27.

²⁸ As explained in the Grothe Declaration, for business reasons WorldCom plans to operate Intermedia as a subsidiary until it can complete the sale of all, or substantially all, of Intermedia’s assets (excluding the Digex shares). Those assets, including the frame relay assets, will be held by this subsidiary and will not be integrated into WorldCom. In addition, WorldCom intends to retain Intermedia’s current employees, so that customers will continue to be served by their existing account representatives. In other words, the transaction should be entirely transparent to Intermedia’s current customers.

²⁹ See Declaration of Robert M. Manning (“Manning Declaration”), attached as Attachment C; see also The Yankee Group, “ATM Service and Pricing Trends,” *Data Communications Report* Vol. 14, No. 16 at 7 (Oct. 1999) (noting that Intermedia is “predominantly a frame-relay carrier” and “does not expect its ATM service to grow much more than 20% per year.”)

³⁰ See Melanie A. Posey, “U.S. Frame Relay Services: Market Share and Assessment, 1999-2004,” *International Data Corporation*, Document # 20674 at 13-14 (Nov. 1999) (*IDC Report*).

SBC, Infonet and Ameritech – have higher frame relay revenues than Intermedia.³¹ AT&T reportedly is the largest frame relay provider with an aggregate share of over 35%, WorldCom is second with 22% of revenues, and Sprint is third with 20% of all frame relay revenue.³²

AT&T's leadership position is even more pronounced among providers of national/international frame relay service. In 1999, AT&T captured nearly 43% of all national/international frame relay revenues. WorldCom was second with 26.3%, Sprint was third with 24.1% and all other U.S.-based providers combined (including Intermedia) accounted for the remaining 6.9%.³³ The frame relay segment is growing rapidly, with demand for frame relay in the United States predicted to nearly triple from \$3.9 billion in 1998 to \$11.8 billion in 2004.³⁴

WorldCom's frame relay customers are primarily businesses, with large businesses (over 1,000 employees) constituting slightly more than 50% of its customer base.³⁵ Intermedia, by contrast, is not a significant competitor in the provision of frame relay services to large business customers.³⁶ Further, although Intermedia and WorldCom both serve small and medium business customers, they are only two of the many providers competing to supply data networks

³¹ *Id.* at 13. Bell South has more ports than Intermedia, though slightly lower revenues. *Id.* at 14.

³² *Id.* at 13. AT&T Sprint and WorldCom all have a smaller share of frame relay ports than frame relay revenues. *Id.* at 13-14.

³³ *Id.* at 41; *see also id.* at 42 (AT&T, Sprint and WorldCom account for 94% of frame relay ports, with providers, such as Qwest, IXC, Infonet and Cable & Wireless accounting for the remaining 6% of all ports).

³⁴ *IDC Report* at 1.

³⁵ *See id.* at 71.

³⁶ Vincent Ryan, "Intermedia's Swan Song WorldCom to sell CLEC Assets," *Telephony (online)*, (Sept. 11, 2000) (explaining that "most of Intermedia's customers are small and medium-sized businesses, making them a less attractive fit for WorldCom's strategy of targeting big business customers.") Nancy Bedard and Kitty Weldon, "Communications Services for the New E-conomy," *The Yankee Group Report*, Vol. 1, No. 10 at 3 (July 2000) (noting that Intermedia "focuses on small and medium business customers . . ."); Jeanne Schaaf, Ph.D. and Brenden Hannigan, "WorldCom Puts Meat on Generation D Bones," *Forrester Research*, Sept. 11, 2000, at 1 ("*Forrester Report*") (noting that Intermedia serves small and medium-sized business throughout the U.S.).

to small and medium sized businesses.³⁷ Hence, the merger will not affect competition in the provision of frame relay services to such customers.

IV. THE MERGER WILL NOT HARM COMPETITION FOR LOCAL TELECOMMUNICATIONS SERVICES

WorldCom's acquisition of Intermedia will not reduce competition in local markets because of the overwhelming presence of incumbent LECs in those markets. Despite the Commission's ongoing efforts to require incumbent LECs to open their local markets to competition, pursuant to the Telecommunications Act of 1996, local competition is not yet robust. Consequently, although the number of competitive local exchange carriers (LECs) is growing,³⁸ competitors have yet to make any serious inroads into the overwhelming dominance and market share enjoyed by incumbent LECs.

The Commission's most recent analysis of local competition statistics reports that in 1999 the combined revenues of all competitive LECs (including WorldCom and Intermedia) accounted for less than 5% of the total local exchange market of \$112 billion.³⁹ WorldCom's revenues from local telecommunications services amount to approximately 1% of this industry total, while Intermedia's revenues amount to only 0.37% of the total.⁴⁰ Given these *de minimis*

³⁷ Companies targeting smaller businesses include AT&T, Sprint, and Qwest. *See IDC Report* at 44-83; *see also* Carl Garland and Jeffrey Knowles, "Look, No Hands! Intermedia adds to its Bundled Services Portfolio," *Current Analysis* at 1 (Sept. 18, 2000) (noting that Qwest, Sprint "and a host of others" offer frame relay to "smaller businesses").

³⁸ According to one industry report, as of mid-2000, there were more than "250 [competitive LECs] using at least some of their own local facilities . . . and several hundred more reselling. Steve Koppman, "Local Competitive Update: CLECs No More?" *Gartner Group Competitive Analysis*, at 3 (Aug. 28, 2000); *Id.* at 8 (Local telecommunication competition is "spreading rapidly, with a profusion of new and varied competitors rapidly gaining market share by all measures.")

³⁹ Federal Communications Commission, *Telecommunications Industry Revenue Report ("Industry Revenue Report")* at 1 (rel. Sept. 25, 2000).

⁴⁰ Intermedia's 1999 revenues for local access and voice were approximately \$414.2 million, Intermedia 1999 10K at 5, F-3, accounting for .37% of the \$112 billion local services market. *Trends Report* at 1. Intermedia's local revenues declined sharply in the second quarter of 2000.

market shares, it is clear that the proposed merger will not have any material effect on competition within the local exchange market.

Moreover, as shown by the Declaration of David N. Porter (attached as Attachment D), there are relatively few Metropolitan Statistical Areas (MSAs) where both companies have deployed switches and/or fiber facilities. And, in those MSAs where the companies' local networks overlap, WorldCom and Intermedia face robust competition – both from other competitive LECs as well as from the dominant incumbent LEC.

Specifically, there are 36 MSAs in which Intermedia either owns a local circuit switch, owns or leases local fiber, or has both switching and fiber. WorldCom owns local circuit switches and local fiber in 23 of these MSAs. Of those 23 MSAs, there are only six where Intermedia and WorldCom own potentially overlapping local fiber networks.⁴¹ In five out of these six MSAs, there is less than a 15% overlap in the route miles covered by the companies' networks.⁴² In fact, the only MSA in which both companies have deployed networks that serve similar geographic areas is St. Louis.⁴³

The St. Louis MSA is dominated by the incumbent LEC, SBC. In addition, St. Louis is served by at least five other competitors, including such well-funded providers as AT&T, XO

Telephony (online) (Intermedia's second quarter local access and voice revenues declined by about 26% over one year earlier). WorldCom serves 1% of the 180,471,261 access lines in the U.S., while Intermedia serves .31% of such lines. *Gartner Group Competitive Analysis* at 6 (WorldCom serves 1.85 million access lines, and Intermedia serves 560,000 such lines); *Trends Report* at 20-3 (showing a total of 180,471,261 access lines in the U.S. at the end of 1998).

⁴¹ As explained in the Declaration of David N. Porter ("Porter Declaration"), attached as Attachment D, out of the twenty-three overlapping MSAs, there are seventeen in which Intermedia owns no local fiber serving end-users – eight where it owns no fiber, five where it only leases fiber and four where it has only interoffice (POP-to-POP) fiber. Thus, there are only six MSAs in which Intermedia and WorldCom own potentially overlapping local networks.

⁴² The overlap is 0% in the Raleigh/Durham MSA (WorldCom's network is located entirely in Raleigh and Intermedia's network is entirely in Durham); less than 5% of route miles in Orlando; less than 10% in Miami and less than 15% in Tampa/St. Petersburg and Cincinnati. See Porter Declaration at ¶ 8.

⁴³ Even in St. Louis, the overlap involves less than 45% of WorldCom's route miles. *Id.*

Communications and Teligent.⁴⁴ Thus, even within the one MSA where there is significant overlap between Intermedia and WorldCom's local exchange operations, consumers would retain the ability to choose service either from various other competitive LECs or from the dominant incumbent LEC. Therefore, it is clear that, whether the Commission examines competition for local services on a national basis, or on an MSA-by-MSA basis, the proposed merger will not impair local competition, particularly given the small market shares of the two applicants.

V. THE MERGER OF WORLDCOM AND INTERMEDIA WILL NOT IMPAIR THE ROBUST COMPETITION AMONG PROVIDERS OF INTERNET AND INTERNET-RELATED SERVICES

The supply of Internet and Internet-related services is growing at a phenomenal pace. Existing Internet Service Providers (ISPs) continue to expand their capacity to provide transit and access services to meet unprecedented growth in demand from residential and business customers as well as other ISPs. New entrants and once-smaller ISPs continue to establish themselves as competitive forces to be reckoned with, increasing the number of national Internet backbone providers to more than 45. Peering agreements, both public and private, are becoming ever more prevalent, and those ISPs that re-sell universal Internet connectivity that they achieve, in whole or in part, through buying transit services from other providers continue to be vigorously competitive with ISPs that achieve universal connectivity through peering. Thus, employing any of a variety of business models, an ever-increasing number of ISPs are successfully providing end users with access to every point on the global network of networks that is the Internet. There is no credible basis for any suggestion that the combination of WorldCom and Intermedia would have any negative effect on these trends.

⁴⁴ The other MSAs served by both companies are also served by a sizeable number of

A. Description of Services

Internet Access Services

Internet service providers offer connectivity to the Internet primarily in two ways: on a dedicated or on a dial-up basis. Dedicated Internet access connects a customer (whether an ISP seeking transit or an end user) to the Internet via a point-to-point transmission link to the network of the ISP. Dial-up access enables individual end users to connect to a modem bank, where traffic is aggregated and routed over a dedicated facility to a node, which, in turn, is interconnected to the Internet.⁴⁵

WorldCom is a leading provider of Internet access services, including wholesale and retail dedicated and dial-up Internet access.⁴⁶ Through UUNET, WorldCom operates a nationwide Internet backbone network that, including both the dedicated and the dial-up infrastructure that UUNET operates, spans over 2,000 points of presence worldwide, including over 1,500 in the U.S. Through UUNET, WorldCom offers an array of retail and wholesale Internet access services, including dial-up and dedicated access.

Intermedia's Business Internet unit provides dedicated Internet access to retail business and government customers. Although Intermedia does not actively market dial-up access, its Intermedia Business Internet does provide such access as an adjunct to its dedicated access service, either as a back-up service in the event of a dedicated access outage, or to customers that require dial-up access for remote offices, telecommuters and employees who travel.⁴⁷

competitive LECs. *See Porter Declaration at ¶ 10.*

⁴⁵ The transmission link may use a combination of copper, fiber, coaxial or radio facilities.

⁴⁶ For circuit switched "dial-up" access, the switch usually is between the modems; for packet switched access (e.g., xDSL, cable modems and MMDS), the switch is on the network side of both modems.

⁴⁷ Intermedia has approximately 4,000 residential dial-up customers (down from 13,000 six months ago), which it acquired as part of an earlier transaction.

Internet-Related Services

In addition to the Internet access services described above, WorldCom (through UUNET) and Intermedia (through Digex) sell related "value-added" services, including web-hosting, colocation, and security services. Web-hosting services, which are not regulated by the Commission, involve, among other things, the provisioning of rack space and Internet connectivity for servers that host the websites of business customers.⁴⁸ Web-hosting providers may offer a range of services, including colocation, shared and dedicated web-hosting, and managed web-hosting.⁴⁹ Security services include the sale and management of firewalls, which are designed to permit Internet traffic to flow between the customer's computers and other sites on the Internet, without allowing unauthorized users to access the customer's internal files.

UUNET's web-hosting offerings include colocation, and shared and dedicated hosting services. In addition, UUNET provides application hosting (including e-commerce solutions), and Internet security services, such as firewalls.

Digex is a leading provider of dedicated and managed services. It offers both simple and complex dedicated web and application hosting services (*e.g.* website management, managed services, and hosting platforms for various application service providers).

⁴⁸ See Melanie A. Posey, "Web Hosting Service: 1999 Market Share Assessment," *IDC*, Document # 22016R at 1 (Apr. 2000).

⁴⁹ "Colocation" hosting enables a customer to place its own server in space that is owned by the ISP. Customers of colocation hosting generally provide their own monitoring and maintenance services. "Shared" web-hosting involves the provision of web-hosting services to multiple customers whose websites are maintained on a single server owned and maintained by the web-hosting provider. "Dedicated hosting" involves the provision of web-hosting services to a single customer whose website is maintained on one ("simple") or several ("complex") separate servers owned and operated by the web-hosting provider. "Managed" hosting involves complex, dedicated hosting arrangements in which the web-hosting provider also performs administration, monitoring and maintenance services.

B. The Internet Industry

Publicly available information indicates that the demand for and supply of Internet and Internet-related services are continuing to expand at a rapid pace.⁵⁰ Internet bandwidth demand doubles every three to four months.⁵¹ Since 1997: the number of ISPs (facilities-based and resellers) has increased by nearly 40%;⁵² the number of points-of-presence per ISP has increased by five times;⁵³ the number of hosts connected to the Internet has more than quadrupled;⁵⁴ Internet traffic has increased from six to ten times;⁵⁵ and over \$1 trillion has been invested in Internet-related infrastructure. In addition, there were an estimated 7,463 ISPs in the spring of 2000, 20% of which operated on a nationwide basis.⁵⁶

Entry into the supply of dedicated Internet access services can be achieved relatively quickly and at low costs. Fiber capacity can be leased from a variety of sources, and there is no shortage of capacity available to enable smaller networks or new entrants to expand capacity or

⁵⁰ M. Kende, *The Digital Handshake: Connecting Internet Backbones*, OPP Working Paper No. 32, Federal Communications Commission, September 2000, at 13 (“*Digital Handshake*”).

⁵¹ WCOM, *Worldcom at the Heart of Internet Growth*, 1999 e-Annual Report, (last visited Oct. 15, 2000) <http://www.wcom.com/about_the_company/investor_relations/annual_reports/1999/do-internet.phtml>; see also Alex Gove, *Kings of the WorldCom*, Red Herring Magazine, <<http://www.redherring.com/mag/issue59/kings.html>> at 2 (Oct. 1998) (interview with John Sidgmore noting that “Internet usage is growing at 1,000 percent a year”).

⁵² Cahners In-Stat Group, *The U.S. ISP Industry: What is it Earning? What is it Spending?*, Table 2, Vendor-Projected U.S. ISP Market Sizing, 1997-1998, Report # IS99-01MC (April 1999), (last visited Oct. 16, 2000) <http://www.instat.com/abstracts/ia/1999/is9901mc_abs.htm>.

⁵³ *Id.* at Figure A4: Average Number of Points of Presence Per ISP, 1997-1998.

⁵⁴ M. Lottor, *July 2000 Survey*, Network Wizards, (last visited Oct. 17, 2000) <<http://isc.org/ds/www-200007/index.html>>. A “host” is defined as a computer connected to the Internet with a static IP address that can respond to a query.

⁵⁵ Gilder Technology Group, 1999 Newsletter, (last visited Jan. 12, 1999). <<http://gildertech.com/html/gtg.html>>.

⁵⁶ Michael Robuck, “Report Says National ISPs will Dominate U.S. Market,” ISPworld (last visited Oct. 5, 2000) <http://www.ispworld.com/bs/BS_92600a.htm>; Cahners In-Stat Group, “The U.S. ISP Industry: Revenues and Services” (Sept. 21, 2000), (last visited Oct. 5, 2000) <http://www.instat.com/abstracts/ia/2000/is0004sp_abs.htm>.

enter the market.⁵⁷ New fiber carriers are laying cables and creating new backbone networks.⁵⁸ Suppliers of Internet connectivity, including AT&T, Global Crossing, Qwest Communications, and Level 3 Communications, have grown in number and expanded their physical presence to meet the increase in demand from other ISPs as well as residential and business customers.⁵⁹ In addition to transmission capacity, the routers needed to make a backbone network are readily available from a variety of third party suppliers.

New construction and consolidation along with the availability of competitively priced transit services have enabled companies with smaller Internet businesses to evolve into significant ISPs. Thus, in its 2000 directory, Boardwatch reported 46 national backbone providers, including nine companies that did not appear in its 1999 directory.⁶⁰

⁵⁷ See *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Second Report, CC Docket No. 98-146, FCC 00-290 at ¶ 208 (rel. Aug. 21, 2000) (*Advanced Services Report*).

⁵⁸ IDC, *Emerging Internet Service Providers* (Aug. 2000), (last visited Oct. 16, 2000). <<http://www.itresearch.com/alfatst4.nsf/UNITABSX/W22799?OpenDocument>>.

⁵⁹ Demand for broadband Internet access from business and residential consumers has increased substantially with the growing deployment of high speed cable modem service and Digital Subscriber Line (DSL) service. See *Advanced Services Report* at ¶ 72.

Directory of National Internet Backbone Providers

AboveNet Communications, Inc.	Multacom
AT&T	NetRail
BCE Nexxia	One Call
Broadwing	Onyx Networks
Cable & Wireless	OrcoNet
CAIS	PSINet
Cogent Communications	Qwest
Concentric	RMI.NET
Electric Lightwave	Savvis Communications
Epoch	Servint
e.spire	Splitrock/McLeod USA
Excite@home	Sprint
Exodus	Teleglobe
Fiber Network Solutions	Telia Internet Inc.
Genuity Inc.	UUNET
GlobalCenter	Verio
Globix	Vnet
GST Communications	Williams
ICG Communications	Winstar
IDT Corporation	Ziplink
Intermedia	Intira
Level 3	Applied Theory/CRL
Lighting Internet	Road Runner

Source: *Boardwatch Magazine's Directory of Internet Service Providers* (12th ed. 2000)⁶¹

Moreover, in order to be able to provide the universal connectivity demanded by every end user, ISPs are interconnecting with each other on an ever-increasing basis. Network externalities (*i.e.*, the networking principle that the greater the number of users that can be reached by means of a service, the greater the value of that service to each user) provide incentives for Internet backbone providers to interconnect with other providers.⁶² This

⁶⁰ The nine companies listed in Boardwatch's 2000 directory that did not appear in the 1999 directory are: BCE Nexxia, Cogent Communications, Lighting Internet, Multacom, NetRail, One Call, Onyx Networks, OrcoNet, Applied Theory/CRL.

⁶¹ Three companies included in this table were not listed separately in Boardwatch's directory, although they were specifically discussed in the publication.

⁶² See *Digital Handshake* at 4 ("The ability to provide direct and indirect network externalities to customers provides an almost overpowering incentive for Internet backbone providers to cooperate with one another by interconnecting their networks.")

conclusion is corroborated, for example, by the dramatic expansion of public and private peering agreements over the past two years. In particular, peering arrangements between smaller Internet backbone providers are becoming even more prevalent.⁶³

In sum, publicly available information plainly shows that the number of ISPs is large and growing.⁶⁴ The merger of WorldCom and Intermedia will not impair competition in the ISP industry.⁶⁵

The Applicants recognize that the Commission in other contexts has used market shares as a starting point for analyzing the performance of a market.⁶⁶ That approach is problematic in examining the ISP industry because there is no reliable, generally accepted method for measuring ISPs' shares. Nevertheless, an examination of different published share estimates supports the view that Internet backbone services are intensely competitive and that even if WorldCom retained the Intermedia Internet backbone assets (which it does not plan to do), competition among backbone service providers would be undiminished.

Without endorsing specific share measurements, we provide various data obtained from available sources analyzing relative shares of Internet backbone providers. In November 1999,

⁶³ Joel Yaffe, "Peering Between ISPs: Recent Developments and Trends," *IdeaByte*, 258919-JY99, (Dec. 30, 1999); AboveNet claims to have "Peering Agreements with over 380 peers with over 1000 sessions." See <http://www.abovenet.com/_host.html>.

⁶⁴ See discussion *supra* at pp. 19-20 and note 56.

⁶⁵ WorldCom in prior submissions to the FCC has shown that the Internet is a non-hierarchical network of networks. See, e.g., WorldCom and Sprint Reply to Comments and Petitions to Deny Application for Consent to Transfer Control, *In re Applications of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 1, 21, 24, 25, 63, 73, 78, 90, and 101*, CC Docket No. 99-333. Some parties, however, may continue to insist that certain providers, including UUNET, are so-called "Tier 1 backbone providers." This term frequently is defined to refer to ISPs that maintain private peering arrangements with all other "Tier 1" backbone providers. Although the precise number of "Tier 1" backbone providers is a subject of debate, Intermedia clearly does not qualify since it does not peer with Sprint (which is a "Tier 1" provider).

⁶⁶ See *Motion of AT&T Corp. to be Reclassified a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995).

Tod A. Jacobs of Sanford C. Bernstein & Co., estimated that Internet backbone revenues and shares were as follows:

INTERNET BACKBONE REVENUE AND SHARE FORECAST

Revenue (US\$ MM)	1997	1999	2001	2003
MCI WorldCom	1,151	3,090	5,379	7,051
GTE-BBN	346	1,207	2,375	3,860
AT&T	322	924	2,206	4,120
Sprint	325	728	1,148	1,660
C&W	233	459	869	1,257
All Other	287	1,677	3,326	4,186
Total	2,664	8,085	15,303	22,134

Market Share				
MCI WorldCom	43%	38%	35%	32%
GTE-BBN	13%	15%	16%	17%
AT&T	12%	11%	14%	19%
Sprint	12%	9%	8%	7%
C&W	9%	6%	6%	6%
All Other	11%	21%	22%	19%
Total	100%	100%	100%	100%

Source: *Hearing on the MCI WorldCom-Sprint Merger Before the Senate Committee on the Judiciary*, Exhibit 3 (Nov. 4, 1999) (Testimony of Tod A. Jacobs, Senior Telecommunications Analyst, Sanford C. Bernstein & Co., Inc.).

By this measure, Intermedia, with revenues of \$84 million in 1999 is clearly not a leading provider of Internet backbone services.⁶⁷ Indeed, assuming Intermedia classifies Internet revenues in the same way as other companies in the Bernstein analysis, Intermedia's 1999 market share was approximately 1%. Internet share calculations that are derived from revenue estimates are, however, of questionable value, because actual total industry revenues are not known, many providers of Internet services do not report revenues publicly, and Internet

⁶⁷ See Manning Declaration, Attachment C.

revenues reported for one provider may not include the same services that other providers include in their calculations.

Some analysts have suggested the use of the number of ISP connections to estimate market share. Boardwatch, for example, describes market shares of the “Top Backbone Providers,” by number of connections:

BoardWatch, Directory of Internet Service Providers, 12th Edition, 2000
Top Backbone Providers

Company Name	No. of Connections	Market Share (%)
UUNet	2628	23.93
Sprint	1483	13.50
Cable & Wireless	818	7.45
AT&T	810	7.38
GTE Internetworking	539	5.36
Verio	483	4.40
Qwest	461	4.20
PSINet	450	4.10
SAVVIS	388	3.53
Intermedia	345	3.14
GlobalCenter	260	2.37
AGIS	215	1.96
Electric Lightwave	196	1.78
Level 3	178	1.62
Win Star	176	1.60
Ziplink	135	1.23
e.spire	121	1.10
Exodus	117	1.07
AboveNet	114	1.04
GST	111	1.01
[Others]	905	8.24

By this measure as well, Intermedia is not a leading provider of Internet backbone services, with a share of 3.14%. The number of connections, moreover, does not necessarily translate into revenues, which is a better (albeit imperfect) indicator of actual position in the marketplace. For example, the number of ISP connections does not indicate whether large,

small, or medium-sized ISPs are connected, nor does it take into account the differing bandwidths of the connections.⁶⁸

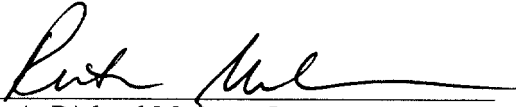
In sum, even if WorldCom retained all of Intermedia's assets used to serve ISPs (which it does not plan to do), the share estimates described above support a conclusion that the merger of the two companies would not in any way impair competition for Internet backbone services. Rather, given the robust competition among Internet service providers existing today and fostered by current technological developments, the merger between WorldCom and Intermedia is fully consistent with the public interest.

⁶⁸ A New York Times article from March 2000 illustrates the flaws in using ISP connections as a measure of market share. Seth Schiesel, "An Iconoclast Goes It Alone On the Net," *New York Times*, at C1 (Mar. 13, 2000). According to that report, in 1999, AT&T (\$1.206 billion) generated approximately twice the Internet-related revenues of Sprint (\$600 million), but Sprint had more than twice as many ISP connections (1,607, compared to 789 for AT&T).

CONCLUSION

For the foregoing reasons, the Commission should find that the proposed transaction is in the public interest and approve the requested transfer expeditiously.

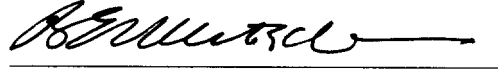
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Dated: October 23, 2000

CERTIFICATE OF SERVICE

I, Andrew Willis, do hereby certify that on this 23 day of October, 2000, I caused a copy of the foregoing Application for Consent to Transfer Control to be served upon each of the parties listed on the attached Service List.

A handwritten signature in black ink, appearing to read "Andrew Willis", is written in a cursive style.

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