

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)
)
Pacific Telesis Group)
Transferor,)
)
and)
)
SBC Communications, Inc.)
Transferee,)
)
For Consent to Transfer Control)
of Pacific Telesis Group and its)
Subsidiaries)

Report No. LB-96-32

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 1997

Released: January 31, 1997

By the Commission:

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I. INTRODUCTION

1. We have before us applications filed by SBC Communications, Inc. ("SBC") and Pacific Telesis Group ("PacTel") pursuant to Section 310(d) of the Communications Act of 1934, as amended ("the Communications Act").¹⁴ Section 310(d) requires that, before control over any radio construction permit, station license or any rights thereunder may be transferred, we must find that the proposed transfer will serve the public interest, convenience, and necessity. Applicants seek our consent to transfer ultimate control over certain FCC authorizations held by subsidiaries of PacTel from PacTel to SBC in connection with the proposed merger of SBC and PacTel. Under the terms of their merger agreement, PacTel would merge with, and become a wholly-owned subsidiary, of SBC.

Executive Summary

2. We find that the proposed transfer will serve the public interest, convenience, and necessity and, accordingly, we grant the applications. We find that the arguments that the proposed transfers may reduce competition to a substantial degree generally lack merit. First, we find that the opponents of the proposed transfer have failed to establish the elements needed to satisfy the doctrine of actual potential competition. Second, the other dangers to competition noted by the opponents of the proposed transfer are ones that, to a large degree, exist currently with SBC and PacTel as unaffiliated, pre-transfer companies. The proposed transfer will increase these dangers only slightly, if at all. Their relevance to this proceeding is therefore slight at most because, consistent with Section 7 of the Clayton Act, our focus here is on reductions in competition that may result from the proposed transfer. Third, while we find that SBC has engaged in some anti-competitive activity in Texas, there is good reason to believe that conduct will not be repeated in California or Nevada, the areas over which SBC will acquire control as a result of the proposed transfer. Accordingly, here too we foresee no reduction in competition resulting from the proposed

¹⁴ 47 U.S.C. § 310 (d). Appendix A is a list of each of the filings addressing the applications, the party that filed it, and the date on which it was filed.

transfer. Finally, we find that the proposed transfer may result in some modest improvements to the competitiveness and performance of some markets. A demonstration that benefits will arise from the transfer is not, however, a prerequisite to our approval, provided that no foreseeable adverse consequences will result from the transfer.

II. BACKGROUND

A. The Applicants

3. SBC is incorporated under the laws of Delaware and has its primary place of business in San Antonio, Texas. SBC is a publicly traded corporation in which no one holds an interest of five percent or more. SBC is a holding company and does not directly hold any FCC licenses.¹⁵ SBC principally owns Southwestern Bell Telephone Company ("SWBT"), a landline local exchange company, and Southwestern Bell Wireless Holdings, Inc.,¹⁶ a holding company which in turn owns one hundred percent of Southwestern Bell Mobile Systems, Inc. ("SBMS"),¹⁷ a cellular licensee.¹⁸ SWBT serves a population of 27 million persons with 14.2 million lines that are used for local exchange service and exchange access in substantial parts of Texas, Missouri, Oklahoma, Kansas and Arkansas.¹⁹ SBC also publishes telephone directories and owns (or holds interests in) certain other businesses, including cable television systems in Arlington County, Virginia, and Montgomery County, Maryland, and the Americast video programming venture.²⁰ SBC has international telecommunications interests, including an approximately ten percent interest in Telefonos de Mexico ("Telmex") and investments in telecommunications companies in France, Chile, South Africa, Israel, South Korea and Australia.²¹

4. PacTel's businesses consist most prominently of local exchange services, PCS, wireless

¹⁵ Application for Transfer of Control ("Application"), Exh. 5 at 1.

¹⁶ *Id.*, Exh. 5 at 1.

¹⁷ *Id.*

¹⁸ Approximately two-thirds of the population covered by SBMS's cellular systems are located in Chicago, Boston, Baltimore/Washington, and upstate New York areas. In the 1995 FCC auctions for broadband Personal Communications Services ("PCS"), SBMS acquired licenses for three areas where it does not hold cellular authorizations (Tulsa, Little Rock, and Memphis-Jackson). Application, Exh. 2 ("Public Interest Statement") at 4.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4.

²¹ *Id.*

video, and a directory publishing business.²² Together, Pacific Bell and Nevada Bell (subsidiaries of PacTel) serve a population of 33 million persons with 15.8 million lines that are used for local exchange service and exchange access in substantial parts of California and Nevada.²³ In 1994, PacTel divested its cellular and paging properties to AirTouch.²⁴ Since then, PacTel's wireless operations have focused on both wireless voice service in California and Nevada (through recently acquired PCS authorizations) and wireless video service capacity recently acquired in California and elsewhere.²⁵ According to PacTel's filings, PacTel is establishing itself as a provider of Internet access services and is a participant in the Tele-TV video programming venture.²⁶

B. The Applications

5. The proposed transfer involves authorizations for a variety of wireless facilities, including point-to-point microwave stations (which PacTel subsidiaries use in the provision of local exchange service and exchange access), PCS, MDS and ITFS facilities that PacTel subsidiaries use to provide wireless voice and wireless video services.²⁷

6. Under the Agreement and Plan of Merger, SBC Communications (NV) Inc., an SBC subsidiary formed to accomplish the merger, will merge into PacTel and the stockholders of PacTel will receive, on a tax-free basis, 0.733 newly-issued shares of SBC common stock for each share of

²² *Id.* at 4-5.

²³ *Id.*

²⁴ *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding Narrowband PCS, Third Memorandum Opinion & Order & Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, PP Docket No. 93-253, FCC 94-219, at ¶¶ 18, 71 (released Aug. 17, 1994).

²⁵ Public Interest Statement at 5. PacTel's video services are to be conducted through authorizations from this Commission for Multipoint Distribution Service ("MDS") and Instructional Television Fixed Services ("ITFS").

²⁶ Tele-TV is a video programming and technology company equally owned by Bell Atlantic, NYNEX and Pacific Telesis.

²⁷ Specifically, the applicants filed transfer of control applications for the following services: Experimental Radio Service (Part 5), Point-to-Point Microwave Service, Developmental Temporary Fixed Point-to-Point Microwave Service, Local Television Transmission Radio Service, Multipoint Distribution Service (Part 21), Paging and Radiotelephone Service, Rural Radio Telephone Service, Improved Mobile Telephone Radio Service, Air-to-Ground Radio Service (Part 22), Personal Communications Services (Part 24), Domestic Earth Station (Part 25), Cable Television Relay Service (Part 78), Maritime Radio Service (Part 80), Business Radio Service, Telephone Maintenance Radio Service (Part 90), and Private Operational-Fixed Microwave Radio Service (Part 94). Public Interest Statement at 1 & Attachment A.

PacTel common stock they hold, subject to adjustment.²⁸ SBC will own all of PacTel's stock after the merger.²⁹ Approximately 66 percent of SBC will be owned by the pre-merger shareholders of SBC and 34 percent will be owned by the pre-merger shareholders of PacTel.³⁰ PacTel will continue to own the stock of Pacific Bell, Nevada Bell and its other pre-merger subsidiaries, and those entities will continue to hold all of their currently held FCC authorizations.³¹ There will be no transfer of direct control of PacTel's FCC authorizations when SBC becomes the new parent of PacTel.³² The PacTel directors and officers will play an important role in the merged company and several of PacTel's executive officers are expected to remain following the merger.³³

7. The proposed transfer has also come under the scrutiny of the United States Department of Justice ("DOJ"), the Public Service Commission of Nevada, and the Public Utilities Commission of the State of California. DOJ has completed its review without taking action against the proposed merger,³⁴ and the Public Service Commission of Nevada has approved it subject to certain conditions.³⁵ The Public Utilities Commission of the State of California has not yet acted on the proposed transfer.

C. Petitioners and Commenters

8. Several parties have filed timely petitions to deny and comments arguing that the proposed PacTel transfer is not in the public interest, chiefly on the grounds that it will impair competition. The commenters are: AT&T, MCI, both of which are entrants into the applicants' local exchange and exchange access markets; the Intelcom Group, Inc. ("ICG"), a competitive provider of local telecommunications service in the United States; and the Association of Directory Publishers

²⁸ Before the merger was announced, SBC common stock was trading at \$52.625 and PacTel common stock was trading at \$27.75. Public Interest Statement at 2.

²⁹ *Id.*

³⁰ *Id.* SBC has approximately 610 million shares outstanding, and PacTel has approximately 436 million shares outstanding. At the exchange ratio of 0.733, approximately 319 million new shares of SBC stock would be issued to former PacTel stockholders, representing approximately 34% of the new total of approximately 929 million shares of SBC.

³¹ *Id.*

³² *Id.* at 3.

³³ *Id.*

³⁴ *See infra* ¶ 86 & n.159.

³⁵ *Nevada Regulators Approve SBC-Pacific Telesis Merger*, BUSINESS WIRE, Dec. 16, 1996.

("ADP"), a group of companies that publish telephone directories in competition with SBC. SBC has filed a lengthy response to these submissions. We address each of the opponents' arguments and the applicants' responses below.

9. The Competition Policy Institute ("CPI"), a pro-competition consumer protection group, filed "Ex Parte Comments" ("Comments") on the application on November 22, 1996. This was over four months after the deadline for such filings, July 12, that the Commission set in its Public Notice concerning the applications.³⁶ CPI's filing raises numerous competitive objections to the proposed transfer and advocates several delays and conditions on any approval of it. The applicants filed a "Joint Response" to CPI's submission on December 10, 1996, noting that it was several months late, asking that we not consider it, and responding to it on the merits to some extent. On December 12, 1996, CPI filed a Motion to Accept Late-Filed Comments, stating that CPI was founded in the spring of 1996, and its General Counsel retained on June 10, 1996. These dates, CPI alleges, show that it did not have enough time to submit a timely filing (on July 12, 1996).³⁷

10. We find that CPI's grounds for its delay are insufficient. The dates stated by CPI show that months elapsed after its founding before a timely filing was due. We believe that these amounts of time were sufficient to prepare a filing. Accordingly, we deny CPI's Motion to Accept Late-Filed Comments and do not accept its filings into the record in this proceeding. However, in light of CPI's interest in promoting competition, we will treat its late-filed Comments as an informal request for Commission action under Section 1.41 of our Rules,³⁸ and will address its concerns briefly below.

III. LEGAL STANDARDS

A. Sections 310(d) of the Communications Act and 7 and 11 of the Clayton Act

11. Section 310(d) of the Communications Act requires that we determine whether the public interest, convenience, and necessity will be served by the transfer of control of a company holding radio licenses.³⁹ As part of this determination, we review the citizenship, character, and financial and technical qualifications of the transferee, which is SBC in this case.⁴⁰ SBC, through

³⁶ *SBC Communications, Inc. and Pacific Telesis Group Seek FCC Consent for Proposed Merger*, Public Notice DA 96-924, 11 F.C.C.R. 6703 (1996), released June 7, 1996.

³⁷ CPI Motion to Accept Late-Filed Comments at 2.

³⁸ 47 C.F.R. § 1.41 (informal requests for Commission action).

³⁹ 47 U.S.C. § 310(d).

⁴⁰ *Id.* See also *Craig O. McCaw & American Tel. & Tel. Co., Memorandum Opinion & Order*, 9 FCC Rcd 5836, 5844 (1994), *reconsideration denied on other grounds, Memorandum Opinion & Order on Reconsideration*, 10 FCC Rcd 11786 (1995) (hereinafter "*McCaw*"), *affirmed sub nom. SBC Comm., Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

subsidiaries, is a Commission licensee and communications carrier of longstanding. No party claims that SBC lacks any of the qualifications just mentioned, and we find that it possesses those qualifications.

12. The competitive consequences of the proposed transfer are almost the exclusive subject to which the applicants and opponents have devoted their submissions. Our examination of a proposed transfer of control under the public interest standard of Section 310(d) includes consideration of the effect of the transfer on competition.⁴¹ In addition, Sections 7 and 11 of the Clayton Act empower this Commission to disapprove acquisitions of "common carriers engaged in wire or radio communications or radio transmissions of energy" "where in any line of commerce in any section of the country" the effect of such acquisition may be "substantially to lessen competition, or to tend to create a monopoly."⁴²

13. The courts have construed these statutory provisions to mean that the Commission has discharged its antitrust responsibilities "when the Commission seriously considers the antitrust consequences of a proposal and weighs those consequences with other public interest factors."⁴³ We have discretion whether to exercise our Clayton Act authority.⁴⁴ We choose not to exercise it in this case because we find our jurisdiction under the Communications Act to be sufficient to address all the competitive effects of the proposed transfer -- including the issue of whether the proposed transfer may substantially lessen competition or tend to create a monopoly.⁴⁵

IV. COMPETITIVE ANALYSIS

A. Framework of Competitive Analysis

14. In most cases, we begin our consideration of the competitive impact of a proposed transfer by defining the "relevant markets" in which competition may be affected.⁴⁶ Most of the competitive issues raised in this proceeding, however, involve conduct or alleged effects in which

⁴¹ *United States v. FCC*, 652 F.2d 72, 82 (D.C. Cir. 1980) (*en banc*).

⁴² 15 U.S.C. §§ 18, 21(a). Both SBC and PacTel are common carriers.

⁴³ *United States v. FCC*, 652 F.2d 72, 88 (D.C. Cir. 1980) (*en banc*).

⁴⁴ *Id.*, 652 F. 2d at 83.

⁴⁵ *McCaw*, 9 FCC Rcd at 5843-44 & n. 25; *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Comm. Co., Order*, 10 FCC Rcd 13368, 13373 & n. 19 (Wireless Tel. Bur. 1995), *application for review pending on other grounds* ("BAMS-NYNEX Mobile").

⁴⁶ *See, e.g., McCaw*, 9 FCC Rcd at 5845.

the precise boundaries of relevant markets are not at issue. Our rulings below would be the same regardless of how we defined the pertinent relevant markets. In addition, no party has attempted to define any relevant markets in its filing. Accordingly, we will refrain from an all-encompassing set of definitions of relevant markets at the outset.⁴⁷ We will describe parts of the telecommunications business in our competitive analysis, but our language should not be taken as formal findings of relevant markets. We do assume one relevant market, in paragraph 40 below, where doing so is necessary to evaluate an alleged anti-competitive effect of the proposed transfer.⁴⁸

B. Local Exchange Service and Exchange Access in SBC/PacTel Territory

1. Introduction

15. SWBT provides conventional local exchange service⁴⁹ to residents of Texas, Missouri, Oklahoma, Kansas, and Arkansas with a combined population of 27 million persons and 14.2 million access lines. Pacific Bell and Nevada Bell provide the same service to communities throughout California and Nevada, serving 33 million persons with 15.8 million access lines. Because SWBT and the PacTel subsidiaries provide this service in States that are separated by at least 500 miles, the proposed transfer does not result in any reduction of existing competition.

16. One of the Commission's highest priorities, consistent with the 1996 amendments to the Communications Act, is the stimulation of competition in local exchange service.⁵⁰ Opponents of the proposed transfer contend that it will reduce this kind of competition in various ways. We divide our consideration of these contentions into the following categories: (1) actual potential competition, (2) implementation of the 1996 Act, (3) and alleged anti-competitive conduct by SBC in Texas.

⁴⁷ Defining relevant markets only where it is necessary is consistent with our past practice. For example, in *Bell Atlantic Mobile Systems, Inc. & NYNEX Mobile Communications Co., Order*, 10 FCC Rcd 13368, 13375 (Wireless Tel. Bur. 1995), and *Order*, 10 FCC Rcd 13262 (Wireless Tel. Bur. 1995), *application for review pending on other grounds*, the Wireless Telecommunications Bureau refrained from defining any relevant "product" market because "the following analysis of the competitive effects of the proposed merger would be the same whether the relevant product market were defined narrowly . . . or broadly . . ." (footnotes omitted).

⁴⁸ In defining this relevant market, we employ the *Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines*, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1992), 57 Fed. Reg. 41,552 (Sept. 10, 1992) which we find to be a useful tool for our analysis in this decision.

⁴⁹ We will use the single term "local exchange service" to refer to both that service and to exchange access, both for brevity's sake and because we see no differences between them that are significant to our competitive analysis. In other contexts, we may treat the two distinctly.

⁵⁰ See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report & Order*, 1996 WL 452885, FCC 96-325 (released Aug. 8, 1996).

2. Actual Potential Competition

17. General. MCI, AT&T, ADP, and CPI raise the doctrine of actual potential competition.⁵¹ They do so principally in the hypothetical of SBC as a potential entrant into the local exchange markets where PacTel is now the dominant provider.⁵² The doctrine of actual potential competition arises when a firm (*e.g.*, SBC) proposes to enter a concentrated market (*e.g.*, local exchange service in California) by merging with a company that is already in the market (PacTel) and, but for the merger, the firm likely would have entered in another way⁵³ that would have reduced concentration.⁵⁴ Where the doctrine's requirements are satisfied, the merger eliminates a pro-competitive entry by the firm that would have occurred otherwise.

18. The need to apply the actual potential competition doctrine arises in cases such as this one, where the would-be merging companies do not compete, but might be viewed as being "on the edge" of each others' markets and, therefore, potential competitors. If one or both would have entered the other's market(s) but for their proposed merger, their merger would reduce competition that would otherwise have occurred.⁵⁵ The doctrine of actual potential competition has five

⁵¹ See, *e.g.*, CPI Comments at 2, 13-16. No party raises the related doctrine of perceived potential competition, except by brief reference and without any attempt to establish its elements. We are aware of no evidence that either SBC or PacTel was a perceived potential entrant into the other's markets. See Comments of the Association of Directory Publishers ("ADP Comments"), filed July 12, 1996, at 4. Accordingly, we do not analyze the proposed transfer under it. Concerning the doctrine of perceived potential competition generally, see *United States v. Marine Bancorporation*, 418 U.S. 602 (1974) (hereinafter *Marine Bancorporation*); I ABA ANTITRUST SECTION, ANTITRUST LAW DEVELOPMENTS at 328-29 (3d ed. 1992) (hereinafter "ANTITRUST LAW DEVELOPMENTS").

⁵² Petition of AT&T to Deny or in the Alternative, to Defer Pending Further Investigation and Briefing ("AT&T Petition"), filed July 12, 1996, at 10-11; MCI Comments, filed July 12, 1996, at 4.

⁵³ Other ways are *de novo* or the "toe hold" acquisition of a small existing competitor.

⁵⁴ ANTITRUST LAW DEVELOPMENTS at 322. This doctrine has not been expressly adopted by the U.S. Supreme Court but has been used by lower courts and Federal Trade Commission. See *Id.* at 324-25. It has been used in previous Commission decisions. See, *e.g.*, *Alascom, Inc., Order & Authorization*, 11 FCC Rcd 732, 755 (1995); *Satellite Business Systems, Memorandum, Opinion, Order, Authorization & Certification*, 62 FCC2d 997, 1061-1100, *reconsideration denied*, 64 FCC2d 872 (1977), *affirmed en banc sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980). We find this doctrine to be a useful analytical tool in our competitive analysis of the proposed transfer.

We confine our explicit analysis of entry to the possibility of entry by SBC into PacTel's markets. The same general analysis is applicable, however, to PacTel as a potential entrant into SBC's markets. The opponents of the proposed transfer focus their arguments on SBC as a potential entrant into PacTel's markets, and refer only parenthetically to PacTel as an entrant into SBC's markets. AT&T Petition at iii, 10. SBC entering PacTel's markets appears to us to be the more plausible potential entry. If the elements of the actual potential competition doctrine are not present in that context (and we find below that they are not), they will not be present in the other.

⁵⁵ Department of Justice 1984 Merger Guidelines, 49 Fed. Reg. 26823, §§ 4.11, 4.112 (June 29, 1984) ("*1984 Guidelines*"). The *1984 Guidelines* have been superseded in some respects by the Department of Justice and Federal

elements: (1) the market in question ("the target market") is highly concentrated;⁵⁶ (2) few other potential entrants are "equivalent" to the company that proposes to enter the target market by merger (SBC);⁵⁷ (3) the company entering the target market by merger would have entered the market but for the proposed merger; (4) that company had other feasible means of entry; and (5) such alternative means of entry offer a substantial likelihood of ultimately producing deconcentration in the target market or other significant pro-competitive effects.⁵⁸

19. Contentions of the Parties. MCI expresses concern because the local markets at issue are highly concentrated, dominated by powerful incumbents, and barriers to entry are high.⁵⁹ MCI asserts that cable, wireless, and long distance carriers do not possess advantages comparable to those of the Regional Bell Operating Companies ("RBOCs").⁶⁰ Thus, MCI maintains that SBC and PacTel would be among the most advantaged competitors should they enter each other's markets. AT&T similarly argues that the local exchange markets in the applicants' "home" regions are dominated by their respective monopolies, and that each applicant, as a potential entrant into the other's markets, possesses distinct advantages over most other actual or potential competitors.⁶¹ AT&T cites evidence of SBC's aggressiveness in entering out-of-region markets and goes on to state that, even if SBC and PacTel would not have entered each others' markets as competitors, the consolidation of these two companies would still impede local competition.⁶² AT&T also cites the 40 percent premium (over market value) that SBC has agreed to pay for PacTel's stock as evidence

Trade Commission 1992 Horizontal Merger Guidelines, *supra* note 35, but not concerning the doctrine of potential competition. Notices, Department of Justice & Federal Trade Commission, Antitrust Division, 1992 Horizontal Merger Guidelines, 57 Fed. Reg. 41552 (Sept. 10, 1992), stating that the 1992 Guidelines "do not include a discussion of horizontal effects from non-horizontal mergers (e.g., *elimination of specific potential entrants . . .*) Neither agency has changed its policy with respect to non-horizontal mergers. Specific guidance on non-horizontal mergers is provided in section 4 of the Department's 1984 Merger Guidelines . . ." (italics added).

⁵⁶ *Marine Bancorporation*, 418 U.S. 602, 630-31; *United States v. Siemens Corp.*, 621 F.2d 499, 505 (2d Cir. 1980); ANTITRUST LAW DEVELOPMENTS at 323 & cases cited in n. 284; ANTITRUST LAW DEVELOPMENTS at 323.

⁵⁷ *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 580-81 (1967); ANTITRUST LAW DEVELOPMENTS at 323-24 & cases cited in n. 286. *See also 1984 Guidelines*, § 4.132, referring to § 3.3 ("The more difficult entry into the market is, the more likely the Department is to challenge the merger"). *Cf. Mercantile Tex. Corp. v. Board of Governors*, 638 F.2d 1255, 1267 (5th Cir. 1981).

⁵⁸ *Marine Bancorporation*, 418 U.S. at 633 (1974); *In re B.A.T. Indus., Ltd.*, 104 F.T.C. 852, 923-25 (1984); ANTITRUST LAW DEVELOPMENTS at 324-5 & cases cited in nn. 291-93.

⁵⁹ MCI Comments at 4.

⁶⁰ *Id.* at 5.

⁶¹ AT&T Petition at 8-9.

⁶² *Id.* at 9, 11.

of SBC's significant interest in entering PacTel's markets.⁶³ AT&T asserts that it is unlikely that, absent the proposed transfer, SBC would have declined to enter PacTel's markets in California. MCI claims that barriers to entry into California exchange markets are high because of significant economies of scale and because there are no new technologies that new entrants can exploit to overcome an incumbent's advantages. MCI and AT&T contend that there is a small pool of potential entrants that are poised to enter PacTel's region. But, they say, SBC possesses unique advantages in overcoming these barriers to entry. In particular, the RBOCs have knowledge, experience, and expertise in negotiating interconnection agreements, and in Operational Support Systems ("OSS"), including billing, service orders and provisioning systems, and network management systems.⁶⁴

20. SBC and PacTel respond to the above arguments by maintaining that there are enough other firms that are actually preparing to compete in the provision of local exchange service in California that the proposed transfer could not have a significant adverse impact on potential competition. They claim that these companies include long distance carriers, local exchange carriers ("LECs"), Competitive Access Providers ("CAPs"), cable television companies, and several wireless companies. Many of these companies have much the same experience as SBC in OSS, and also have customer bases already in place in California, giving them significant competitive advantages over SBC.⁶⁵

21. Applicants also claim that there is no evidence that, but for the proposed transfer, SBC would have entered PacTel's region as a local exchange carrier. SBC states in an affidavit that it "had no plans, absent the merger, to enter the local exchange business or to provide long distance service to [PacTel's] customers in California or Nevada."⁶⁶ SBC describes its corporate policy as considering entry into an out-of-region market only when it already has facilities, a customer base, and brand name recognition there. SBC states that it has none of these in California.

22. Applicants assert that there is evidence that numerous other firms are entering the local exchange business in both PacTel's and SBC's regions, and there are many other potential entrants with advantages in entering these markets that neither SBC nor PacTel have.⁶⁷ Applicants say that

⁶³ *Id.* at 10.

⁶⁴ AT&T Petition at 7-12; MCI Comments at 4-6.

⁶⁵ Joint Opposition of SBC Communications, Inc. and Pacific Telesis Group to Petitions to Deny and Reply to Comments ("Joint Opposition"), filed August 9, 1996, at 12-22.

⁶⁶ Joint Opposition, Attachment A (Affidavit of James S. Kahan, Senior Vice President for Corporate Development of SBC Communications Inc.) at 1. *See also* Public Interest Statement at 15-16; Joint Opposition, Attachment B (Affidavit of Steven C. Hubbard, Corporate Development Vice President of the Pacific Telesis Group) at 1.

⁶⁷ Joint Opposition at 15-22.

over 60 companies have filed for authority to provide local exchange service in California. Specifically, they state, AT&T, MCI and Sprint are all strong new entrants in the provision of local exchange service in California. All have received Certificates of Public Convenience and Necessity from the California Public Utilities Commission for providing local service in California. AT&T announced it will be introducing local service in the San Francisco Bay Area and that the company aims to gain 30 percent of the local exchange business over five years. MCI is also active in providing local exchange service in California. Through its subsidiary MCImetro, MCI is operating local exchange networks in Los Angeles, San Francisco, San Diego, Sacramento, Oakland and San Jose, as well as other cities throughout the country. These new entrants, according to SBC, are just a few of the local exchange companies entering California.⁶⁸

23. Discussion. Applying the doctrine of actual potential competition, we find that the commenters and petitioners have failed to show at least two of the doctrine's five elements. These are the second and third ones listed above, that there are few other potential entrants that are "equivalent" to the company that proposes to enter the target market by merger (in this case, SBC), and that this company would have entered the market but for the proposed merger. Concerning the first element in particular, we find that the markets for local exchange service in California are highly concentrated. The Commission has recently found that incumbent local exchange carriers such as PacTel have approximately 99.5 percent of local exchange service nationwide,⁶⁹ and we have no reason to believe that PacTel's market share in California and Nevada as a whole is significantly lower than that figure. Also, there are still significant barriers to entry in those markets despite the enactment of the 1996 amendments to the Communications Act.⁷⁰

24. We do not find, however, the second element of actual potential competition: that there are few other potential entrants that are "equivalent" to SBC. Potential entrants with the same assets are the other major providers of local exchange services in this country, including five other RBOCs,⁷¹ GTE, and Sprint. In addition, recent and potential entrants include AT&T, MCI, LDDS, Cable & Wireless, TCI and Time/Warner. Some of these companies have capabilities or assets comparable to those of SBC, including experience in operating complex telecommunications systems (including local exchange networks in the case of the RBOCs, GTE, and Sprint). Some

⁶⁸ *Id.* at 20-22. See also generally *Id.*, Attachment C (Report of Richard R. Gilbert ("Gilbert Report")) at 6-29.

⁶⁹ *Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 11 FCC Rcd 9054, 9058 (1996).

⁷⁰ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order*, FCC 96-325, 1996 WL 452885 at ¶¶ 10, 19 (released Aug. 8, 1996), *stayed on other grounds in The Iowa Utilities Board v. FCC*, 8th Circuit, Nos. 96-3321 *et. al.*, *Order Granting Stay* (October 15, 1996), and *Notice of Proposed Rulemaking*, 11 FCC Rcd 14171, 14174-75 (1996).

⁷¹ Now there are five RBOCs other than the applicants. However, Bell Atlantic Corp. and NYNEX Corp. have proposed to merge as well.

have assets that SBC lacks, such as facilities and customers in or near California, or a recognized brand name in the State.⁷² In conclusion, we find that there are more than a few other potential entrants into the markets in question that are at least equivalent to SBC in competitive capabilities. Certainly, there are more than the three that DOJ uses as a benchmark in applying the actual potential competition doctrine.⁷³

25. We also find lacking the third element of actual potential competition, namely any showing that SBC would enter or would have entered the markets in question but for the proposed transfer. Such entry is not inconceivable. It is possible that SBC's experience in local exchange service in its home region gives it enough of the necessary characteristics and capabilities to make entering PacTel's region a plausible business strategy, and that the opportunity for profit posed by urban and suburban business customers in California would give SBC an incentive for such entry. On the other hand, it is at least equally plausible that SBC's economic incentives are, rather, to devote its capital to entering new product markets in its own region (especially long distance, multi-channel video program delivery ("MVPD"),⁷⁴ and broadband data services). We are unaware of evidence that SBC was a likely entrant into local markets in California before the proposed transfer was announced. No party has submitted even informed speculation in the trade press or by experts to that effect. The fact that DOJ took no action against the proposed merger under the antitrust laws, even after reviewing the applicants' internal files,⁷⁵ is a further indication that SBC was not planning such entry. No party has brought to our attention any instance in which SBC has engaged in such entry against any other RBOC, including those with which it shares a border -- BellSouth, Ameritech and US West.⁷⁶

26. We do not find significant in this regard the premium over market value that SBC has agreed to pay for PacTel's stock. Such a premium is far from unambiguous evidence that SBC would enter into competition with PacTel but for the proposed transfer. Other interpretations of the premium are at least equally plausible. These include the possibility that SBC anticipates high profits from improved management of PacTel, or economies and efficiencies resulting from the

⁷² For example, several major companies now hold or control cellular or broadband Personal Communications Services licenses in California and/or Nevada and already have facilities, customer bases, and recognized brand names there. These are GTE, Sprint, BellSouth, AirTouch, and The WirelessCo venture of Sprint and major cable television companies.

⁷³ *1984 Guidelines*, § 4.133.

⁷⁴ MVPD is defined in detail in *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report*, CS Docket. No. 96-133, FCC 96-496 (released January 2, 1997).

⁷⁵ *See infra* ¶ 86 & n.158.

⁷⁶ We are aware, of course, that SBC provides cellular service outside its region. But it does not do so in California or Nevada.

proposed transfer, or that SBC simply agreed to pay too much for PacTel.⁷⁷

27. We find more convincing SBC's showing, which no party disputes, that it has entered only those "out-of-region" markets in which it already has facilities, an existing customer base (*e.g.*, from cellular activities) and brand name recognition. SBC has none of these in PacTel's region.⁷⁸ Thus, the likelihood of entry, which is the third element of actual potential competition, has not been established.

28. Accordingly, at least two necessary elements of actual potential competition are absent, and we conclude that the opponents of the proposed transfer have not shown that it will be anti-competitive on the grounds of that doctrine. In light of this failure, we do not analyze the proposed merger under the other elements of the actual potential competition doctrine.

3. Implementation of the 1996 Amendments to the Communications Act

29. Contentions of the Parties. AT&T argues that combining two of the largest monopolies in local exchange markets risks undermining the local exchange competition that the Commission's policies -- implementing express Congressional intent -- seek to promote. More specifically, AT&T argues that effectuating this proposed transfer would require a "massive and counterproductive diversion of both companies' resources"⁷⁹ away from implementing the unbundling, reselling, access, and interconnection activities that Section 251 of the Communications Act mandates for incumbent LECs ("ILECs") such as the applicants. AT&T asserts that the process of moving these markets toward competition can succeed only if it commands the full attention of the ILECs' (SBC's and PacTel's) management. In a related vein, AT&T argues that the proposed transfer will raise unprecedented regulatory challenges and will reduce the number of benchmarks to assess ILECs' actions in negotiating with new entrants.⁸⁰

30. SBC and PacTel respond by arguing that they have demonstrated their commitment to implementing the provisions of the Communications Act. They reply that SBC has reached interconnection agreements with six new local service providers and is in the process of negotiating additional agreements with over twenty other companies, while PacTel has concluded

⁷⁷ Assuming *arguendo* that the premium that SBC is willing to pay indicates that it anticipates high profits as a result of the proposed transfer, we reject the notion that high profits, without more, necessarily indicate anti-competitive intent or effects.

⁷⁸ We attach no significance in this regard to SBC's three percent non-voting interest in Bay Area Cellular Telephone Co. See Public Interest Statement at 15.

⁷⁹ AT&T Petition at 6.

⁸⁰ AT&T Petition at 5-7, 11-12. See also MCI Reply Comments, filed August 9, 1996, at 4.

interconnection agreements with ten companies.⁸¹

31. Discussion. We find AT&T and MCI's arguments unpersuasive. They have not cited any instance to date where the applicants' compliance with the 1996 amendments to the Communications Act has been delayed due to the labor of negotiating or litigating the proposed transfer. Much less is there evidence of any upcoming "massive and counterproductive diversion of both companies' resources" from such compliance. We see no reason why applicants cannot both comply with their statutory obligations and effect the proposed transfer. In the absence of any showing that such a disability will exist, we find speculation to that effect insufficient to show that the transfer may result in a substantial reduction in competition or tendency towards monopoly.

32. Also, while the proposed transfer would reduce the number of RBOCs by one, nothing in the Communications Act or the antitrust laws requires the present number of RBOCs, or any particular number of them.⁸² Even after the proposed transfer, there could be six major LECs. (The proposed merger of Bell Atlantic and NYNEX would reduce the number of RBOCs to five, and the inclusion of GTE would return the number of major LECs to six.) We find that six is an adequate supply of benchmarks for us to discharge our regulatory functions.⁸³

33. However, we caution that our approval of this proposed transfer should not be taken as an indication that we will approve all subsequent proposed combinations of major carriers. In such combinations, the elements of the doctrine of potential competition (actual or perceived) may be present. We will evaluate all future merger applications on a case-by-case basis.

⁸¹ Joint Opposition at 9-11.

⁸² We also note that the Modification of Final Judgment ("MFJ"), which resulted in the present seven RBOCs, did not require any particular number. The MFJ provided only that nothing in it "shall require or prohibit the consolidation of the ownership of the [Bell Operating Companies] into any particular number of entities." *United States v. AT&T*, 552 F. Supp. 131, 227 (D.D.C. 1982), *affirmed sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), *modified*, 714 F. Supp. 1 (D.D.C. 1988).

⁸³ The merger of SBC and PacTel will also make for one less new entrant (e.g., SBC invading PacTel's region). But, as we found in paragraph 25, such entry would not likely have occurred.

4. Alleged Anti-Competitive Conduct by SBC in Texas

34. Contentions of the Parties. Many of the commenters raised concerns regarding SBC's alleged anti-competitive conduct.⁸⁴ AT&T argues that this proposed transfer would place control of local exchanges in California, the country's most populous State, in the hands of an RBOC that has demonstrated great hostility to competition. For example, AT&T cites evidence that SBC spent \$11 million lobbying against local competition in Texas alone, advocating a bill in the State Legislature to delay real competition in Texas' local markets. AT&T argues that SBC's anti-competitive behavior could be exported to California and harm competition there.⁸⁵

35. ICG recites a litany of alleged anti-competitive acts by SBC. For example, ICG maintains that SBC has fought competition in Texas intraLATA toll markets. ICG cites articles that quote SBC's officers as stating, in effect, that they intend to maintain their power as long as possible by making their "welcome mat" for new entrants smaller than anyone else's.⁸⁶ ICG quotes SBC officers as stating that, while Texas law may require SBC to resell unbundled loops, it does not compel SBC to switch the call or provide necessary functions for processing the call. ICG claims that such an approach to unbundling makes facilities-based local competition difficult, if not impossible. In addition, ICG also states that SBC is now asking one class of competitive local exchange carriers seeking authorization in Texas to stipulate they will not use their own transmission facilities to provide telecommunications services, but will instead resell only SBC services. By doing so, SBC has foreclosed facilities-based competition, according to ICG. ICG claims that SBC refuses to discuss compensation terms in interconnection negotiations with a new entrant unless the new entrant signs a burdensome and oppressive non-disclosure agreement.⁸⁷ ICG also argues that, with respect to interconnection or transiting agreements, SBC has notified all new entrants that it will negotiate interconnection for termination of local traffic only -- but not for joint and through traffic -- thereby requiring new entrants to negotiate with each local exchange company regarding interchange of such traffic. ICG states that this is directly contrary to standard industry practice. ICG also claims that SBC has used its position to prevent new entrants from gaining assignments of seven-digit NXX codes. Finally, ICG alleges a history of lobbying, political, regulatory, and litigation activity by SBC that persistently fought the entry of competitors and attempted to render the legal and regulatory framework for their entry as unfavorable as possible. This history, ICG

⁸⁴ See, e.g., CPI Comments at 16-18. SBC's anti-competitive conduct in the market for directory publishing and its elements is covered elsewhere in this decision. See *infra* ¶¶ 58-63.

⁸⁵ AT&T Petition at 12-13.

⁸⁶ Petition to Deny of IntelCom Group (U.S.A.), Inc., ICG Telecom Group, Inc., and ICG Access Services, Inc. ("ICG Petition"), dated July 12, 1996, at 6.

⁸⁷ This issue has been brought to the Commission's attention, and the Commission has recognized that the non-disclosure requirements will likely "impede the development of local competition, and may be inconsistent with the provisions of the 1996 Act." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, CC Docket No. 96-98, 1996 WL 191792, ¶ 47.

contends, amounts to abuse of the regulatory process.⁸⁸

36. Applicants counter generally that SBC's lobbying, political, regulatory, and litigation activity is not as widespread as ICG alleges, was not frivolous or in bad faith, and was often successful and therefore meritorious. Specifically, applicants respond that SBC opposed only seven of the 30 applications which had been ruled on by the Public Utility Commission of Texas as of June 3, 1996. Of those seven, that Commission upheld SBC's position, in whole or in part, in three of those instances.⁸⁹ Concerning its lobbying efforts in opposition to ICG's joint venture with a municipal entity, applicants state that ICG neglected to disclose that the Attorney General of Texas ruled that the joint venture violated State law and that a federal district court dismissed as unfounded ICG's case against SBC and denied its reconsideration petition.⁹⁰ Applicants respond that their conduct is a constitutionally protected exercise of SBC's right of free speech and is protected from antitrust liability under the *Noerr-Pennington* doctrine.⁹¹ SBC's negotiating posture and business practices, applicants say, are no more than vigorous competitive efforts that seek maximum business advantage within the limits of the law.⁹² Applicants also claim that statements quoted by ICG from SBC's marketing plans and employees were misinterpreted and outdated because they preceded the passage of the 1996 amendments to the Communications Act. With respect to ICG's claims about SBC's use of non-disclosure agreements in interconnection negotiations, applicants contend that its agreements contain standard terms protecting confidential business information of both parties, terms that have been agreed to by AT&T, Time Warner, and others.⁹³ Finally, applicants also argue that ICG "misstates" SBC's stance on joint and through traffic. According to applicants, SBC has negotiated transit rates in its agreements without negotiating on behalf of other incumbent LECs, which have to set their own termination rates for traffic sent to them.⁹⁴

37. Discussion. SBC's conduct -- as alleged by AT&T and ICG and admitted by applicants -- sought by several means to delay and minimize the emergence of competition for its local exchange monopolies in Texas. It appears, however, that each individual act alleged by AT&T and ICG and admitted by applicants consists of either constitutionally protected free speech or business

⁸⁸ ICG Petition at 5-13.

⁸⁹ Joint Opposition at 33.

⁹⁰ *Id.* at 34.

⁹¹ *United Mine Workers v. Pennington*, 381 U.S. 657, 669-70 (1965); *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-40 (1961).

⁹² Joint Opposition at 31-35.

⁹³ *Id.* at 34.

⁹⁴ *Id.*

conduct that is legally permissible.⁹⁵ None of these acts has been found to be a violation of any law.

⁹⁵ See, e.g., *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d 919, 927 (9th Cir.1980) ("Of course, it is free and open competition that the Sherman Act protects, and not any right of one competitor to be free of rough treatment at the hands of another"), *cert. denied*, 450 U.S. 921 (1981), *quoted with approval in Los Angeles Land Co. v. Brunswick Corp.*, 6 F.3d 1422, 1427 (9th Cir. 1993), *cert. denied*, 510 U.S. 1197 (1994); *Northeastern Tel. Co. v. AT&T*, 651 F.2d 76, 79 (2d Cir. 1981) ("dominant firms . . . must be allowed to engage in the rough and tumble of competition"), *cert. denied*, 455 U.S. 943 (1982), *citing Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093 (1980). See also ANTITRUST LAW DEVELOPMENTS at 235 (citing decisions that allow vigorous competition).

38. We also find it important that almost all the acts alleged by AT&T and ICG occurred in Texas. This indicates that SBC's market power-preserving conduct may not have spread throughout its home region (to Arkansas, Kansas, Missouri, and Oklahoma). This gives us some confidence that SBC's acts in Texas, assuming they are anti-competitive, will not be repeated in California and Nevada. If SBC/PacTel violates the Communications Act, however, we are ready to use the specific enforcement tools that Congress has given us in the Communications Act.⁹⁶ We are also aware of the comparable tools that the Public Utilities Commission of the State of California and the Public Service Commission of Nevada have at their disposal to protect their ratepayers from unlawful anti-competitive abuses. We are also devoting significant resources to what we believe is the best long-term preventor of anti-competitive conduct, namely the stimulation of efficient competition.⁹⁷ We find that reliance on these tools, in the event that they are needed at all, and on the creation of competition in the longer term, is a more appropriate prophylactic than denying or delaying the proposed transfer.

C. Long Distance Services Originating in SBC/PacTel Territory

39. Contentions of Parties. MCI raises several concerns that flow from two future events: (1) the proposed transfer, and (2) the possible entry of SBC/PacTel into "in-region" long distance service in the enlarged home region that it would have after the proposed transfer. "In-region" long distance service consists generally of calls that are between a point within a Local Access and Transport Area ("LATA") and a point outside that LATA, and that originate in a state in which SBC or PacTel was authorized to provide wireline telephone exchange service pursuant to the MFJ as in effect on the day before the date of enactment of the 1996 amendments to the Communications Act.⁹⁸ The States fitting this description are Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, and Texas.

⁹⁶ For example, we are now considering petitions that seek the preemption of the enforcement of certain provisions of the Texas Public Utility Regulatory Act of 1995, and/or actions by the Texas Public Utility Commission. *See Pleading Cycle Established for Comments on Petitions for Preemption of Local Entry Barriers Pursuant to Section 253*, 11 FCC Rcd 6578, released June 4, 1996.

⁹⁷ *See, e.g., authority cited supra* n.37.

⁹⁸ *See* 47 U.S.C. §§ 153(21), 271(b)(1), (i)(1). For the most part, we will use the single term "long distance" to refer to all domestic interstate, interLATA services. We do so for brevity's sake and because the parties have generally done so in their filings.

40. Discussion. For purposes of our analysis of this proposed transfer, we assume a relevant market consisting of all domestic, interstate long distance services originating in the States contained in applicants' home regions (the individual pre-transfer regions of SBC and PacTel and, post-transfer, the SBC/PacTel region). This market appears to have been the one addressed by most parties in their filings (although, as we noted in paragraph 14 above, no party has explicitly suggested any relevant market definitions). No party has suggested a narrower product dimension than long distance services generally.

41. The 1996 amendments to the Communications Act permitted each RBOC, including SBC and PacTel, to provide long distance service that originates *outside* of its in-region States. However, the 1996 amendments condition each RBOC's entry into *in-region* long distance services on its compliance with certain provisions of Sections 271 and 272, and require separate proceedings for each state about such entry. Applicants do not now have, and have not yet applied for, permission to provide in-region long distance services in any state in their respective regions. Sections 271 and 272 are intended in part to mitigate the inherent danger to long distance competition that is posed by each RBOC's market power in the markets for a necessary input to long distance service -- local exchange service in its home region.⁹⁹

42. Some of MCI's concerns focus on in-region long distance service itself, while others focus upon several aspects of SBC/PacTel's supply of the necessary input of exchange access for such long distance service to itself and competitors such as MCI. We will address MCI's concerns in sequence. With regard to the full scope of MCI's concerns, however, we emphasize several points at the outset. First, in some respects MCI has failed to distinguish adequately between the two events we noted above: the proposed transfer, which is the subject of this proceeding, and SBC/PacTel's possible entry into in-region long distance service, which is not. Second, the basic competitive issue in this proceeding is not the market power or potential misconduct of SBC and/or PacTel at present, but the incremental increase in that power or misconduct that will result from the proposed transfer. MCI has failed to make this distinction and in so doing has overstated the anti-competitive effects of the proposed transfer. Only if the incremental increase mentioned above results in a substantial reduction in competition or in a tendency toward monopoly in the relevant market would there be reason for concern. We are unwilling to go so far as to disapprove this proposed transfer, especially in light of the speculative and unfocused case that MCI has presented against it.

⁹⁹ See generally *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, Notice of Proposed Rulemaking*, 1996 WL 406008 (FCC), ¶¶ 7-17 (1996).

1. Possible Monopsony Power

43. Contentions of the Parties. MCI is concerned that the proposed transfer will create monopsony power in the purchase of long distance service for resale.¹⁰⁰ Applicants attempt to refute this argument by stating that, if SBC supplied long distance service to as many as 25 percent of the current local exchange customers of SBC and PacTel combined, and it purchased all of that capacity from long distance carriers, its purchases would amount to no more than 7.5 percent of the total U.S. volume of long distance traffic (assuming a nationwide geographic market).¹⁰¹ According to applicants, this is insufficient to confer monopsony power.¹⁰²

44. Discussion. DOJ and the Federal Trade Commission have stated that concerns about the size of purchasing power do not arise until the purchases involved amount to 35 percent or more of total purchases in the relevant market.¹⁰³ There is not even speculation in the record in this proceeding, much less a showing by MCI or any other party, that SBC/PacTel's purchases or internal self-supply will attain that level, even in the relevant geographic market -- the home region of SBC/PacTel. Nevertheless, any purchasing power commanded by SBC/PacTel would only serve to lower prices to end users (at "retail") for long distance calls, or at least leave retail prices where they are now, without causing any existing long distance supplier and its assets to exit the market. In that event, we do not see any harm to competition or the public interest.

¹⁰⁰ MCI Comments at 10. Monopsony power is the ability of a single purchaser of goods or services to make prices lower than they would be in a competitive market, thereby reducing output below the optimal level. *See United States v. Syufy Enterprises, Inc.*, 903 F.2d 659, 663 & n.4 (9th Cir. 1990); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Annual Report*, 11 FCC Rcd 2060, 2123 (1995).

¹⁰¹ Compare Joint Opposition at 28 ("approximately 5 percent") with Gilbert Report at 36-37 ("less than 7.5 percent").

¹⁰² Joint Opposition at 27-28.

¹⁰³ See U.S. Department of Justice, Antitrust Division, *Business Review Letter* to North American Shippers Association, Inc. (Mar. 16, 1988).

2. The Provision of Exchange Access

45. MCI raises several issues that involve the impact on terminating exchange access of the proposed transfer and the expected entry by SBC/PacTel into in-region long distance service. First, MCI argues that SBC/PacTel will rely entirely on itself to provide terminating access to its long distance service within its home region. MCI fears that the proposed transfer will remove SBC as a provider of long distance calls terminating in PacTel's region, and as a customer for terminating access provided by PacTel's competitors there. Second, MCI claims that SBC/PacTel will bundle access and long distance services, thus discouraging its long distance customers from buying access services from its competitors. Third, MCI claims that there are significant economies of scale in providing both switched local exchange and exchange access services. SBC/PacTel, presumably, will be able to realize these economies and benefit from them. MCI argues this combination of advantages for SBC/PacTel may reduce the incentives for new entrants into local markets, thereby impeding development of competition there.¹⁰⁴

46. SBC and PacTel answer that the amount of long distance traffic SBC could terminate in PacTel's region after the proposed transfer is too small to affect the incentives of potential entrants. SBC and PacTel claim that, as a result of the proposed transfer, the amount of long distance traffic originating and terminating within the enlarged home region would increase by only six to seven percent. That is, approximately 45 percent of the calls that originate in SBC's present region terminate there also. For PacTel, the figure is approximately 46 percent. By contrast, approximately 52 percent of those originating calls will terminate in the post-transfer, combined region of SBC/PacTel.¹⁰⁵ SBC and PacTel maintain that this increment is too small to have any discernable effect on the incentives of potential entrants to begin to provide such terminating access.¹⁰⁶

47. Discussion. MCI's concerns that SBC/PacTel will not buy access service from one of its competitors (a competitive LEC or "CLEC") are misplaced. Incoming long distance calls will be terminated over the facilities of the local service provider selected by the called party -- his or her "local phone company," which may be SBC/PacTel or a CLEC -- not by the long distance carrier. Thus, in the case of a post-transfer call from someone in SBC/PacTel territory in Texas to someone in SBC/PacTel territory in California, the called party will have chosen SBC/PacTel or a CLEC according to his or her wishes. SBC/PacTel will not be able to force the called party to have incoming calls terminated on SBC/PacTel's local facilities.

48. Second, the bundling of local access and long distance services -- a form of one-stop

¹⁰⁴ MCI Comments at 7-10.

¹⁰⁵ Joint Opposition, Gilbert Report at 34.

¹⁰⁶ Joint Opposition at 23.

shopping -- may be a desirable feature for some customers.¹⁰⁷ If and when SBC/PacTel does obtain authorization to provide in-region long distance service, post-transfer customers of SBC/PacTel's local services may select SBC/PacTel as their in-region long distance carrier to obtain the convenience of one-stop shopping. However, SBC/PacTel's potential ability to offer this service would not be inherently anti-competitive. MCI has provided no evidence that SBC/PacTel will gain the ability to exercise market power or engage in misconduct in the provision of services to customers demanding one-stop shopping in a manner that would not be possible for PacTel or SBC individually absent the merger. We observe that MCI and others are also capable of offering one-stop shopping, by building their own local facilities, by reselling unbundled network elements, or by reselling PacTel's facilities and adding that local offering to their existing long distance service.¹⁰⁸ The customers who want one-stop shopping may choose the combined local and long distance services of SBC/PacTel or one of its competitors. If SBC/PacTel composes such an offering first and satisfies all regulatory requirements, then it should benefit from being first to the market with one-stop shopping.¹⁰⁹ One-stop shopping is a benefit arising from increased competition and we should not stop any carrier from being the first to provide it. This may harm MCI or SBC/PacTel's other competitors, but that alone is not a sufficient reason to deny the proposed transfer. Our priority is to promote efficient competition, not to protect competitors.¹¹⁰

49. Third, MCI's claim that there are significant economies of scale in providing both switched local exchange and exchange access services is insufficient. Assuming that those economies exist, they exist today for SBC and PacTel as independent companies. MCI has not shown that the increase (if any) in those economies that will result from the proposed transfer will be sufficient to deter entry into local access markets so much that it may result in a substantial reduction in competition or a tendency to monopoly. Nor has MCI shown that any such economies are

¹⁰⁷ We note that, according to one recent research report, nearly 80% of American households would like to receive telecommunications services (local telephone, long distance, cable television, cellular, paging, and Internet access) from a single provider, if the overall cost remained the same. MTA-EMCI Consumer Research, *Branding & Bundling Telecommunications Services: Telephony, Video and Internet* (<http://www.americasnetwork.com>). Deloitte & Touche also released a study recently that investigated the choices likely to be made by large business customers for telecommunications vendors to meet their one-stop shopping needs. *Communications Daily*, December 13, 1996.

¹⁰⁸ Also, under 47 U.S.C. § 272(g)(1), if SBC/PacTel's in-region long distance company sells SBC/PacTel's exchange services, then SBC/PacTel will be required to allow MCI to sell its exchange services also.

¹⁰⁹ We recognize that any competing offering by an IXC would have to be in compliance with Section 271 (e)(1) of the Communications Act, 27 U.S.C. § 271 (e)(1), which provides that: "Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier."

¹¹⁰ *SBC Comm., Inc. v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995) and cases cited therein.

inefficient and should therefore be denied because the entry that they discourage will be more efficient.

50. Concerning all of MCI's points, we find it significant that the proposed transfer will increase the proportion of long distance traffic originating and terminating within SBC/PacTel's home region by only six to seven percentage points.¹¹¹ In the absence of any evidence or estimates from MCI, it is not apparent to us that, even if SBC/PacTel won half of that traffic, its increased profits and the corresponding losses to its competitors would be large enough to reduce competition substantially. It is highly unlikely that SBC/PacTel, a new entrant into the market for that traffic, will seize it all. Customers have grown accustomed to receiving long distance service from AT&T, MCI, Sprint, and many others for more than a decade. A massive shift of customers upon the entry of a new supplier (SBC/PacTel) is unlikely unless that new supplier offers them something more attractive than the existing suppliers are offering and can possibly offer in response. MCI has not established that if SBC/PacTel wins a modest share of the traffic for which it will be newly able to compete, the incentives for entry into its local markets will be reduced to a significant degree.

3. Charges for Terminating Switched Access

51. Contentions of the Parties. MCI contends that SBC/PacTel will charge high prices for terminating switched access once it begins selling in-region interLATA services. This will give SBC/PacTel the ability to engage in a price squeeze, and take market share from in-region interLATA competitors. MCI argues that the in-region interLATA competitors will be forced to pay SBC/PacTel high access charges, while SBC/PacTel will be able to offer in-region interLATA service with self-supplied access, and thus, compete unfairly in the in-region interLATA market.¹¹² Applicants reply that the bases of MCI's concern are RBOC entry into the interLATA market and the level of access charges, neither of which is the subject of this proceeding.¹¹³

52. Discussion. We disagree with MCI's contentions. First, there is no basis for its underlying assumption that the proposed transfer will result in higher access charges, or in lower reductions in them than would occur without the proposed transfer. The proposed transfer itself will not alter the access charges of either applicant. Nor will it alter the applicants' incentives regarding access service. SBC and PacTel will continue to be, as they are now, incumbent LECs in their

¹¹¹ Joint Opposition, Gilbert Report at 34. Traffic that both originates and terminates within SBC/PacTel's home region is smaller than traffic in the relevant market (all calls that originate in that region, including ones that terminate elsewhere). The six to seven percent figure in the text above therefore overstates the effect of the proposed transfer to some extent. It is, however, the only material datum in the record.

¹¹² MCI Comments at 7-8.

¹¹³ Opposition at 26-27 & Gilbert Report at 34-36.

respective markets. Second, what might change their incentives is their entry into in-region long distance service, which is not the subject of this proceeding.

53. Third, applicants' incentives may not change at all. Under the Communications Act, all ILECs are required to provide interconnection and access to unbundled network elements, as well as to offer retail services for resale at wholesale rates and without unreasonable discrimination. Price discrimination, which is one way that SBC/PacTel may attempt to violate those legal obligations, is relatively easy for us and others to detect, and is therefore unlikely to occur. Our upcoming proceeding concerning access charge reform may reduce ILECs' incentives and/or their ability to use access charges as an anti-competitive tool (aside from using them to engage in price squeezes, as discussed separately below).¹¹⁴

54. Fourth, SBC/PacTel could conceivably attempt to engage in a price squeeze to increase market share by offering interLATA service below cost while raising the price of access services to MCI and others. In most businesses, price squeezes are thought to be very difficult (and therefore rare) because they entail losses from predatory pricing in the short term. These losses cannot be recouped by later supra-competitive pricing and monopoly profits because entry prevents such practices.¹¹⁵ In the telecommunications business, however, where a BOC possesses market power over local access, which is a necessary input to long distance service, the BOC may be able to effect a price squeeze by lowering its long distance price and raising the price of access that it and its long distance competitors must pay.¹¹⁶ But if SBC/PacTel did that, then under the provisions of the 1996 amendments to the Communications Act new entrants or other competitors would be able to defeat that scheme. For example, under the provisions of section 251,¹¹⁷ a competitor could purchase the interLATA service on a wholesale basis or purchase unbundled network elements to compete with SBC/PacTel's offering. As long as the incumbent LEC is required to offer unbundled network elements and resale of retail services, an attempted price squeeze is unlikely to be an effective anti-competitive tool. MCI has not shown that they are likely to occur, especially on a competitively significant scale. MCI has not shown, for example, that if a price squeeze occurred, it would force one of the long distance carriers and its assets to withdraw from the market. Also, assuming that a price squeeze were not detectable, we observe that both SBC and PacTel are capable of price squeezes at present, and the pertinent issue in this proceeding is the incremental increase in the scope of the price squeeze that the proposed transfer will make possible for the first time. MCI again has failed to demonstrate that any incremental increase in applicants' incentives and rewards that results

¹¹⁴ *Access Charge Reform, Notice of Proposed Rulemaking*, FCC 96-488 (released Dec. 24, 1996).

¹¹⁵ *See, e.g., Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588-91 (1986).

¹¹⁶ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, First Report & Order & Further Notice of Proposed Rulemaking*, 1996 WL 734160 at ¶ 12, released Dec. 24, 1996.

¹¹⁷ 47 U.S.C. § 251 (c)(3).

from the proposed transfer may cause a substantial reduction in competition or a tendency towards monopoly on a significant scale.

4. Non-Price Discrimination

55. Contentions of the Parties. MCI argues that risks of non-price discrimination against long distance carriers will increase if the proposed transfer is approved. As long as applicants and the other RBOCs were prohibited from competing in the long distance market, MCI says, they had incentives to cooperate with long distance carriers to maximize their revenues from provision of local exchange access. Once they are allowed to compete against in-region long distance carriers, however, their incentives will change, creating a substantial risk that the RBOCs will act to undermine conditions needed for a competitive market to succeed. Non-price discrimination, MCI claims, will have greater impact when it occurs on both ends of in-region calls. MCI asserts that the proposed transfer will increase the number of in-region long distance calls and increase the opportunity for non-price discrimination.¹¹⁸

56. Applicants respond by stating that MCI provides no details about or evidence of such discrimination, nor does it explain in any detail what type of discrimination is feasible. Applicants also argue that long distance carriers are too sophisticated to allow discrimination to go undetected. Any discrimination that would be competitively effective, they say, would be detected and punished, and the certain knowledge of this will deter discrimination.¹¹⁹

57. Discussion. Again, we focus on the incremental amount of long distance calls with which SBC/PacTel would be able to engage in non-price discrimination as a result of the proposed transfer -- namely, the number of calls that will be classified as in-region for the first time as a result of the proposed transfer. As noted in paragraphs 46 and 50 above, this is a modest number. MCI has not established, and we do not believe, that, if SBC/PacTel were to practice unlawful non-price discrimination on these calls, the results would be a substantial reduction in competition or tendency towards monopoly in the relevant market, whether by reduced incentives for entry by CLECs or otherwise. In addition, if SBC/PacTel engages in non-price discrimination, regulatory remedies are available that may mitigate such abuses.¹²⁰

¹¹⁸ MCI Comments at 7-10.

¹¹⁹ Joint Opposition at 27-28.

¹²⁰ 47 U.S.C. §§ 251 (a-c) and 272 (c) require that SBC and PacTel provide nondiscriminatory access to all long distance carriers and that they not favor their own affiliated firms. The existence of these regulatory protections, as well as our ability to inquire into the actual extent of any such abuses in proceedings concerning SBC/PacTel's entry into in-region long distance service, may reduce SBC/PacTel's incentive to engage in any unreasonable non-price discriminatory misconduct.

D. Directory Publishing and Its Elements

58. Each applicant, as a provider of local exchange service, has "subscriber list information" ("SLI")¹²¹ concerning its customers for that service. Each applicant also publishes directories, for which SLI is an important input. In some areas, other firms publish competing directories that use, in whole or in part, each applicant's SLI. The context of an "upstream" monopoly and a potentially competitive downstream market creates a risk of anti-competitive abuses and, in Section 222 (e) of the Communications Act, Congress imposed affirmative duties on exchange service providers' treatment of SLI to prevent some such abuses.¹²²

59. Contentions of the Parties. The Association of Directory Publishers ("ADP") notes that the proposed transfer would result in SBC expanding its control over local exchange service and SLI into California and Nevada. ADP fears an expansion into the latter States of monopolistic activity that SBC engaged in within its home region. In this regard, ADP draws heavily on *Great Western Directories, Inc. v. Southwestern Bell Corp.*,¹²³ a recent monopolization and attempted monopolization case in which SBC was held by the United States Court of Appeals for the Fifth Circuit to have violated Section 2 of the Sherman Act, which forbids monopolization and attempted

¹²¹ SLI is defined in 47 U.S.C. § 222 (f)(3) as "any information -- (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

¹²² Section 222 (e), 47 U.S.C. § 222 (e), provides in pertinent part: "a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." Speaking in favor of what became § 222(e) on the floor of the House of Representatives, Rep. Barton stated: "Subscriber list information is essential to publishing directories. Carriers that charge excessive prices or set unfair conditions on listing sales deprive consumers and advertisers of cheaper, more innovative, more helpful directory alternatives." 142 Cong. Rec., H 1160 (daily ed. February 1, 1996) (Statement of Rep. Barton). See also H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 89 (1995), which states concerning an earlier version of Section 222(e) that it is "intended to ensure that persons who use subscriber information, including publishers of telephone directories unaffiliated with LECs, are able to purchase published or soon-to-be published subscriber listings and updates from carriers on reasonable terms and conditions. . . . LECs have total control over subscriber list information. . . . Section 222 ensures that independent directory publishers have access to subscriber listing information gathered by all LECs".

¹²³ *Great Western Directories, Inc. v. Southwestern Bell Corp.*, 1993 WL 463146 (N.D. Tex.), 1993 WL 755366 (N.D. Tex.) (*Amended Final Judgement*), *affirmed in part and reversed in part*, 63 F.2d 1378 (5th Cir. 1995), *petition for rehearing en banc granted in part and denied in part*, 74 F.3d 613 (5th Cir. 1996), *vacated pursuant to settlement, cert. denied*, 135 L. Ed. 2d 1120 (1996) ("*Great Western*").

monopolization.¹²⁴ The court essentially found an upstream monopolist (SBC) extending its monopoly into a potentially competitive downstream market (directories) by raising the prices of an input (SLI) to all downstream directory publishers, including SBC's own downstream publishing affiliate, while that affiliate cut its advertising prices substantially. In addition to the price squeeze, the court found that SBC furnished SLI to competing publishers only on numerous restrictive terms and conditions that were anti-competitive and had no legitimate business justification.¹²⁵ SBC was found to have violated Section 2 of the Sherman Act. A multi-million dollar jury verdict against SBC was upheld on appeal, and the Supreme Court denied certiorari.¹²⁶

60. ADP fears that the proposed transfer, which would result in a substantial geographic expansion of control by SBC, would cause that same kind of conduct to occur in California and Nevada. ADP, therefore, requests that the Commission condition any approval of the merger on certain pro-competitive safeguards. For example, they request that SLI be provided under reasonable and nondiscriminatory rates, terms, and conditions, that SLI be updated in a timely and regular fashion, and that SLI be unbundled into the information levels requested by the purchaser. These requests essentially track the provisions of Section 222(e) of the Communications Act.

61. Applicants' Joint Opposition answers, with notable brevity, that the adverse judgment in *Great Western* reflects acts that occurred long ago and that a petition for certiorari has been filed,¹²⁷ so that the judgment is still not final. They also argue that the enactment of Section 222 (e) and the possibility of our taking regulatory action pursuant to it constitute sufficient protection for their competitors against any future abuses.¹²⁸

62. Discussion. Neither SBC nor Pacific publishes directories in the other's home region or elsewhere in competition with the other. Therefore, the proposed transfer will not eliminate actual competition between the parties. No party alleges any such effect, and we foresee none.

63. We do take seriously, however, the proven monopolistic conduct by SBC in its home region in the "upstream" activity of supplying SLI to its own "downstream" publishing arm and

¹²⁴ 15 U.S.C. § 2. The antitrust suit was brought against several SBC affiliates, which we will refer to collectively as "SBC" for simplicity's sake.

¹²⁵ *Id.* at 1387.

¹²⁶ *See supra* n.110. Although it appears that the antitrust suit was settled out of court, resolving the relations of the plaintiffs and defendants in that suit *inter se*, the published decisions continue as a holding that SBC violated Section 2 of the Sherman Act.

¹²⁷ Since applicants made this observation, the petition was denied (*see supra* n.110) and it appears that the dispute among the parties was settled out of court.

¹²⁸ Joint Opposition at 30-31.

competing directory publishers. The written opinions in the *Great Western* case show unreasonable bundling, adhesory contractual terms, and a price-squeeze carried out by SBC as a monopolist in its home region. SBC's filings in this proceeding acknowledge no wrongdoing. We will not, however, impose conditions on our approval of the proposed merger, for essentially the same reasons stated in paragraph 38 above in connection with ICG's allegations of misconduct by SBC. As there, almost all of SBC's actions involving SLI occurred in Texas. This indicates that exploitation by SBC of its market power may not have spread elsewhere within its home region and that SBC/PacTel will not attempt to repeat its monopolistic conduct in California and Nevada. Furthermore, ADP has offered no evidence that the adjudicated behavior at issue in the *Great Western* case is occurring anywhere in SBC's territory today. Should SBC/PacTel attempt similar behavior in the future, we are ready to use the specific enforcement tools that Congress has given us in the Communications Act, and the standards that emerge from our current rulemaking proceeding implementing Section 222.¹²⁹ The Public Utilities Commission of the State of California and the Public Service Commission of Nevada have comparable tools at their disposal to protect their ratepayers from unlawful anti-competitive abuses. Finally, if SBC's conduct as revealed in *Great Western* occurs in California or Nevada, we may impose forfeitures and/or revocation of one or more licenses.

E. Concentration in Certain Markets

64. CPI is concerned that the proposed transfer will result in, or add to, an undesirable level of concentration in various markets: in the communications industry as a whole, in the creation of another large corporation, and in the purchasing of equipment. We address those concerns in the following paragraphs.

65. The Communications Industry as a Whole. CPI is concerned at what it sees as an general increase in concentration the communications industry.¹³⁰ It addresses these concerns, however, in very general terms, with no data concerning pre- and post-transfer levels of concentration in any relevant market. CPI has not established that this particular transfer, which is the focus of this proceeding, will increase concentration in any market to an anti-competitive or otherwise undesirable degree. Lacking any stated objective basis, these concerns are not a basis to deny the proposed transfer. We also note that, while a combination of existing providers increases concentration, the actuality or possibility of new entry reduces the dangers of such increased concentration and may do so more efficiently than detailed regulatory impositions or an anti-merger policy that prohibits otherwise beneficial mergers.¹³¹ While entry into the most concentrated parts

¹²⁹ See Commission Press Release, *Commission Initiates Proceeding to Clarify Customer Proprietary Network Information Provisions of Telecom Act*, 1996 WL 263137, released May 17, 1996, re CC Docket No. 96-115, CC Docket Nos. 90-623 and 92-256, Report No. DC 96-45.

¹³⁰ CPI Comments at 2, 6.

¹³¹ See, e.g., *Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines*, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1992), 57 Fed. Reg. 41,532 (Sept. 10, 1992) § 3.0 ("A merger is not likely to create or

of the telecommunications business -- local exchange service and MVPD¹³² -- is not easy, we are taking steps to lower the barriers to entry.¹³³ We are also licensing spectrum for new entrants, and allowing its use for local exchange service and MVPD, and we are promoting flexible use of already-licensed spectrum.¹³⁴

66. Large Corporations. CPI is also concerned at the sheer size of SBC/PacTel.¹³⁵ We repeat our general observation in *McCaw*, that "[a] large, multi-market corporation does not necessarily preclude the entry or success of competitive firms."¹³⁶ As we also stated about AT&T in 1991 in the *First Interexchange Competition Order*, "The issue is not whether AT&T has advantages, but, if so, why, and whether any such advantages are so great as to preclude the effective functioning of a competitive market."¹³⁷ The mere fact that the proposed transfer will create a large entity does not render it anti-competitive or contrary to the public interest. However, as we noted in paragraphs 32-33 above, we are aware of the possible competitive risks that might be posed by further combinations, which might be more dangerous than the present one. We will remain on guard against actual and specific anti-competitive abuses that occur, as will the regulators of

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. Such entry likely will deter an anti-competitive merger in its incipiency, or deter or counteract the competitive effects of concern"); *Rebel Oil Co. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1439-40 (9th Cir. 1995) ("A mere showing of substantial or even dominant market share alone cannot establish market power sufficient to carry out a predatory scheme. The plaintiff must show that new rivals are barred from entering the market and show that existing competitors lack the capacity to expand their output to challenge the predator's high price").

¹³² The Commission has recently found that ILECs have a market share of over 99% in local exchange communications, and that incumbent cable television companies have a market share of approximately 89% in MVPD. *Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 11 FCC Rcd 9053, 9058 (1996); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report*, CS Docket. No. 96-133, FCC 96-496, at ¶ 121 and App. F (released January 2, 1997).

¹³³ See *supra* ¶¶ 16 & 38.

¹³⁴ *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report*, 10 FCC Rcd 8844, 8859-8861 (1995); *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8965 (1996).

¹³⁵ CPI Comments at 3, 18-21.

¹³⁶ *McCaw*, 9 FCC Rcd at 5861.

¹³⁷ *Competition in the Interstate Interexchange Marketplace, Report and Order*, 6 FCC Rcd 5880, 5891-92 (1991), *reconsiderations on other grounds*, 6 FCC Rcd 7569 (1991), 7 FCC Rcd 2677 (1992), *modified on other grounds*, 10 FCC Rcd 4562 (1995).

California and Nevada, DOJ, and the antitrust courts. We will also continue our strenuous efforts to promote the long-term preventor of anti-competitive abuses -- efficient competition. In the meantime, however, we do not find the size of the post-transfer SBC/PacTel, without more, to threaten a significant reduction in competition or a tendency to monopoly that will be so great that we should deny the proposed transfer.

67. The Purchasing of Telecommunications Equipment. CPI asks us to inquire into SBC/PacTel's possible excessive purchasing power over telecommunications equipment.¹³⁸ We decline to do so. Again, CPI has provided no estimates of pre- and post-transfer concentration with which to make such an inquiry. We note that a hypothetical relevant market for the purchase of telecommunications network equipment for use in the United States would contain, even after the proposed transfer, at least eleven large purchasers: six RBOCs, GTE, AT&T, MCI, Sprint, and LDDS. This does not, on its face, indicate an anti-competitive degree of concentration. Finally, we note that no manufacturer of equipment has protested the proposed transfer. Presumably, these companies would have the keenest sense of any real danger to their interests. The fact that not one manufacturer has participated or sought to intervene in this proceeding leads us to believe that the risk of this anti-competitive effect is not significant.¹³⁹ While we decline to investigate this issue at present, we note that, in future proceedings where more detailed showings are made, a more detailed investigation may be warranted.

¹³⁸ CPI Comments at 21.

¹³⁹ See *McCaw*, 9 FCC Rcd at 5869.

F. Other Markets

68. Each applicant has a presence in local MVPD, terrestrial Commercial Mobile Radio Services ("CMRS"),¹⁴⁰ international markets, the production of video programming, the development of broadband multimedia services (such as Internet access), and other commercial ventures.¹⁴¹ No party alleges any anti-competitive effects in any of these areas, and we perceive none. Nevertheless, we will briefly discuss the first three of them. In MVPD, SBC owns several incumbent cable television systems and, to that extent, exercises market power. None of these systems is in SBC or PacTel's region, however,¹⁴² so the proposed transfer will not eliminate a potential competitor or otherwise enhance SBC's market power. In terrestrial CMRS, SBC and PacTel both have a significant presence, but not in the same areas. Therefore, the proposed transfer will not effect a consolidation of competitors or a concentration of spectrum in violation of our Spectrum Cap.¹⁴³ The proposed transfer will effect a combination of non-overlapping service territories, not unlike the combination of New Vector and AirTouch.¹⁴⁴ In international markets, SBC owns an approximate 10 percent interest and has certain management responsibilities in Telmex, the dominant national telephone company of Mexico. Because neither applicant provides communications between the United States and Mexico, however, there appears no way for them, singly or in combination, to commit the kind of bottleneck abuses that have required our remedial attention in other cases.¹⁴⁵ We will not address such possible abuses before the conditions that may give rise to them exist.

69. With respect to the remaining ventures, neither party has market power in these "other"

¹⁴⁰ We have used terrestrial CMRS as a relevant product market in analyzing other transfers. *See Dial Page, Order*, DA 95-2379, 1995 WL 693097 (FCC), ¶¶ 21, 24 (Wireless Tel. Bur. 1995).

¹⁴¹ 7 RBOC Update No. 11, *Hardware -- DIGEX*, Nov. 1, 1996, 1996 WL 5804303; M. Mills, *Megamergers Shake Up Two Industries: Communications; Two 'Baby Bells' Plan a \$24 Billion Deal*, WASHINGTON POST, Apr. 2, 1996, at A-1; P. Farhi, *Opening The Door To Mergers; Law Likely to Spark Phone, Cable Deals*, WASHINGTON POST, Feb. 3, 1996, at H-1. *See also generally* Public Interest Statement at 4-5 & n. 4-5, 9-10, 12-14; Joint Opposition at 36-43.

¹⁴² These SBC cable television systems are in the Washington, D.C. area. Public Interest Statement at 12. SBC also owns a cable television system in its certificated telephone territory, in Richardson, Texas, but is an entrant overbuilder there and as such does not exercise market power. We view PacTel's in-region MDS and ITFS interests as being means of new entry into a concentrated market and similarly not a threat to competition.

¹⁴³ *See* 47 C.F.R. § 20.6.

¹⁴⁴ *Transfer of US West, Inc. Cellular Licenses to WMC Partners, L.P., Public Notice* (May 12, 1995).

¹⁴⁵ *Sprint Corporation, Declaratory Ruling & Order*, 11 FCC Rcd 1850 (1996); *MCI Communications, Inc./British Telecommunications, Plc., Declaratory Ruling & Order*, 9 FCC Rcd 3960 (1994).

markets,¹⁴⁶ and the proposed transfer is unlikely to create any. On the contrary, in certain of these markets the proposed transfer may create a stronger new entrant and might therefore be expected to have a slightly pro-competitive effect.¹⁴⁷ These pro-competitive effects are discussed below, in the following Section.

V. ALLEGED PRO-COMPETITIVE AND EFFICIENCY BENEFITS OF PROPOSED TRANSFER

70. In the previous sections of this Memorandum Opinion and Order, we have found that the proposed transfer will have no significant anti-competitive effects. In this section, we will address the applicants' claims that the proposed transfer will create benefits in terms of stimulating competition in various markets, enabling the achievement of efficiencies, and otherwise serving the public interest. The applicants contend that the proposed transfer will make SBC/PacTel a more effective competitor in three principal markets: wireless mobile services, long distance, and local exchange. Also, they argue that SBC/PacTel will have an increased ability to develop innovative and competitively priced services and products in fields such as Internet access and video services, and will be a more effective international competitor. AT&T disputes some of these claims, suggesting that any efficiencies can be achieved by joint venture and other cooperative arrangements short of a merger.¹⁴⁸ We now turn to an evaluation of applicants' claims, and we find that some of them have merit.¹⁴⁹

71. Mobile Wireless Services: Contentions of the Parties. The applicants argue that PacTel's recently acquired PCS authorizations provide SBC/PacTel with the opportunity to be an important additional wireless provider for the 33 million potential wireless customers in California and Nevada. SBC/PacTel will be able to provide all of its customers with the option of one-stop shopping for the combination of telecommunications services customers are seeking and which many of SBC's and PacTel's competitors can now provide. SBC will not only provide improved access to capital, but also will augment PacTel's technological and marketing expertise related specifically to the provision of wireless services. The efficient and successful introduction of PCS in California and Nevada will produce benefits for wireless customers in those States, providing both

¹⁴⁶ *In Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 464 (1992), the Supreme Court defined market power as the power to force a purchaser to do something he would not do in a competitive market, or the ability of a single seller to raise prices and restrict output.

¹⁴⁷ *Cf. United States v. FCC*, 652 F.2d 72, 96-97 (D.C. Cir. 1980) (*en banc*) (approving joint venture by new entrants into concentrated markets on the grounds that it will be "a strong new competitor").

¹⁴⁸ AT&T Petition at 5. See also CPI Comments at 11-12.

¹⁴⁹ Consideration of such factors is a usual part of our 'public interest' analysis in license transfer proceedings. *See, e.g., McCaw*, 9 FCC Rcd at 5871-72.

new services and increased competition in the wireless market.¹⁵⁰ In opposition, AT&T argues that the assertion that PacTel must merge with SBC in order to use its PCS licenses effectively is an absurd argument,¹⁵¹ given the fact that it was less than two years ago that PacTel divested its own cellular business.¹⁵¹

72. Discussion. As we noted above in paragraph 68, the proposed transfer will effect a combination of the territories of two mobile service providers that do not compete with each other. This will create another wide-area CMRS combination, like AirTouch-New Vector, PCS Primeco, WirelessCo, Sprint-PCS, AT&T Wireless, and Nextel. Such combinations, by placing more territories under unified control, are likely to increase uniformity and reduce the occurrence of uncoordinated offerings and pricing. For one carrier to have a broader geographical reach might improve market conditions by reducing customer confusion and making the totality of available price plans more comprehensible. This would enable consumers to make more informed decisions. If SBC/PacTel becomes another such competitor, the proposed transfer would likely create a modest pro-competitive effect of this type. In addition, SBC has years of experience providing cellular service outside of PacTel's region, and that experience, if it is devoted to PacTel's region, may improve PacTel's performance as a new entrant into broadband PCS there.¹⁵²

73. Long Distance Services: Contentions of the Parties. SBC and PacTel have been developing plans to enter the in-region long distance business.¹⁵³ They claim they plan to focus their long distance efforts on those areas where one of them has existing facilities, customers, and name recognition. Such entry into long distance markets is a new business opportunity that applicants believe will provide new growth and create jobs.¹⁵⁴ They also argue that the long-distance operations of SBC/PacTel will contribute more substantially to ensuring a highly competitive market for such services in California than PacTel would be able to effect by itself. For example, applicants argue that SBC/PacTel will increase competition in all the States it serves by providing more choice, more service options, and lower prices.¹⁵⁵

74. Discussion. Assuming the grant of their application to provide in-region long distance services, the applicants in combination may be a stronger competitor against AT&T, MCI, Sprint, and others, than they would be if they remained unaffiliated. Specifically, the SBC/PacTel

¹⁵⁰ Public Interest Statement at 9; Joint Opposition at 43.

¹⁵¹ AT&T Petition at 3.

¹⁵² Public Interest Statement at 7.

¹⁵³ *Id.* at 10.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

combined "home" region would create a larger territory within which it would control both ends of long distance calls. If it chose to guarantee a particular level of service on its originating *and* terminating access lines, its service might be more attractive than the services offered by the two companies separately. Also, the long distance operations of SBC/PacTel might increase efficiencies if the applicants merged their software development, customer service, and billing and collection, thus eliminating duplication that would otherwise exist. These improvements would be extremely difficult to effect without the proposed transfer and, if they are realized, may make the market somewhat more competitive and efficient.

75. Local Exchange Service: Contentions of the Parties. The applicants argue that the proposed transfer will bring together two companies with complementary strengths, specifically SBC's marketing strength and PacTel's technical and cost management expertise.¹⁵⁶ Their combination should enhance the development of new services and products for the customers of the combined company's local exchange subsidiaries.

76. Discussion. Improved local exchange service might result from the proposed transfer if SBC/PacTel eliminates overlapping operations, such as by combining its management staff and creating a single billing system that would be more economical and efficient than two. The proposed transfer will also permit the companies to pool their research and development resources and thus avoid some duplication. PacTel might benefit from SBC's larger research and development subsidiary without having to undertake a costly expansion on its own. The proposed transfer, by increasing SBC/PacTel's customer base, may also make feasible the development of new products and services that need a large customer base in order to be economically viable. Such improvements in research and development, however, might well be achievable by a joint venture, and without the proposed transfer.

77. Internet Access Services: Contentions of the Parties. The applicants state that PacTel has been establishing itself as a major provider of Internet services and that California is one of the biggest markets for Internet-related products and services in the country. California and Texas are leaders in the research, development, and production of computer hardware and software that support the Internet. By locating the Internet company in California, the applicants claim, the merged company will not only draw on California's expertise, but also will support and promote it, financially and otherwise. In addition, the experience and expertise of PacTel in these services could be imported by the merged company into Texas and other SBC operating areas, enhancing California's position as an "exporter" of high technology products and services.¹⁵⁷

78. Discussion. The proposed transfer, by combining SBC's sounder financial standing with PacTel's experience and California home base, may make SBC/PacTel a more effective entrant

¹⁵⁶ Public Interest Statement at 11; Joint Opposition at 43.

¹⁵⁷ Public Interest Statement at 12; Joint Opposition at 38 & n.41.

into Internet access markets. Such improvements, however, might well be achievable by a joint venture, and without the proposed transfer.

79. Production and Delivery of Video Services: Contentions of the Parties. Before the 1996 amendments to the Communications Act, SBC and PacTel each took steps to enter video services in different areas -- including SBC's cable operations in the Washington, D.C., area and in Richardson, Texas; PacTel's MDS and other video authorizations in California and elsewhere; and both companies' interests in video programming ventures.¹⁵⁸ AT&T counters that the applicants should continue with their separate plans, thereby availing consumers of the benefits from greater competition that would ensue absent the merger.¹⁵⁹

80. Discussion. The proposed transfer will enable the companies to benefit from each other's limited expertise and experience and may make SBC/PacTel a more effective new entrant. Again, however, such improvement might be achievable without the proposed transfer through a joint venture.

81. International: Contention of the Parties. The applicants claim that the proposed transfer will enhance their ability to participate actively in the emerging international telecommunications ventures. SBC's investment in Telmex and its other commitments in Latin America, they say, will complement PacTel's focus on developing opportunities in Asia. AT&T sees no benefits from this combination, noting that both applicants acknowledged that each would have proceeded with their separate plans absent the merger.¹⁶⁰

82. Discussion. The proposed transfer will allow the companies to combine their resources and to develop their joint international operations without duplicating costs. This could make their combined operations more efficient than their present separated ones. Again, however, such improvement might be achievable by a joint venture and without the proposed transfer.

83. Summary. We conclude that, on balance, the proposed transfer may result to a modest degree in efficiencies, in increases in the competitiveness of SBC/PacTel in a few markets, and in other public interest benefits. SBC/PacTel should be able to achieve some savings in overhead and support systems, and to offer "one-stop shopping" of some services that is now impossible. In the latter regard, we have in mind particularly local exchange and in-region long distance in the combined home region of SBC/PacTel for customers with premises in both companies' home regions (assuming, in the latter case, regulatory permission). Controlling both ends of in-region long distance calls will allow improvement of the quality of that service. There will probably be pro-

¹⁵⁸ Joint Opposition at 37-38.

¹⁵⁹ AT&T Petition at 4-5. AT&T makes the same point about Internet access.

¹⁶⁰ AT&T Petition at 5.

competitive efficiencies in mobile wireless services that would not be achievable without the proposed transfer.¹⁶¹

84. On the other hand, we are mindful of the fact that each applicant is already a business enterprise of substantial size, with significant internal efficiencies and economies of scale and scope. Also, the parties' description of their anticipated pro-competitive effects and efficiencies is tentative and vague, and they have not provided any monetary or other objective estimate of these benefits. Accordingly, we conclude that the proposed transfer will result in pro-competitive effects, efficiencies, and other public interest benefits that could be real but, if they occur, will not likely be dramatic. We emphasize that it is not these benefits of the proposed transfer, but rather its lack of any significant and foreseeable anti-competitive effects, that has led us to approve it.

VI. PROPOSED FURTHER PROCEEDINGS

85. Contentions of the Parties. AT&T, MCI, and CPI request further proceedings. In particular, AT&T and MCI ask us to convene a review of documents that the applicants filed with the DOJ pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976,¹⁶² to await the outcome of proceedings now underway before the California Public Utilities Commission, and to await the outcome of proceedings before this Commission under Sections 251 and 271-72 of the Act.¹⁶³ Finally, CPI suggests "that an equitable share of any cost efficiencies from the merger be flowed through to consumers."¹⁶⁴ The applicants answer that such further proceedings are neither necessary nor desirable, and would needlessly prolong these proceedings for no adequate reason.¹⁶⁵

86. Discussion. We find none of AT&T and MCI's requests compelling. DOJ completed its review process, including review of "Hart-Scott-Rodino documents," and concluded that the SBC-PacTel merger does not violate the antitrust laws.¹⁶⁶ DOJ has not filed any objection to the proposed

¹⁶¹ *BAMS-NYNEX Mobile*, 10 FCC Rcd at 13385 ("We also find that many of the alleged efficiencies would be materially more difficult and time-consuming without a merger; and that the efficiencies in management and uniform marketing, pricing, and sales would be practically impossible without a merger"), *application for review pending on other grounds*.

¹⁶² 15 U.S.C. § 18a.

¹⁶³ AT&T Petition at iii, 3, 14-17; MCI Comments at 2-4; MCI Reply Comments at 5. *See also* CPI Comments at 3, 9, 22-24.

¹⁶⁴ CPI Comments at 3.

¹⁶⁵ Joint Opposition at 45-51.

¹⁶⁶ Department of Justice Press Release # 96-542, *Antitrust Division Statement Regarding Pacific Telesis / SBC Communications Merger*, Nov. 5, 1996 (DOJ is closing its investigation "having concluded that the merger did not

transfer with us. This strengthens our conclusion that the proposed transfer will not, in general, reduce competition substantially and that any particular dangers of anti-competitive conduct can be removed by the use of our conditioning authority. The decision whether to review Hart-Scott-Rodino documents calls for balancing the relevance of the information that may reside only in the documents, the importance of the issues to which any such information would be material, the closeness of those issues in light of the other available evidence, and the danger of unintentionally giving the opponents of the proposed transfer "a potent instrument for delay."¹⁶⁷ AT&T and MCI have not shown that the relevance of the Hart-Scott-Rodino documents and the paucity of other evidence on the issues to which those documents might be material outweigh the substantial burden that review of them would pose for the applicants, this Commission, and the other parties to this proceeding.

87. Nor do we see any need to wait for the California Public Utilities Commission to act before we do. Neither AT&T nor MCI has shown that there is a specific matter that is before the California Commission, that has not been (or could not be) brought before this Commission, and that is an essential part of our public interest analysis under the Communications Act. In the absence of such a showing, generalized urging to abide the outcome of other regulatory proceedings are simply requests for needless delay.

88. Nor does the prospect of proceedings under Sections 251 and 271-72 require a different conclusion. No party has shown that Congress, in adopting the 1996 amendments to the Communications Act, intended to freeze the RBOCs in place until the amendments were fully implemented. Nor has there been any showing that the dangers against which Sections 251 and 271-72 are designed to protect both (a) would be materially increased by the proposed transfer, and (b) are beyond the Commission's control in proceedings under those specific sections.¹⁶⁸ We will address any such dangers in proceedings under those specific statutory provisions. In those proceedings, the dangers (if any) will be clearer than they are now and more narrowly tailored remedies will be at hand. Accordingly, we decline to defer action on the present applications on account of such possible dangers.

89. The Commission has broad discretion to determine the scope of information required to

violate the antitrust laws").

¹⁶⁷ *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1497 (D.C. Cir 1995), quoting *United States v. FCC*, 652 F.2d 72, 91 (D.C. Cir. 1980).

¹⁶⁸ We have discretion not to decide, in a license transfer proceeding, whether to impose conditions on the parties to the transfer that are under consideration in a rulemaking concerning their general class of licensees. *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995) (upholding the Commission's refusal to impose equal access on a cellular carrier in a license transfer proceeding in part because "the Commission is currently addressing in a separate rulemaking the question whether it should require all cellular carriers to provide equal access"). See also *Hale v. FCC*, 425 F.2d 556 (D.C. Cir. 1970).

complete its public interest analysis and the manner in which it will conduct its fact finding inquiries in license transfer proceedings. As the courts have long recognized, it need obtain only "sufficient information to make an informed decision."¹⁶⁹ In the present record, the applicants and the opponents of the proposed transfer have presented us with more than sufficient information on which to base our decision. The opponents have not convinced us to disapprove the transfer wholly, or to withhold judgment until some later date.

90. Finally, concerning CPI's "flow through" proposal, we note initially that we found above that the proposed transfer may result in efficiencies that are at best modest. Also, CPI has provided no basis on which we could calculate the efficiencies caused by the proposed transfer; nor has it proposed any mechanism for us to choose from among all the possible recipients. Nor, more fundamentally, has it shown that the public benefits that a regulatory flow-through mechanism would eventually put in the hands of consumers would be greater than the public benefits that will result from SBC/PacTel re-investing their savings and realizing their efficiencies in an efficient, profit-maximizing manner. We also understand that a flow-through has been effected by the Public Service Commission of Nevada,¹⁷⁰ and is under consideration by the Public Utilities Commission of the State of California.¹⁷¹ The efficiencies to be passed on by these Commissions are the same efficiencies that a mechanism of our own might reach, because we are both considering the same services -- the State commissions through their jurisdiction over services, and we through our jurisdiction over the radio licenses used to provide those services. The danger of "double-dipping" in these circumstances is another reason for us to refrain from any attempt at passing on efficiencies of the proposed transfer by our direct regulatory action. Accordingly, we reject CPI's proposed "flow-through" of the efficiencies resulting from the proposed transfer.

¹⁶⁹ *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 630-31 (D.C.Cir. 1978). See also 47 U.S.C. § 154(j) (empowering the Commission to "conduct [its] proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice"); 308(b) (granting the Commission discretion to determine what information it requires of license applicants in order to review the qualifications of those applicants); 309(a) (stating that the Commission may render a judgment of whether the public interest standard has been satisfied based on its review of the application and consideration of "such other matters as the Commission shall officially notice").

¹⁷⁰ *Nevada Regulators Approve SBC-Pacific Telesis Merger*, BUSINESS WIRE, Dec. 16, 1996 ("In conjunction with the application for merger approval in Nevada, the companies agreed to provide at least \$4 million to Nevada Bell customers in lieu of siting four headquarters and adding jobs in California" [sic]).

¹⁷¹ *Calif. PUC Order Could Stop Merger*, MULTICHANNEL NEWS, 1996 WL 13824170 (Oct. 14, 1996). We note the reported conclusion of the Attorney General of California that the proposed merger will not harm competition in California and that "PacTel and SBC are 'neither actual nor potential competitors' in California." COMMUN. DAILY, *State Activities*, Jan. 6, 1997.

VII. MISCELLANEOUS

91. The applicants make several procedural requests¹⁷² that are reasonable and unopposed. Accordingly, we grant them. First, pursuant to Section 21.39 of our Rules (47 CFR § 21.39), we find that the transfer of authorized but unconstructed point-to-point microwave facilities that are controlled by PacTel does not implicate the Commission's anti-trafficking restrictions. Second, pursuant to Section 21.934(c) of our Rules (47 CFR § 21.934(c)), we find that the anti-trafficking provision of Section 21.39 does not apply to the BTA Multipoint Distribution Service authorizations involved in this proposed transfer. Third, pursuant to Sections 1.2111, 21.934, and 24.839 of our Rules (47 CFR §§ 1.2111, 21.934, and 24.839), we find that no trafficking or unjust enrichment is involved in the transfer of control of licenses for facilities in the Personal Communications Services and Multipoint Distribution Service which were obtained through competitive bidding in the last three years. Finally, pursuant to Sections 21.23(c)(6), 22.123(a), 24.823(g)(3), and 25.116(b)(3) of our Rules (47 CFR §§ 21.23(c)(6), 22.123(a), 24.823(g)(3), and 25.116(b)(3)), we grant applicants a blanket exemption from any applicable cut-off rules which would otherwise apply to PacTel subsidiaries or affiliates filing amendments to pending Part 21, 22, 24 or 25 applications or other applications to reflect the consummation of the proposed transfer of control.¹⁷³

VIII. ORDERING CLAUSES

92. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the applications filed by Pacific Telesis Group and SBC Communications Inc. in the above-captioned proceeding ARE GRANTED.

93. IT IS FURTHER ORDERED that the above grant shall include authority for SBC to acquire control of:

- a) any authorization issued to PacTel's subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval;
- b) construction permits held by licensees involved in this transfer that mature into licenses after closing and that may have been omitted from the transfer of control applications; and
- c) applications that will have been filed by such licensees and that are pending at the

¹⁷² Public Interest Statement at 19-21.

¹⁷³ See *McCaw*, 9 FCC Rcd at 5909.

time of consummation of the proposed transfer of control.¹⁷⁴

94. IT IS FURTHER ORDERED that the "Petition to Deny," filed by IntelCom Group (U.S.A.), Inc., ICG Telecom Group, Inc., and ICG Access Services, Inc., IS DENIED.

95. IT IS FURTHER ORDERED that the "Petition to Deny or, in the Alternative, to Defer Pending Further Investigation and Briefing," filed by AT&T Corp., IS DENIED.

96. IT IS FURTHER ORDERED that the "Motion to Accept Late-Filed Comments," filed by the Competition Policy Institute, IS DENIED.

97. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹⁷⁴ *McCaw*, 9 FCC Rcd at 5909 n.300.

APPENDIX A

Comments

Association of Directory Publishers, filed July 12, 1996

MCI, filed July 12, 1996

Petitions to Deny

AT&T, filed July 12, 1996

Intelcom Group (U.S.A.), filed July 12, 1996

Opposition to Petitions to Deny and Reply to Comments

SBC Communications Inc., and Pacific Telesis Group, filed August 9, 1996

Reply Comments

MCI, filed on August 9, 1996

Joint Opposition to Petitions to Deny and Reply to Comments

SBC Communications, Inc., and Pacific Telesis Group, filed on August 9, 1996

Ex Parte Comments

Competition Policy Institute, filed November 22, 1996

Joint Response to Ex Parte Comments

SBC Communications, Inc., and Pacific Telesis Group, filed on December 10, 1996

Motion to Accept Late-Filed Comments

Competition Policy Institute, filed December 12, 1996