

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application for Consent to Transfer Control)
Filed By Verizon Communications Inc. and) WC Docket No. 05-75
MCI, Inc.)

COMMENTS OF VONAGE HOLDINGS CORP.

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EXECUTIVE SUMMARY

Vonage Holdings Corp. (“Vonage”) comments on the application of Verizon Communications Inc. (“Verizon”) and MCI, Inc. (“MCI”) for a transfer of control of MCI to Verizon. Although Vonage is concerned with the increasing concentration among firms controlling bottleneck facilities in several different areas of the U.S. telecommunications marketplace, it is encouraged that Verizon has recently taken steps to lessen the likelihood that this merger will hurt the emerging IP-enabled services market in which Vonage competes. For instance, Verizon is the first ILEC to work closely with any nomadic VoIP service to ensure emergency calling keeps pace with VoIP technology. In addition, Verizon has recently reported that its business plan calls for the untying of DSL from other services, *i.e.*, the offering of naked DSL. Therefore, Vonage does not oppose the merger, but respectfully requests that the Federal Communications Commission (“FCC”) carefully consider certain issues raised by a merger of this size.

The FCC should examine whether the merger will negatively affect the ability of standalone VoIP providers to gain nondiscriminatory and reasonable access to: 1) direct tandem access necessary for interconnection to the PSTN and provision of 911 services; 2) number porting; 3) Internet backbone facilities; and 4) wireless platforms. In addition, the FCC should determine what impact the merger will have on competitive VoIP providers’ reliance on net neutrality in order to assure access to their services over Verizon’s broadband network. Vonage requests that the FCC consider the above issues, and condition grant of this transfer of control application to the extent it deems it necessary to ensure that Verizon and

MCI do not backslide on the positive steps they have already taken to ensure competition in the IP-enabled services market.

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I. INTRODUCTION

Vonage Holdings Corp. (“Vonage”), by its undersigned counsel, hereby comments on the application of Verizon Communications Inc. (“Verizon”) and MCI, Inc. (“MCI”) for a transfer of control of MCI to Verizon (“the Merger”).¹ While Vonage is concerned with the increasing concentration among firms controlling bottleneck facilities in several different areas of the U.S. telecommunications marketplace, Vonage is encouraged that Verizon has recently taken steps to lessen the likelihood that the Merger will hurt the emerging IP-enabled services market in which Vonage competes. Therefore, Vonage does not oppose the Merger, but respectfully requests that the Federal Communications Commission (“FCC”) carefully consider the following issues raised by a merger of this size.

The FCC should examine whether the Merger will negatively affect the ability of standalone VoIP providers to gain nondiscriminatory and reasonable access to: 1) direct tandem access necessary for interconnection to the PSTN and provision of 911 services; 2) number porting; 3) Internet backbone facilities; and 4)

¹ See *Commission Seeks Comment on Application for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI Inc.*, DA 05-762, WC Docket No. 05-75, rel. Mar. 24, 2005.

wireless platforms. In addition, the FCC should determine what impact the Merger will have on competitive VoIP providers' reliance on net neutrality in order to assure access to their services over Verizon's broadband network. Vonage requests that the FCC consider the above issues, and condition grant of this transfer of control application to the extent it deems it necessary to preclude any actions that might curtail competition in the U.S. telecommunications and information service marketplaces.

II. LEGAL STANDARD FOR REVIEW

In reviewing the Merger, the FCC must conduct a public interest analysis pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended ("the Act") to determine whether Verizon and MCI have demonstrated that the public interest would be served by the transfer of control of MCI's many licenses to Verizon.² Also, because MCI is seeking authority to transfer control of its submarine cable landing licenses to Verizon, the application must be reviewed under the Cable Landing License Act.³

Pursuant to sections 214 and 310 of the Act, the FCC must weigh the potential public interest harms resulting from the Merger against the potential public interest benefits "to ensure that, on balance, the proposed transaction will

² 47 U.S.C. §§ 214(a), 303(r), 310(d). *See Ameritech Corp., Transferor and Verizon Communications, Inc., Transferee, For Consent to Transfer Control of Corporation Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, 14736 at ¶46 (1999) ("Ameritech/Verizon Order").

³ 47 U.S.C. §§ 34-39.

serve the public interest, convenience, and necessity.”⁴ The burden of proof is upon Verizon and MCI to demonstrate through a preponderance of the evidence that the Merger serves the public interest.⁵ There are four overriding factors the FCC examines: “(1) whether the transaction would result in a violation of the Communications Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Communications Act, or would interfere with the objectives of that and other statutes; and (4) whether the merger promises to yield affirmative public interest benefits.”⁶ Finally, the FCC’s analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the Merger under traditional antitrust principles.⁷

Vonage offers the following comments to assist the FCC in its review of the Merger to determine whether Verizon and MCI have met their burden of proof that the Merger is in the public interest.

III. THE MERGER’S IMPACT ON THE NEW VOICE SERVICES MARKET

As the FCC is well aware, Vonage is a leading provider of consumer and small business Voice over Internet Protocol service, or “VoIP” as it is referred to in the industry, in the United States, with over 600,000 subscriber lines. Vonage’s

⁴ See *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee*, IB Docket No. 04-366, DA 04-4034, at ¶ 15 (rel. Dec. 22, 2004) (“*Intelsat Order*”).

⁵ *Ameritech/Verizon Order*, 14 FCC Rcd 14737 at ¶48.

⁶ *Id.*

⁷ *Id.* at ¶ 49.

innovative VoIP service offers consumers a choice in the retail market for communications services. However, like many other innovative services delivered by means of telecommunications, Vonage's service relies upon reasonable and non-discriminatory access to the network infrastructure owned and controlled by telephone companies. Vonage is concerned that the proposed merger, when coupled with the SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") merger ("SBC/AT&T Merger"), may diminish existing competition by further consolidating ownership and control over the communications infrastructure on which Vonage and other competitors, including cable providers, rely to provide service to end users. In these comments, Vonage will explain the basis for this concern and outline what issues the FCC should examine to ensure that competition is preserved in both the wholesale and retail communications marketplaces.

IV. ACCESS TO ESSENTIAL NETWORK FACILITIES

In order for VoIP providers like Vonage to offer competition in the retail marketplace for communication services, they must have access to the access tandem switches – the access ramps to and from the PSTN – controlled by local exchange carriers, and, to an increasing extent, the backbone facilities that represent the Internet itself. In the context of the SBC/AT&T Merger proceeding, Vonage explained in detail how important these facilities are, and how SBC continued to obstruct competition by blocking access to these facilities.⁸

⁸ See Opposition of Vonage Holdings Corp. (filed Apr. 25, 2005), in *Application for Consent to Transfer Control filed by SBC Communications Inc. and AT&T Corp.*, WC Docket No. 05-065.

Fortunately in this proceeding, Vonage can report that its concerns about the anticompetitive nature of the merger of Verizon and MCI have been reduced due to recent actions of Verizon described below.

A. Access to Tandem Switches and E911 Facilities

VoIP providers need tandem access in order to deliver calls to the PSTN. Access to the public telephone network is mainly provided through a dwindling number of competitive local exchange carriers. Vonage also has experienced the difficulties in obtaining access to the facilities used to deliver E911/911 services because they are controlled by just a handful of local exchange carriers. For instance, while Vonage is technically able to provide E911 call-back and location information, it has been stymied in its efforts by SBC and most other ILECs who control essential facilities. As reported earlier, SBC has denied Vonage access to the same 911 infrastructure that they make directly available to their VoIP affiliate. Therefore, Vonage has serious concerns about the SBC/AT&T Merger because it will encourage the continued anticompetitive behavior of SBC.

On the other hand, Vonage does not have the same concerns in this proceeding because Vonage has entered into an agreement with Verizon to access elements of Verizon's wireless and wireline Enhanced 911 network to offer Vonage's customers E911 service. Verizon is the first ILEC to work closely with any nomadic VoIP service to ensure emergency calling keeps pace with VoIP technology. Verizon's wholesale group has committed to offer Vonage the following elements on a commercial basis for the deployment of National Emergency Number Association ("NENA")-compatible Enhanced 911 within Verizon's 28-state territory: 1) Direct

trunking to more than 100 Verizon-owned selective routers; 2) Provision of wireless components enabling non-local numbers to call 911 – ESRNs (pANIs) and ESQKs (pALIs); and 3) ALI-steering agreement for Intrado, Vonage’s technology partner.

Accordingly, in reviewing both the SBC/AT&T Merger, and the Verizon/MCI Merger, the FCC should take into account the fact that unlike Verizon, SBC has not yet agreed to offer VoIP providers similar E911 access, and, accordingly should consider a conditional grant of that merger appropriate unless such access is made available. Likewise, in reviewing the Verizon/MCI Merger, the FCC should recognize the important steps Verizon has taken to meet the needs of VoIP providers, and only impose those conditions that might be necessary to ensure continued cooperation with VoIP providers.

B. Access to Internet Backbone Facilities

Another of the key elements necessary for a healthy VoIP market is a competitive Internet backbone market. VoIP providers must have reasonable access to the packet-switched network that comprises the Internet. The FCC has already found that the Internet backbone market is a separate relevant product market for examination in the case of mergers.⁹ The FCC’s duty to protect the public interest requires it to ensure that nothing happens to hurt competition in this market.

⁹ See *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025, 18107 at ¶148 (1998)(“*MCI/WorldCom Order*”).

VoIP providers require access to a high quality Internet backbone with diverse and multiple peering points and robust network facilities in order to offer a high quality VoIP product. While access to the Internet via one peering relationship may be fine for offering a basic web browsing service, in order to offer a voice service, a VoIP provider needs access at multiple peering points with a guaranteed amount of speed, quality and bandwidth. However, there are very few Internet backbone providers that can offer such arrangements. MCI, through UUNET, is one of the premier Internet backbone providers controlling a significant segment of the market.

To date, Vonage has not had an issue getting the Internet backbone access it needs from companies like UUNET. Despite the lack of regulation mandating access to the Internet backbone on fair and reasonable terms, the market dynamics have been such that competition has flourished with its attendant checks on terms and price offered. In a circuit-switched environment, where ILECs control access to the essential facilities necessary to reach end-users, their power is checked by a series of regulations governing interconnection. In contrast, the “interconnection” of IP broadband networks is done outside this regulatory framework pursuant to “peer-to-peer” relationships.

Currently, carriers like MCI and AT&T peer on a cost-free basis because they have similar networks. On the other hand, smaller carriers must pay for peering with the larger networks. As a result, CLECs and ILECs are on an equal footing in terms of getting access to the Internet backbone because neither have large IP

networks. With the merging of MCI with Verizon and AT&T with SBC, however, the combined companies will be large enough that they can peer with each other for free, but require peering fees from everyone else. The FCC has declined to exercise regulatory oversight over peering. Whatever the validity of that policy in a market in which there were several providers of backbone services and barriers to entry were relatively low, the impending concentration of this market in the hands of local access providers, who can erect new barriers to entry by denying access to their local facilities, calls for an urgent re-examination. Therefore, the FCC should carefully examine whether conditions are necessary in the context of this merger to ensure that peering or IP interconnection continues to occur on a reasonable basis.

C. Access to Wireless Internet Services

Vonage foresees that VoIP will increasingly be delivered via a wireless platform. Verizon, through its affiliate Verizon Wireless, is a major player in the wireless market. As the wireless market becomes increasingly consolidated due to the lifting of spectrum caps and mergers, third party providers will face tremendous hurdles in delivering new innovative VoIP offerings to the wireless space. In order to be competitive, VoIP providers will need to be able to offer a combined WiFi and cellular product, which can only be offered if they have access to a resold wireless product. As long as wireless services remain closed to a limited number of competitors, and those competitors dominate the wireline market, there will not be true competition. Accordingly, in order for VoIP providers to be competitive, the FCC should examine in the context of the Merger what conditions might be

necessary to ensure that VoIP services remain competitive by having access to a wireless platform.

V. NETWORK NEUTRALITY MUST BE ENSURED

The market dominance of the combined Verizon and MCI also presents concerns about their ability to discriminate in the quality of the broadband connection they offer end-users. Broadband discrimination could take three different forms. First, an entity like Verizon that either owns or controls a broadband Internet connection could prioritize packets associated with the application it provides to its end-users over the packet generated by a third-party provider like Vonage. In this instance, Vonage would be placed at a significant disadvantage as compared to the network provider because the network provider would provide superior quality service by allowing its packets to supersede those transmitted by third-party Internet application providers. Second, an entity that either owns or controls a high-speed Internet connection could inject latency or otherwise degrade the packets sent by a third-party Internet application provider. In this way, the network provider would discourage their users from taking advantage of a service like Vonage's because of performance related concerns that are caused entirely by the actions of the network provider. Finally, a broadband provider could block certain transmissions. The industry has established certain standards that define what pathways a certain Internet application will use when it is provided to an end-user. VoIP services are assigned to a specific route or port. By blocking the port associated with VoIP services, a broadband Internet access provider can prevent VoIP providers from providing their service.

While cable providers have committed to not block customer access to new innovative IP applications, Verizon has not made any commitments in this area. To ensure a competitive VoIP market, the FCC should consider whether conditions are appropriate to prevent Verizon from packet-discrimination in favor of any VoIP provider affiliates.

VI. NUMBER PORTABILITY CONCERNS

The Merger presents concerns about potential anticompetitive behavior in the area of number portability. As VoIP service providers seek to gain a toehold in the huge voice services market, one obstacle they increasingly face is the reluctance of consumers to switch service providers unless they can keep their existing telephone numbers. Although number portability is by law available to these potential VoIP customers, in reality the ILECs often make portability so difficult and time consuming that customers are discouraged from switching service providers. VoIP providers must be able to offer new customers the ability to keep their existing phone numbers if they are going to succeed in offering true competition to the ILECs. In other FCC proceedings Vonage has raised these concerns, and proposed solutions.¹⁰

Number portability is a potential issue in this proceeding because Verizon already offers a VoIP product called VoiceWing. Verizon's ability to acquire numbers directly for its VoiceWing customers gives it a competitive advantage over

¹⁰ See generally Reply Comments of Vonage Holdings Corp. (filed Dec. 17, 2004), in *Second Further Notice of Proposed Rulemaking*, FCC 04-217, CC Docket No. 95-116, (rel. Sept. 16, 2004) (“*Telephone Number Portability*”).

independent VoIP providers that must rely on Verizon to port numbers of new customers. While Vonage hopes the Commission will take firm action to address potential porting abuses on a general level in its open *Telephone Number Portability* docket,¹¹ it is critical that the Commission determine whether conditions are warranted now in this proceeding to preclude Verizon from engaging in such abuse against VoIP providers such as Vonage.

VII. “NAKED DSL” SHOULD BE MADE AVAILABLE TO CONSUMERS

In the context of the SBC/AT&T merger, Vonage raised concerns that SBC must be prevented from the anticompetitive practice of tying DSL services to other services, and noted that the practice of tying broadband Internet access services to basic voice offerings is widespread throughout the telecommunications marketplace. The practice of DSL tying is clearly anticompetitive because it prevents customers from porting their numbers, and essentially forces them to purchase local services they do not want – either because they have a wireless option or because they prefer to use VoIP alternatives. The net effect is to act as a drag on the adoption of broadband new IP technologies by making services like those offered by Vonage economically unattractive.

Vonage, however, is pleased to see in a recent press report that Verizon’s business plan calls for the untying of DSL from other services, *i.e.*, the offering of

¹¹ See *Telephone Number Portability* at ¶4.

naked DSL.¹² Therefore, in reviewing this Merger, the FCC should take into consideration Verizon's commitments in this area, and determine whether conditions are appropriate to ensure that Verizon carries through with its commitments to allow DSL customers to port their number while maintaining a standalone Verizon DSL service.

¹² *See State Telecom Activities*, Communications Daily, page 6, dated May 5, 2005 (Verizon plans to offer naked DSL in California before California PUC Commissioner Susan Kennedy's proposed revised telecom consumer bill of rights could be implemented.).

VIII. CONCLUSION

The merger of Verizon and MCI will result in a combined company with both the resources and motivation to act anticompetitively in several different areas of the U.S. telecommunications marketplace. Recently, however, Verizon has taken positive steps in the direction of not hindering competition from standalone VoIP providers. Therefore, the FCC must determine what, if any, conditions might be appropriate on the grant of the transfer of control application to ensure that Verizon and MCI do not backslide on the positive steps they have already taken in this area.

Respectfully submitted,

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Dated: May 9, 2005

CERTIFICATE OF SERVICE

I, Troy Tanner, do hereby certify that, on May 9, 2005, a copy of the foregoing Comments of Vonage Holdings Corp. to the Application for Consent to Transfer Control filed by Verizon Communications Inc. and MCI, Inc., as filed with the Federal Communications Commission in WC Docket No. 05-75, was served by electronic mail upon the following Applicants, their counsel, and FCC staff:

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