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May 9, 2005

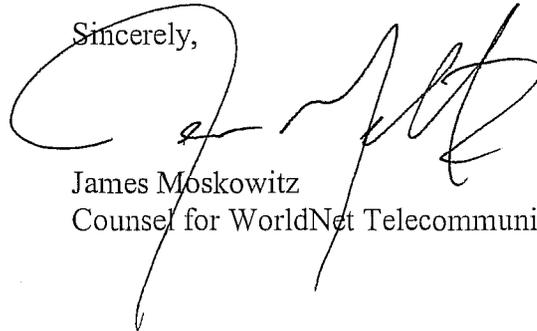
Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: **WC Docket No. 05-75**

Dear Ms. Dortch:

Attached please find a copy of the Comments of WorldNet Telecommunications, Inc. in the above referenced docket. Should you have any questions about this filing, please contact the undersigned at (202) 939-7900.

Sincerely,



James Moskowitz
Counsel for WorldNet Telecommunications, Inc.

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

In the Matter of)	
)	
Verizon Communications Inc. and)	
MCI, Inc.)	WC Docket No. 05-75
Application for Approval of)	
Transfer of Control)	

COMMENTS OF WORLDNET TELECOMMUNICATIONS, INC.

WorldNet Telecommunications, Inc. ("WorldNet"), through its undersigned counsel, hereby respectfully submits the following comments in the above captioned docket.¹ As more fully discussed below, WorldNet believes that the Verizon/MCI merger is inherently anti-competitive and that, as a result, the Federal Communications Commission ("Commission") cannot approve it as currently proposed. Rather, at a minimum, the Commission should impose conditions on the transaction to reduce the ability of the merged company to engage in anti-competitive conduct.

Regardless of any conditions or restrictions that the Commission ultimately sees fit to require as a result of this proceeding, it must be certain to apply these conditions and restrictions to all of Verizon's wireline affiliates, including expressly the Puerto Rico Telephone Company ("PRTC"), which is the incumbent local exchange carrier ("incumbent LEC") in Puerto Rico. The Commission's failure to expressly include PRTC in prior merger conditions has significantly

¹ *Commission Seeks Comment on Application for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc.*, WC Doc. No. 05-75, Public Notice, DA 05-762 (March 24, 2005).

delayed the development of competition in Puerto Rico.² In order to avoid having competition in Puerto Rico fall even further behind the rest of the mainland, the Commission must be certain to expressly include PRTC in any conditions placed on this present merger.

With regard to specific conditions, because of the effect that this merger will have on the market for enterprise customers, the Commission should restrict Verizon's ability to "lock in" large business customers through the use of carefully tailored multi-year contract tariffs. In addition, the Commission should require that Verizon offer for resale, at wholesale rates, its service bundles where at least one component of the service bundle is a telecommunications service. This will preserve resale as a meaningful mode of competitive entry.

I. Background

Headquartered in San Juan, Puerto Rico, WorldNet is a relatively small company, currently employing about 80 people. WorldNet has no affiliations with any other company and operates only in Puerto Rico. WorldNet currently provides local and long distance telephone and data services to enterprise customers throughout Puerto Rico. Initially, WorldNet provided its services exclusively through resale. However, WorldNet's business plan has always anticipated migrating its resale services to its own facilities. WorldNet is committing the extensive economic and strategic resources necessary to execute a facilities-based deployment plan and is scheduled to deploy its first facilities in the Fall of 2005. However, resale of PRTC services remains an important mode of competitive entry for WorldNet and allows it to aggregate the customers necessary to justify the investments required for the Company to migrate to its own facilities.

² See *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket 98-184, Memorandum Opinion and Order, FCC 00-221, 15 FCC Rcd 14032 (2000) (*GTE/Bell Atlantic Merger Order*).

II. Merger Conditions Should Apply in Puerto Rico

Regardless of anything else that the Commission does in this proceeding, it is critical that any conditions or restrictions placed upon the merger of Verizon and MCI be applied equally to all of Verizon's wireline affiliates and specifically to PRTC in Puerto Rico. PRTC is the incumbent LEC in Puerto Rico and serves approximately 1.2 million access lines, making it by far the largest telecommunications company in the Commonwealth.³ Through little more than a drafting oversight, prior merger conditions that were placed on the merger of Bell Atlantic and GTE, which created important competitive safeguards in other markets, were not applied in Puerto Rico.⁴ This oversight by the Commission all of those years ago has had a significant, negative impact on the development of competition in Puerto Rico.

Today, the telecommunications market in Puerto Rico lags far behind the rest of the country in terms of competitive development. Indeed, whatever the state of competition in the rest of the country, the conditions supporting robust, irreversible facilities-based competition do not exist in Puerto Rico. Although it has been over nine years since the passage of the Telecommunications Act of 1996 ("Act" or "1996 Act"),⁵ little progress has been made in introducing facilities-based competitive telecommunications services in Puerto Rico. Rather, as the Telecommunications Regulatory Board of Puerto Rico ("Puerto Rico Board" or "Board") found a little over one year ago, the telecommunication market in Puerto Rico is "more

³ See SEC Form 10-K of Verizon Communications, Inc. for the fiscal year ended December 31, 2004, at 27; see SEC Form 10-K of Telecomunicaciones de Puerto Rico, Inc. for the fiscal year ended December 31, 2004, at 7.

⁴ See generally *GTE/Bell Atlantic Merger Order*. The failure of the Order to mention PRTC was later interpreted by PRTC as meaning that the Order did not apply to PRTC. See Letter from Edwin Quinones, Counsel for WorldNet Telecommunications, Inc., to Michael K. Powell, Chairman of the Federal Communications Commission (February 12, 2001) (available in the record of CC Doc. Nos. 98-141, 98-184).

⁵ 47 U.S.C. §§ 151 et seq.

embryonic than corresponding markets on the mainland"⁶ and competitors attempting to gain access to the critical incumbent LEC facilities necessary for the provision of ubiquitous facilities-based telecommunications services must contend with an incumbent with a "consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised."⁷

PRTC was granted the ability to provide long distance services in 1987⁸ and was never subject to the market opening requirements of Section 271, even though Verizon subsequently bought it in 2000.⁹ This is mainly because the Bell Atlantic / GTE merger conditions were never applied in Puerto Rico. As a result, PRTC has been left with unrestrained access to both the local and long distance markets in Puerto Rico without having to meet the market opening requirements of Section 271.¹⁰ Consequently, PRTC has never developed any of the detailed service quality standards, performance plans or enhanced OSS options that have opened the way for meaningful facilities-based entry in many other markets of similar size.

Given this state of affairs it is easy to understand why the growth of competition in Puerto Rico has been slower and less robust than on the mainland. As a matter of fact, Puerto Rico currently has only one active facilities-based competitor,¹¹ and, of the approximately six

⁶ *Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Switching Impairments in Defined Puerto Rico Markets*, CC Doc. Nos. 01-338, 96-98, 98-147, Order and Notice of Proposed Rulemaking, FCC 04-179, p. 5 (filed December 30, 2003) ("*Waiver Petition*").

⁷ *Waiver Petition* at 23.

⁸ *Authorization of Common Carrier Facilities to Provide Telecommunications Services Off the Island of Puerto Rico*, CC Doc. No. 86-309, Report and Order, 2 FCC Rcd. 6600 (1987) ("*PRTC Long distance Order*").

⁹ *GTE/Bell Atlantic Merger Order*.

¹⁰ 47 U.S.C. § 271(c)(2)(B); see *PRTC Long distance Order*.

¹¹ Of the approximately eight CLECs that are certified by the Board to provide telecommunications services, only one facilities-based CLEC, Lambda Communications, Inc., a subsidiary of Centennial Communications, Inc., is active in Puerto Rico.

companies that are certified by the Board to operate as resellers in Puerto Rico, WorldNet is the largest reseller and is believed to be the only one with a locally based sales and support staff.

Moreover, San Juan ranks nearly last among major U.S. cities in terms of telecommunications competition, despite its status as the 27th largest metropolitan statistical area in the United States. Indeed, while local competition has flourished on the mainland, it has languished on the island. PRTC still maintains many of the characteristics of a vertically integrated monopoly.¹² The incumbent's market share dwarfs the shares of all of its other competitors combined. The other major competitor in Puerto Rico, Centennial Telecommunications, Inc. ("Centennial"), has about ten percent of the market and WorldNet has around 3%. This leaves the 13 percent competitive presence split between only two competitors, WorldNet and Centennial. No less authority on the subject than the Puerto Rico Board has recently found that the market in Puerto Rico is "more embryonic than corresponding markets on the mainland."¹³

There are a number of factors that have combined to create the bleak competitive situation that currently exists in Puerto Rico and this is not the place to list them all. However, it is clear that Puerto Rico is not a market that can afford to be overlooked by the Commission yet again as it considers a merger that will have a dramatic impact on the national telecommunications market in general and in Puerto Rico in particular. As a result, above all else, WorldNet urges the Commission to double check and make sure that any conditions or restrictions that it places on this merger are applied to PRTC, Verizon's monopoly wireline

¹² *Solicitud de Comentarios en Torno a Dominio de Mercado en la Prestacion de Servicios de Telecomunicaciones*, Case No. JRT-2000-CCG-0003, Resolution and Order on Reconsideration, 8 (Dec. 22, 2000); *Solicitud de Comentarios en Torno a Dominio de Mercado en la Prestacion de Servicios de Telecomunicaciones*, Case No. JRT-2000-CCG-0003, Resolution and Order, 9 (Sept. 6, 2000), (collectively "*Market Power Orders*").

¹³ *Waiver Petition* at 5.

affiliate in Puerto Rico. An oversight in not clarifying that any merger conditions apply in Puerto Rico would have lasting and harmful effects in the Commonwealth.

III. The Commission Should Place Restrictions on Verizon's Ability to "Lock In" Business Customers

As many observers have noted, the completion of this merger will represent a landmark event in the continuing evolution of the telecommunications industry in the United States and has the potential to drastically reduce the level of competition in several key markets, including the market for large enterprise customers.¹⁴ The merged company will be the second largest telecommunications company in the country and will own facilities permitting it to control access to critical voice and broadband facilities.¹⁵ The merged company's ability to control access to critical bottleneck facilities and to bundle services in ways that are harmful to competition has prompted calls from Congress and from the competitive community for the placement of conditions on this merger in an effort to blunt its anticompetitive effects.¹⁶ Such conditions would not be unprecedented, as the Commission has in the past conditioned its approval of mergers on the acceptance of voluntary merger conditions by the merging parties.¹⁷

WorldNet believes that one of the central dangers posed by this merger is the potential for Verizon to use its control over local bottleneck facilities to "lock in" the large enterprise customers brought into the company by MCI. WorldNet's experience in Puerto Rico with PRTC illustrates this point.¹⁸ Specifically, in Puerto Rico PRTC has used very narrowly tailored

¹⁴ See Yuki Naguchi, *Telcom Is Getting Another Behemoth*, Wash. Post, February 15, 2005 at A 1; See Ian Martinez, *AAI Panel Argues Against Big Telecom Mergers*, Comm. Daily, March 25, 2005 (*Martinez Article*).

¹⁵ See Terry Lane, *Senators Urged to Focus on Network Access in Merger Reviews*, Comm. Daily, April 20, 2005.

¹⁶ See Terry Lane, *Antitrust Senators to Send Telecom Merger Conditions to DOJ*, Comm. Daily, March 16, 2005; see *Martinez Article*.

¹⁷ See, e.g., *GTE/Bell Atlantic Merger Order*.

¹⁸ See *WorldNet Telecom. V. Puerto Rico Tel. Co., Inc.*, Case No. JRT-2003-Q-0143 (complaint filed by WorldNet against PRTC for unlawful use of contract tariffs).

contracts to win back and lock in specific large enterprise customers. PRTC then files these contracts with the local regulatory authority as a contract tariff.”

While under normal circumstances this can be a perfectly acceptable business practice, PRTC has used these contracts as a device for leveraging its monopoly power to very effectively win back enterprise customers and prevent them from ever leaving PRTC. The contract tariffs in question contain both regulated and unregulated communications services and customers are locked into the three-year term of this tariff by a termination charge, which is not based upon the costs actually incurred by PRTC in setting up the contract.¹⁹ Further, each individual service within the bundle of services that constitutes the tariff is locked into the bundle by a minimum annual revenue commitment, which the customer must pay for the services in the bundle even if it is not taking all of those services.²⁰ In this way, the mutually reinforcing termination penalty and revenue commitments force a customer to stay with PRTC and pay the full amount for every particular service within the bundle, even if it is no longer using the service. This effectively locks in the customer for each service within the contract tariff as well as to the contract tariff as a whole.

In practice, PRTC has negotiated these contracts by first requiring a confidentiality agreement that effectively prevents the customer from negotiating simultaneously with PRTC and any other supplier for the same bundle of services.²¹ Then, once the contractual arrangement is made and the contract tariff filed, no other competitor can use the tariff to supply other customers because the tariff is designed around the unique characteristics of a specific

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

customer.²² In addition, because the contract includes unregulated services, no customer could meet the revenue commitments on the remaining regulated service portion of the bundle. The minimum annual revenue commitment also prevents competitors from offering the PRTC contract customers a better price on any individual service in the contract tariff. Finally, at the end of the contract term, it is likely that PRTC will simply re-impose a “confidentiality” requirement during the renegotiation period and lock in the customer for an additional three years and repeat the cycle.

WorldNet is concerned that Verizon’s ability to apply this tactic, which is of very questionable legality in its own right, to customers currently served by MCI will permanently lock in a large segment of the market for enterprise customers. Accordingly, WorldNet believes that the Commission should place a condition on this merger that forbids Verizon from entering into arrangements that effectively lock in enterprise customers for more than a single year term. Specifically, the Commission should require that all contract tariffs be made available for resale for the life of the contract, allow the resale of both regulated and unregulated portions of the service bundle (as discussed below), require that any termination penalties be based upon recouping the costs of setting up the services, and require the pro-rating by service of any minimum revenue requirement. These conditions will help mitigate the impact of this merger on the enterprise customer market and will provide competitors with reasonable ability to compete for large enterprise customers.

²² *Id.*

IV. The Commission Should Require Verizon to Make Bundled Service Packages Available For Resale

In a sales strategy related to its contract tariffs, PRTC provides a number of bundled packages to its retail customers.²³ PRTC uses the fact that a service bundle offered to enterprise customers contains either regulated services provided by an affiliate (rather than directly by PRTC), or unregulated services, as an excuse for not making the entire package available to competitors for resale. In essence, PRTC uses these other services to “inoculate” a service package from resale. WorldNet is concerned that a merger of Verizon and MCI will allow the merged company to expand this practice. This, taken together with the lock in tactics discussed above, poses a serious threat to competition and could significantly reduce the viability of resale as a meaningful mode of competitive entry.

Congress enacted the 1996 Act to promote and encourage competition in the local telecommunications market by “lifting the shackles of monopoly regulation.”²⁴ Accordingly, the 1996 Act imposes certain duties upon incumbent LECs such as Verizon. Of particular importance to this case is the incumbent LECs’ “resale” obligation, which requires incumbent LECs to provide their complete package of retail services to competitors.²⁵ Competitors may compete with the incumbent LECs by reselling these services to their own customers.²⁶ The resale provisions of the 1996 Act further forbid “unreasonable or discriminatory conditions or limitations” on resale.²⁷

²³ See <http://www.telefonicapr.com/prtc/channelArticle/0,1044,2153_2638072_2690650,00.html> (visited Apr. 25, 2005).

²⁴ H.R. Rep. No. 104-204 at 48 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 11.

²⁵ 47 U.S.C. § 251(c)(4).

²⁶ *Id.*

²⁷ *Id.*

In implementing this statutory resale requirement, Commission concluded that [r]esale will be an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled network elements or by building their own networks.”²⁸ Accordingly, consistent with the pro-competitive intent of the 1996 Act, the Commission has appropriately determined that the plain language of the 1996 Act requires that the incumbent LEC make available at wholesale rates retail services that are actually composed of other retail services, *i.e.*, bundled service offerings.”²⁹ The ability to resell the incumbent LECs’ services is an especially critical mode of competitive market entry in Puerto Rico due to the market conditions discussed above and has become even more critical following the FCC’s *TRRO*,³⁰ which drastically reduced the availability of UNEs necessary for market entry.

As Verizon merges with MCI and combines MCI’s extensive current client base and internet and long-distance services and infrastructure with its own, it will have an unprecedented ability to offer a wide variety of bundled service offerings that include regulated and unregulated services from various affiliates. In order to preserve resale as a meaningful mode of competitive entry, the Commission must condition the consummation of this merger on Verizon allowing the resale bundled service offerings in their entirety where they contain a telecommunications component. This will ensure that resale remains a viable option for competitive entry.

²⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, 15516 (1996) (*Local Competition Order*”).

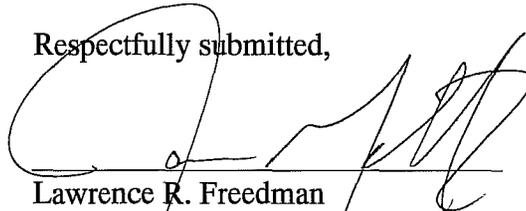
²⁹ *Local Competition Order*, 11 FCC Rcd. at 15937.

³⁰ *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, Order on Remand (rel. Feb. 4, 2005) (*TRRO*”).

V. CONCLUSION

First and foremost in this proceeding, the Commission must ensure that any conditions or restrictions that it ultimately places on the proposed merger are applied to all of Verizon's wireline affiliates, including expressly to PRTC. The Commission's failure to expressly include PRTC in prior merger conditions had negative consequences for the development of competition in Puerto Rico. In order to avoid having competition in Puerto Rico fall even further behind the rest of the mainland, the Commission must be certain to expressly include PRTC in any conditions placed on this present merger. The Commission should also act to lessen the anticompetitive effects that this merger will have on the market for enterprise customers by restricting the merged company's ability to "lock in" large business customers through the use of carefully tailored multi-year "contract tariffs" and to avoid its resale obligations by bundling all of its enterprise telecommunications services with unregulated services and services provided by affiliates.

Respectfully submitted,



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