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

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

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

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SUMMARY

The proposed merger of Verizon Communications Inc. and MCI, Inc. (together, the "Applicants") will cause substantial competitive harm to the telecommunications marketplace unless the Commission conditions its approval of the merger on appropriate safeguards. The fatal flaw in the Applicants' premise is their argument that the proposed transaction poses no competitive concerns because it combines "complementary" companies. However, it is precisely the anti-competitive combination of "complementary" networks and services that led to the AT&T Divestiture and the creation of the Bell Operating Companies ("BOCs"). Contrary to the Applicants' claims, recent market developments – including the simultaneous proposed acquisition of AT&T Corp. by SBC Communications, Inc. – exacerbate, rather than alleviate, the potentially anti-competitive effects of the proposed merger. Today, the proposed combination of Verizon and MCI not only would have vertical market effects (combining their complementary businesses), but horizontal as well, because Verizon now enjoys the regulatory authority to enter market sectors closed to it by Divestiture, and Verizon and MCI already compete with each other in many of these markets.

Of particular concern, the proposed merger raises substantial competition issues in the special access services market. Special access itself is a distinct product market and the Commission must analyze the competitive effects of the merger on that market. Those effects are decidedly anti-competitive. For many customers, MCI is the *only* alternative provider of special access services in Verizon's region; for others, it is one of very few. By increasing Verizon's current market power, the proposed merger will increase Verizon's ability to impose and to sustain supra-competitive prices to the detriment of all special access services customers. Moreover, through Verizon's horizontal and vertical integration of MCI's services, the combined entity will significantly increase its presence in the enterprise network services market.

Therefore, the proposed merger will have significant anti-competitive consequences in that retail end-user market, where special access services are an essential input.

The Commission cannot fully address whether the proposed merger would serve the public interest unless it addresses the competitive effects of the merger on the special access services market in *this proceeding*. The merged company's market power in the pricing and provision of special access services would so fundamentally change the competitive landscape that the Commission cannot properly defer the issues to a separate rulemaking. Indeed, no post-merger rulemaking proceeding would be able to restore competition for special access services once it is eliminated by the proposed merger.

The proposed transaction also will have anti-competitive effects in the switched access services market, and could have a particularly severe impact on IP-enabled services providers. The proposed merger of Verizon and MCI, each a major competitor in the consumer and enterprise VOIP markets, will increase the Applicants' incentive and ability to discriminate in the provision of switched access services to competitive providers. The Commission therefore should clarify in this proceeding the form of access to which VOIP providers are entitled, and the type of intercarrier compensation arrangement that will govern such access, and impose conditions on the proposed merger designed to ensure that the Applicants do not discriminate against competing providers of VOIP services.

Like the pre-Divestiture AT&T, the newly combined Verizon and MCI will utilize the political, legal, and regulatory process to thwart the competitive threats they face in the marketplace. Indeed, one of the strategic benefits to Verizon of the proposed merger is the elimination by Verizon of a major political and regulatory opponent – a company that made its mark challenging the pre-Divestiture AT&T and opening telecommunications markets to

competition. It is important, therefore, that the Commission consider in this proceeding alternative dispute resolution processes because the proposed merger will diminish the diversity of voices in the telecommunications public policy arena and dramatically widen the resource gap between Verizon and its competitors. As the Commission is well aware, inter-carrier disputes are plentiful. Unfortunately, the Commission's existing tools for addressing them are cumbersome, time consuming and expensive. The ability of competitors to obtain equitable relief in a timely and efficient manner is in serious jeopardy, especially in light of the speed with which the telecommunications market is changing. The Commission should reinvigorate and modify its existing "accelerated docket" process and utilize it as a "baseball-style" arbitration panel. Under baseball-style arbitration, the two opposing parties are required to put forth their "best and final" offer and one is selected as the remedy for both parties. This process is quick and efficient and forces opposing parties to narrow their differences before reaching the arbitration stage.

For all of these reasons, the Commission must not approve the merger unless it imposes adequate conditions to guard against the merged company's abuse of market power. The Commission should develop and appropriately tailor the precise form of these conditions as more information becomes available in this proceeding.

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Global Crossing North America, Inc., on behalf of its U.S. operating subsidiaries (collectively, "Global Crossing"), submits its initial Comments in the above-captioned proceeding. Verizon Communications Inc. and MCI, Inc. (together, the "Applicants") have utterly failed to show that approval of the proposed transaction would serve the public interest. To the contrary, the proposed merger of Verizon and MCI – especially viewed in tandem with the proposed merger of SBC and AT&T – would reverse nearly three decades of pro-competitive U.S. telecommunications policy codified in the Telecommunications Act of 1996 ("1996 Act") and raise substantial competitive issues, particularly in the access services market. For the reasons set forth below, the proposed merger is anti-competitive. Therefore, the Communications Act of 1934, as amended (the "Communications Act") precludes the Commission from approving the proposed merger unless the Commission imposes meaningful conditions to mitigate the proposed merger's clear anti-competitive effects.

Global Crossing has a strong interest in this proceeding because it relies heavily on Verizon and MCI's "last mile" access facilities to reach end-user customers. Global Crossing provides telecommunications solutions over the world's first integrated global Internet Protocol-based network to business customers. Its core network connects more than 300 cities in 30

countries worldwide, and delivers services to more than 500 major cities, 50 countries and 6 continents around the globe. Global Crossing offers a full range of managed data and voice products to enterprise customers, governments, system integrators, carriers and Internet service providers. The company relies heavily on Verizon and MCI to obtain "last mile" access services to reach its customers. Because the proposed merger will substantially increase the Applicants' market power in the access services market, the transaction could cause significant competitive harm to competitive carriers, such as Global Crossing, as well as their end-user customers.

I. THE PROPOSED MERGER WOULD REVERSE DECADES OF UNITED STATES TELECOMMUNICATIONS POLICY

The Applicants request that the Commission, "consider the state of competition within a given market not merely as it exists at the time of a transaction, but also as the Commission expects it to develop within the next few years."[1] Global Crossing could not agree more. While the Verizon-MCI merger poses anti-competitive concerns on its own, viewing this proposed merger in light of the proposed SBC-AT&T merger is even more troubling.[2] These proposed combinations of two dominant local exchange carriers in their respective regions and the two largest independent long-distance carriers in the United States would essentially reconstruct the pre-Divestiture AT&T in Verizon's and SBC's regions, raising many of the historical concerns regarding the Bell System's discriminatory treatment of its competitors. As a statement of the Judiciary Committee of the U.S. House of Representatives explains, the proposed Verizon-MCI and SBC-AT&T mergers "ha[ve] created what some have perceived to be a telecom oligopoly comprised of a diminishing number of Baby Bells that increasingly

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1 *Public Interest Statement* at 5 (citing *Bell Atlantic/GTE Order* at ¶ 396 n.883).

2 The proposed SBC-AT&T merger raises similar anti-competitive concerns, as Global Crossing set forth in its Comments filed in the Commission's proceeding reviewing that transaction. Comments of Global Crossing North America, Inc., WC Docket No. 05-65 (filed April 25, 2005).

resemble the Ma Bell monopoly from which they were created."[3] The irony of the proposed transaction is particularly palpable considering that MCI was the first major competitive threat to AT&T and a major catalyst leading to Divestiture.

In the Applicants' *Public Interest Statement*, Verizon and MCI repeatedly tout the complementary aspects of their businesses and the efficiencies that would purportedly flow from the transaction.[4] For nearly three decades, however, the courts and then Congress, through the 1996 Act, consistently have guarded against the ability of any single telecommunications company to amass excessive control over the telecommunications network, and thereby stifle competition. In this proceeding, the Applicants are asking the Commission to reverse this policy.

The Applicants' *Public Interest Statement* argues that the telecommunications market has been "transform[ed]" by "changes in technology, regulation, and consumer demand."[5] The fact that the telecommunications market is constantly evolving, however, does not permit the Commission to re-write the policies set forth in the 1996 Act. While Congress intended that the BOCs could grow their own in-region long distance businesses once they satisfied the competitive requirements set forth in Sections 271 and 272 of the 1996 Act, Congress never contemplated that two BOCs would almost simultaneously swallow up the first and second largest long distance providers in the country, AT&T and MCI.[6]

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3 *House Judiciary Leaders Raise Concerns Over Telecom Mergers*, Communications Daily, Apr. 21, 2005.

4 *See Public Interest Statement* at 10-18.

5 *Id.* at 5.

6 The position of policy-makers at the time the 1996 Act was passed is exemplified by former Commission Chairman Reed Hundt, who, in 1997, labeled any merger between AT&T and a BOC to be "unthinkable." *Thinking About Why Some Communications Mergers are*

It is one thing to allow Verizon and SBC to enter the long distance market, starting from zero market presence, pursuant to Sections 271 and 272 of the Act, but it is quite another to allow these BOCs instantly to eliminate their largest potential competitors in that market. Ivan Seidenberg, Chief Executive Officer of Verizon, recently made the following statement regarding Verizon's ability to build a national Internet network and organically grow its government and corporate contracts business versus simply buying MCI: "It would take us longer to build ourselves."[7] This leaves little doubt that Verizon's entry into these markets is inevitable without the merger, but that the proposed merger would end any prospect of competition between Verizon and MCI.

Wholly apart from the anti-competitive implications of the vertical integration of MCI and Verizon, changes to the telecommunications market since the passage of the 1996 Act have created horizontal issues that did not previously exist. For example, Verizon only recently received all of the necessary regulatory approvals pursuant to Section 271 of the 1996 Act to provide long distance services throughout its region. In addition, the Commission's approval of the proposed merger would preclude competition between Verizon and MCI and, therefore, would have significant anti-competitive effects in at least two distinct product markets: (1) the market for special access services (essentially, an input market); and (2) the market for enterprise network services (a downstream market that relies upon special access services as an essential input).[8]

Unthinkable, Chairman Reed E. Hunt, before the Brookings Institute, Washington, DC (June 19, 1997).

[7] Todd Wallick, *Verizon CEO sounds off on Wi-Fi, customer gripes; Seidenberg also explains phone company's reasons for wanting to buy MCI*, SAN FRANCISCO EXAMINER, at C-1, Apr. 16, 2005.

[8] *See* Statement of Joseph Farrell at ¶ 40 (attached as Exhibit A to Comments of Global Crossing, WC Docket No. 05-65 (filed April 25, 2005) ("*Farrell Statement*").

The Communications Act demands that the Commission not approve the proposed merger unless the Applicants demonstrate that the grant would serve the public interest. The proposed transaction raises significant competitive issues, however, and the Commission should not approve the transaction without imposing the necessary conditions to safeguard against the potential anti-competitive effects of the transaction.

II. THE PROPOSED MERGER WOULD HARM COMPETITION IN THE SPECIAL ACCESS SERVICES MARKET

Special access services are critical to the competitiveness of U.S. telecommunications markets because they provide the "last mile" connection to a customer's premises and are an essential input to all providers of telecommunications services to business customers.[9] Yet, the Applicants fail to engage in a rigorous economic analysis of the product and geographic markets relevant to special access services.[10] Rather, the Applicants claim that "it does not advance the analysis to . . . divide customers into separate markets based on where they are located or what kinds of communications products they are purchasing."[11] Based on their less than thorough economic analysis, the Applicants repeatedly claim that they are not "'among a small number of . . . most significant market participants' for any relevant service or for any relevant customer group."[12]

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9 "Special access services do not use local switches; instead they employ dedicated facilities that run directly between the end user and the IXC's point of presence (POP) or between two discrete user locations." *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* 20 FCC Rcd 1994, at ¶ 7 (2005) ("*Special Access NPRM*").

10 *Public Interest Statement* at 9.

11 *Id.*

12 *Public Interest Statement* at 9; *see id.* at 4, 18 and 22.

In stark contrast to the Applicants' assertions, an economic analysis based on the Department of Justice's Merger Guidelines and Commission precedent[13] demonstrates that Verizon and MCI *are indeed* "among a small number of . . . most significant market participants" in the special access services market and that the proposed merger would have substantial anti-competitive effects in that market. Consistent with this precedent, the following sections: (1) define the special access services product market and geographic markets; (2) describe the current state of competition in the special access services market and the respective roles of Verizon and MCI in that market; and (3) discuss how, if the Commission approves the merger without conditions, the combined company would have the ability and incentive to use its market power in the provision of special access services to harm competition throughout Verizon's region.

A. A Rigorous Analysis of the Special Access Services Market Shows That the Proposed Merger Will Enhance Verizon's Market Power

1. Special Access Services Constitute a Distinct Product Market

The Commission consistently has reviewed the access services market as its own product market,[14] and most recently recognized the "increased importance of special access

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[13] *See generally,* Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, Issued Apr. 2, 1992, Revised April 8, 1997; *see Applications of Ameritech Corp. and SBC Communications For Consent to Transfer Control Corporations Holding Commission and Lines Pursuant to Sections and 310(d) of the Communications and Parts 5, 22, 24, 25, 63, 90, of the Commission's Rules,* 14 FCC Rcd 14712, at ¶ 67 (1999) ("*Ameritech-SBC*"); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc*., 13 FCC Rcd 18025, at ¶ 16 (1998); *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries*, 12 FCC Rcd 19985, at ¶ 37 (1997) ("*Bell Atlantic-NYNEX*").

[14] *See Special Access NPRM* at ¶ 3; *Performance Measurements and Standards for Interstate Special Access Services; Petition of U S West, Inc. For a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed Interstate Services; Petition of Association for Local Telecommunications Services for*

services relative to other access services."[15] In prior merger proceedings, the Commission has addressed special access services as a discrete product market in determining whether approval of the proposed transactions would serve the public interest,[16] and has found it necessary to impose conditions to guard against the potential abuse of market power for special access services.[17]

The Applicants erroneously imply that the abundance of collocation in Verizon's region somehow translates into competition in the special access services market.[18] But this suggestion ignores the fact that Verizon exercises considerable pricing power, because collocators are dependent on Verizon for two of three rate elements which comprise special access services. Special access services are comprised of the three basic rate elements – two channel terminations representing the end points of the special access circuit and the mileage component representing the transport between the two endpoints. Collocators self-provision one

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Declaratory Ruling; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements; AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Need to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services, 16 FCC Rcd 20896 (2001); *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd 18730 (1997).

15 *Special Access NPRM* at ¶ 3.

16 *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations; Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent to Assignment and Long-Term De Facto Lease of Licenses; Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses*, 19 FCC Rcd 21522, ¶ 183 (2004).

17 *See, e.g., Ameritech-SBC* at ¶ 404 (requiring merging entities to "file reports showing the service quality provided to interexchange carriers, which will include data regarding . . . special access services").

18 *Public Interest Statement* at 32-33 (discussing competition in terms of fiber to the wire center).

channel termination, but rely on Verizon for the other channel termination and the mileage component. Under the Commission's pricing flexibility rules, Verizon has wide latitude in pricing these elements. Therefore, collocators can only truly compete for one-third of the rate elements that make up a special access service. Verizon's control of the other two-thirds greatly diminishes any marketplace benefit potentially derived from this limited competition.

Moreover, access to unbundled network elements ("UNEs") is not part of the same product market as special access services. The requirement to provide unbundled access to DS1 and DS3 loop and transport facilities does not serve as a viable alternative to special access services for most carriers. Commission rules require such unbundling only to facilitate the provision of local services. As the Commission explained in its recent *Remand Order*, "the majority of special access arrangements are used to provide service in the mobile wireless and long distance markets . . . [the Commission has] foreclosed UNE access for the exclusive provision of mobile wireless and long distance services."[19] Global Crossing is among a group of carriers that provides predominantly services that are ineligible for UNE access, and thus it derives little or no benefit from UNE arrangements. Because the majority of carriers cannot avail themselves of regulated UNE rates, their end-user customers also fail to benefit from any cost savings that regulated access to UNE DS1 or UNE DS3 services might otherwise provide.

2. The Commission Should Analyze the Special Access Services Market on Both a Route-Specific and a Region-Wide Basis

The Commission should define the geographic market for special access services in two ways: (1) on a route-specific basis (building-by-building); and (2) on a region-wide

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[19] *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, at ¶ 64 (Feb. 4, 2005) ("*Remand Order*").

basis.[20] The more granular geographic market analysis will show that a special access customer has very few competitive choices to reach most business customer end-users, and that there will be even fewer choices if the proposed merger is approved. The region-wide analysis will prove Verizon's unmatched ability to reach the majority of end-users region-wide, and expose its practice of requiring special access customers, such as Global Crossing, to enter into high, region-wide volume commitments to obtain discounted rates. These volume commitments constrain the ability of special access customers to utilize the services of lower cost providers of special access services. Under either analysis, Verizon wields considerable market power that will be exacerbated if the Commission approves the proposed merger.

A route-specific geographic market analysis demonstrates the limited level of competition to serve particular end-user customers. As Professor Farrell has explained, customers of special access services "try[] to serve particular [end-user] customers in particular locations."[21] Commission precedent demonstrates that this type of analysis is typically required to determine the competitive effects of a proposed merger.[22] Specifically, where a building is

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[20] *Farrell Statement* at ¶¶ 3, 19. As Professor Farrell explains, "These are not alternative means of analysis. . . . an analysis that uses geographic market definition must consider both of these definitions or risk overlooking important effects." *Id.* ¶ 20.

[21] *Id.* ¶ 10.

[22] *See, e.g., Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, 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*, 15 FCC Rcd 14032, ¶ 411 (2000) (analyzing "whether it is necessary to impose [the Commission's] international dominant carrier safeguards on the merged entity's international carrier subsidiaries in their provision of service on these [specific] affiliated routes"); *see also Remand Order* at ¶ 79 ("we measure impairment with regard to dedicated transport on a route-by-route basis"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 17 FCC Rcd 16978, at ¶ 376 (2003) ("Where the record indicates impairment and that only with more granular evidence could a finding of non-

served by multiple special access services providers, there is no assurance of substantial competition in areas adjacent to that building. As one economist has explained:

> Special access competitors desiring to serve a particular end-user require facilities at both ends of the circuit and in between as well. An end-user in a particular building in a city center location may have multiple competitive alternatives available while a customer in a building a block or two away may not have alternatives available for some time.[23]

AT&T similarly stated in its Petition to reform BOC pricing flexibility in the special access services market:

> Enterprise customers do not confront 'similar choices regarding a particular good or service' throughout an entire MSA – the standard previously adopted by the Commission as the basis for defining a geographic market area . . . . [D]ecisions as to self-provisioning are made on a case-by-case basis, and are only justified where revenues available at the specific location are sufficient to offset the large capital investment that is required to construct facilities to the building.[24]

Even in determining in its *Pricing Flexibility Order* to set competitive triggers on an MSA basis, the Commission properly recognized that a more granular analysis "might produce a more finely-tuned picture of competitive conditions."[25] Here, such a "finely-tuned picture" would

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impairment be made, we establish triggers to identify non-impairment based on route-specific evidence"); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, at ¶ 80 (1997) ("Our decision here to examine aggregate data that encompasses all international point-to-point markets does not modify our existing route-by-route approach to consider whether U.S. carriers affiliated with a foreign carrier should be regulated as dominant in the provision of international services because they are affiliated with a foreign carrier that exercises market power in a foreign market").

[23] Daniel Kelley, *Deregulation of Special Access Services: Timing is Everything*, at 10, *available at* http://www.hainc.com/ALTS.pdf (last viewed April 25, 2005).

[24] *Id.*

[25] *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221, 14260 (1999), *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) ("*Pricing Flexibility*

demonstrate that competition to serve all but the most urban markets is extremely thin, and that there is no competitive choice to reach many end-users even within such urban markets. But because the data relevant to such a showing is not publicly available, the Commission should require that the parties provide it so that the Commission may conduct the necessary analysis.

The Commission should reject the Applicants' contention that fiber to a wire center equals special access services competition to an individual building.[26] The Applicants imply that the special access market is competitive on a building-by-building basis by stating that in "wire center areas" where MCI fiber reaches individual buildings, "there is at least one other competing carrier within the area . . . ."[27] As the above analysis demonstrates, however, building fiber to a "wire center area," or collocation in a Verizon central office, is far different from building fiber to an end-user's premises. Applicants list Global Crossing repeatedly as having a competing network in the 150 largest MSAs,[28] but Global Crossing does not provide "last mile" special access services, and in fact is one of Verizon's and MCI's largest customers for special access services.[29] The Commission should thus examine the geographic market on a building-by-building, not "wire center area," basis.

Order"). In the *Pricing Flexibility Order*, the Commission did not require a competitive showing below the MSA level due to the administrative costs such a showing would entail. *Id.* The Commission's consideration of administrative costs in promulgating general regulatory frameworks, however, is distinguishable from the merger analysis the Commission must undertake to determine whether a particular transaction serves the public interest.

26 *Public Interest Statement* at 32-33.

27 *Id.* at 33.

28 Declaration of Quintin Lew and Ronald H. Lataille (Attachment 5 to the *Public Interest Statement*), at Exhibit 5.

29 The fact that the Applicants cite Global Crossing as a competitor for special access services instead of a consumer of such services raises serious questions about the Applicants' (and Declarants') analysis.

To complete its market analysis, the Commission also should analyze the special access services market on a region-wide basis.[30] Only Verizon provides special access services to virtually all business customers throughout its entire region. No competing special access services provider offers the region-wide coverage of Verizon. This forces carriers like Global Crossing to deal with Verizon and give Verizon as much business as possible if they are to qualify for the best discounts Verizon offers. Thus, as a practical matter, even where special access alternatives exist, such alternatives do not present real choice to carriers that seek to provide services to end-users region-wide.

A region-wide analysis is all the more appropriate because Verizon has imposed on its special access customers region-wide volume and term commitments which are structured to prevent special access customers from utilizing the services of competing special access providers. Typically, Verizon will structure volume commitments in terms of a percentage of the special access customer's embedded base of circuits, or its current annual spend. Special access customers must commit to spend at least 90% of their current spend in the following year or maintain 90% of their embedded circuit base with Verizon in order to be eligible for any meaningful volume discounts. Moreover, Verizon's market dominance allows it to impose longer term contracts and high early termination penalties that lock in customers to Verizon service even if a lower cost special access services alternative presents itself.

Verizon's special access services pricing structure exacerbates carriers' attempts to alter their business plans or implement strategic market plans. For instance, a carrier may elect to exit a particular line of business because it produces low margins or is entirely

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[30] *See Farrell Statement* at ¶¶ 15-18 and Technical Appendix (Professor Farrell's analysis of the product market and geographic market in the proposed merger of SBC and AT&T applies equally to the practices and relative market positions of Verizon and MCI).

unprofitable. Canceling special access services associated with these markets, however, could result in the carrier missing its special access services volume commitment level, triggering price increases by Verizon, and negatively impacting the level of margin or profitability of other lines of business the carrier continues to serve. These lower overall margins could harm the carrier's competitiveness in its remaining lines of business, thus creating a vicious cycle that ends only when the carrier is out of business entirely. Currently, the carrier would, at least, be able to turn to MCI or AT&T as the most viable region-wide special access service alternative, but the proposed merger would eliminate MCI as an option.

B. Current Market Conditions Demonstrate that Verizon and MCI Are "Among a Small Number of Most Significant Market Participants" in the Special Access Services Market

The *Public Interest Statement* speaks in general terms about competitive choice, but fails to adequately address the fact that Verizon and MCI are "among a small number of . . . most significant market participants" in the special access services market. In particular, Verizon is, by far, the largest provider of special access services in its BOC service territories. Typical of BOCs, Verizon's ILEC subsidiaries serve as the only connection to a customer throughout the majority of their respective service areas. In many geographic areas, Verizon serves as one of only one or two providers of special access services essential to reach a particular end-user.

MCI owns among the largest set of competitive access assets in the country and throughout Verizon's region. Where Global Crossing has any choice at all, MCI sometimes serves as one of the only competing providers of special access services to reach a particular end-user. Indeed, Global Crossing purchases more special access services from Verizon and MCI than any other carrier in Verizon's region. Further, because of pricing flexibility granted to the BOCs, and the huge volume of special access services that MCI purchases, MCI has buying

power to obtain volume discounts that no other carrier (except perhaps AT&T) likely can obtain. In addition to its own extensive network facilities, MCI resells some of the special access services it purchases from Verizon, thus expanding its own network presence and viability as a regional competitor in the special access services market. When MCI resells Verizon special access services, MCI passes on some of its discount to its wholesale customers, and provides service at rates lower than offered by Verizon. Regardless of whether MCI provides special access services over its own facilities or on a resale basis, it invariably serves as a lower-cost alternative to Verizon. The availability of MCI's special access services as a lower cost alternative to Verizon will end upon the consummation of the proposed merger, as the merged entity will have no incentive to use its integrated assets to compete with itself (whether or not it seeks to combine these operations to gain synergies).

Due to its superior ability to reach end-users throughout its region, Verizon exercises market power in the special access services market in Verizon's region, and the proposed merger will only increase that market power. As described above, in those buildings where Verizon faces special access services competition, the competitors will serve as a low cost alternative to Verizon. At a regional level, however, Verizon's unmatched ability to reach more end-user premises enables it to require that special access customers enter into region-wide volume commitments in order to be eligible for price discounts. These volume commitments, in turn, constrain special access customers' flexibility to choose the alternative special access provider, even if the alternative provider offers the service at a lower rate.

For example, whenever feasible, Global Crossing uses an alternative provider of special access services at substantial cost savings to the special access services offered by Verizon. However, Verizon's volume commitment requirements restrict carriers' flexibility to

take advantage of competitive alternatives. Aware of the lack of region-wide choices available to market participants such as Global Crossing, Verizon chooses not to meet its competitors' rates. For example, Global Crossing often must pass up using competitive access alternatives *at nearly half the price* of Verizon's identical product, due to the constraints accorded by Global Crossing's contractual volume commitment with Verizon. In those rare instances that Verizon loses business to an alternative special access services provider, Verizon apparently considers this a cost of doing business. It is far more profitable for Verizon to charge high rates to its captive (and thus non-price-sensitive) customers, rather than lower its prices to compete with MCI for fringe customers.

Market performance data filed by AT&T supports a finding that Verizon has considerable pricing power. AT&T filed a Petition alleging that Verizon has earned supra-competitive profits for special access services -- a rate of return in 2001 of 21.72% percent, 37.08% excluding the NYNEX service territory -- far in excess of the 11.25% rate of return level that the Commission has found reasonable for other services (and, for that matter, special access services).[31] According to AT&T, if the special access services market were actually competitive, one would expect prices and profits to fall.[32] But this has not occurred. Rather than decreasing, special access services rates steadily have increased in Verizon's region.[33]

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[31] AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593, at 8 (filed Oct. 15, 2002) ("*AT&T Special Access Petition*").

[32] *Id.* (discussing the "predictive judgments that market forces would constrain the Bell's special access pricing"). Indeed, prices have fallen dramatically in the long-haul special access market, where prices have dropped 90% since 1999 on most routes in the U.S. and Europe. *2004 International Bandwidth Report*, Telegeography, Chapter 5, at 16.

[33] *See AT&T Special Access Petition* at 9 (showing the upward trend in Verizon's special access rates).

In sum, special access services competition is, at best, inconsistent throughout Verizon's region. Competition varies significantly on a building-by-building basis. On the other hand, Verizon is the only carrier capable of serving the entirety of its region's business customers. While MCI serves as a valuable low cost alternative, Verizon wields considerable market power due to its continued preeminence as the primary provider of special access services throughout its region.

C. The Proposed Merger Will Eliminate a Lower-Cost Alternative to Verizon's Special Access Services in a Market that Only Has a Small Number of Significant Market Participants

The Applicants are incorrect in their assertions that their proposed merger will not harm competition. To the contrary, the proposed merger would give the combined company substantial market power by pairing Verizon, the largest special access services provider with one of the few other "significant market participants" in terms of special access services market share and facilities-based reach. And, in those instances in which Verizon and MCI are the only options to gain access to certain buildings, the proposed merger would be a merger to monopoly. The existence of other fiber networks in the "wire center area" will not mitigate the anticompetitive effects of this merger. Moreover, MCI consistently offers special access services at a lower rate than Verizon, and therefore serves as a primary region-wide special access services alternative to Verizon. In fact, as stated above, MCI is *the* number one alternative special access services choice for Global Crossing in Verizon's region. The proposed merger would increase Verizon's market power, to the detriment of special access services users.

In addition, the vertical integration of Verizon, a BOC, with MCI, the second largest independent interexchange carrier in the United States, would substantially raise Verizon's incentives to harm competitors of the former MCI, such as Global Crossing. Verizon currently is not a major competitor of Global Crossing, but MCI is. Therefore, while the record

shows that Verizon has substantial market power in the special access services market, Verizon currently does not have a substantial competitive incentive to discriminate against Global Crossing. Conversely, MCI has ample incentive to discriminate against Global Crossing, but today it lacks the market power necessary to charge supra-competitive special access services rates. Consummation of the proposed transaction would change this dynamic. The proposed merger would increase significantly Verizon's incentives to exercise its market power in the special access services market to the detriment of Global Crossing and other users of special access services with which the combined company will compete.[34]

It has been suggested that the newly combined Verizon and MCI will be more sensitive to special access services pricing because Verizon will be a large volume purchaser of special access services in its out-of-region territory. Verizon may indeed be, and in fact will likely be among the largest purchasers of special access services, based on MCI's existing use of such services. But that will entitle Verizon to the largest volume discounts, and MCI's extensive local access network will allow Verizon to credibly threaten to bypass other special access services providers who do not meet Verizon's price points. So Verizon's sensitivity to special access services pricing is theoretical at best, and at all events would not redound to the benefit of its own special access customers.[35] Moreover, given Verizon's current use of exclusionary volume discounts, the Commission should examine the potential competitive effects should Verizon engage in those practices on a nationwide basis.

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[34] *See Farrell Statement* (describing this effect in the SBC-AT&T proceeding).

[35] The Commission also should view this issue in the broader context of industry consolidation where SBC is set to acquire AT&T, the largest user and competitive provider of special access services in the country. The prospect that Verizon and SBC could well become each other's largest customer as well as the largest competitive access provider in each other's region warrants further examination in this proceeding.

Verizon's post-transaction market position as a competitor and consumer of local access services creates the ability and incentive for Verizon to discriminate against competing providers of enterprise services. The merger ultimately will harm end-users, as the combined company will be able to raise and sustain supra-competitive special access services rates. Some competitive carriers will likely be forced from the market due to higher special access services rates. Those competitors that remain, however, likely will find it necessary to pass through these higher costs to their end-user customers.[36] In either case, the merger would disserve the public interest.

D. The Commission's Ongoing Proceeding Examining Special Access Services Rates Does Not Justify Overlooking the Anti-Competitive Effects of the Proposed Merger

The Commission should reject the Applicants' suggestion that the Commission may disregard competitive concerns related to special access services simply because the Commission has initiated a rulemaking proceeding related to special access services rates.[37] First, Section 214 of the Communications Act specifically requires that the Commission find that the proposed transaction would serve the public interest before it can approve the merger.[38] The Commission may not approve the proposed transaction unless it finds that "neither the present nor future public convenience and necessity will be adversely affected" by such proposed transaction.[39] Global Crossing does not seek in this proceeding to change "the Commission's

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[36] *Farrell Statement* at ¶ 42 (stating that one effect of the merger would be to "simply to raise market prices downstream").

[37] *Public Interest Statement* at n.33.

[38] 47 U.S.C. § 214.

[39] *Id.*

current regulation of special access prices,"[40] but rather asserts that the proposed merger would cause competitive harm in a particular product market. The Commission cannot determine if the proposed transaction would serve the public interest without examining the potentially anti-competitive vertical and horizontal effects of the proposed merger on the special access services market.[41]

Second, the proposed transaction would create a new paradigm completely changing the market assumptions underlying the special access rulemaking proceeding on which the Applicants rely. No rulemaking proceeding would be able to restore the competition that the proposed merger will eliminate.[42] Verizon intends to acquire one of "a small number of . . . most significant market participants" in the special access services market, not only in Verizon's region but throughout the country. The fact that the Commission already is sufficiently concerned to investigate the exercise of market power related to special access services lends credence to concerns that the merger will exacerbate an already critical situation.

Addressing the special access issue as it pertains to this transaction would also be fully consistent with the Commission's approach in other merger proceedings. For example, in *Bell Atlantic-NYNEX* (merging two BOCs, now part of Verizon), the Commission enforced a pricing condition on transport services despite the fact that the Commission was "considering industry-wide issues related to shared transport in another proceeding."[43] Precedent further demonstrates that merger conditions do not preempt Commission rules or future action in other

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40 *Public Interest Statement* at n.33.

41 *Farrell Statement* at ¶ 3 ("The Commission's rulemaking does not substitute for competitive analysis of the proposed merger").

42 *Id.* ¶ 37 ("no decision likely to be contemplated by the Commission in the rulemaking proceeding can restore . . . competition").

43 *Bell Atlantic-NYNEX* at n.370 and Appendix C.

proceedings.[44] In *GTE-Bell Atlantic*, another merger of companies that now constitute Verizon, the Commission recognized:

> The Commission may . . . adopt additional requirements in other more general proceedings that affect matters addressed by [merger] conditions. In that case, because the conditions are intended to be a floor not a ceiling, the merged firm would be subject to the general requirements as well as these conditions.[45]

Thus, the Commission is not constrained from imposing merger conditions here merely because it has initiated a special access rulemaking. The Commission should impose merger-specific remedies to redress the loss of competition and ensure that the merged entity does not abuse its market power in the special access services market.

III. THE PROPOSED MERGER WOULD INCREASE THE NEW VERIZON'S ABILITY AND INCENTIVES TO DISCRIMINATE IN ITS PROVISION OF SWITCHED ACCESS SERVICES

Just as special access is a distinct product market, switched access is as well. In fact, Verizon enjoys a terminating access monopoly for all of the telephone numbers assigned to its customers, and has – by far – the largest customer base in its region. And just like special access services, switched access services are a critical input for all telecommunications carriers and service providers. The proposed transaction enhances the incentives and ability of the combined Verizon and MCI to utilize its terminating monopoly in a discriminatory manner and negatively impact downstream markets.

The Commission should be particularly concerned about the increased incentives that a post-transaction Verizon will have to discriminate against competing providers of IP-based services to enterprise customers. Through the proposed transaction, Verizon will acquire MCI's

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[44] *Ameritech-SBC* at ¶ 356; *GTE-Bell Atlantic* at ¶ 178.

[45] *GTE-Bell Atlantic* at ¶ 178.

IP-based network services business,[46] with which Global Crossing directly competes. The proposed transaction would recreate some of the very same circumstances which gave rise to AT&T's original forced Divestiture – but only now it is not long distance competition that is at stake, but rather it is competition from IP-enabled service providers. This vertical integration of switched access facilities and IP infrastructure will increase Verizon's incentives to treat originating and terminating VOIP traffic in a manner that will encourage Verizon's dominance in the VOIP market. The Commission therefore must address the potential anti-competitive effects of the merger on the VOIP services market in this proceeding. For the same reasons that require the Commission to examine the special access services issue in the context of this merger, no general rulemaking proceeding will be able to undo the anti-competitive effects that the proposed merger will have on the VOIP services market if the Commission approves the merger without sufficient conditions.

The Commission therefore should clarify in this proceeding the form of access to which VOIP providers are entitled, and the type of intercarrier compensation arrangement that will govern such access, and impose conditions on the proposed merger designed to ensure that the Applicants do not discriminate against competing providers of VOIP services.[47]

The most obvious solution of course is to eliminate switched access charges altogether since the proposed transaction effectively eliminates the historic basis for switched

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[46] *Public Interest Statement* at 13 (contrasting Verizon's and MCI's core strengths, noting that "MCI, by contrast [to Verizon], is a leading provider of large enterprise services with global reach and a wide array of IP-based connectivity services . . . .").

[47] In separate proceedings, Global Crossing consistently has asserted that the Commission should clarify that switched access payments do not apply to VOIP services, and that it is unlawful to charge switched access charges in relation to such services. *See* Reply Comments of Global Crossing, WC Docket No. 04-36 (filed Jul. 14, 2004); Comments of Global Crossing, WC Docket No. 04-36 (filed May 28, 2004); Comments of Global Crossing, WC Docket No. 03-266 (filed March 1, 2004).

access payments in Verizon's region. The parties to the other BOC merger proceeding currently before the Commission, SBC, AT&T and MCI (together with Global Crossing and others), have advocated explicitly to eliminate switched access charges in the Commission's intercarrier compensation proceeding.[48] Those payments were intended to carry forward into the competitive long distance arena the historic subsidies that existed in the pre-divestiture AT&T -- implicit subsidies that the 1996 Act requires be eliminated. Verizon's proposed acquisition of MCI, SBC's proposed acquisition of AT&T, and Sprint's proposed merger with Nextel and effective abandonment of the long distance business in favor of the wireless business eliminate the overwhelming majority of long distance competition, leaving the long distance market mainly to the BOCs themselves. If these acquisitions are approved, the largest local exchange carriers will be the largest payers of switched access -- to themselves. Rather than leave this system of self-dealing in place where Verizon can utilize it to wreak havoc on downstream markets, the Commission should eliminate it entirely.

IV. THE PROPOSED MERGER REQUIRES THE COMMISSION TO REFORM AND REINVIGORATE ITS "ACCELERATED DOCKET" PROCESS

One of the strategic benefits to Verizon of the proposed combination with MCI is Verizon's elimination of one of its most vocal political and regulatory opponents. This effect is compounded by SBC's proposed acquisition of AT&T, taking away another voice that has traditionally counter-balanced powerful, well-financed advocacy supporting the BOCs' policy positions. The Commission should consider alternative dispute resolution processes in this proceeding because the proposed merger will diminish the diversity of voices in the

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[48] *See Ex Parte* Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan, CC Docket No. 01-92 (filed October 5, 2004) (advocating elimination of today's access charge regime in favor of a uniform bill-and-keep compensation framework).

telecommunications public policy arena and dramatically widen the resource gap between Verizon and its competitors.

As the Commission is well aware, inter-carrier disputes are plentiful. Unfortunately, the Commission's existing tools for addressing them are cumbersome, time consuming and expensive. The ability of competitors to obtain equitable relief in a timely and efficient manner is in serious jeopardy, especially in light of the speed with which the telecommunications market is changing. The Commission should reform and reinvigorate its "accelerated docket" process and utilize it as a "baseball-style" arbitration panel. Under baseball-style arbitration the two opposing parties are required to put forth their "best and final" offer and one is selected as the remedy for both parties. This process is quick and efficient and forces opposing parties to narrow their differences before reaching the arbitration stage.

Absent such a process, Verizon's competitors are continually faced with a "Hobson's choice" of spending more money to fix a problem than the problem is worth. In other words, if a carrier has a dispute with Verizon valued at $100,000, it must decide if it is worth $200,000 to resolve the problem in the regulatory arena. In most instances, competitors will obviously opt out of the regulatory arena and absorb the $100,000 problem. But as this process is repeated, the competitors become incapacitated and suffer the proverbial "death by a thousand cuts."

Competitors therefore must have available to them a quick and efficient (low-cost) dispute resolution process. Baseball-style arbitration is ideal for this purpose because it is quick and easy and forces parties to negotiate and narrow their differences before reaching the arbitrator. Under a reformed "accelerated docket" process, inter-carrier disputes could be resolved within 30 days using baseball-style arbitration. The results could be interim, pending

further rulemakings (but not subject to retroactivity) in order to give the Commission an opportunity to address problems more holistically, but the revised accelerated docket process would at least permit carriers to continue operations in a more certain environment. This process is all the more important in the context of this merger because the political, legal, and regulatory resources of the new Ma Bell combinations of SBC-AT&T and Verizon-MCI would be unmatched by anyone in the industry.

V. CONCLUSION

For the foregoing reasons, the Applicants have failed to meet their burden to show that the proposed transaction would serve the public interest without the imposition of mitigating conditions. Global Crossing urges the Commission to conduct a rigorous review of the potential anti-competitive effects of the merger and impose conditions to ensure that the Applicants cannot exercise market power post-merger to the detriment of the telecommunications marketplace.

Respectfully submitted,

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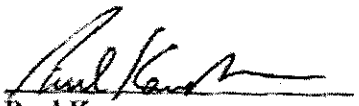
May 9, 2005

VERIFICATION STATEMENT

I, Paul Kouroupas, Vice President, Regulatory Affairs for Global Crossing North America, Inc., declare under penalty of perjury that I have reviewed the foregoing Comments, and that the facts stated therein regarding Global Crossing and its experience as a customer and competitor of Verizon Communications Inc. and MCI, Inc. are true and correct, to the best of my knowledge, information and belief.

Executed on May 9, 2005.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Global Crossing North America, Inc. was served via electronic mail this 9th day of May, 2005, upon the following:

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