

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF CLOSECALL AMERICA, INC.**

CloseCall America, Inc. (“CloseCall”) respectfully submits these comments in this proceeding concerning the proposed acquisition of MCI, Inc. (“MCI”) by Verizon Communications, Inc. (“Verizon”).

**I. Introduction**

CloseCall is a small telecommunications company based in Stevensville, Maryland providing a full range of services to business and residential customers, primarily in the mid-Atlantic region and in the Midwest. CloseCall operates as a competitive local exchange carrier (“CLEC”) within the Verizon footprint, with its greatest concentration of business in Maryland, Delaware, New Jersey, and Pennsylvania. CloseCall knows first-hand of both the gains achieved and persistent difficulties faced by CLECs in seeking a truly open and competitive local telecommunications market in Verizon’s region. While Verizon has made significant strides in certain areas, it stubbornly refuses to allow for progress in others. The proposed merger between Verizon and MCI provides the Commission with the ideal opportunity to impose meaningful conditions on Verizon in order to

root out continuing illegal and discriminatory practices that frustrate the development of competition. Because MCI has operated as one of the largest competitive local service providers in Verizon's region, the Commission should take decisive action now to prevent the merged companies from further thwarting competition in the local voice market.

**II. The Commission Should Impose Meaningful Merger Conditions in Order to Address Verizon's Unlawful, Anticompetitive, and Discriminatory Business Practices**

Section 214 of the Communications Act of 1934, as amended, (the "Act") mandates that the Commission find that the proposed merger would serve the public interest before approving the transaction.<sup>1</sup> Before endorsing Verizon's bid to acquire MCI and become a global telecommunications behemoth, the Commission must insure, through the necessary merger conditions, that Verizon remedies long-standing, unlawful business practices that harm competition at the local level. First and foremost, the Commission should monitor and enforce Verizon's obligation to effectuate promptly number porting requests. In particular, Verizon refuses to process requests to transfer a customer's local service from Verizon to CloseCall when the customer also subscribes to Verizon's DSL service. The Commission recently renounced this practice in its March 25, 2005 Memorandum Opinion and Order and Notice of Inquiry, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband*

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<sup>1</sup> 47 U.S.C. § 214.

*Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, FCC 05-78 (“BellSouth Order”).

In the BellSouth proceedings, several CLECs brought to the Commission’s attention Verizon’s illegal policy of refusing “to port the telephone number for [a] voice line until the customer cancels its DSL service.”<sup>2</sup> The Commission issued a stern rebuke to Verizon and any other incumbent LEC that would consider implementing such a policy:

We take this opportunity to remind carriers that the Act requires, and we intend to enforce, non-discriminatory number porting between LECs, including our previous conclusion ‘that carriers may not impose non-porting related restrictions on the porting out process.’ Because of these requirements, when an incumbent LEC receives a request for number portability, it is required to observe the same rules, including provisioning intervals, as any other LEC and ***cannot avoid its obligations by pleading non-porting related complications or requirements such as the presence of DSL on a customer’s line.***<sup>3</sup>

Following the BellSouth Order, Verizon notified CLECs that, effective April 4, 2005, it would “process Local Service Requests (LSRs) from voice providers to port a Telephone Number when DSL is on the line without the end user having to disconnect his DSL service in advance of the port activity.”<sup>4</sup> However, despite this notice and the Commission’s clear directive

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<sup>2</sup> BellSouth Order ¶ 36.

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> Verizon Notice to CLECs Re: Port Order When DSL Is On The Line.

in the BellSouth Order, Verizon continues to this day its illegal policy of blocking orders from CloseCall (and likely other CLECs) to transfer a customer's local service when the customer also subscribes to Verizon's DSL service.

Verizon's unyielding effort to maintain a stranglehold on local voice service customers by leveraging its DSL offering is hardly surprising. The Maryland Public Service Commission recently determined that Verizon's practice of tying its DSL offering to its local voice service is both discriminatory and anticompetitive under state law, chilling "a customer's right to choose among competing voice service providers" in derogation of "the pro-competitive policy of the Telecommunications Act of 1996."<sup>5</sup> As a result, the Commission should impose, as a specific condition of the proposed merger, measures to insure that Verizon discontinues its unlawful and discriminatory conduct and abides by the clear and unambiguous number porting responsibilities articulated in the BellSouth Order.

In addition to its refusal to process local service change orders, CloseCall discovered, through proceedings before the Maryland Public Service Commission, that Verizon has a practice of entering into secret resale agreements with other CLECs, offering deeper discounts on certain telecommunications services not offered to CloseCall or other carriers. Secret agreements undermine the even playing field established by Congress and

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<sup>5</sup> Case No. 8927, Order No. 79638 of the Maryland Public Service Commission (Nov. 30, 2004) at 11.

the Commission in attempting to cultivate a competitive local services market pursuant to the Act.<sup>6</sup> In connection with the proposed merger, the Commission should investigate and require Verizon to disclose any such clandestine agreements and compel Verizon to offer retroactively to all CLECs the same terms furtively enjoyed by a select few.

Finally, Verizon continues to abdicate its responsibility to insure dialing parity for CLEC customers, as required by the Act.<sup>7</sup> This problem most frequently arises when certain CloseCall customers are billed for intrastate long distance calls but are not required to dial a “1” preceding the number called (as would happen if the customer remained with Verizon). Because CloseCall’s customers are unaware that they are making long distance calls, CloseCall suffers a significant loss of goodwill when customers receive telephone bills with unexpected long distance charges. Numerous attempts by CloseCall to engage Verizon in order to remedy this persistent problem have failed. Dialing parity is a cornerstone of the Act. As part of any approval of the proposed merger, the Commission should impose a discrete condition requiring Verizon to implement a plan to insure dialing parity for competitive carrier customers.

### **III. Conclusion**

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<sup>6</sup> Pursuant to 47 U.S.C. § 251(b)(1), Verizon has a “duty not to prohibit, and not to impose unreasonable or discriminatory limitations on, the resale of its telecommunications services.”

<sup>7</sup> *See* 47 U.S.C. § 251(b)(3).

While CloseCall in no way seeks to minimize the problems outlined in its comments, it is necessary to recognize that Verizon has instituted gradual improvements that do allow for more meaningful competition in the local services market. For example, Verizon now processes local service change orders in a single day where the customer does not subscribe to Verizon's DSL service. This development constitutes significant improvement from a couple of years ago. The Commission, however, must require Verizon to rectify the continuing violations of the Act and the Commission's Orders outlined above before consenting to the proposed merger with MCI. Verizon's misconduct blocks entry into the local telephone market and inflicts significant financial harm on its competitors.

In order for the Commission to find that the proposed merger serves the public interest, the Commission thus, at a minimum, must condition its approval by (a) requiring Verizon to rectify the problems outlined in these comments, (b) mandating that Verizon compensate CLECs, such as CloseCall, for the harm caused by Verizon's illegal, anticompetitive, and discriminatory conduct, and (c) ensuring, going forward, that Verizon will continue to comply with its obligations under the Act and the Commission's Orders.

Respectfully submitted,

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