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RICHARD J. CODEY
 Acting Governor

SEEMA M. SINGH, ESQ.
 Ratepayer Advocate
 and Director

May 9, 2005 DOCKET FILE COPY ORIGINAL

**VIA THE ELECTRONIC AND
 OVERNIGHT DELIVERY**

Marlene H. Dortch
 Secretary
 Federal Communications Commission
 E 9300 Hampton Drive
 Capital Heights, MD 20743

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

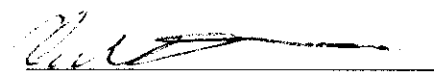
Dear Secretary Dortch:

Enclosed, please find the Initial Comments being filed on behalf of the New Jersey Division of the Ratepayer Advocate in response to the above-captioned matter.

The attached exhibits are redacted. The proprietary version will be filed through hard copy to the Commission.

Very truly yours,

SEEMA M. SINGH, Esq.
 RATEPAYER ADVOCATE

By: 
 Christopher J. White, Esq.
 Deputy Ratepayer Advocate

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* Via electronic mail of redacted version and overnight delivery of confidential version

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

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Transfer of Control)

COMMENTS ON BEHALF OF
THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

I. INTRODUCTION

Verizon Communications Inc. (“Verizon”) and MCI, Inc. (“MCI”) announced an Agreement and Plan of Merger on February 14, 2005, and submitted an application with the Federal Communications Commission (“FCC”) for approval to transfer control of MCI’s licenses and authorizations to Verizon on March 11, 2005.¹ The Applicants submitted a public interest statement and sixteen declarations in support of their proposed transaction.² Under the proposed merger, MCI would become a wholly-owned subsidiary of Verizon. An amended agreement was announced May

^{1/} Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, FCC WC Docket No. 05-75, Application for Transfer of Control, March 11, 2005 (“Application”), at ii.

^{2/} Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, FCC WC Docket No. 05-75, Application for Transfer of Control, March 11, 2005, Appendix 1: Public Interest Statement (“Public Interest Statement”); Declaration of Gustavo E. Bamberger, Dennis W. Carlton, and Allan L. Shampine; Declaration of Robert W. Crandall and Hal J. Singer; Declaration of Eric J. Bruno and Shelley Murphy; Declaration of Jeffrey E. Taylor; Declaration of Quintin Lew and Ronald H. Lataille; Declaration of Michael K. Hassett, Kathy Koelle, Katherine C. Linder and Vincent J. Woodbury; Declaration of Ronald H. Lataille; Declaration of Stephen E. Smith; Declaration of Todd Buchanan; Declaration of John J. Lack and Robert F. Pilgrim; Declaration of Wayne Huyard; Declaration of Ronald J. McMurtrie; Declaration of Jonathan P. Powell and Stephen M. Owens; Declaration of Vinton G. Cerf; Declaration of Ihab S. Tarazi; and Declaration of Michael Kende.

2, 2005 in which each share of MCI would be exchanged for stock worth at least \$26. The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) submits these initial comments in response to the pleading cycle established by the FCC, regarding the proposed transaction.³

A. Interest of the Ratepayer Advocate in the Instant Proceeding.

The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates actively in relevant federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to the Ratepayer Advocate's continued participation and interest in implementation of the Telecommunications Act of 1996.⁴ The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will “promote efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.”⁵ The proposed merger of Verizon and MCI – two telecommunications carriers that presently serve New Jersey’s consumers, one as an incumbent local exchange carrier (“ILEC”) and the other as a competitive local exchange carrier (“CLEC”) which competes with Verizon and other regional Bell operating companies (“RBOCs” or “Bells”) – directly affects the structure of telecommunications

^{3/} Federal Communications Commission, “Commission Seeks Comment on Application for Consent to Transfer of Control filed by Verizon Communications Inc. And MCI, Inc.,” Public Notice released March 24, 2005.

^{4/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” or “the Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

^{5/} *N.J.S.A.* 48:2-21.16(a)(4) and 48:2-21.16(b)(1) and (3).

markets, and the prices that consumers pay for telecommunications services.

The Ratepayer Advocate brings a unique perspective to this proceeding as a result of its participation in, among others, the following related regulatory proceedings in which the Ratepayer Advocate conducted detailed analyses of granular competitive data and assessed the status of local mass market competition in New Jersey: the investigation by the FCC and the New Jersey Board of Public Utilities (“Board”) of Verizon’s Section 271 application, the FCC’s Triennial Review Order remand proceeding,⁶ and the Board’s “impairment” and hot cut proceeding.⁷

Furthermore, the Ratepayer Advocate presently is participating in the FCC’s⁸ and the Board’s⁹ investigations of the two proposed mega-mergers. The Ratepayer Advocate submits herewith the Declaration of Susan M. Baldwin and Sarah M. Bosley (“Baldwin/Bosley Declaration”) in support of the instant comments, and incorporates the data provided therein by reference in these comments.

^{6/} Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Local Exchange Carriers, Federal Communications Commission WC Docket No. 04-313, CC Docket No. 01-338, Initial Comments of the Division of the Ratepayer Advocate and Affidavit of Susan M. Baldwin on behalf of the New Jersey Division of the Ratepayer Advocate, filed October 4, 2004; Reply Comments of the Division of the Ratepayer Advocate, filed October 19, 2004.

^{7/} In the Matter of the Implementation of the Federal Communications Commission’s Triennial Review Order, New Jersey Board of Public Utilities Docket No. TO03090705, Testimony of Susan M. Baldwin on behalf of the New Jersey Division of the Ratepayer Advocate, February 2, 2004.

^{8/} The Ratepayer Advocate submitted initial comments in FCC WC Docket No. 05-65 on April 25, 2005 and intends to submit reply comments to the FCC regarding the proposed SBC/AT&T merger, pursuant to the FCC’s publicly noticed schedule, on May 10, 2005.

^{9/} Joint Petition of SBC Communications Inc. and AT&T Corp., Together with its Certificated Subsidiaries, for Approval of Merger, BPU Docket No. TM05020168, February 28, 2005 (“Joint Petition”); Joint Verified Petition of Verizon Communications Inc. And MCI, Inc. For Approval of Agreement and Plan of Merger, BPU Docket No. TM05030189, March 3, 2005.

B. The Larger Context for this Proceeding

As the Ratepayer Advocate stated regarding the FCC's review of SBC's proposed acquisition of AT&T, in assessing the impact of the proposed merger between Verizon and MCI on consumers and on competition, it is essential to recognize that the merger is not an "isolated" merger but rather is the beginning of another wave of market concentration. The Ratepayer Advocate urges the FCC to consider the implications of these mergers on residential and small business consumers and on the potential to achieve the competition goals set forth by Congress in the Telecommunications Act of 1996.¹⁰ Verizon and ILECs continue to control the last mile to customers and, based on that control, dominate not only local but adjacent telecommunications product markets. As the prospect of competition shrinks, and ILECs' re-monopolize telecommunications markets, rate of return regulation may be the logical regulatory response.

Furthermore, the Ratepayer Advocate recommends that, if the Commission approves Verizon's proposed acquisition of MCI, the Commission impose conditions upon the Applicants to (1) protect consumers sufficiently from anticompetitive behavior, excessive rates for non-competitive services, and service quality deterioration and (2) ensure that mass market consumers gain more from the merger than the "trickle-down" benefits that the Applicants describe. Absent such conditions, there is insufficient information to deem the transaction to be in the public interest.

C. Relationship of the Proposed Transaction to the Development of Competition

Extending the sobering image depicted in Commissioner Adelstein's statement dissenting from the FCC's *TRO Remand Order*, the FCC's approval of the proposed merger between Verizon

^{10/} Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

and MCI would “pound in” yet another nail in the coffin for local competition.¹¹ MCI is indisputably a potential competitor in the local market. MCI has far greater resources than most CLECs with which to enter local markets dominated by ILECs. The proposed transaction would eliminate MCI irrevocably as a potential competitor to incumbent carriers throughout the nation including Verizon. Although one can only speculate about MCI’s chances of success in local mass markets if it had not merged or exited the market, it is clear that the proposed multi-billion dollar transaction does not bode well for consumers. Furthermore, even if one believes MCI’s claim that, if it did not merge, it either could not or would not compete in the local market, MCI’s monumental decision to merge with its rival does not hold out promise for the prospect of local competition. That MCI would throw in the towel casts doubt on the potential for effective local competition.

^{11/} Statement of Commissioner Jonathan S. Adelstein, Dissenting Re: *Unbundled Access to Network Elements* (WC Docket No. 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), December 15, 2004, at 1.

II. SUMMARY OF THE RATEPAYER ADVOCATE'S RECOMMENDATIONS.

A. Introduction

The Ratepayer Advocate urges the FCC to consider carefully and thoroughly the implications of the proposed transaction for consumers. Based on the precarious status of competition in New Jersey, the Ratepayer Advocate's experience with previous mergers between telecommunications carriers, and the Applicants' filing, the Ratepayer Advocate has assessed the likelihood of harm and benefits the proposed merger between Verizon and MCI would likely yield. Where feasible, these comments, and the Baldwin/Bosley Declaration discusses proposed conditions to mitigate and/or reduce the possibility of harm and to enhance and/or increase the possibility of benefits occurring.

B. Impact of the Proposed Merger on Competition

The proposed merger would continue a troubling trend toward Bell-controlled oligopoly at best and market re-monopolization at worst. Financial data reported to the Securities and Exchange Commission ("SEC") in Verizon's Form S-4 indicates operating revenues of \$89.7 billion for 2004 for the combined telecommunications giant. Before any staff reductions, the merged entity would employ approximately 250,000 people. Financial data reported to the SEC in the SBC Prospectus/AT&T Proxy Statement indicates operating revenues of \$69.5 billion for 2004 and over 210,000 employees for the combined telecommunications giant. The SBC/AT&T and Verizon/MCI entities would overshadow all other telecommunications carriers. If Sprint Corporation ("Sprint") and Nextel Communications Inc. ("Nextel") merge, the combined entity would have approximately \$38 billion in revenues. BellSouth reported \$20.3 billion and Qwest reported \$13.8 billion in operating revenues for 2004. Baldwin/Bosley Declaration at paras. 23-24.

The imminent expiration of UNE-P, the virtual absence of UNE-L based deployment to serve

residential and small business consumers, and the potential elimination of Verizon's two largest competitors (MCI and AT&T) effectively close the door on competitive choice for New Jersey's residential and small business customers. See Baldwin/Bosley Declaration, at paras. 28-30, and 33-34. As stated in the Baldwin/Bosley Declaration (para. 33), "[t]he foundation for the New Jersey Board's earlier decisions to relax oversight of Verizon has crumbled, yet Verizon continues to enjoy its regulatory freedoms."

CLECs' demand for UNE-P has peaked and is now declining as the UNE-P expiration date of March 11, 2006 approaches. Verizon's retail market share will likely climb above 90 percent as it wins back the customers now served through UNE-P. As the FCC recently stated, a "high market share does not necessarily confer market power, but it is generally a condition precedent to a finding of market power."¹² Baldwin/Bosley Declaration at 28-29.

In New Jersey Board of Public Utilities Docket No. TO01020095, the Ratepayer Advocate analyzed confidential data about CLECs' presence in local markets in New Jersey. Competition to provide local service still involves only a handful of companies."¹³ CLECs have not yet deployed switches in many New Jersey wire centers. It is time for federal and state regulators to reel back in the regulatory freedoms that they granted prematurely to the Bells to prevent excessive rates, service

^{12/} In the Matter of 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, FCC WC Docket No. 05-25; RM-10593, Order and Notice of Proposed Rulemaking, Released January 31, 2005 ("Special Access NPRM"), at para. 103, citing U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, issued April 2, 1992, revised April 8, 1997 ("Horizontal Merger Guidelines"), § 1.11.

^{13/} In the Matter of the Application of Verizon New Jersey, Inc. for Approval (I) of a New Plan for an Alternative Form of Regulation and (II) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, New Jersey Board of Public Utilities Docket No. TO01020095, Rebuttal Testimony of Susan M. Baldwin, on behalf of the New Jersey Division of the Ratepayer Advocate, February 4, 2005. The exhibit is based on Verizon Response to RPA-VNJ-28 (Lynx Survey Question 11). These data are not included with this declaration because they are covered by a proprietary agreement in the Board's proceeding.

quality deterioration and anti-competitive bundling.

C. Verizon's "Freedom" packages lock in consumers and fortify Verizon's market power in local, data, long distance, and integrated telecommunications markets.

One of the key regulatory freedoms that Verizon obtained in recent years was long distance authority. Verizon's Section 271 approvals provided Verizon's gateway to remonopolizing telecommunications markets:

Verizon's long distance authority makes it vastly harder for CLECs to compete in Verizon's home region. ... This large and growing segment of Verizon NJ's business is occurring precisely at a time when the door has been shut in the face of CLECs who had sought to enter the local market. ... The combination of its entrenched position in the local market with its deployment of substantial resources to attract consumers to numerous packages is now helping Verizon NJ lock in its market power.

Baldwin/Bosley Declaration, at paras. 25-36.

Verizon's "Freedom" packages, which lock customers in to integrated bundles of telecommunications services, lack adequate regulatory scrutiny. Baldwin/Bosley Declaration at paras. 35-56. Verizon's plan to *increase* long distance rates later this month underscores its quickly regained market power in the long distance and bundled services markets. Baldwin/Bosley Declaration at para. 45. Among other issues, the FCC should examine whether (1) Verizon is compensating Verizon New Jersey and other local Verizon companies adequately for the use of their local network and brand recognition; (2) basic local exchange services customers who do not subscribe to Freedom packages are receiving the same quality of service as customers of Verizon's bundles receive; and (3) cross-subsidization and/or preferential treatment is occurring. Baldwin/Bosley Declaration at paras. 46, 48, 55, 56.

As stated in the attached Declaration, "[i]ndividual consumers cannot be expected to consider

the long-term public policy impact of Verizon's packages on the local market structure. As consumers, they maximize their utility by seeking the products they prefer at the least cost. By contrast, the regulators' responsibility is to ensure that, in the long term, effective local competition evolves, and, if it does not, and where it does not, to provide adequate regulatory oversight." Baldwin/Bosley Declaration at para. 48.

Verizon's ability to offer local and long distance services to its home-region consumers makes it a formidable telecommunications competitor because it can more readily meet the demand of those customers that seek a single supplier of multiple telecommunications services. Verizon is a first point of contact for many customers, a position it enjoys as a result of its many years as the incumbent carrier. Verizon possesses a unique advantage that the proposed merger with MCI would enhance. Baldwin/Bosley Declaration at para 36. Regardless of whether the FCC approves Verizon's acquisition of MCI, the FCC should scrutinize the bundling practices of Verizon and the other Bells. Bundle practices implicate "Tying Issues" as further discussed in Baldwin/Bosely Declaration at paras. 44, 48.

D. Intermodal alternatives do not yet provide economic substitutes for basic voice grade service.

Contrary to the Applicants' assertion that "a sufficient number of mass-market customers perceive these [cable telephony, VoIP, and wireless] to be viable alternatives such that they constrain the pricing of one another,"¹⁴ intermodal alternatives do not discipline the price or quality of basic voice grade service. Baldwin/Bosley Declaration at paras. 57-80.

The Applicants exaggerate the significance of intermodal technologies and fail to support

^{14/} Crandall/Singer at para 6.

their assertion of “significant and intensifying competition.”¹⁵ The FCC’s most recent CMRS competition report indicates that “only a small percent of wireless customers use their wireless phones as their only phone and relatively few have ‘cut the cord’ in the sense of cancelling their subscription to wireline telephone service.”¹⁶ The FCC’s Wireless Telecommunications Bureau estimates that five to six percent of all U.S. households use wireless phones only.¹⁷

E. Verizon’s acquisition of MCI would eliminate an actual and potential competitor in the mass market.

Many consumers simply want plain old telephone service. The proposed merger would eliminate a significant competitor and diminish the prospect of competitive choice for mass market consumers. Furthermore, the pending mergers heighten concerns about the absence of sibling rivalry among the Bells and the growing potential for tacit collusion. As the number of firms shrinks, the sellers can more easily coordinate prices and output, which increases regulators’ challenges. Baldwin/Bosley Declaration, at para. 109.

Because mass market competition is absent, because Verizon is offering integrated bundles of non-competitive and competitive services (which complicate the detection of cross-subsidization) and because the merger would yield substantial synergies, the Applicants should commit to using the synergies to support the **offering of broadband services throughout its region to all consumers at basic voice grade prices.**

^{15/} Public Interest Statement, at 34.

^{16/} *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, FCC WT Docket No. 04-111; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Ninth Report*, Rel. September 28, 2004 (“Ninth Annual CMRS Competition Report”), at para. 212.

^{17/} *Id.*, at fn 575.

If, absent the merger, MCI would pack its bags and exit the local market, regulators should take notice. If neither AT&T nor MCI can compete with the Bells, who can? If, instead, MCI *could* compete, then Verizon's acquisition of this experienced CLEC represents the loss of an actual and potential competitor. If MCI *could not* compete, then federal and state regulators should re-assess carefully their rationales for granting Verizon and other incumbent carriers regulatory freedom. Baldwin/Bosley Declaration at para. 87.

F. Verizon's pursuit of operating efficiencies and enhanced revenues exposes consumers to service quality deterioration and aggressive sales practices

The proposed merger exposes consumers to adverse effects related to the Applicants' achievement of the predicted merger synergies. The FCC should protect those consumers most vulnerable to the Applicant's cost-cutting measures (*i.e.*, those in rural areas and those that do not purchase bundled services) to ensure that they do not receive inferior service quality as a result of the Applicants' simultaneous pursuit of revenues from competitive services and implementation of operating efficiency measures. Similarly, regulators should monitor the Applicants' sales practices to ensure that consumers are sufficiently well-informed to be able to make efficient purchasing decisions. Finally, regulators should exercise oversight to detect and prevent anticompetitive practices. Baldwin/Bosley Declaration, at paras. 98-99,

G. The loss of MCI as a CLEC stakeholder in local competition proceedings signals bleak prospects for CLECs' challenges to incumbent carriers.

Through the Ratepayer Advocate's participation in numerous federal and state regulatory proceedings, it is well aware of the value of MCI as a voice distinct from Verizon, often articulating positions and submitting evidence that contribute to the depth and breadth of public policy

development. MCI's metamorphosis from competitor to incumbent would silence an important voice. See Baldwin/Bosley Declaration at paras. 90-94. As stated in the attached Declaration:

The transformation of this regulatory activist into an incumbent's partner will irrevocably alter state and federal investigations of telecommunications policy, ultimately harming consumers. The "if-you-can't-beat-them-join-them" mentality that has overtaken the telecommunications industry reduces consumers' prospects for meaningful competition and underscores the necessity of federal and state regulators to exercise oversight of the local mass market. With each successive phase of market concentration, the need for regulatory oversight of the re-monopolized telecommunications market becomes more critical.

Baldwin/Bosley Declaration, at para. 92.

H. If the FCC approves the proposed transaction, it should increase the X factor in its price cap regulation or implement rate of return regulation.

Because competitive pressures are lacking, the Commission should establish a sufficiently high X factor and restore earnings sharing so that consumers of basic and other monopoly services (such as special access) benefit from the anticipated synergies.

The FCC released its *Special Access NPRM* (Order and Notice of Proposed Rulemaking) in WC Docket No. 05-25 on January 31, 2005,¹⁸ which addresses issues directly related to the proposed merger between Verizon and MCI. The Special Access NPRM commences a "broad examination of the regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services"¹⁹ given the expiration of the CALLS plan on June 30, 2005. The FCC seeks

¹⁸In the Matter of 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, FCC WC Docket No. 05-25; RM-10593, Order and Notice of Proposed Rulemaking, Released January 31, 2005 ("Special Access NPRM").

¹⁹*Id.*, at para. 1.

comments regarding both traditional price cap issues and its current pricing flexibility rules for special access services.²⁰ The FCC has recognized that special access is a key input for competitive LECs, CMRS providers, business customers, and interexchange carriers (IXCs). Special access revenues have grown from 12.8 percent of BOC interstate operating revenues in 1991 to 45.4 percent of interstate operating revenues in 2003.²¹ Among the issues that the FCC is considering is the need for and appropriate magnitude of a productivity factor²² and the merits of earnings sharing.²³

As the prospect of competition shrinks, and as ILECs' re-monopolize telecommunications markets, rate of return regulation may be the logical regulatory response. The combination of the BOCs' supra-competitive special access profits and concerns about ILECs' interaffiliate transactions suggests that federal and state regulators need to examine closely ILECs' costs and revenues. Rate of return regulation would address ILECs' concern about earning adequate return on their investment and permit the establishment of rates for UNE-P that provide accurate pricing signals, *i.e.*, total element long run incremental cost. Baldwin/Bosley Declaration, at paras. 95-97.

²⁰*Id.*, at paras. 1 and 4.

²¹*Id.*, at para. 3.

²²*Id.*, at paras. 35-36.

²³*Id.*, at para. 44.

IV. CONDITIONS

A. **Concerns expressed seven years ago continue to apply**

Verizon's proposed acquisition of MCI raises eerily similar yet even more serious concerns for residential and small business consumers than those that consumer advocates raised seven years ago when Bell Atlantic and GTE sought approval for their merger:

Residential consumers have reason to fear that "competition delay" will be "competition denied." As things stand, consumers and small businesses have been and are likely to remain the last direct beneficiaries of competition. While competition is delayed, the ILECs are likely to be driving for increased deregulation, pricing flexibility, and other regulatory concessions that *increase* the ILECs' ability to leverage their market power in the residential and small business end of the local exchange market. The result of this strategy is to further retard the development of competition through the local exchange and exchange services market, and in the emerging market for bundled services. Under such conditions, residential and small business customers will lose twice: first, by being made to directly and indirectly finance the competitive ventures of their ILEC and, second, by having competition further delayed (or perhaps never realized) with respect to the services these customers purchase from the ILEC. This outcome is definitely *not* in the public interest, and can best be avoided by denying the proposed Bell Atlantic/GTE merger.²⁴

If the FCC approves the proposed Verizon/MCI merger, it should only do so contingent upon explicit, enforceable conditions that do not sunset and that would (1) mitigate and/or prevent harms that the merger would likely cause and (2) enhance and/or increase the likelihood of merger benefits.

Baldwin/Bosley Declaration at paras. 99-113.

The Ratepayer Advocate summarizes proposed conditions below, which are similar to and expand upon those that it proposed on April 25, 2005 in its initial comments in WC Docket No. 05-

^{24/} GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control, Federal Communications Commission CC Docket No. 98-184, Affidavit of Susan M. Baldwin and Helen E. Golding on behalf of a coalition of consumer advocates from Delaware, Hawaii, Maine, Maryland, Missouri, Ohio, Oregon, West Virginia, and Michigan, filed on December 18, 1998, at para. 9 (emphasis in original).

65. See also Baldwin/Bosley Declaration, at paras. 100-115. Based on its review of other parties' initial comments and its participation in state investigations of the Verizon/MCI and SBC/AT&T mergers, the Ratepayer Advocate may modify or supplement its proposed conditions. Consistent with the Commission's prior merger orders, the Applicants have the burden to prove that the proposed transaction is in the public interest merger.²⁵

B. The Ratepayer Advocate's preliminary recommendation for conditions.

The conditions summarized below are intended to minimize post-merger risks to consumers and competitors and to increase the likelihood of mass market consumers gaining more than "trickle-down" benefits. As the merger is presently structured, it is not in the public interest.

Verizon's pursuit of new revenues creates risks for consumers: *The FCC should require an independent audit of Verizon's sales practices, an independent audit of Verizon's interaffiliate transactions, and comprehensive customer education.*

Verizon's pursuit of cost-cutting measures could jeopardize service quality, particularly of "unbundled" basic voice grade service: *The FCC should coordinate with state public utility commissions to impose sanctions if service quality for non-competitive Verizon-supplied telecommunications services declines below benchmark levels (1) as measured at geographically*

^{25/} In re: Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control, FCC CC Docket No. 98-141, Memorandum Opinion and Order, released October 8, 1999, at para. 48, citing Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from TeleCommunications, Inc., Transferor, to AT&T Corp., Transferee, CS Docket No. 98-178, Memorandum Opinion and Order, 14 FCC Rcd at 3160, 3169-70, para. 15 (1999); WorldCom/MCI Order, 13 FCC Rcd at 18031, para. 10 n.33; American Telephone and Telegraph Co. and MCI Communications Corporation Petitions for the Waiver of the International Settlements Policy, File No. USP-89-(N)-086, Memorandum Opinion and Order, 5 FCC Rcd 4618, 4621, para. 19 (1990).

disaggregated levels and (2) with comparative statistics for consumers that purchase only basic voice grade service and consumers that purchase bundled "Verizon Freedom" packages.

The proposed merger would eliminate a significant, nationwide supplier of telecommunications services, thereby diminishing competitive options: Verizon should commit to providing "naked DSL" to promote consumer choice at reasonable rates, terms, and conditions.

Concerted out-of-region entry could promote local competition, but meanwhile Verizon should relinquish competitive classification of basic local exchange service until effective competition materializes: The Applicants should commit to out-of-region entry to offer basic local exchange service to residential and small business consumers in more than a "bare bones" fashion or alternatively state that such out-of-region entry is not profitable and that they have no intention of pursuing mass market "unbundled" customers beyond their home turf. Furthermore, until BOCs, are able to enter other local mass markets profitably,²⁶ the FCC and state PUCs should assume that these markets are non-competitive and should regulate them accordingly. Verizon should relinquish any competitive classification that it has acquired for providing basic voice-grade service to the mass market.

^{26/} The FCC previous determined that "as out-of-region competitors we consider Bell Atlantic and GTE to be unusually qualified." In re Application of GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee For Consent to Transfer Control, Memorandum Opinion and Order, CC Docket No. 98-184, released June 16, 2000, at para. 221. Despite this vote of confidence by the FCC, mass market consumers have yet to benefit from Verizon's "unusually qualified" ability to compete beyond their home turf.

The FCC should impose conditions to enhance and/or increase the likelihood of benefits for consumers; absent regulatory requirements, consumers of non-competitive services will not benefit from the anticipated merger synergies: *The Applicants should flow through merger synergies by reducing rates for non-competitive interstate and intrastate services. The FCC should establish an adequate X factor, or reimpose rate of return regulation and restore earnings sharing in its Special Access proceeding.*

The Commission should ensure that MCI's current customers are not harmed: *MCI's local and long distance residential small business customers should not default to the incumbent local exchange carrier in Verizon's "home" region, but instead should receive comprehensive notification, subject to review by consumer advocates and public utility commissions, so that they can make informed decisions and have ample opportunity to select a local and/or long distance carrier other than Verizon.*

Competitive reporting and information are more essential than ever: *So that federal and state regulators can monitor the impact of the TRRO and any merger approvals on local, DSL, long distance, and integrated telecommunications markets, ILECs should submit detailed quarterly*

*reports that provide information about market structure disaggregated by product and geographic markets.*²⁷

IV. CONCLUSION.

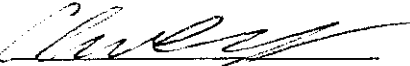
WHEREFORE the reasons set forth above, the Ratepayer Advocate submits the following recommendations to the Commission:

- The FCC should impose enforceable conditions to protect consumers from harm and that increase the likelihood of benefits flowing to mass market consumers.
- Absent such conditions, the Applicants have failed to demonstrate that, on balance, the proposed merger is in the public interest.
- The FCC should seek detailed data and information from the Applicants, as described generally in these comments.

Respectfully submitted,

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RATEPAYER ADVOCATE

By:



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^{27/} The New Jersey Board has scheduled a series of stakeholder meetings to develop of comprehensive list of services and unbundled network elements to assist the Board in monitoring the extent of competition in the telecommunications market. Letter from Anthony Centrella, Director, Division of Telecommunications, April 26, 2005, Re: UNE/Competitive Reporting Requirements. The Michigan Public Service Commission ordered SBC and CLECs to file quarterly reports detailing competitive conditions on an Access Area basis finding that "frequent and timely monitoring of the state of competition" was essential for assessing the merits of continuing the competitive classification past the one-year trial period that it authorized. *In the matter of SBC Michigan's request for classification of business local exchange service as competitive pursuant to Section 208 of the Michigan Telecommunications Act; In the Matter of SBC Michigan's request for classification of residential local exchange service as competitive pursuant to Section 208 of the Michigan Telecommunications Act*, Michigan Public Service Commission Case Nos. U-14323; U-14324, Opinion and Order, January 6, 2005, at 15.