

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

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

**REPLY COMMENTS OF THE OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA**

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I. INTRODUCTION

The Office of the People’s Counsel for the District of Columbia (“OPC-DC”), in furtherance of its mandate as the statutory representative of District of Columbia ratepayers in utility proceedings,¹ hereby respectfully submits its Reply Comments pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice (“Notice”) issued March 10, 2005.² In its Notice, the Commission seeks comment on Verizon Communications, Inc. (“Verizon”) and MCI Inc.’s (“MCI”) (jointly referred to as “Joint Applicants”) joint application (“Application”) requesting approval to transfer control of licenses and authorizations directly and indirectly held by MCI to Verizon. For reasons submitted herein, OPC-DC submits the proposed merger transaction is not in the public interest of District of Columbia ratepayers. Accordingly, as discussed below, OPC-DC submits the Commission should not grant the Application as submitted. Rather, approval of the Application should be contingent upon the adoption of conditions that will ensure the public interest is protected.

¹ D.C. CODE 2001 ed. § 34-804(d).

² *In re Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Public Notice (“Notice”) WC Docket No. 05-75 (rel. Mar. 10, 2005).

A. SUMMARY OF OPC-DC'S POSITION

OPC-DC submits the proposed merger, as currently structured, does not satisfy the public interest, convenience and necessity standard, as required by governing statutes and the FCC's rules.³ In the District of Columbia, the proposed merger will substantially harm the development of competition in the local phone market. Wireless and advanced telecommunications services are not ubiquitously available to DC residents and are not comparable substitutes for wireline services in the District of Columbia.

District of Columbia residents will have very little choice, if any, among competitors which is contrary to the goals of the Telecommunications Act of 1996 should the FCC approved the Application. Although the goals of competition are laudatory, they have been slow to materialize in the District of Columbia and DC residents have realized few, if any, benefits. OPC-DC submits the Commission must adopt conditions to the proposed merger in order to protect District of Columbia consumers from declining service quality in the local, long distance and advanced telecommunications market.

II. STATEMENT OF INTEREST/JURISDICTION

OPC-DC is statutory consumer advocate authorized by Section 34-804, *et seq.* of the District of Columbia Code to represent the people of the District of Columbia in proceedings that involve the interests of users of the products and services furnished by public utilities under the jurisdiction of the Public Service Commission.⁴ OPC-DC's interest in this proceeding is to protect the right of D.C. consumers to have competitive and affordable service options as promised in the federal Telecommunications Act of 1996.

³ 47 U.S.C. §§ 214(a), 310(d).

⁴ *Supra*, n.1.

III. REVIEW OF INITIAL COMMENTS

OPC-DC reviewed initial comments filed by industry members and consumer advocate groups. There is an overwhelming consensus that a merger between Verizon and MCI would substantially restrict competitive choices for both mass and enterprise customers. For example, CompTel/ALTS asserts “market concentration could increase significantly” and “the elimination of a significant competitor of Verizon in the wholesale special access market ... and MCI’s exit will clearly reduce alternatives for most [wholesale] carrier customers.”⁵ OPC-DC agrees with CompTel/ALTS that residential and government customers alike will be adversely affected should the Commission approve the proposed merger.⁶ The majority of interested parties filing comments in this proceeding, recommend the Commission adopt conditions to protect the interests of retail and wholesale customers.

Consumer groups agree that should the Commission approve the Application, approval of the merger must be contingent upon explicit and enforceable conditions. For example, the New Jersey Ratepayer Advocate and the Texas Office of the Public Utility Counsel recommend conditions that will promote competition, as well as govern audits and performance standards for retail customers.⁷ The National Association of State Utility Consumer Advocates (NASUCA) recommends the FCC should implement consumer protection measures,⁸ ensure open access to

⁵ CompTel/ALTS Petition to Deny, at 16-18.

⁶ CompTel/ALTS recounts how billing disputes between Verizon and enterprise customers, such as the District of Columbia government, can escalate and adversely impact the quality of life for DC residents. *Id.*, at 46-50.

⁷ New Jersey Division of the Ratepayer Advocate Comments, at 14-18; Texas Office of Public Utility Counsel Comments, at 10-11. (In the District of Columbia, the PSC requested comment on OPC-DC’s proposal to implement billing credits for DC residents should Verizon DC’s performance fall below acceptable performance standards in the quality of service proceeding, Formal Case No. 990.)

⁸ NASUCA Comments, at 24.

the network for competitors,⁹ as well as implement and enforce retail and wholesale performance standards.¹⁰

The Consumer Federation of America, Consumers Union and U.S. Public Interest Research Group commented on how the adverse effect bundled services have on the mass market that further illustrates the need for the Commission to adopt merger conditions.¹¹ DC consumers are not given the option to buy stand-alone DSL (or “naked DSL”) and must buy a bundled package from one service provider, which in the District of Columbia is the incumbent Verizon DC. While bundled packages can offer consumer savings, on the other hand, consumers are forced to buy unwanted services they may not use which leads to inefficient use of resources.

Comments filed on behalf of CAN Communications Services, Inc., ATX Communications, Inc., Biddeford Internet Corporation d/b/a Great Works Internet, BridgeCom International, Inc., Broadview Networks, Inc., Bullseye Telecom, Inc., Cavalier Telephone Mid-Atlantic, LLC, Cimco Communications, Inc., CTC Communications Corporation, Gillette Global Network, Inc. d/b/a Eureka Networks, Granite Telecommunications, LLC, Lightship Communications, LLC, Lightwave Communications, LLC, Lightyear Network Solutions, LLC, Pac-West Telecomm, Inc., Mpower Communications Corp., RCN Telecom Services, Inc., US LEC Corp., U.S. TelePacific Corp., d/b/a TelePacific Communications (collectively “Commenters”), recommend the Commission should impose self-enforcing transition safeguards to prevent a disruption in the provision of service in the marketplace and ensure open access to the IP backbone.¹² The

⁹ *Id.*, at 21.

¹⁰ *Id.*, at 25.

¹¹ Petition to Deny of Consumer Federation of America, Consumers Union, and U.S. Public Interest Research Group, at 16-18 (May 9, 2005).

¹² Comments of CAN Communications Services, Inc., ATX Communications, Inc., Biddeford Internet Corporation d/b/a Great Works Internet, BridgeCom International, Inc., Broadview Networks, Inc., Bullseye Telecom, Inc., Cavalier Telephone Mid-Atlantic, LLC, Cimco Communications, Inc., CTC Communications Corporation, Gillette Global Network, Inc. d/b/a Eureka Networks, Granite Telecommunications, LLC, Lightship Communications, LLC,

comments opposing the merger further support OPC-DC's assertion that the proposed merger is not in the public interest of DC residents.

IV. DISCUSSION

A. THE ELIMINATION OF MCI AS A SIGNIFICANT MARKET PARTICIPANT IN THE DISTRICT OF COLUMBIA WOULD SEVERELY RESTRICT CONSUMER CHOICE IN THE TELECOMMUNICATIONS MARKET.

1. MCI Provided DC Residents Alternative Service Choices in the Local and Long Distance Telephone Market.

OPC-DC disagrees with Verizon's assertions that MCI is not a "significant market participant".¹³ Verizon asserts MCI is not a significant market participant because of the company's: 1) declining residential sales; 2) reduction of sales efforts and staff serving a declining legacy customer base; and 3) decision to raise residential rates.¹⁴ Verizon claims that the merger will not adversely affect competition because MCI's position in the telecommunications industry has changed. OPC-DC disagrees.

Contrary to the Joint Applicants' claims, OPC-DC submits MCI is a "significant market participant" in the District of Columbia. MCI's introduction of The Neighborhood plan was the beginning of DC residents having real and tangible choices in local and long distance services.¹⁵ As proclaimed by MCI, in 48 states and the District of Columbia MCI was the "*only nationwide competitor in the consumer local phone market*".¹⁶ Emerging out of bankruptcy, MCI was at the forefront of delivering the federal Telecommunications Act of 1996's promise of more consumer choice and affordable phone services. MCI asserted their bundled service plan "*revolutionized*

Lightwave Communications, LLC, Lightyear Network Solutions, LLC, Pac-West Telecomm, Inc., Mpower Communications Corp., RCN Telecom Services, Inc., US LEC Corp., U.S. TelePacific Corp., d/b/a TelePacific Communications ("Commenters"), at 55-57 (May 9, 2005).

¹³ *Supra*, n.2, Public Interest Statement at 18-19, 35, 48. *See also*, Bamberger, Carlton, and Shampine Decl., at 4.

¹⁴ Verizon/MCI Application, at 47. *See also*, Wayne Huyard Decl.

¹⁵ *Id.*

*the consumer communications industry...and proves that consumers overwhelmingly want “any distance” phone service.”*¹⁷ Shortly thereafter, Sprint Communications (Sprint) entered the District of Columbia’s residential local service market and, also began offering bundled residential packages. Unfortunately, effective January 2005 Sprint decided to “grandfather” the company’s bundled local and long-distance packages to DC residents and no longer accepts new subscribers. Prior to MCI’s entry into the local residential telecommunications market, Starpower (now, RCN) was the only competitor who offered residential services competitively priced with Verizon Washington DC, Inc. (Verizon DC).¹⁸

Since the advent of the Telecommunications Act of 1996, in the District of Columbia more than 150 carriers filed applications to provide telecommunication services, however, numerous carriers withdrew their applications or filed bankruptcy. However, OPC-DC’s research revealed that several competitors never entered the residential market. Some carriers disconnected their phone numbers; or are MCI subsidiaries, resellers of Verizon DC’s services, or only sell business-class services.

As of June 2004, the Public Service Commission of the District of Columbia (DCPSC) reports there are 10 carriers (including the incumbent) that offer local residential services in DC.¹⁹ Today, DC residential consumers only have a choice between two full-service providers - Starpower and Verizon. Wireless services and IP-enabled services are not ubiquitously available in the District of Columbia and, most importantly, are not true substitutes for wireline services. As commonly known, neither Instant Messaging (IM) nor electronic mail service provides access

¹⁶ MCI Public Policy on Local Competition, *MCI Working to Bring the Promise of Local Competition*, at <http://global.mci.com/about/publicpolicy/localcompetition/promise/> (last visited May 11, 2005) (emphasis added).

¹⁷ THE DIGEST, “2 Million in The Neighborhood”, at <http://www.thedigest.com/more/144/144-031.html> (last visited May 11, 2005).

¹⁸ , Starpower currently sells residential telecommunications services under the corporate name, RCN.

to emergency services. Access to emergency services via VoIP and wireless services is limited, at best.

OPC-DC learned through community meetings that residential customers switched their telephone service from Verizon to MCI because of poor quality of service. Wholesale unbundled network element-platform (UNE-P) arrangements between Verizon and MCI made it possible for DC residents to choose MCI as a service provider. However, should the Commission approve the merger, as CompTel/ALTS correctly states “*the loss of the largest potential [mass market] customers will be a disincentive for packet- and switched-based competitors to negotiate similar UNE-P arrangements as replacements to MCI.*”²⁰ *The elimination of MCI as a potential customer virtually guarantees that the remaining MCI mass market local customers will have no choice but to revert back to a monopoly provider of local and long distance services.*”²¹

Notably, recent Commission and court Orders have not created a regulatory climate that has benefited competitive providers such as MCI.²² The FCC’s recent elimination of UNE-P as a means to enter the local market effectively eliminated MCI’s ability to compete and future competitive strength. But for the elimination of UNE-P, MCI may not have been induced to merge with Verizon today.

2. MCI is a Significant Opponent of Verizon in DC Regulatory Proceedings.

OPC-DC agrees with NASUCA and the New Jersey Division of the Ratepayer Advocate (NJ Advocate)’s assertion that MCI is not only a significant market participant, but is also a formidable opponent of Verizon DC in evidentiary hearings before the DCPSC and other state

¹⁹ DC Public Service Commission: Telecommunications Customer Choice, at http://www.dcpsc.org/customerchoice/whatis/telecommunications/6_1.shtm (last visited May 11, 2005).

²⁰ CompTel/ALTS Petition to Deny, at 18 (footnote omitted).

²¹ *Id.* (emphasis added).

commissions.²³ Unlike OPC-DC, MCI and AT&T of Washington DC, Inc. (AT&T) had access to and submitted a substantial amount of credible evidence concerning service quality between the companies and the incumbent (including the “hot cut” process), UNEs, and operation support systems (OSS).²⁴ Removing MCI and AT&T as formidable opponents and as information resources hampers federal and state commissions’ ability to gain an accurate assessment of competitive or anticompetitive business practices in the District of Columbia’s telecommunications market.

3. Advanced Telecommunications and Wireless Services Are Not Ubiquitously Deployed in the District of Columbia.

NASUCA correctly points out “*intermodal competition is largely a myth.*”²⁵ In 2000, OPC-DC petitioned the DCPSC to investigate and conduct hearings concerning the lack of ubiquitous deployment of and market entry barriers associated with offering advanced telecommunications services.²⁶ Several community witnesses testified that lack of access to DSL exacerbated the growing digital divide between affluent and low-income communities.²⁷

In 2005, many District of Columbia neighborhoods still do not have access to advanced telecommunications services such as Digital Subscriber Line (DSL) as either a result of corporate “cherry-picking” strategies or technical constraints. The introduction of VoIP and other IP-enabled services has not relieved D.C. residential consumers’ concerns that advanced

²² Huyard Decl. at 7.

²³ NASUCA Comments, at 14-15. See, New Jersey Division of the Ratepayer Advocate Comments, at 11.

²⁴ AT&T did not enter the District of Columbia local phone market, but continues to be a significant provider of long distance services.

²⁵ NASUCA Comments, at 9.

²⁶ *In re the Investigation into the Availability of Advanced Telecommunications services in the District of Columbia*, Formal Case No. 992, Community Hearing Before the Public Service Commission, (Oct. 2000).

²⁷ *Id.*

telecommunication or information services will become ubiquitously available in the District of Columbia. VoIP is only available where broadband is deployed.

Today, many District of Columbia residents living in communities southeast and north of the downtown cannot access the Internet via DSL or VoIP. In fact, VoIP services further widen the “digital divide” that currently exists in the District of Columbia. As demonstrated by the section 271 application and unbundled network element (UNE) proceedings, the District of Columbia is usually the last business market in which Verizon introduces new products or implements a new business strategy or policy. As a result, it may be years before DC residents are recipients of any projected savings resulting from the proposed merger between Verizon and MCI.²⁸

V. CONCLUSION

The Joint Applicants state that the availability of and the benefits from intermodal telecommunications alternatives for residential, small and large businesses outweigh “*any potential of lessening competition in any segment of the broad communications market.*”²⁹ Not surprisingly, general evidence submitted in the Application heavily relies upon the extent of intermodal competition in the enterprise market (large, institutional, and government). There is very little evidence submitted depicting the state of competition in the mass market. The FCC cannot possibly evaluate the extent of market concentration or accurately assess how the merger will affect individual markets across the country. Accordingly, the Commission should not grant the Application as structured. In the alternative, should the Commission find the Application is in the public interest, OPC-DC supports recommendations protecting residential consumer interests and the development of competition in the mass market.

²⁸ Verizon claims the proposed merger will result in annual cost savings of \$1 billion by the third year. Bamberger, Carlton, Shampine Decl., at 21, ¶ 34. In the DCPSC merger review (Formal Case No. 1036), OPC-DC has filed discovery regarding the amount of savings that will be passed to DC residents.

²⁹ Verizon/MCI Merger Application, at 5.

For the foregoing reasons, OPC-DC respectfully requests the Commission consider its Reply Comments in the evaluation of the proposed merger between Verizon, Inc. and MCI, Inc.

Respectfully submitted,

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