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	)	

JOINT OPPOSITION OF VERIZON COMMUNICATIONS INC. AND MCI, INC. TO PETITIONS TO DENY AND REPLY TO COMMENTS

William P. Barr
Michael E. Glover
Edward Shakin
Karen Zacharia
Sherry Ingram
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Anastasia Kelly
Carol Ann Petren
Richard S. Whitt
Curtis L. Groves
Alan Buzacott
MCI, Inc.
22001 Loudoun County Parkway
Ashburn, Va. 20147
(202) 887-3845

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REDACTED – FOR PUBLIC INSPECTION

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. PUBLIC INTEREST BENEFITS 8

III. LARGE ENTERPRISE AND OTHER COMMERCIAL AND INSTITUTIONAL CUSTOMERS 13

A. The Transaction Will Not Reduce Competition in Any Relevant Market Through Horizontal Concentration 16

B. The Commenters' Vertical Concerns Regarding Special Access Are Irrelevant to the Transaction and Without Merit 40

IV. MASS MARKET 47

A. Intermodal Alternatives Provide Extensive Mass-Market Competition That Will Be Unaffected by This Transaction 49

B. MCI Is Not One of a Small Number of Most Significant Competitors in the Mass Market Going Forward 60

C. The Merger Will Not Result in Adverse Effects in Competition for Long Distance Services 63

V. INTERNET-RELATED SERVICES 69

A. The Share of the Combined Company Will Be Too Small To Give Rise to Any Plausible Competitive Concern 70

B. The Combined Company Would Not Have the Ability or Incentive To Discriminate Successfully Against Other Internet Backbone Providers 75

C. The Merger Will Not Affect the Incentive or Ability To Discriminate Against Unaffiliated Content and Application Providers or ISPs 82

VI. OTHER ISSUES 86

VII. CONCLUSION 95

Attachments

Attachment 1	Reply Declaration of Gustavo E. Bamberger, Dennis W. Carlton, and Allan L. Shampine
Attachment 2	Reply Declaration of Robert W. Crandall and Hal J. Singer
Attachment 3	Reply Declaration of Michael Kende
Attachment 4	Reply Declaration of Quintin Lew
Attachment 5	Reply Declaration of Eric J. Bruno, Kathy Koelle, Veronica Pellizzi, and Judy K. Verses
Attachment 6	Reply Declaration of Michael K. Hassett, Tom Maguire, Michael O'Connor, and Vincent J. Woodbury
Attachment 7	Reply Declaration of Robert F. Pilgrim
Attachment 8	Reply Declaration of Wayne Huyard
Attachment 9	Reply Declaration of Jonathan P. Powell, Peter H. Reynolds, and Edwin A. Fleming

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I. INTRODUCTION AND SUMMARY

The combination of Verizon and MCI will decisively benefit the public interest by creating a strong new competitor for enterprise customers nationwide, enhancing investment in the nation's critical communications infrastructure, and establishing the nation's most advanced broadband platform, capable of delivering next-generation multimedia services in markets across the country.

Most of the commenters are competitive carriers that seek to block, delay, or condition the transaction based on their fears that it will create a more efficient rival, or on their selfish hopes that they will benefit from the imposition of unnecessary conditions. But the sheer number of these commenters – which includes more than two dozen CLECs formed in the wake of the Telecommunications Act of 1996 ("1996 Act" or "Act") – is testament to the fact that this transaction will not result in any meaningful concentration. And many of the most significant competitors did not even file comments. For example, there is no opposition from the systems integrators and managed network service providers, such as IBM, EDS, Lockheed Martin, and Accenture, which have begun competing extensively for large enterprise customers by compiling the broad service packages that these customers demand. Virtually all of the new intermodal competitors in the mass market have likewise remained silent – only a single ("predominantly rural") wireless provider filed comments; only one cable operator (Cox) did, but admits (at 4) that "facilities-based carriers (including wireless carriers) and voice over Internet Protocol ('VoIP') service providers will offer . . . meaningful competitive alternatives" going forward; and the only VoIP provider to file comments (Vonage) states

(at 1, 5) that it "does not oppose" the transaction, and credits Verizon as "the first ILEC" to help facilitate its entry.

The competing carriers that do oppose fail to make a case. In general, they seek to turn back the clock more than twenty years and analyze the transaction using a framework that may have been appropriate at divestiture, but that is obsolete today. As the Public Interest Statement demonstrated, profound changes in technology have brought about a convergence among wireline voice, data, cable, wireless, and satellite providers, which are all increasingly competing against each other in delivering an expanding array of innovative voice, data, and video services to all kinds of customers. These developments have shattered the divisions between local and long distance and voice and data that have shaped industry regulation in the past. Particularly in the last two years, cable and wireless companies have become significant and accelerating competitors to ILECs. The Commission's analysis of this transaction should conform to these new developments, rather than replay the past as the commenters urge.

Even on their own terms, however, the commenters' claims do not withstand scrutiny. As an initial matter, the commenters display enormous chutzpah in criticizing Verizon and MCI for failing to provide adequate data, yet at the same time refusing to provide even a shred of information about their own competitive operations. The Public Interest Statement provided extensive data regarding all of the issues that these commenters address, and this evidence, as well as the additional data provided with these reply comments, demonstrate that robust competition in all segments of the broad communications marketplace will not be harmed by this combination. Verizon and MCI

are not among a "small number" of "most significant market participants" for customers generally, or for any relevant subgroup of customers, but instead face intensifying competition from a growing number of significant market participants in all of their lines of business.

Large Enterprise and Other Commercial and Institutional Customers. The Public Interest Statement demonstrated that, in the large enterprise segment that represents the core of MCI's business, the combined company will be just one among many other competitors in what is widely recognized as the most competitive segment of the industry. The commenters do not seriously dispute that there is significant competition at the retail level today. Nor could they reasonably do so. There are large numbers of providers competing for these customers today, none of which has a dominant share, including traditional interexchange carriers such as AT&T, Sprint, and Qwest; CLECs like XO and Level 3; systems integrators and managed service providers like IBM, EDS, Accenture, Northrop Grumman, and Lockheed Martin; major global telecommunications providers such as Equant, British Telecom, Deutsche Telekom, COLT, KPN Telecom, and NTT; equipment vendors like Lucent and Nortel; and, most recently, major application providers such as Microsoft. There is accordingly no credible risk that this transaction will foster a duopoly for large enterprise customers, or that the combined company will stop competing with its major rivals, including AT&T. To the contrary, the main purpose of the transaction is to promote even greater competition for these customers, and to allow the combined company to compete more effectively nationwide.

In the absence of any credible argument that this transaction will impair retail competition, the commenters instead claim that the transaction will eliminate a competitive source of local access facilities on which they argue this competition depends. But the truth is that MCI's local fiber facilities in Verizon's region are limited, in virtually every area where they do exist there are already other competing carriers with comparable facilities, and in every location competing carriers are clearly capable of deploying facilities given that MCI itself did so. For example, in the specific areas in which Verizon and MCI have overlapping fiber, there are a total of more than 90 different fiber suppliers; two or more suppliers in 92 percent of the areas; at least one supplier in all but one of these areas; and an average of six competing fiber suppliers in the wire centers where there is an overlap. Further, at least 50 percent of the buildings that MCI has lit with fiber have other known competing carriers within those buildings, as unquestionably do others that we cannot identify from publicly available sources. And the fact that MCI was able to deploy fiber to those buildings, and that 80 percent of those buildings are in locations that meet the "triggers" the Commission established for determining where competing providers are capable of deploying their own high-capacity facilities, demonstrates that others can do so as well.

The commenters also claim that the transaction will enable the combined company to discriminate in the provision of special access, but their arguments are misplaced and wrong. Commenters advance no credible merger-specific arguments concerning special access. As the Commission has found, any supposed theoretical incentives or ability that the combined company has to discriminate already exist. And

the Commission repeatedly has held that existing regulatory safeguards adequately protect against any such risk. Moreover, to the extent there are concerns about the combined company's price or non-price terms for special access going forward – despite the presence of numerous competitive alternatives – they are properly addressed in industry-wide proceedings, as the Commission has consistently held.

The claims also lack substance. While these claims assume that the combined company will effect a price squeeze, both the Commission and the courts have recognized that such a strategy is unlikely to be attempted, and even less likely to succeed. The Commission also repeatedly has found that its regulations adequately protect against the risk of a price squeeze. Accordingly, the Commission has repeatedly rejected the very types of arguments made here. And even ignoring regulatory safeguards, the extensive facilities-based competition in the specific areas where MCI has deployed fiber in Verizon's region would make it impossible for the combined entity successfully to execute a price squeeze.

***Mass Market*.** The Public Interest Statement demonstrated that MCI is not among a small number of most significant competitors for mass-market customers, but that instead its mass-market business is in a continuing and irreversible decline. These reply comments provide further evidence of that fact. While a few commenters speculate that MCI might be able to compete using various intermodal and facilities-based alternatives, they fail to prove that MCI is somehow unique in this regard, and their argument merely underscores that these alternatives are a viable replacement of MCI's mass-market business.

The Public Interest Statement also demonstrated that intermodal alternatives such as cable and wireless are major factors in the mass market today and will provide the most significant competition going forward. This competition is particularly intense in Verizon's service area, where cable companies and others are rolling out service on a widespread basis. Indeed, as of the end of this year, cable companies will be offering voice telephone services to nearly 60 percent of U.S. households, including more than 23 million homes in Verizon's services areas alone, and are expected to offer voice services to nearly 100 percent of homes passed over the next two to three years. And they are competing aggressively. Cable companies report that they have attracted 20-40 percent of all subscribers in some markets where they offer telephone service; Time Warner alone added over 150,000 net new customers in just the first quarter of this year; Cox added more than 110,000 customers during this same period; and Cablevision added another 92,000 customers entirely within Verizon's service areas. Wireless carriers are similarly competing with wireline carriers for both lines and, even more significantly, for minutes of use. Analysts estimate that approximately 7-8 percent of wireless users had given up their landline phones and that wireless made up nearly 30 percent of voice minutes in 2004. As of year-end 2004, analysts estimate that wireless had displaced approximately 11 million wireline access lines and billions of otherwise revenue-producing minutes. And both lines and formerly revenue producing minutes increasingly are being displaced by non-traditional sources of competition such as VoIP, which is available to the more than 90 percent of U.S. homes that now have access to broadband services, as well as e-mail and instant messaging.

***Internet Backbone and Related Services*.** A number of commenters raise concerns relating to the Internet backbone and related services, but for the most part these claims are not merger-specific and in any case are at war with the facts. By any relevant measure, MCI operates one of several Internet backbones of roughly similar size, while Verizon has a minor backbone, and their combination will not give them anything close to "mega peer" status as some commenters claim. Instead, the combined firm would carry less than 10 percent of North American Internet traffic, which would make it only the fourth largest carrier of Internet traffic, in the middle of a group of seven backbone providers of larger or comparable size, with major competitors including the likes of AT&T, Sprint, Level 3, Qwest, SAVVIS, and AOL. As a result, the combined company would not have close to a market share that would threaten competitive harm. Indeed, any attempt to somehow disadvantage another provider would be doomed to failure because the other provider could simply connect to one of a number of other top-level backbone operators to obtain the connectivity it needs. Further, the combination of the companies would not create or exacerbate any supposed incentive or ability on the part of the combined company to discriminate against unaffiliated content and application providers through its last-mile broadband facilities. The Commission has found that the broadband market is competitive and that cable modem service is the leader, accounting for a substantial majority of all broadband customers. Accordingly, denying customers access to the content they want would merely cause them to switch to a competitor. Indeed, the FCC itself has explained that the competitive pressures facing companies such as Verizon when they offer broadband services compel them to, *inter alia*, offer

reasonable rates and terms to wholesale customers in order to retain their business, and Verizon has endorsed net neutrality principles because they make good business sense.

Other Issues. The commenters raise a number of other arguments, but for the most part these have nothing to do with the transaction and are instead an improper attempt to use this proceeding to air grievances that are properly addressed in industry-wide proceedings. In any event, as we explain below, these claims are uniformly misplaced.

For the reasons set forth above, the Commission should grant the application to transfer control of the licenses and authorizations at issue.

II. PUBLIC INTEREST BENEFITS

In their application, Verizon and MCI demonstrated that the combination of their complementary assets and expertise, together with the added investment that Verizon has committed to make to MCI's network and systems, will strongly promote the public interest. *See* Public Interest Statement at 10-18. In particular, large enterprise customers will benefit from the creation of a strong and stable new facilities-based competitor that will be capable of providing a full range of communications services to these customers nationwide. Governmental and national security customers will benefit from the strengthening of an important technology and infrastructure provider and the ability to obtain a full array of existing and future services across the country. Likewise, wholesale customers will benefit from the creation of a stronger nationwide provider with a broader facilities-based reach. Mass market customers, in turn, will benefit from the combination of MCI's IP network and expertise with Verizon's ongoing deployment of the nation's

most advanced broadband networks. And the economy as a whole will benefit from enhanced efficiency and innovation-producing investments, along with the creation of a strong U.S. competitor in the global marketplace. In short, the combination of Verizon and MCI will create the type of national facilities-based competitor that public policy has sought, and provide the significant public interest benefits that go with it.

The commenters here do not take serious issue with this overall showing, and instead choose to quibble over isolated aspects of it. For example, some parties question the significance or the magnitude of the benefits that will be derived by national security and other governmental customers. *See*, *e.g.*, ACN et al. at 48; Cbeyond et al. at 82, 84. But the simple fact of the matter is that these customers, and the other businesses that serve them, will benefit for all the same reasons as enterprise customers in general. In particular, while a number of companies can and do assemble and provide full-service capabilities to governmental and other large enterprise customers, this transaction will add another strong full-service provider capable of delivering integrated, end-to-end services on a facilities basis nationwide. Further, the combined company will have greater financial resources that will enable it to ensure that the government will continue to receive robust, reliable, and technologically advanced services that it needs. *See, e.g.*, Bruno/Murphy Decl. ¶¶ 31, 50-52.

Indeed, while this is true of governmental customers generally, the benefits are likely to be particularly pronounced in the case of national security and national defense customers that need to connect installations located across the country and around the world, and that have a heightened need for network integrity and security to reach those

far-flung locations. For example, if a single company provides a service end-to-end over its own network, it is easier to provide the appropriate level of security than if the service traverses networks of multiple providers; among other things, there will be fewer interfaces, handoffs, and other points of potential vulnerability. In addition, carriers may well be reluctant to share information with one another about the ways in which their networks might be vulnerable to attack. Similarly, if a virus or other attack were mounted, it would be faster and simpler to identify, isolate, and respond to the attack if the facility was part of a single network owned by a single organization.

Likewise, although some parties question the impact of this transaction on the wholesale segment of the market, the same considerations will produce benefits for that segment as well. In an industry as competitive and dynamic as communications, companies with large fixed infrastructure investments need viable wholesale businesses in order to fill their networks and help recover the costs of those investments. Indeed, long distance companies have long maintained a wholesale business for just that reason. And the creation of a stronger and more efficient nationwide wholesale provider will produce benefits for this segment just as it does for others.

A few commenters question whether the combined company will innovate and invest in new technologies, claiming it will have no competitive incentive to do so and instead will seek to protect the alleged market power derived from Verizon's status as an incumbent. *See* ACN et al. at 43-44; Cbeyond et al. at 85-86. But Verizon already has demonstrated its commitment to investment in new technologies by spending billions of dollars in the rollout of new facilities and services such as fiber to the home and 3G

wireless services such as EV-DO. And Verizon has committed to an investment of $2 billion in capital to enhance MCI's network and information technology platforms, and a total of $3 billion including integration expenses. *See* Bruno/Murphy Decl. ¶ 51. Moreover, as Verizon and MCI have detailed in this proceeding, the combined company would have little choice but to continue investment and innovation: it will face strong and growing competitive pressures from an array of both wireline and intermodal competitors, including cable operators, VoIP providers, wireless carriers, other ILECs and CLECs, ISPs and content providers, and various other technology companies.

A few commenters quibble with the estimated cost savings and efficiencies set forth in the application and question whether the full amount of those benefits will be realized. *See, e.g.*, Cbeyond et al. at 78-79. In fact, Verizon has met or exceeded its synergy estimates in prior mergers with NYNEX and GTE, *see* Smith Decl. ¶ 7, and that previous success is far more probative evidence than the blanket assertions of merger opponents. One commenter claims that, even if the combined company can achieve these savings, they are not a "public interest benefit" because they will not be passed on to customers in the absence of competition. ACN et al. at 47-48. But, as described above, the combined company will in fact operate in a highly competitive environment, and it will have no choice but to pass along those benefits in the form of competitive prices, further investment, and/or added innovation to bring new services to customers.

Finally, commenters also claim that some or all of the benefits and efficiencies set forth in the application are not merger-specific and already exist or could be achieved in other ways. Yet even in cases where there might be other ways to achieve some of the

same end results, the transaction will enable the companies to achieve them more quickly and efficiently. For example, one commenter asserts that Verizon could obtain end-to-end connectivity by entering into contracts with unaffiliated long distance providers. *See* ACN et al. at 47; *see also* Cbeyond et al. at 82. Although contractual arrangements are an option, as Verizon and MCI previously explained, ownership of the various pieces of the network enhances a carrier's ability to impose standardized quality of service across the entire network and to offer comprehensive network management capabilities and service level guarantees. *See* Bruno/Murphy Decl. ¶¶ 48-49.

More generally, some commenters offer the criticism that one company or the other already provides the relevant benefit or capability and that the merger therefore adds nothing. *See*, *e.g.*, Cbeyond et al. at 72-74. But this claim ignores the efficiencies inherent in the merged enterprise. By combining complementary assets and capabilities, the merged company will be able to provide services and capabilities that neither could alone or do so more quickly or efficiently. Thus, while it is true that MCI already has a global IP platform and Verizon does not add to that directly, Verizon brings other capabilities, such as a wireless network, that MCI does not have. As a result, the combined firm will be able to offer on a more efficient basis a broader array of enterprise services then either firm would have absent the transaction. Similarly, after the transaction, service innovations that benefit MCI's commercial and institutional customers can be standardized and offered to Verizon's much larger base of residential and small business customers. *See* Hassett et al. Decl. ¶¶ 20, 23, 27-28. In light of

benefits such as these, the combination of Verizon's and MCI's complementary assets and expertise will promote the public interest.

III. LARGE ENTERPRISE AND OTHER COMMERCIAL AND INSTITUTIONAL CUSTOMERS

The Public Interest Statement demonstrated that the combination of Verizon's and MCI's highly complementary operations would have significant benefits for large enterprise and other commercial and institutional customers by creating a strong new competitor with the network reach and financial resources to compete in this market segment nationwide.[1] It further demonstrated that, particularly with the advent of wireless, data, and other new technologies, as well as the rise of systems integrators, equipment suppliers, and applications providers, there is extensive and accelerating competition for all different types and sizes of such customers, and for all of the various services they purchase.[2] The applicants also explained that, as a result of this industry transformation, it does not advance the analysis to divide large enterprise and other business customers into separate markets based upon their size, where they are located, or what kinds of communications products they are purchasing.[3] But even if the Commission were to delineate narrower product or geographic markets, the result would

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[1] *See* Public Interest Statement at 11-18; Bruno/Murphy Decl. ¶¶ 31-52; McMurtrie Decl. ¶¶ 8-20; *see also* Bruno et al. Reply Decl. ¶¶ 51-55. As explained in the Public Interest Statement (at 19-20), the term "large enterprise and other commercial and institutional customers" refers to customers that the Commission has formerly described as "larger business" or "enterprise."

[2] *See* Public Interest Statement at 24-30; Bruno/Murphy Decl. ¶¶ 14-30; McMurtrie Decl. ¶¶ 8-20; *see also* Bruno et al. Reply Decl. ¶¶ 8-19, 33-45.

[3] *See* Public Interest Statement at 9, 19-21.

be the same – the transaction does not harm competition for any segment of enterprise customers or services, and the combining companies are not "among a small number of . . . most significant market participants" for any relevant customer group or for any relevant service. *Bell Atlantic/GTE Order*[4] ¶ 98.

The commenters do not come close to rebutting this showing. With respect to competition at the retail level, the commenters barely assert, much less prove, that the transaction will result in a material increase in horizontal concentration. No commenter disputes that Verizon and MCI largely compete for different kinds of customers today, or that the companies are each minor players in each other's core business segment. Nor do any of the commenters – which include 30 carriers that compete for enterprise customers today – attempt to show that there would be a limited number of remaining market participants with the removal of either Verizon or MCI.

For the most part, the commenters complain about the possibility of horizontal concentration at the wholesale level involving local fiber network facilities. But the competing carriers making this claim fail to provide any data regarding their own competing facilities – not a single CLEC has identified the locations where it is competing using its own facilities, third-party facilities, or ILEC special access. This information is unquestionably and uniquely within the CLECs' possession, but by withholding it the CLEC commenters put the Commission in the untenable position of having to evaluate their assertions without access to the most relevant data. Their failure

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[4] Memorandum Opinion and Order, *Application of GTE Corp. and Bell Atlantic Corp. for Consent To Transfer Control*, 15 FCC Rcd 14032 (2000) ("*Bell Atlantic/GTE Order*").

to present probative evidence within their possession, moreover, strongly suggests that they know those data would thoroughly undermine their assertions. In fact, under well-settled precedent, the Commission must infer that data that competing carriers obviously maintain but have purposely withheld are unfavorable to them.[5] At a minimum, the Commission may not accept these carriers' arguments without compelling them to produce all relevant information bearing on their claims.

In any event, the Public Interest Statement demonstrated that MCI's local fiber facilities in Verizon's region are limited. Moreover, even based on the incomplete evidence available to Verizon and MCI that understates current competitive alternatives, in virtually every relevant market area where MCI owns fiber facilities, there are a number of other competing carriers with comparable facilities. While some commenters attempt to dispute this showing with respect to a handful of market areas, their analysis is deeply flawed. A few commenters also claim that MCI exerts competitive discipline by acting as an aggregator and reseller of Verizon's special access. But the reality is that MCI provides such resale to only a minimal extent today, and Verizon's special access pricing structure does not provide the kind of volume discounts that would give MCI any unique ability to become a more significant reseller going forward.

The commenters also argue that the merger raises vertical concerns, by enabling the combined company to discriminate in the provision of special access services. But the vertical aspects of this transaction are overwhelmingly pro-competitive – the

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[5] *See*, *e.g.*, *International Union, UAW v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.").

combination of Verizon's and MCI's complementary operations will make the combined company a more vibrant competitor for enterprise customers both within and outside of Verizon's franchise territory. In any event, any theoretical incentives or ability that the combined company supposedly would have to discriminate already exist. The price-squeeze claims have been repeatedly rejected and are misplaced in the context in which they are raised here. And to the extent there are concerns about the combined company's price or non-price terms for special access going forward, they are properly addressed in industry-wide proceedings, as the Commission has consistently held.

A. The Transaction Will Not Reduce Competition in Any Relevant Market Through Horizontal Concentration

The Public Interest Statement explained (at 19-20) that the Commission should repeat its past approach of examining a single market for large enterprise and medium business customers as a whole and declining to distinguish between the retail and wholesale provision of the services purchased by these customers. It also explained (at 21) that, in light of dramatic industry changes such as the rise of wireless and data services, it no longer makes sense to analyze local services separately from long-distance services, as the Commission has done in past mergers. Large enterprise customers and medium businesses often purchase any-distance packages of services, and it accordingly does not make sense to partition those packages into artificial categories that are no longer relevant in the marketplace.[6]

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[6] *See* Bruno et al. Reply Decl. ¶¶ 30-32; *see also* Public Interest Statement at 21; Bruno/Murphy Decl. ¶ 12; McMurtrie Decl. ¶ 6.

Although a number of the commenters argue that the Commission should separately analyze the wholesale inputs used to serve large enterprise and medium business customers, none of the commenters identifies separate categories of retail services or customers for the Commission to analyze. To the contrary, to the limited extent the commenters even address retail competition, they refer only to an undifferentiated "business market" or "enterprise market."[7] In any event, even if the Commission were to look separately at different segments of enterprise or business customers, the outcome would be the same. The provision of service to these customers is highly competitive overall and, as shown below, in all its segments.

Retail Competition for Large Enterprise Customers. Large enterprise customers include Fortune 1000 companies, the federal government and large state government entities, and large public institutions.[8] As the Public Interest Statement demonstrated, although these customers form the core of MCI's business, Verizon is a minor player with respect to such customers, and there are many other competitors that will remain after the transaction.[9] Indeed, Verizon is rarely, if ever, a competing prime bidder against MCI on large enterprise contracts. *See* McMurtrie Decl. ¶ 23; Bruno et al. Reply Decl. ¶ 22. Based on a preliminary analysis of hundreds of bids by Verizon and MCI between October 1, 2004 and May 1, 2005, the two companies competed for the same bid in a

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[7] ACN et al. at 25-27; *see also* Qwest at 22-23 (using "retail market," "enterprise market," and "business market," interchangeably); CompTel/ALTS at 20 ("National and Global Enterprise Services"); Cbeyond et al. at 18 ("business markets").

[8] *See* Public Interest Statement at 25; Bruno/Murphy Decl. ¶ 6; McMurtrie Decl. ¶ 3.

[9] *See* Public Interest Statement at 25-26; Bruno/Murphy Decl. ¶¶ 14-26, 29; McMurtrie Decl. ¶ 23.

very small minority of cases. *See* Bruno et al. Reply Decl. ¶ 22. While this analysis is preliminary – because, among other things, it has not yet been determined how many times the two companies were actually competing against each other to provide the same services in response to the same RFP – even the upper-bound estimate confirms what Verizon's and MCI's sales representatives report from the field, which is that the two companies have different strengths and therefore rarely bid on the same RFP. *See id.*

Some commenters claim that Verizon and MCI – or Verizon and MCI and SBC and AT&T combined – will control a dominant percentage of some undefined business or enterprise market in which only traditional telephone companies compete, and then only on a regional basis.[10] But these claims fail for multiple reasons.

First, they ignore the wide variety of competing providers actually serving these customers today. As the Public Interest Statement demonstrated, to the limited extent that Verizon and MCI do compete head-to-head, there are many other competitive providers that do as well, ranging from traditional interexchange carriers such as AT&T, Sprint, and Qwest; CLECs like XO and Level 3; systems integrators and managed service providers like IBM, EDS, Accenture, Northrop Grumman, and Lockheed Martin; and major global telecommunications providers such as Equant, British Telecom, Deutsche Telekom, COLT, KPN Telecom, and NTT.[11] To cite one recent example, the General Accounting Office issued an RFP for a $1 billion contract involving the U.S. Department

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[10] *See*, *e.g.*, Qwest at 2, 22; CFA/CU/USPIRG at 22-23; ACN et al. at 25-27; CompTel/ALTS at 20-22.

[11] *See* Public Interest Statement at 24-30; Bruno/Murphy Decl. ¶¶ 14-30; McMurtrie Decl. ¶¶ 8-20; *see also* Bruno et al. Reply Decl. ¶¶ 9-13, 33-35.

of Treasury, and among the companies responding were the contract incumbent, Northrop Grumman, as well as AT&T, Broadwing, Level 3, and Qwest, prompting one expert on government contracts to note that the contract "attracted both integrators and carriers to the competition. We're seeing a clash of the titans where the integrators and carriers are going head to head."[12]

Any evaluation of retail competition must also take into account competition from equipment providers and value-added resellers, such as Lucent and Nortel, as well as applications providers, which likewise offer products and services that compete directly with the offerings of traditional telecommunications carriers.[13] For example, Microsoft and IBM have recently announced plans to integrate voice service into the office and e-mail applications suites used extensively by large enterprise customers, in much the same way that Microsoft Outlook and IBM's Lotus Notes provide e-mail today.[14]

When these various competitive alternatives are taken into account, it is clear that there will continue to be robust competition following the transaction. As the Public Interest Statement demonstrated, other independent analyst studies and Verizon's own internal market-share analysis put Verizon and MCI's combined share of large enterprise

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[12] Howard Buskirk, *GAO Considers Rebidding Major Treasury Dept. Contract*, Communications Daily (Mar. 21, 2005) (quoting Warren Suss); *see also* Bruno et al. Reply Decl. ¶ 12.

[13] *See* Carlton et al. Decl. ¶¶ 58-67; Bruno/Murphy ¶¶ 17-26; McMurtrie Decl. ¶¶ 24-27.

[14] *See* Bill Whyman, *et al.*, Precursor, *MSFT Enters Communications: Enterprise Voice Becoming a Free Software Feature* at 1 (Mar. 7, 2005).

and mid-sized business revenues at no more than 16-22 percent.[15] For example, Verizon's internal analysis shows that, as of the end of 2004, AT&T is the largest single provider serving large enterprise and mid-sized businesses, with a 17 percent share of the revenues, and no other single provider is in double digits. *See* Taylor Decl. ¶¶ 4-6. MCI is the next largest provider, at 9 percent; SBC and Verizon each has 7 percent, while Sprint, BellSouth, and Qwest have 3 to 5 percent each. *See id.* Other CLECs, equipment providers, and systems integrators and IP applications providers have the remaining 49 percent. *See id.* ¶ 9 & Exh. B.[16] This analysis is consistent with and confirmed by an independent analysis conducted by Lehman Brothers, which estimates that, for 2005, AT&T's share will be 15.5 percent; SBC's 13.1 percent, MCI's 11.8 percent, Verizon's 10.1 percent, Sprint's 5.9 percent; Qwest's 5.7 percent; BellSouth's 5.5 percent; Level 3's 1.2 percent; XO's 0.9 percent; and the rest of the industry, including systems integrators and CLECs, 30.4 percent.[17]

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[15] *See* Public Interest Statement at 23-24; Taylor Decl. ¶¶ 3-20 & Exhs. 1-2; Bruno/Murphy Decl. ¶ 29 & Exh. 1; Crandall/Singer Decl. ¶ 36. These studies and analyses that the applicants provided put the lie to claims that they failed to provide sufficient data to analyze competition for large enterprise customers. *See*, *e.g.*, Qwest at 23; ACN et al. at 25; CompTel/ALTS at 21; CFA/CU/USPIRG at 20. These claims also should be disregarded given that not a single competing carrier provided even a shred of data regarding their competitive operations.

[16] *See*, *e.g.*, *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 517 (3d Cir. 1998) (market share of "twenty five percent" "is insufficient in itself to impose *per se* antitrust liability"); *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1250 (11th Cir. 2002) ("A market share at or less than 50% is inadequate as a matter of law to constitute monopoly power.").

[17] *See* R. Dale Lynch & Blake Bath, Lehman Brothers, *Enterprise Telecom Services; A Comeback Begins* at 15, Fig. 12 (Nov. 11, 2003) (attached as Exhibit 1 to Bruno/Murphy Decl.); *see also* Crandall/Singer Decl. ¶ 36.

Second, the commenters ignore the marketplace dynamics that help ensure the existence of robust competition going forward. For example, large enterprise customers are highly sophisticated customers that often purchase communications service through an RFP process that involves competitive bidding.[18] These customers also typically purchase service for multiple locations, which means that no single carrier, regardless how large, will be able to serve all of that customer's needs. *See* Bruno/Murphy Decl. ¶ 7; Bruno et al. Reply Decl. ¶ 21. As a result, a great deal of what is required to serve these customers is integration of multiple networks, which is why systems integrators have become a powerful competitive force for these customers. *See* Bruno/Murphy Decl. ¶ 18; Bruno et al. Reply Decl. ¶¶ 11-12; McMurtrie Decl. ¶ 27. Finally, large enterprise customers often require redundancy, which by definition means that no single provider can ever satisfy that customer's needs, and that there will always be a need for alternative providers. *See* Bruno/Murphy Decl. ¶ 12; Bruno et al. Reply Decl. ¶ 32.

Third, the commenters define the relevant geographic market overly narrowly. ACN et al. claim (at 25) that Verizon's "[i]n-region market shares . . . in the enterprise market following the merger has been stated to be in 'the mid-80 percent range.'" To begin, the source on which ACN et al. rely (a New York Times article cited in a statement by Mark Cooper of the Consumer Federation of America) says no such thing. Rather, it provides shares of a "corporate telecommunications market" that places

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[18] *See* Public Interest Statement at 26-27; Carlton et al. Decl. ¶ 70; Bruno/Murphy Decl. ¶¶ 15, 27-30; Lew/Lataille Decl. ¶¶ 8-10, 15; McMurtrie Decl. ¶¶ 24-29; *see also* 2A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 404c7, at 18 (2002) ("*Areeda*") ("sellers will find it more difficult to maintain supracompetitive prices when tempted to discount in order to win large orders from sophisticated buyers").

Verizon's and MCI's respective shares at 15 and 12 percent.[19] And as noted above, other independent analyst studies and Verizon's own internal market-share analysis put Verizon's share several points lower.[20] In addition, any focus on "in-region" shares fundamentally misconstrues the nature of large enterprise customers, which are nationwide or global in scope. *See* Bruno et al. Reply Decl. ¶ 21 & Attach. 3.[21]

Fourth, while the commenters argue that the Commission should analyze this transaction as if AT&T were lost as a competitor as well, the underlying premise of this line of argument – that Verizon and SBC (which has an agreement to acquire AT&T) are prone to "mutual forbearance" or "tacit collusion" – is complete nonsense.[22]

As explained above and in the Public Interest Statement, a key purpose and benefit of this transaction is the increased ability of the combined company to compete on a national and global scale. *See* Public Interest Statement at 11-12. One of the primary rationales for this transaction would accordingly disappear if Verizon/MCI were to cease competing for customers in the SBC region. *See* Carlton et al. Reply Decl. ¶¶ 57-62.[23] It

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[19] Matt Richtel, *Valuing MCI in an Industry Awash in Questions*, N.Y. Times, Feb. 9, 2005, at C1.

[20] *See* Public Interest Statement at 23-24; Taylor Decl. ¶¶ 3-20 & Exhs. 1-2; Bruno/Murphy Decl. ¶ 29; Crandall/Singer Decl. ¶ 36.

[21] For the same reason, Qwest's purported analysis (at 22-24) of "share of enterprise local lines" in New York City is misplaced. Moreover, Qwest's analysis does not define what it considers an "enterprise local line," and its own expert purports to measure "total local business lines," a term that suggests it includes small-business customers that are part of the mass market. Qwest Bernheim Decl. ¶ 67.

[22] *See*, *e.g.*, ACN et al. at 33-35; Qwest at 30-37; Cbeyond et al. at 45-65; Cbeyond et al. Wilkie Decl. ¶¶ 26-36.

[23] SBC and AT&T have likewise informed the Commission that they in fact plan to compete aggressively with Verizon if their merger is approved, and that "SBC is

is simply not credible to suggest that Verizon and MCI would combine and then abandon their business in the extensive SBC region. *See id.* ¶¶ 58-61, 65. In addition, any attempt at tacit collusion with SBC would result in both companies losing business to competitors willing and able to provide service in both Verizon's and SBC's regions. *See id.* ¶ 62. This would be economically irrational, and there is accordingly no basis to assume that either company would behave in this manner. *See id.* ¶¶ 58-61, 65.

Although the commenters claim that Verizon already fails to compete against SBC,[24] the facts show the opposite, particularly in the telecommunications industry's main growth areas – wireless, data, VoIP, and enterprise. A few examples make the point. There is extensive head-to-head competition between Verizon Wireless and Cingular, and a number of the major markets where Verizon has deployed its 3G wireless broadband service (EvDO) are within major metropolitan areas in SBC's territory.[25] Verizon competes for enterprise customers in 28 out-of-franchise areas, 17 of which are in SBC's service area. *See* Bruno et al. Reply Decl. ¶ 15. Verizon has deployed 300

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investing $16 billion to acquire AT&T precisely *because* it seeks to compete more effectively for businesses with national and international operations, including those with operations in the 30% of the country served by Verizon." Ex Parte Letter from Gary L. Phillips, SBC, and Lawrence J. Lafaro, AT&T, to Marlene H. Dortch, FCC, at 4, WC Docket Nos. 05-65 & 05-75 (May 17, 2005).

[24] *See*, *e.g.*, ACN et al. at 33-35; Qwest at 30-37; Cbeyond et al. at 45-65; Cbeyond et al. Wilkie Decl. ¶¶ 26-36. In addition, the Commission has found that Verizon fully complied with its obligations under the *Bell Atlantic/GTE Order* to engage in out-of-region competition. *See* Order, *Application of GTE Corp. and Bell Atlantic Corp. for Consent To Transfer Control*, 18 FCC Rcd 18884, ¶ 1 (2003) (finding that Verizon had "fulfill[ed] the out-of-region investment requirements of the *Bell Atlantic/GTE Merger Order*"); Cbeyond et al. at 53-56.

[25] *See* Verizon Wireless, *Wireless Internet BroadbandAccess*, *at* http://www.verizonwireless.com/b2c/mobileoptions/broadband/index.jsp.

miles of optical network facilities in Los Angeles to compete directly with SBC. *See id.* Verizon has also extended its optical fiber to compete with SBC in Dallas. *See id.* Verizon operates an IP/MPLS backbone with routers in several SBC cities, including Chicago, Dallas-Fort Worth, Los Angeles, and San Francisco.[26] SBC Telecom competes with Verizon for business customers in Albany; Baltimore; Bergen-Passaic, NJ; Boston; Charlotte; Middlesex, NJ; Nassau-Suffolk, NY; New York City; Newark; Norfolk, VA; Philadelphia; Tampa; and Washington, DC.[27] SBC has recently won a major contract with the American Red Cross in Washington, DC.[28] Verizon's VoiceWing VoIP service competes with SBC by offering area codes in 11 of SBC's 13 states.[29] Verizon and SBC also compete in the directory publishing business as independent publishers in markets outside of their traditional local franchise service areas, and through their online yellow pages.[30]

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[26] *See* Verizon News Release, *Verizon Plugs In New National Broadband Network* (Apr. 14, 2004).

[27] *See* New Paradigm Resources Group, *CLEC Report 2005*, Ch. 6 – SBC Telecom at 7-8 (19th ed. 2005) ("*CLEC Report 2005*").

[28] *See* SBC News Release, *SBC Communications Announces Five-Year, $59.7 Million Contract with the American Red Cross* (Apr. 18, 2005).

[29] California, Connecticut, Illinois, Indiana, Kansas, Missouri, Michigan, Ohio, Oklahoma, Texas, and Wisconsin.

[30] Of course, the list in the text is not meant to be exhaustive and there are other examples as well. For instance, Verizon Avenue has offered bundled services to apartment complexes and condominium communities in competition with SBC in Chicago; Los Angeles; Dallas; Middletown, CT; and Tulsa. *See CLEC Report 2005*, Ch. 6 – Verizon (Verizon Avenue) at 6-7. Verizon and SBC also compete directly in the provision of conference calling, E911 services, and dial-up Internet access.

Unable to demonstrate that the transaction would remove the combined company as an actual most-significant competitor for large enterprise customers, a few parties claim that "[e]nterprise customers will also be harmed by the loss of Verizon as a potentially substantial competitor for national and global enterprise services." CompTel/ALTS at 21; *see also* Qwest at 22-24. But even assuming that Verizon on its own would have, in the two-year horizon relevant here, become a more significant competitor for enterprise customers than it is today, that is beside the point. The removal of a potential competitor is significant only where the relevant market is already concentrated, not, as here, where the market is intensely competitive.[31] Moreover, the Public Interest Statement demonstrated that the transaction enables both Verizon and MCI to be a stronger competitor for large enterprise customers than either company could have become on its own, which will result in substantial net benefits to these customers.[32]

Finally, British Telecom claims that the transaction threatens to harm competition for "global telecommunications services," which it defines as a subset of large enterprise

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[31] *See*, *e.g.*, Memorandum Opinion and Order, *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control*, 13 FCC Rcd 18025, ¶ 173 n.476 (1998) ("*MCI/WorldCom Order*") ("We find that there are a sufficient number of market participants on our list below to allay anticompetitive concerns in the larger business market; therefore, we conclude that we need not reach the question of whether the types of companies identified by Applicants are potential competitors in this market."); *Bell Atlantic/GTE Order* ¶ 100 (concluding that, with respect to the "larger business market," "both Bell Atlantic and GTE are only two of a larger number of most significant actual and potential competitors in each other's service areas," and that, accordingly, the merger was "less likely" to have anticompetitive effects); *Tenneco Inc. v. FTC*, 689 F.2d 346, 352 (2d Cir. 1982) (even assuming actual potential competition doctrine was valid, party challenging merger must show "that the relevant market is oligopolistic") (citing *United States v. Marine Bancorporation, Inc.*, 418 U.S. 602, 630, 633 (1974)).

[32] *See* Public Interest Statement at 11-14.

services involving "the provision of international communications services to multi-sited multinational companies across a number of countries."[33] But even if these services are viewed separately, the very study on which British Telecom relies shows that Verizon is not a substantial competitor for these services today, and does not possess any significant international assets that would be used to provide these services.[34] This same study also demonstrates that, even after the transaction, there will be many other "major competitors" remaining, including British Telecom itself as well as AT&T, Cable & Wireless, Colt, Equant, Global Crossing, T-Systems, and Vanco.[35] In addition, as with the enterprise market generally, IT companies and aggregators such as EDS, Accenture, Siemens, and Fujitsu increasingly provide these services. *See* McMurtrie Decl. ¶¶ 24-27.[36]

Retail Competition for Medium Business Customers. Medium business customers occupy a continuum – ranging from single-location businesses with a handful

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[33] Presentation of British Telecom at 4, attached to Ex Parte Letter from A. Sheba Chacko, British Telecom, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (May 6, 2005).

[34] *See* Ex Parte Letter from A. Sheba Chacko, British Telecom, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (May 9, 2005) (attaching Jan Dawson, Ovum, *MNC Providers in Europe – 2004*, at 12, Fig. 4 (July 2004) ("*Ovum Study*") (providing list of major competitors that excludes Verizon)). It should be noted that the *Ovum Study* does not purport to, and does not, identify all entities active in the GTS market. In addition, there are a number of features of the *Ovum Study* that likely lead to an overstatement of MCI's GTS market share, if Ovum's revenue figures are used to calculate market shares. At best, therefore, market shares derived from the Ovum revenue data can be understood as providing an upper limit on MCI's GTS market share.

[35] *See Ovum Study* at 12, Fig. 4.

[36] *See* Julian Bright, *ICT Outsourcing: IT Pays To Partner*, Total Telecom Mag., Oct. 1, 2004, at 36.

of employees, a few telephone lines, and limited data needs, to multi-location businesses with hundreds of employees and the need for sophisticated data services, integrated voice and data service, and other advanced applications.[37] The Bruno et al. Reply Declaration explains how Verizon serves the variety of customers within the medium business segment. *See* Bruno et al. Reply Decl. ¶¶ 25-29. That declaration, along with the other evidence the applicants have presented, demonstrates that there is robust competition today at all levels of this diverse segment, and that this transaction will have no negative effect on competition to serve these customers. Indeed, there is no service or region where Verizon does not face competition from a variety of providers. *See* Bruno et al. Reply Decl. ¶¶ 33-45.

No commenter seriously claims that this transaction will remove one of a small number of the most significant competitors for medium business customers. Nor could they. At the upper end of the medium business segment, for customers with global networking needs, AT&T is the leading competitor, with MCI, Sprint, Qwest, and systems integrators among many other competitors. *See* Bruno et al. Reply Decl. ¶¶ 33-35. Verizon, in contrast, has essentially no competitive international offering. *See id.* ¶ 33. In the mid-range, and for upper-end customers with regional networking needs, Verizon faces extensive competition, in particular from CLECs (such as TelCove, PAETEC, XO, CTC, US LEC, and Cavalier); cable companies (such as Time Warner, Cox, and Cablevision); and ILECs such as SBC, which recently won a five-year, $60

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[37] *See* Bruno et al. Reply Decl. ¶¶ 25-30; *see also* Bruno/Murphy Decl. ¶ 8; McMurtrie Decl. ¶ 4.

million contract with the American Red Cross, including at its Washington, DC corporate headquarters. *See id.* ¶¶ 14, 34, 36-39. Virtually all of these companies also compete for the business of customers at the lower-end of the medium business segment, as do other CLECs including Broadview, Conversent, ATX, and Choice One. *See id.* ¶¶ 36-41.[38] For all of these reasons, this transaction cannot be viewed as eliminating one competitor from among a small list of most significant participants in the medium business segment.

Wholesale Local Fiber Facilities. Several commenters argue that the combination of Verizon's and MCI's high-capacity local network facilities will reduce competition both for high-capacity services themselves and for the downstream retail services that rely on these services.[39] But these commenters take an unduly narrow view of the relevant geographic scope of competition for these facilities, and misstate the facts regarding the availability of actual and potential competitive alternatives.[40]

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[38] The Bruno et al. Reply Declaration includes profiles of the competing carriers that serve medium business customers, the services they offer, the areas within Verizon's footprint where they operate, the facilities they own or operate, and examples of the customers they serve. *See* Bruno et al. Reply Decl. ¶¶ 38-41 & Exh. 4.

[39] *See* Cbeyond et al. at 18-34; CompTel/ALTS at 13-20; ACN et al. at 32-33; Global Crossing at 6-16; Qwest at 16-17, 19-20; Broadwing/SAVVIS at 20-30; Presentation at 6-7, attached to Ex Parte Letter from Kristen Verderame, BT, to Marelne Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (May 6, 2005).

[40] The CLECs concede here that, to the extent competitive fiber alternatives do exist, they can be readily channelized and provided on a wholesale basis to other carriers. *See* Cbeyond et al. at 19-20. Even were that not the case, moreover, all competitive fiber must be included in the analysis as it is well settled as a matter of antitrust law that self-providers impose discipline on wholesale suppliers. *See*, *e.g.*, U.S. Dep't of Justice/Federal Trade Comm'n, *Horizontal Merger Guidelines* §§ 1.31.-1.32 (rev. 1997); 2A *Areeda* ¶ 535e, at 225-26 ("[T]he integrated firm's . . . output belongs in the market."); *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 424-25 (2d Cir. 1945); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 389 (1999) (faulting the Commission for

As the Public Interest Statement demonstrated, MCI's facilities in Verizon's territory are located exclusively in areas with high concentrations of business customers with substantial telecommunications needs, and in each of those areas there are a large number of fiber suppliers competing to serve those needs.[41] Not even counting rapidly growing competition from intermodal providers, and based on data that do not include all known fiber providers, in the 39 groupings of contiguous wire-center areas in which Verizon and MCI have overlapping fiber, there are more than 90 different fiber suppliers; two or more suppliers in 92 percent of the areas; and at least one supplier in all but one of these areas.[42] There is at least one additional competitor in 89 percent of the individual wire center serving areas within these 39 areas, and an average of nearly six competitors per wire center. *See* Lew/Lataille Decl. ¶ 23. And as the Lew Reply Declaration demonstrates, Verizon's Wholesale Markets group has further determined that at least one of the five competing carriers with which Verizon competes most often in the overlapping areas – AT&T, Sprint, Level 3, Time Warner Telecom, and NEON – is competing in some manner in *every one* of the 39 areas, and – based on the limited data we have on their facilities – has either a lit building or fiber-based collocation in 33 of these 39 areas. *See* Lew Reply Decl. ¶ 7 & Exh. 2.

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failing to consider carriers that self-provide facilities in evaluating competitive alternatives).

[41] *See* Public Interest Statement at 31; Powell/Owens Decl. ¶ 7; Powell et al. Reply Decl. ¶ 16.

[42] *See* Lew/Lataille Decl. ¶ 22; Powell/Owens Decl. ¶ 18. That one area is in Carbondale, Illinois, where MCI's local fiber network overlaps with only a single Verizon wire center. *See* Lew/Lataille Decl. ¶ 22.

Although they provide no information whatsoever about their own networks, a number of competing carriers complain that Verizon and MCI did not provide sufficiently granular data to evaluate the overlap.[43] But these claims simply ignore the extensive data that were provided in the Public Interest Statement, which included the best and most comprehensive data publicly available on competitive alternatives within the contiguous geographic clusters where MCI has deployed fiber, and within the individual wire centers in those clusters. This approach is consistent with the geographic level of analysis that the Commission recently conducted in the *Triennial Review Remand Order*,[44] where it rejected a building-by-building analysis. *See Triennial Review Remand Order* ¶ 162.[45]

In any event, while it would be contrary to precedent to apply a building-level analysis here, the building-by-building data included with these reply comments provides further proof that the transaction will not result in anticompetitive harms. Every building with MCI fiber is in a cluster of contiguous wire centers with at least one competing fiber supplier in that area, and 81 percent of MCI's buildings are in individual wire center

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[43] *See* Cbeyond et al. at 20-21; Global Crossing at 11-12; Qwest at 9-13.

[44] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 & CC Docket No. 01-338, FCC 04-290, 20 FCC Rcd 2533 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*"), *petitions for review pending*, *Covad Communications Co., et al. v. FCC, et al.*, Nos. 05-1095 *et al.* (D.C. Cir.).

[45] *See also USTA v. FCC*, 359 F.3d 554, 575 (D.C. Cir. 2004) ("*USTA II*") (Commission "cannot ignore the . . . facilities deployment [in one area] when deciding whether CLECs are impaired with respect to [another area] without a good reason"); Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd 14221, ¶ 74 (1999) ("*Pricing Flexibility Order*") (rejecting proposals to grant special access pricing flexibility "on the basis of wire centers or central offices").

serving areas with four or more competitive suppliers. *See* Lew/Lataille Decl. ¶ 24; Lew Reply Decl. ¶¶ 19-23. As the Powell et al. Reply Declaration further demonstrates, based on the lit-building lists provided by the limited subset of nine CLECs that provide dedicated access services to MCI, those nine CLECs alone provide fiber to more than 45 percent of MCI's on-net buildings in the Verizon-East (*i.e.*, former Bell Atlantic) footprint, or **[Begin Proprietary]** **[End Proprietary]** such buildings. *See* Powell et al. Reply Decl. ¶ 19. The actual number is undoubtedly higher, as this total does not include other CLECs known by MCI to have lit buildings in the Verizon-East footprint, such as **[Begin Proprietary]**

[End Proprietary], or the extensive fiber networks that have been constructed by utilities and other fiber wholesalers. *See id.* ¶ 20; *see also* Lew/Lataille Decl. ¶ 17 & Exh. 9.

In addition to the fact that there are already existing competitive alternatives to MCI in the majority of overlapping areas and buildings, for all or most locations where MCI is present competing carriers can economically deploy new fiber.[46] Although some commenters claim that there are various "barriers to entry" in deploying competitive fiber, these claims rely on geographically undifferentiated generalizations that ignore the

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[46] Although Qwest asserts that MCI and AT&T "appear to be the most likely, best-situated candidates" for deploying fiber (Bernheim Decl. ¶ 55), it provides no support for this claim. In fact, MCI represents only a small percentage of the competitive local fiber deployed nationwide. *See UNE Fact Report 2004*, Table 1, WC Docket No. 04-313 & CC Docket No. 01-338 (Oct. 2004) (MCI accounts for less than 15 percent of known local fiber route miles).

highly concentrated nature of the locations where MCI has deployed local facilities.[47] As the reply declarations explain, virtually all of MCI's fiber has been deployed in areas of high concentration, where the Commission has previously recognized that it is possible for other competing carriers to deploy new fiber facilities.[48]

First, MCI has focused on providing high-capacity circuits between "carrier" buildings such as IXC POPs, wireless POPs, ISP POPs, carrier hotels, and incumbent LEC central offices. *See* Powell et al. Reply Decl. ¶ 21. Because these locations generate very high-traffic volumes, they are able to attract multiple CLECs and fiber providers. *See id.* ¶¶ 21, 23-25. And they already have – as noted above, there is at least one additional competitor in 89 percent of the wire centers with overlapping fiber, and an average of nearly six competitors per wire center. *See* Lew/Lataille Decl. ¶ 23. Moreover, the fact that MCI has deployed fiber to these locations proves that other competing carriers can do so as well.

Second, competing carriers also can economically deploy fiber to the individual office buildings to which MCI has deployed fiber. MCI's lit buildings are invariably located in highly concentrated areas where there are already many competitive fiber providers. In fact, 80 percent of MCI's lit buildings are concentrated in only 111 of the **[Begin Proprietary]** **[End Proprietary]** Verizon wire centers with MCI-lit buildings, and each of those 111 wire centers already has an average of ten other

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[47] *See* Broadwing/SAVVIS at 20-21; Cbeyond et al. at 22-23; Qwest at 17-18; Qwest Bernheim Decl. ¶ 55; CompTel/ALTS at 15-20.

[48] *See* Powell et al. Reply Decl. ¶ 31.

competitive fiber networks. *See* Powell et al. Reply Decl. ¶ 22. And in all but 10 of those 111 wire centers, there are at least three or more competitive fiber providers. *See id.* Moreover, in the vast majority of the MCI-lit buildings – at least **[Begin Proprietary]** **[End Proprietary]** – MCI has customer demand for a single DS3 or more, which in MCI's experience was sufficient to recover the costs of constructing a fiber lateral. *See id.* ¶¶ 27-28. And in at least **[Begin Proprietary]** **[End Proprietary]** of MCI's lit buildings, MCI has customer demand at the OCn or near-OCn level. *See id.* ¶ 28. The Commission has found that, at any location that supports OCn-level demand, new fiber can be deployed by a reasonably efficient CLEC. *See Triennial Review Remand Order* ¶¶ 12, 20, 30. In fact, at least 80 percent of MCI's lit buildings meet the "triggers" the Commission established for de-listing high-capacity DS3 loop, or have sufficient demand to justify the use of OCn circuits. *See* Powell et al. Reply Decl. ¶ 31. Approximately 51 percent of these lit buildings are in wire centers that satisfy the DS3 trigger, while in another 29 percent of those buildings MCI is providing two or more DS3s. *See id.* And all of these figures significantly understate the extent to which competing carriers can deploy fiber to these locations because they represent only MCI's demand at the location, not total demand, which is undoubtedly higher in most or all cases.

Rather than provide competitive data of their own, Cbeyond et al. submit an analysis by Simon Wilkie that purports to show, based on GeoResults data, buildings served by CLECs in six of the "metropolitan areas" where Verizon and MCI have overlapping facilities. *See* Cbeyond et al. Wilkie Decl. ¶ 19 & Table 1. Tellingly,

however, this analysis does not even attempt to measure the only conceivably relevant effect here – the absence of MCI alone from the relevant area. The analysis instead evaluates the combined effect of removing MCI *and AT&T*, which by Cbeyond et al.'s own admission (at 28) "appears to have a greater building presence in the Verizon markets than MCI." But AT&T's presence in these markets is not affected by this transaction, and it is irrational to assume that SBC would purchase AT&T's purportedly widespread local building presence, and then *not* use it to compete. *See* Carlton et al. Reply Decl. ¶¶ 25-26, 58-61, 65. When this flaw alone is corrected, Wilkie's analysis falls to pieces. *See id.* ¶ 26.

In addition, Wilkie's analysis is thoroughly unreliable in that it both grossly overstates the number of MCI-lit buildings, and significantly understates the number of other CLEC-lit buildings, in each of the six metropolitan areas it purports to analyze. *See* Powell et al. Reply Decl. ¶ 18. For example, according to MCI's data of its own lit buildings as well as the subset of other CLEC-lit buildings that MCI obtained from a limited number of CLECs, there is one or more competitive fiber supplier other than MCI in at least 89 percent of the lit buildings in the Albany, NY metropolitan area; 82 percent of the lit buildings in the Baltimore, MD metropolitan area; 92 percent of the lit buildings in the Pittsburgh metropolitan area; 94 percent of the lit buildings in the Philadelphia metropolitan area; 94 percent of the lit buildings in the New York metropolitan area; and 46 percent of the lit buildings in the Washington, DC metropolitan area. *See id.* Wilkie also wrongly ignores the fact that the Commission has found that other competing carriers should be able to deploy fiber to the buildings where MCI has found it economic

to do so. As described above, MCI's lit buildings are located in dense urban wire centers, the vast majority of which meet the triggers the Commission established for DS3 facilities. *See id.* ¶ 31; *Triennial Review Remand Order* ¶¶ 174-177. In fact, in approximately **[Begin Proprietary]** **[Begin Proprietary]** percent of the MCI-lit buildings the six metropolitan areas that Wilkie analyzes, MCI is providing at least two DS3 equivalents or more, which the Commission has found is sufficient demand to support new fiber deployment to any building anywhere by a reasonably efficient CLEC. *See* Powell et al. Reply Decl. ¶ 29; *Triennial Review Remand Order* ¶¶ 12, 20, 30.

Wilkie's attempt to analyze the results of RFPs to prove that MCI's absence will have anticompetitive effects is equally unavailing. *See* Cbeyond et al. Wilkie Decl. ¶ 24. As an initial matter, none of the "bid data" that Wilkie claims to have "reviewed" has been provided here, or even summarized, which is a sufficient basis to disregard the analysis in its entirety.[49] Moreover, the purported results of this analysis are filled with so many vague characterizations – "almost never," "by far," "most of the time," "significant difference" – as to be completely meaningless. Cbeyond et al. Wilkie Decl. ¶ 24.[50] And while Cbeyond et al. attempt to use this analysis to make the extraordinary

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[49] *See*, *e.g.*, *Epilepsy Found. of Northeast Ohio v. NLRB*, 268 F.3d 1095, 1103 (D.C. Cir. 2001) (when parties fail to provide support for their claims, agency lacks the most relevant evidence necessary to make "'a fair estimate of the worth'" of such claims) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 490 (1951)); *see also Timpinaro v. SEC*, 2 F.3d 453, 459 (D.C. Cir. 1993); *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 866 (D.C. Cir. 2001); *United States v. Undetermined Quantities of Various Articles of Drug . . . Equidantin Nitrofurantoin Suspension*, 675 F.2d 994, 1000 (8th Cir. 1982).

[50] Although Wilkie's description is too vague to say for sure, it also appears to be based on Verizon's tariffed base rates for special access, despite the fact that competing carriers

claim (at 29) that "prices will rise approximately 100 percent" absent MCI, this is based on a single undocumented bid that is not even claimed to be within Verizon's region.[51] The analysis also misapprehends the nature of the competition and contains other flaws. For example, it wrongly assumes that other competitors would choose to avoid the very same buildings that MCI found it economic to serve, even when these competitors may have their own fiber nearby. *See* Carlton et al. Reply Decl. ¶¶ 39-40.

Finally, the commenters' attempt to show concentration in local fiber facilities also ignores the extensive and rapidly growing intermodal competition for high-capacity access services. *See* ACN et al. at 16. As the Public Interest Statement demonstrated, the nation's major cable operators have broadened their reach to offer high-capacity services to medium-sized businesses and even to large enterprise customers. *See* Bruno/Murphy Decl. ¶ 26; *see also* Bruno et al. Reply Decl. ¶¶ 16-19. For example, Cablevision "generated close to $200 million in 2004 with more than 1,600 buildings on net and

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typically purchase special access services from Verizon at discounts that are approximately 35 to 40 percent off the tariffed base rates for these services. *See* Cbeyond et al. Wilkie Decl. ¶ 25; Lew Reply Decl. ¶¶ 54-57. This one correction, alone, eliminates between two-thirds and four-fifths of the price increase that he purports to identify.

[51] Broadwing likewise attempts (at 25) to make broad generalizations from the result of a single RFP in December 2004 involving entrance facilities between Verizon's central offices and Broadwing's POPs. While Broadwing claims (at 25) that "[t]he only responses that were at all useful" were from MCI and AT&T, the Commission has found that there are no legitimate competitive issues regarding the availability of entrance facilities, because "competitive LECs have a unique degree of control over the cost of entrance facilities," which also are "less costly to build, are more widely available from alternative providers, and have greater revenue potential than dedicated transport between incumbent LEC central offices." *Triennial Review Remand Order* ¶¶ 136, 138. For the same reason, there is no merit to PAETEC's concerns (at 4) that the transaction will result in higher prices for the DS3 entrance facilities it currently purchases from MCI.

150,000 access lines through its Lightpath business services arm."[52] A study by In-Stat/MDR found that 41 percent of "enterprises" and 32 percent of "middle market" businesses were using cable modem service in their main offices for some high-capacity services.[53] Fixed wireless provides an additional layer of competition. Speakeasy has recently deployed high-capacity fixed wireless services in downtown Seattle, "marking the first time that a true, high-density, point-to-multipoint broadband wireless service will be deployed in a large metropolitan U.S. city."[54] Clearwire – owned by wireless pioneer Craig McCaw – has recently deployed fixed wireless in four metropolitan areas (Abilene, TX, Daytona Beach, FL, Jacksonville, FL, and St. Cloud, MN, and plans to deploy additional facilities soon in Medford, OR, Modesto, CA, and Stockton, CA).[55]

Resold Special Access. A number of commenters claim that the merger will lead to increased prices for special access by eliminating MCI as an important aggregator and reseller of special access purchased from Verizon.[56] To the extent they are valid, these arguments unwittingly make an important concession – that carriers are able to compete by reselling Verizon's special access, and that this resale therefore belongs in any

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[52] Michael Harris & Alan Breznick, *Cable Gets Down To Building Busine$$*, Telecommunications Americas, Mar. 1, 2005, at 34.

[53] Kneko Burney, *et al.*, In-Stat/MDR, *Cash Cows Say "Bye-Bye": The Future of Private Line Services in US Businesses* at 19, Tables 9 & 10 (Dec. 2003).

[54] Speakeasy Press Release, *Seattle Space Needle Anchors Speakeasy Wireless Broadband Service, Defining WiMax Future* (May 4, 2005), *available at* http://www.speakeasy.net/press/pr/pr050405.php.

[55] Clearwire, *Interactive Coverage Map*, *at* http://www7.clearwire.com/customer/service_check.php.

[56] *See* Broadwing/SAVVIS at 26, 33; CompTel/ALTS at 15-16; Global Crossing at 13-14; Cbeyond et al. at 23-24.

meaningful market analysis. *See*, *e.g.*, Broadwing/SAVVIS at 33 ("The market for special access includes not only those circuits that MCI self provisions (*i.e.*, Type 1 circuits), but also the special access circuits that MCI purchases from Verizon and resells to other entities (*i.e.*, Type 2 circuits)."). If Broadwing is correct, the Lew Reply Declaration demonstrates that when the use of Verizon's special access is taken into account, 92 percent of MCI's lit buildings in Verizon's territory have at least one other competitive provider. *See* Lew Reply Decl. ¶ 20 & Exh. 3.

In any event, the commenters greatly exaggerate the extent to which MCI actually does or could play an important or unique role as a special access reseller. As an initial matter, the commenters are simply wrong in describing MCI as an important reseller of Verizon special access today. MCI does not resell circuits obtained entirely from Verizon as special access. Moreover, less than **[Begin Proprietary]** **[End Proprietary]** of the circuits MCI does sell to other carriers include any links purchased from an ILEC, and even then in almost all cases ILEC special access is only one of the three links in the circuit. *See* Powell et al. Reply Decl. ¶ 11. On these circuits, any difference between MCI's price and the incumbent LEC's price for an equivalent circuit is almost exclusively attributable to the "on-net" parts of the circuit – that is, the part provided over MCI-owned facilities. *See id.* ¶¶ 13-14.

But even assuming that MCI were reselling Verizon special access to a significant extent, it would not have the competitive effect that the commenters describe. In particular, MCI would not be able to obtain larger discounts by virtue of any perceived size advantage, and then pass those discounts on to other carriers. The commenters'

claims to the contrary betray a fundamental misunderstanding of Verizon's tariffs – indeed, at least one commenter refers only to "BOC" tariffs generally. *See* Broadwing/SAVVIS at 23-25. MCI does not obtain any greater discounts than other competitors as a result of the volume of special access it purchases from Verizon. *See* Lew Reply Decl. ¶¶ 26, 59-61; *see also* Powell et al. Reply Decl. ¶ 14.[57] That is because the overwhelming majority of Verizon's discount plans are *term* and not *volume* based, so that the same significant discounts are available on an order of a single DS1 or 1000 DS1s. *See* Lew Reply Decl. ¶ 59.[58]

In light of the structure of Verizon's tariffs, MCI does not qualify for larger discounts than smaller carriers, and is therefore not uniquely capable of acting as an aggregator of resold special access. Even assuming that Verizon were to begin offering the kinds of volume discounts that would make such aggregation viable, MCI is by no means uniquely situated to play that role. As commenters concede, and as the Lew Reply

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[57] The Commission has repeatedly rejected the claim that the commenters rehash here that, after this transaction, MCI will be artificially advantaged because it alone can obtain special access at the "forward-looking economic cost of such facilities." CompTel/ALTS at 23. Verizon's regulatory obligations with respect to special access and sales to its affiliates will not change as a result of this transaction. *See* Lew/Lataille Decl. ¶ 12; *see also* 47 C.F.R. § 69.727(a)(2)(iii).

[58] Some commenters criticize Verizon's few discount plans that provide carriers a discount if they agree to maintain a volume of business equal to 90 percent of what they already obtain from Verizon at the time that they sign up for the plan. In doing so, however, they fail to acknowledge that competitors can obtain discounts of up to 40 percent without using these plans – the same discount available under plans with the 90 percent requirement. *See* Lew Reply Decl. ¶ 55. In addition, the 90 percent commitment is (a) based on the number of circuits already in service with Verizon (not the carrier's total circuits); (b) can last for as little as a year; and (c) are not circuit-specific, so a carrier can move circuits to its own facilities or another competitor's facilities, while purchasing new special access circuits as it grows into new regions. *See id.* ¶¶ 56-57.

Declaration demonstrates, there are many competing carriers that already have wholesale operations. *See* Lew Reply Decl. ¶¶ 7-15. And there is no need even to operate as a carrier to enter this business – at least two companies, Global Internetworking and Last Mile Connections, have recently entered that business as carrier-agnostic wholesalers, with the former reporting that it already provides access to more than 500,000 lit buildings. *See id.* ¶ 61.

B. The Commenters' Vertical Concerns Regarding Special Access Are Irrelevant to the Transaction and Without Merit

The Public Interest Statement demonstrates that the combination of Verizon's and MCI's highly complementary networks would provide significant benefits to large enterprise and medium business customers alike.[59] The Commission has, in fact, repeatedly held that such vertical combinations are generally pro-competitive, by "reduc[ing] the costs of producing the relevant goods and services, improv[ing] the quality of products, or increas[ing] the variety of alternatives available to consumers."[60]

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[59] *See* Public Interest Statement at 11-18.

[60] Memorandum Opinion and Order, *Merger of MCI Communications Corp. and British Telecommunications plc*, 12 FCC Rcd 15351, ¶ 154 (1997) ("*MCI/BT Order*"); *see also* Carlton et al. Reply Decl. ¶¶ 68-71; Final Decision, *Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Second Computer Inquiry*), 77 F.C.C.2d 384, ¶ 202 (1980) ("vertical integration normally represents, a benign, efficiency-producing method of organizing production"); Memorandum Opinion and Order, *Application by Qwest for Authorization To Provide In-Region, InterLATA Services in Colorado, et al.*, 17 FCC Rcd 26303, ¶ 414 (2002) ("[T]he entry of the BOC into the interLATA market[] leads to increased competition for all services. This competition, in turn, should foster efficiencies, innovations, and competitive pricing for communications services. A party alleging a price squeeze must show that the consequences of the price squeeze undermine these benefits."); Notice, U.S. Dep't of Justice, *United States v. Cargill, Inc.*; Public Comment and Plaintiff's Response, 65 Fed. Reg. 15982, 15990 (Mar. 24, 2000) ("In many circumstances, vertical integration is actually procompetitive, allowing firms to

A number of commenters nonetheless argue that the transaction will increase the incentives and ability of the combined company to discriminate in the provision of special access, and thereby harm competition in the downstream markets in which such access is used.[61] These arguments should be rejected for multiple reasons.

As an initial matter, all of the concerns raised here are already being addressed by the Commission in other, industry-wide rulemaking proceedings. As the Commission has held, it is "more appropriate[]" to address concerns regarding special access in "our existing rulemaking proceedings on special access performance metrics and special access pricing" so that the Commission may "develop a comprehensive approach based on a full record that . . . treats similarly-situated incumbent LECs in the same manner." *Cingular/AT&T Wireless Order*[62] ¶ 183. Indeed, the Commission has repeatedly and consistently "declined to consider in merger proceedings matters that are the subject of other proceedings before the Commission." *SBC/SNET Order* ¶ 29.[63] The commenters offer no valid reason for the Commission to change its practice here.[64]

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reduce their costs."); Herbert Hovenkamp, *Federal Antitrust Policy: The Law of Competition and Its Practice* 332-36 (1994); U.S. Dep't of Justice, *Non-Horizontal Merger Guidelines* § 4.24 (1984).

[61] *See*, *e.g.*, Broadwing/SAVVIS at 28-30; ACN et al. at 32-33; PAETEC at 5-6; CompTel/ALTS at 22-25.

[62] Memorandum Opinion and Order, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent To Transfer Control*, 19 FCC Rcd 21522 (2004) ("*Cingular/AT&T Wireless Order*").

[63] Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp. to SBC Communications, Inc.*, 13 FCC Rcd 21292 (1998) ("*SBC/SNET Order*"); *see also Bell Atlantic/GTE Order* ¶ 432; Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses and Section*

Even if the Commission were to depart from precedent and consider claims about special access discrimination here, it should reject them on the merits. As an initial matter, the commenters fail to demonstrate that the transaction materially increases the risks of discrimination in the provision of special access. Indeed, the Commission has recognized that any theoretical incentives or ability that Verizon has to discriminate already exist by virtue of its current vertical integration, and has held that the only relevant issue in the context of a merger proceeding is whether the transaction somehow creates materially greater risk.[65]

Thus, the argument that the combined company will have the ability to raise special access prices or engage in a price squeeze hinges on the claim that Verizon has

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214 Authorizations by Time Warner Inc. and America Online, Inc. to AOL Time Warner Inc., 16 FCC Rcd 6547, ¶ 209 (2001); Memorandum Opinion and Order, *General Motors Corp. and Hughes Electronic Corp., and The News Corp. Ltd. for Authority To Transfer Control*, 19 FCC Rcd 473, ¶ 306 (2004); Memorandum Opinion and Order, *Applications of Ameritech Corp. and SBC Communications Inc. for Consent To Transfer Control*, 14 FCC Rcd 14712, ¶ 518 (1999).

[64] For different reasons, both of them meritless, CompTel/ALTS and Global Crossing assert that the Commission must complete its pending special access rulemakings before reviewing this transaction. *See* CompTel/ALTS at 11-13; Global Crossing at 18-20. CompTel/ALTS, like other commenters, makes claims based on alleged features of "BOC" tariffs that are not present in *Verizon's* special access tariffs. *See supra* pp. 38-29. And Global Crossing's claim reduces to its erroneous assertion that this transaction will eliminate competition. *See supra* pp. 16-32. Finally, to the extent any of the claims raised in those other proceedings are found to have merit, the Commission's *industry-wide* rules will apply to the practices of the combined entity. There is no reason for the Commission to prejudge those issues in a proceeding involving only one ILEC.

[65] *See* Memorandum Opinion and Order, *Applications of Pacific Telesis Group and SBC Communications, Inc. for Consent To Transfer Control*, 12 FCC Rcd 2624, ¶ 54 (1997) ("*SBC/PacTel Order*") (recognizing that the "pertinent issue" is "the incremental increase in the scope of the price squeeze that the proposed transfer will make possible"); Memorandum Opinion and Order, *Qwest Communications International Inc. and US WEST Inc., Applications for Transfer of Control*, 15 FCC Rcd 5376, ¶ 42 (2000).

already been engaging in such practices since it became vertically integrated as a result of receiving section 271 authority. But the Commission has never endorsed such claims and Verizon has provided evidence that demonstrates the contrary both here and elsewhere. *See* Lew Reply Decl. ¶¶ 28-37.[66]

Furthermore, claims that the combined company will engage in a price squeeze are inconsistent with Commission precedent and the specific facts presented here.[67] First, commenters ignore Commission findings on the regulatory safeguards in place. Contrary to the claims of some commenters, even after the transaction the combined company would be required to impute to MCI the same charges for special access that it charges other carriers, just as Verizon does today for its affiliates. The Commission has previously acknowledged that its regulations provide adequate protections against price squeezes, and has rejected analogous price-squeeze claims in the past on this basis. For example, in the *Access Charge Reform Order*, the Commission held that, regardless of any incentive to engage in price squeezes, it "ha[d] adequate safeguards against such

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[66] *See also*, *e.g.*, Report and Order and Memorandum Opinion and Order, *Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, 19 FCC Rcd 5102, ¶ 18 (2004); Second Report and Order, *Regulatory Treatment of LEC Provision of Interexchange Services*, 12 FCC Rcd 15756, ¶ 126 (1997); *Pricing Flexibility Order* ¶¶ 69, 80; Taylor Special Access Pricing Decl., WC Docket No. 04-313 & CC Docket No. 01-338 (FCC filed Oct. 4, 2004); Verses/Lataille/Jordan/Reney Decl. ¶ 61, WC Docket No. 04-313 & CC Docket No. 01-338 (FCC filed Oct. 4, 2004); Nogay Decl. ¶¶ 33-34, WC Docket No. 04-313 & CC Docket No. 01-338 (FCC filed Oct. 4, 2004); Bruno Decl. ¶¶ 26-29, WC Docket No. 04-313 & CC Docket No. 01-338 (FCC filed Oct. 4, 2004); Taylor Reply Decl., WC Docket No. 04-313 & CC Docket No. 01-338 (FCC filed Oct. 19, 2004).

[67] *See*, *e.g.*, Broadwing/SAVVIS at 28-30; ACN et al. at 32-33; PAETEC at 5-6; CompTel/ALTS at 22-25.

conduct."[68] The Commission explained that the "requirement that incumbent LECs offer services at tariffed rates . . . reduces the risk of a price squeeze to the extent that an affiliate's long distance prices would have to exceed their cost for tariffed services."[69] The courts, too, have held that regulatory safeguards reduce any arguable risk from price squeeze: in the seminal *Town of Concord* case, then-Judge Breyer held that, "where [an alleged monopolist's] prices are regulated at both the primary and secondary levels," a price squeeze is not only significantly less likely to occur, but even when it does occur "is not ordinarily exclusionary."[70]

Second, even ignoring regulatory safeguards, the marketplace conditions in the locations where MCI has deployed fiber in Verizon's region would make it impossible for the combined entity successfully to execute a price squeeze. Commenters' apparent theory is that the combined entity could reduce its retail prices (or raise its special access service prices) enough so that competitors could no longer compete successfully using Verizon's special access services. This type of price squeeze that competitors allege is, in essence, analogous to a predatory pricing scheme – it involves forgoing profitable short-term sales of special access in the hope of longer-term profitability that can occur only if the combined entity could (1) force competitors from the market and (2) later raise

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[68] First Report and Order, *Access Charge Reform*, 12 FCC Rcd 15982, ¶ 278 (1997) ("*Access Charge Reform Order*"); *see also SBC/PacTel Order* ¶ 53 ("Price discrimination . . . is relatively easy for [the Commission] and others to detect, and is therefore unlikely to occur.").

[69] *Access Charge Reform Order* ¶ 279; *see also Bell Atlantic/GTE Order* ¶ 198 n.454 (same).

[70] *Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 22 (1st Cir. 1990).

prices enough in the retail market to recoup the lost short-term profits.[71] Neither pre-condition could be satisfied here. In all of the areas where MCI currently has deployed facilities and provides service, there is robust existing competition and free entry at both the wholesale and retail level, which means that the price squeeze could not succeed in the first instance. Assuming that Verizon were free to raise its special access prices in these locations, it would attract entry by competitive providers, because MCI's facilities are invariably located in areas of high concentration that are uniquely suited to competitive supply. *See supra* pp. 28-32. And, given the existence of a multitude of facilities-based providers in these overlapping areas, *see id.*, an increase in special access prices would not eliminate existing retail competitors. Moreover, even assuming that the combined entity were successful in driving competitors out of the retail market, an ensuing price increase would simply attract additional entrants who either use sunk facilities that would remain in place from the competitors who exited or deploy new ones.[72] In short, the combined company will not have the ability to drive all competition

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[71] *See* 3A *Areeda* ¶ 767c, at 126-27 (explaining that, of the various types of price squeezes, "[m]ost" are "beyond reproach" and that "[o]nly" a price squeeze that involves "predatory pricing" "raises a question of unlawful conduct"). It might appear at first that the combined entity could conceivably raise special access prices without suffering lost profits, but if the goal of the hypothesized special access price increase is to force special access users out of the downstream market, the combined entity would not make sales of special access at the higher price, and would therefore lose revenues and profits.

[72] *Cf. MCI/BT Order* ¶ 162 (predatory strategy profitable only if the carrier can "raise the downstream price of the end-user service long enough to recoup its losses after its rivals had exited the market, without inducing new entry").

from the market for the services at issue here, let alone to preclude re-entry, which is essential for any alleged price squeeze to succeed.[73]

Finally, the Commission should reject allegations that the combined company's performance in provisioning special access circuits will decline as a result of this transaction.[74] As an initial matter, these claims are not specific to this transaction, because any incentive the combined company might have to provide non-affiliates with inferior performance already exists. This transaction will not negatively affect any incentives with respect to performance. In any event, as Verizon has explained elsewhere, the 1996 Act and the Commission's rules require Verizon to provide the same level of performance to competing carriers as it provides to itself and its affiliates. *See* 47 U.S.C. § 272(e). The Commission has explained that it is "firmly committed to ensuring compliance with the nondiscrimination requirements in section 272(e)."[75] In light of the Commission's commitment, the commenters do not establish a plausible case that the combined company could obtain meaningful advantages by discriminating against non-

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[73] *See* Robert W. Crandall & Hal J. Singer, *Are Vertically Integrated DSL Providers Squeezing Unaffiliated ISPs (and Should We Care)?*, at 17 (Apr. 25, 2005), *available at* http://www.criterioneconomics.com/docs/crandall_singer_pricesqueeze.pdf.

[74] Broadwing and SAVVIS take issue with Verizon's current performance in provisioning special access circuits, but they simply repeat claims that were made in the context of the Commission's review of Verizon's section 272 audits. *See* Broadwing/SAVVIS at 31-32. Verizon responded to those claims and the Commission did *not* accept claims that Verizon provided its affiliate with performance superior to that provided to other long-distance carriers. *See* Notice of Apparent Liability for Forfeiture, *Verizon Telephone Cos., Inc., Apparent Liability for Forfeiture*, 18 FCC Rcd 18796, ¶ 6 n.18 (2003).

[75] Memorandum Opinion and Order, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, 17 FCC Rcd 26869, ¶ 1 (2002).

affiliates that would escape the Commission's attention or that of competitors. *See* Carlton et al. Reply Decl. ¶ 53.

While ACN et al. assert (at 35-37) that the Commission will be unable to police discrimination in favor of MCI that ACN et al. hypothesize will occur, ACN et al. wrongly presume that the Commission will simply cease regulating in this area, and ignores that MCI (as a member of the Joint Competitive Industry Group) and Verizon have each separately filed proposed metrics designed to measure and compare special access performance in provisioning circuits for affiliated and unaffiliated companies.[76] Any issues regarding incumbent LECs' performance with respect to special access are not merger-specific and should be addressed as part of the Commission's existing rulemaking proceedings.

IV. MASS MARKET

In their application, Verizon and MCI demonstrated that the transaction would not harm competition for mass-market customers (both residential and small businesses that buy commodity products) because (1) facilities-based intermodal alternatives such as cable, wireless, and VoIP provide extensive and increasing competition for mass-market customers, and (2) MCI's mass-market business is in a continuing and irreversible decline, and it is not one of a small number of most significant market participants for mass-market services going forward. Verizon and MCI also showed that it was

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[76] *See* Revised JCIG Proposal, Attach. A to Ex Parte Letter from the Joint Competitive Industry Group to Marlene H. Dortch, FCC, CC Docket No. 01-321 (Sept. 3, 2004); Joint BOC Section 272(e)(1) Performance Metrics Proposal, attached to Ex Parte Letter from Mary L. Henze, BellSouth, to Marlene H. Dortch, FCC, WC Docket No. 02-112 & CC Docket Nos. 01-321, 96-149 (Dec. 20, 2004).

unnecessary to subdivide the markets either geographically or in terms of traditional products such as local and long distance. Customers today purchase a wide array of communications services, often on an integrated basis, from a range of wireline and intermodal providers, many of whom operate on a national basis. No matter how one defines the markets, competition is growing, and the transaction will not undermine it.

Rather than directly address these points, the commenters that oppose the transaction seek to divert attention from them. They point to "market share data" that they claim demonstrates the merger will result in unacceptable levels of concentration. But the data they cite generally ignores intermodal competition altogether and fails to account for MCI's declining presence in the mass market. The opponents try to diminish the significance of intermodal competition by suggesting that not every one of these alternative services is a perfect substitute for every user of wireline services in every case. But there is no dispute that cable telephony is a direct competitive substitute, that wireless services increasingly are displacing both millions of wireline lines and billions of minutes of formerly revenue-producing traffic, and that VoIP and other non-traditional alternatives such as e-mail and instant messaging are likewise displacing lines and traffic. These various intermodal alternatives can and do have a price constraining effect on wireline services. Some commenters also seek conditions for alleged harms that are unrelated to this transaction and that have been or will be addressed in industry-wide proceedings.

None of the merger opponents provides a reason for the Commission to deny this Application. Much of the present and future competition that is of significance in the

mass market is and will be intermodal, and this transaction will not harm that competition.

A. Intermodal Alternatives Provide Extensive Mass-Market Competition That Will Be Unaffected by This Transaction

As a result of technological, market, and regulatory changes, competition for mass-market customers and traffic now comes from not only traditional wireline carriers, but also cable and wireless companies, as well as other VoIP providers, e-mail, and instant messaging. This competition has led to a growing movement of both lines and traffic from wireline carriers to intermodal alternatives, which is particularly pronounced in Verizon's serving area. As one Wall Street analyst recently observed, as a result of intermodal competition, "[t]he Bells' access line trends . . . in the first quarter [of 2005], [had] generally higher-than expected declines in overall access lines. Each of the Bells reported year-over-year declines that were the highest since at least 1Q04, ranging from a 3.9% decline for BellSouth to 5.1% for Verizon."[77] Deutsche Bank expects that "access line losses will escalate over the next 12 months towards 6%, and possibly as high as 8% per annum, driven by wireless cannibalization, rapid take-off of cable telephony, and proliferation of non-facilities-based VoIP services."[78] And Moody's recently

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[77] J. Halpern, *et al.*, Bernstein Research Call, *US Telecom 1Q05 Review: Broadband, Wireless Growth Highlight Positives; Access Lines Start to Show VoIP Impact* at 3 (May 9, 2005); T. Horan, *et al.*, CIBC World Markets, *SBC and VZ Downgraded to Sector Performer* at 2 (May 3, 2005) ("Fundamentally, access line trends are set to worsen from already difficult levels, and the negative leverage in the models could further pressure margins. . . . We expect wireless cannibalization to continue, and VOIP competition should create most of the incremental access line declines in the next two years.").

[78] Viktor Shvets & Andrew Kieley, Deutsche Bank, *Consumer Wireline Erosion: The Strategic Response to "Water Torture"* at 2 (May 19, 2005).

downgraded the debt ratings of several Verizon operating companies because they face "increasing competition and technology substitution" that will lead to "accelerating access line losses."[79] As the New York Attorney General recently observed, "[n]ever before have consumers had so many choices for cable, satellite, Internet and phone services."[80]

Merger opponents offer no reason either to discount the significance of this growing facilities-based competition from intermodal alternatives or to suggest that this transaction will somehow undermine it:

Cable. Most commenters do not even attempt to contest the fact that cable companies are formidable competitors in the mass market. The few that do rest on bare assertions that are belied by the market facts. *See, e.g.*, Cbeyond et al. at 40 n.134.

As Verizon and MCI explained in their application, cable companies are aggressively rolling out voice telephone service to their customers, including the widespread deployment of IP-based services. By the end of 2004, cable companies offered telephony services (VoIP or switched) to at least 32 percent of U.S. households. *See* Hassett et al. Decl. ¶¶ 30-31. Analysts still expect all the major cable companies to offer VoIP to nearly 100 percent of their cable homes passed over the next two to three years. *See* Hassett et al. Reply Decl. ¶ 14. Indeed, cable companies are finding that they

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[79] Moody's Investors Services Press Release, *Moody's Cuts Certain Verizon Subsidiaries (New England, NJ, PA, MD, VA, and Southwest); Rtgs Of Most Verizon Subs Remain On Review For Possible Cut* (May 20, 2005).

[80] New York Attorney General's Office Press Release, *Time Warner Agrees to Alter Promotional Practices*, (May 18, 2005).

have increased incentives to deploy telephony service because it leads to growth in the subscription rates for basic cable service. *See id.* ¶ 16.

The growth in cable telephony deployment has only been confirmed in the few months since the application was filed. *See* Hassett et al. Reply Decl. ¶¶ 15-26. For example, in the first quarter of 2005, Time Warner added over 150,000 net new customers, about 30 percent more than in the fourth quarter of last year. Time Warner's rollout success has continued into the second quarter, and it is now adding more than 15,000 net new subscribers per week. *See id.* ¶ 21. Similarly, Cox, which already offers circuit-switched voice telephone service and VoIP to more than half of the 10 million homes it passes nationally, is expected to roll out VoIP service to five more markets this year to reach a total of 70 percent of homes passed. *Id.* ¶ 23. During the first quarter of 2005, it added 112,000 digital voice customers. *Id.* And Comcast plans to expand its VoIP deployment to 15 million homes passed by the end of 2005, and to all 40 million homes passed by the end of 2006. *Id.* ¶ 24.

Although one commenter appears to suggest that competition from cable may not be extensive in areas where Verizon provides local telephone service, NASUCA at 10, the opposite is true. *See* Hassett et al. Reply Decl. ¶¶ 17-20. Verizon estimates that cable companies already offer voice telephone services that reach more than 23 million homes in Verizon's service areas, and have announced that they will offer service on a much wider basis by the end of this year. *See id.* ¶ 17. Analysts have noted that Verizon is particularly exposed to competition from Time Warner and Cablevision, two of the most aggressive cable competitors for telephony service that "represent[] more than 90% of

total homes passed by cable VoIP" and whose telephony subscriber base is expected to "more than double" in 2005. *See id.*

As Verizon and MCI showed in their application, cable mass-market voice offerings are often priced at or below comparable offerings from Verizon. *See* Hassett et al. Decl. ¶¶ 53-54 & Exh. 2. As a result, each of the major cable companies has major concentrations of customers in Verizon's service areas. *See id.* ¶¶ 35-44; Hassett et al. Reply Decl. ¶¶ 17-20. Indeed, cable competitors are achieving high take rates for their VoIP and other telephone services in Verizon's territory. For example, in Portland, Maine, up to 18 percent of homes passed are subscribing to Time Warner's VoIP service. Hassett et al. Reply Decl. ¶ 22. Analysts have concluded that Verizon's "worse-than-peer access line trend is at least partly reflective of its overlap with cable telephony" and expect that, as a result, "Verizon is again likely to lead the access line declines" in 2005 among incumbent carriers. *See id.* ¶¶ 17-18.

Wireless. As Verizon and MCI demonstrated in their Application, wireless carriers compete with wireline carriers both for lines and, even more extensively, for long distance and local minutes of use. *See*, *e.g.*, Crandall/Singer Decl. ¶¶ 14-21. No one disputes the rapid growth of wireless services. Indeed, some time during 2005, there will be more wireless subscribers than wireline access lines. *See* Hassett et al. Decl. ¶ 73. Yet most commenters that address this wireless competition suggest that it should not be

deemed important because not enough customers have actually "cut the cord" and abandoned entirely their wireline service. *See, e.g.*, Cbeyond et al. at 35-36.[81]

As an initial matter, these commenters understate the significance of the growth in the number of access lines that wireless service has displaced. As of year-end 2004, analysts estimate that wireless had displaced approximately *11 million* wireline access lines, and approximately 7-8 percent of wireless users had given up their landline phones. *See* Hassett et al. Decl. ¶¶ 74-75 (collecting data from independent analysts). Indeed, one analyst puts the number even higher, stating that "[b]etween 10% and 15% of the total market is now using wireless exclusively." *See* Hassett et al. Reply Decl. ¶ 72 n.112. (quoting Standard & Poor's analyst Kenneth Leon). And the number of displaced lines is growing: three million additional wireless subscribers are now giving up their wireline phones each year. *See id.* ¶ 72. Deutsche Bank states that "wireless cannibalization" accounted for approximately 60-70 percent of "primary residential access line loss," which amounts to "more than 1m lines lost per quarter," and that "the rate of wireless cannibalization has accelerated in the last four quarters."[82] Likewise, Qwest has

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[81] One commenter asserts that the Commission already has found that wireless service constitutes its own product market and that academic studies support the view that wireline and wireless services are not in the same product market. Cbeyond et al. Wilkie Decl. ¶ 41. However, that both misstates the significance of what the Commission found and ignores several academic studies that support the conclusion that wireless is a competitive alternative for wireline. Crandall/Singer Reply Decl. ¶¶ 9-11.

[82] Hassett et al. Reply Decl. ¶¶ 11, 72; *see also* Ninth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 19 FCC Rcd 20597, ¶ 213 (2004) ("*Ninth CMRS Report*") ("Wireless cannibalization remains a key driver of access line erosion.").

recognized that "[c]onsumers have demonstrated that they are increasingly willing to replace our wireline service with the wireless services of our competitors."[83] This trend is particularly pronounced among younger households: according to Census Bureau data from 2004, *18 percent* of households headed by someone under the age of 24 had only a cellular phone, and the same was true for 9.6 percent of households headed by someone between the ages of 25 and 34. *See* Crandall/Singer Reply Decl. ¶ 8. This fact not only indicates that wireless displacement will increase going forward, but also exerts competitive pressure more generally since Verizon cannot price separately by customer age. *See id.*; Hassett et al. Reply Decl. ¶ 73.

Moreover, commenters largely ignore altogether the significant and growing migration of long distance and local *traffic* from wireline to wireless carriers. *See* Hassett et al. Decl. ¶¶ 77-81; Crandall/Singer Decl. ¶¶ 14-18. One analyst estimates that, for 2004, "wireless could make up approximately 29% of voice minutes in the US."[84] The displacement for long distance calls is even greater. According to one report, 60 percent of long distance calls in households with cellular phones are now made on wireless phones. *See* Hassett et al. Reply Decl. ¶ 74. By contrast, the number of long distance minutes on landline phones declined by 40 percent between 1997 and 2002. *See* Hassett et al. Decl. ¶ 80; Crandall/Singer Decl. ¶¶ 15-16. The end result, according to data from

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[83] Petition to Deny of Qwest Communications Int'l, Inc., filed in WC Docket No. 05-65, Apr. 25, 2005, at 35.

[84] Hassett et al. Reply Decl. ¶ 74; Eighth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 18 FCC Rcd 14783, ¶ 102 (2003) ("*Eighth CMRS Report*") ("One analyst estimates that wireless has now displaced about 30 percent of total wireline minutes.").

the Telecom Industry Association, is that revenue from wireless services has outpaced revenue from wireline long distance since 2003 and will surpass revenue from landline local exchange calls by 2007. *See* Hassett et al. Reply Decl. ¶ 74.

The competition from wireless carriers is also evident with respect to pricing. *See* Hassett et al. Decl. Exh. 2. One Wall Street analyst notes that "[w]ireless pricing dropped below wireline pricing in 2003 for the first time." Hassett et al. Reply Decl. ¶ 75. An econometric analysis by the Competitive Enterprise Institute found that "a one percent increase in wireline prices would result in nearly a 2 percent increase in wireless demand. In other words, if wireline carriers were to increase their prices, wireless service providers would gain a substantial number of subscribers. This finding, coupled with the fact that wireless prices continue to decrease, suggests that wireline providers may soon be under pressure to decrease prices in order to stem market share losses."[85]

Faced with the clear data demonstrating existing competition from wireless providers, opponents are left to speculate that the transaction will reduce competition by creating an incentive for Verizon somehow to cause Verizon Wireless not to compete as extensively. *See, e.g.*, Qwest Bernheim Decl. ¶ 87. But that makes no sense. Any decision by Verizon Wireless to compete less vigorously would not lead to increased revenue, but would simply result in loss of those lines and minutes to one of the numerous other wireless providers such as Cingular, Sprint, Nextel, and T-Mobile. *See* Hassett et al. Decl. ¶ 72; *Cingular/AT&T Wireless Order* ¶ 94. In any case, there is no

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[85] Stephen B. Pociask, Competitive Enterprise Institute, *Wireless Substitution and Competition: Different Technology but Similar Service – Redefining the Role of Telecommunications Regulation* at 15 (Dec. 15, 2004).

reason that the merger will increase any supposed incentives Verizon has in this respect, because it is already losing both lines and traffic to wireless providers.

VoIP. In addition to obtaining VoIP service from a cable company, any customer with broadband access from cable or any other source can obtain voice service from multiple independent VoIP providers. In Verizon's top 50 MSAs, approximately 92 percent of the population now has access to cable modem service and therefore also has access to VoIP from these independent providers. *See* Hassett et al. Decl. ¶ 58. Moreover, many VoIP providers offer service packages with comparable or greater services and features than those available from conventional wireline providers; these packages are offered at attractive prices that are often below comparable wireline offerings and that, when combined with broadband service, are competitive with what customers pay for a narrowband bundle of local, long distance and dial up Internet access. *See* Hassett et al. Decl. ¶¶ 66-67 & Exhs. 2 & 5.

As a result, VoIP competition is rapidly increasing. Vonage, for example, provides service to 600,000 customers and continues to add 15,000 customers per week. Hassett et al. Reply Decl. ¶ 41. AOL, the country's largest Internet service provider, is now providing VoIP service,[86] and industry experts expect that other Internet companies will soon follow: "It's pretty evident that you are going to have Yahoo, MSN, Google, all within the next six months, their entry into this marketplace. These guys own the

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[86] *See* AOL Press Release, *America Online Introduces AOL® Internet Phone Service* (Apr. 7, 2005).

desktop, and the desktop is the highway out of your house. Anybody who's got real stickiness with their target audience can drop [a VoIP] application right into their code."[87]

A few commenters nevertheless claim that VoIP by itself does not impose price discipline on wireline offerings because the service is relatively new and the number of subscribers is too small. *See, e.g.*, ACN et al. at 17; Cbeyond et al. Wilkie Decl. ¶ 42. But the relevant question is not how many customers actually subscribe to VoIP services today. Rather the relevant economic question is whether VoIP is a viable alternative to enough subscribers that, along with the many other alternatives that are available, it would render unprofitable a hypothetical price increase. *See* Crandall/Singer Reply Decl. ¶ 14. VoIP is available today to anyone that is able to obtain a broadband connection, and, as noted above, VoIP offerings provide features that are comparable to (and in some cases superior to) wireline offerings. The constraining effect of VoIP is stronger given that the loss of even a relatively small number of subscribers may well be sufficient to make a price increase unprofitable. *See* Crandall/Singer Reply Decl. ¶ 15.

Several commenters suggest that VoIP providers cannot be effective competitors because Verizon allegedly does not offer "naked DSL" (*i.e.*, the ability to purchase DSL on a line without also purchasing wireline voice service), and customers therefore have to purchase voice service from Verizon in addition to VoIP from an independent provider. *See, e.g.*, Cbeyond et al. at 36; ACN et al. at 18; New York Attorney General at 8-12. But this argument is based on two incorrect premises. First, it assumes that DSL is the

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[87] C. Wilson, *AOL Helps Usher in VoIP's Growth Spurt*, Telephony at 10 (Mar. 14, 2005).

only means for consumers to obtain broadband access that they can then use in connection with VoIP. In fact, however, more than 90 percent of U.S. households are now able to obtain a broadband connection from a provider other than their incumbent local telephone company, principally cable modem service. Hassett et al. Decl. ¶ 58. Consumers can use those broadband connections to obtain VoIP either from cable companies or independent providers such as Vonage regardless of the availability of naked DSL.

Second, contrary to the commenters' suggestion, Verizon's DSL customers can obtain VoIP service while keeping their standalone DSL service. In particular, a customer can cancel voice service from Verizon, obtain voice service from an independent VoIP provider such as Vonage, and retain his DSL line provided by Verizon. *See* Hassett et al. Reply Decl. ¶ 65. A customer can also port his telephone number to another facilities-based provider such as a cable company or wireless carrier, while keeping his Verizon DSL line.[88] *See id.* Although Verizon's advances in this area were originally geographically limited, the comments of the New York Attorney General are now moot because Verizon's stand-alone DSL offering is generally available in all of Verizon's service territories, not just the former Bell Atlantic service territory. *See id.* ¶ 66. And this is just the first step in Verizon's roll-out of a broader standalone DSL

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[88] Contrary to CloseCall's assertions, CloseCall at 4, Verizon *does* permit such porting. CloseCall, in contrast, has submitted UNE-P or resale requests for customers who have Verizon DSL. *See* Hassett et al. Reply Decl. ¶ 67. But Verizon is not required to provide DSL on a UNE-P or resold line. *See* Order and Notice of Inquiry, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling*, FCC No. 05-78 ¶ 27 (rel. March 25, 2005). In addition, UNE-P and resale requests do not involve number portability because the customer's number is not moved to a different switch.

offering, which Verizon anticipates testing and commercially offering in at least some markets this summer. *See id.*

A few commenters also assert that VoIP is not a viable competitive alternative because not all VoIP providers offer reliable E911 service. *See*, *e.g.*, NASUCA at 10. But most cable companies, including Time Warner, Comcast, Adelphia, and Cox, either already offer E911 service or plan to do so in the near future. *See* Hassett et al. Reply Decl. ¶ 61. The concerns about E911 therefore pertain principally to the subset of VoIP providers that offer "nomadic capability" (*i.e.*, the ability to use the service from any broadband access point) or the option to select non-geographically relevant telephone numbers. *See id.* These providers typically offer an emergency response service that can be reached by the customer dialing 911, but the issue has been that they have not provided E911 capabilities (*i.e.*, the provision of a call-back number and the caller's address). As to that issue, Verizon has been an industry leader in working with the relevant industry segments to develop a solution that, if successful, will be able to serve as a model for national deployment. *See id.* ¶ 62. Indeed, one of the leading independent VoIP providers acknowledges that "Verizon is the first ILEC to work closely with any nomadic VoIP service to ensure emergency calling keeps pace with VoIP technology." Vonage at 5. And the Commission has now directly addressed this issue on an industrywide basis.[89] It is hardly a reason to doubt VoIP's impact on the competitive marketplace.

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[89] *See* FCC News Release, *Commission Requires Interconnected VoIP Providers To Provide Enhanced 911 Service*, WC Docket Nos. 04-36, 05-196 (May 19, 2005).

E-Mail and Instant Messaging. Commenters do not refute that e-mail and instant messaging also displace a significant fraction of traffic that used to travel on wireline networks, including revenue-producing traffic such as interexchange calls. As Verizon and MCI demonstrated, if only 5 percent of the approximately nine billion messages per day that U.S. users are estimated to send substitute for a 90-second voice call, this data traffic has displaced more than 10 percent of the voice traffic that would otherwise have been handled by the incumbents' networks. *See* Hassett et al. Decl. ¶¶ 88-89; Carlton et al. Decl. ¶ 30.

B. MCI Is Not One of a Small Number of Most Significant Competitors in the Mass Market Going Forward

The removal of MCI through this transaction also will not harm competition because MCI will not be one of a "small number" of "most significant participants" in the mass market going forward. The facts show that MCI's position in the mass market is in irreversible decline, and, even absent this transaction, MCI's role would consist largely of serving its shrinking legacy customer base.

As explained in the application, whether looked at in terms of revenue, traffic, or lines, MCI's mass-market business had declined substantially by the end of January 2005. *See* Huyard Decl. ¶¶ 2-3. The accompanying Reply Declaration shows that this trend continues, with the loss of **[Begin Proprietary]** **[End Proprietary]** of additional mass-market customers in just the three subsequent months. *See* Huyard Reply Decl. ¶ 3. This decline has caused MCI to make concrete and significant cuts to its mass-market operations, including eliminating broadcast

advertising, drastically reducing telemarketing, letting go employees, and closing call centers and customer service operations. *See* Huyard Decl. ¶¶ 16-17.

Merger opponents ignore these facts and suggest that MCI's statements are a smokescreen motivated by the merger or that MCI could in fact remain a significant player in the mass market if it only tried a different strategy. *See*, *e.g.*, Cbeyond et al. at 35, 41; ACN et al. at 11. In fact, however, as MCI's CEO testified to Congress, MCI previously made the decision to "exit constructively the consumer market."[90] Further, this decision was not based on a whim, but on careful consideration of a long list of factors, including facilities-based intermodal provider competition from cable companies and wireless carriers; competition from VoIP, e-mail, and instant messaging; competition from the RBOCs and other wireline carriers; restrictions on marketing resulting from Do Not Call legislation; customer preference for all-distance services; and regulatory changes that eliminated UNE-P. *See* Huyard Decl. ¶¶ 5-12. These obstacles would continue to impede MCI even in the absence of this transaction.

Commenters are left to theorize about how MCI might manage to remain in the mass market. They suggest that MCI could continue to serve the mass market using a UNE-L or similar strategy. But, as explained in the application, MCI determined that a viable UNE-L strategy required the continued availability of UNE-P as a supplement and that, given the *Triennial Review Remand Order*, this approach did not make economic

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[90] *Competition in the Communications Marketplace: How Technology Is Changing the Structure of the Industry: Hearing Before the House Comm. On Energy and Commerce*, 109th Cong., Federal News Service, Tr. at 78-79 (Mar. 2, 2005) (statement of Michael Capellas).

sense. *See* Huyard Decl. ¶¶ 14-15. At least one commenter speculates that the regulatory environment might someday change in some unspecified way to make it possible for MCI to re-enter the mass market. *See* Qwest Bernheim Decl. ¶ 84. Such unmoored speculation clearly cannot be the basis for MCI's strategy going forward or for a decision on this merger. And, in any case, as noted above, the regulatory environment was one of only many factors that contributed to MCI's decision, and even merger opponents do not pretend there is any prospect all of those other factors, such as the intense intermodal competition from cable and others, will fade away. *See* Carlton et al. Reply Decl. ¶ 75.

Commenters also point to MCI's recent commercial agreements with Qwest and other ILECs and suggest that MCI could indefinitely continue to serve profitably just its existing customer base.[91] *See, e.g.*, ACN et al. at 11; Cbeyond et al. at 43. But they offer no explanation for how that strategy could possibly render MCI one of a small number of significant market participants that exerted any price disciplining effect on the overall market or even how that approach could be sustainable over the long run given the inevitable customer churn all carriers experience. Instead, those agreements permit MCI to obtain a UNE-P replacement product that allows it to avoid terminating service to its existing and shrinking residential customer base as it manages the decline in its consumer

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[91] One commenter purports to do a "merger simulation" that allegedly shows it would be profitable for the merged company to raise prices to MCI's existing customers because many of them would simply choose Verizon's service instead. *See* Cbeyond et al. Wilkie Decl. ¶¶ 43-44. This analysis is deeply flawed. *See* Crandall/Singer Reply Decl. ¶¶ 17-19; Carlton et al. Reply Decl. ¶¶ 76-78. Among other things, it both ignores the likelihood that customers of the combined company would respond to a price increase by choosing intermodal competitors and makes a variety of unsupported and implausible assumptions. *See id.*

business. *See* Huyard Reply Decl. ¶ 4. In fact, these contracts are structured to permit an orderly decline over time, with more advantageous cost terms to MCI in the first two years of the agreements.

Several commenters also suggest that MCI could transform itself into an intermodal competitor of some kind. *See, e.g.*, ACN et al. at 23; Qwest Bernheim Decl. ¶ 84. Aside from the ironic fact that some of these same competitors elsewhere deny the competitive significance of intermodal providers, they offer no reason why MCI is necessary for the growth and development of intermodal competition. As described above, such competition is already thriving and includes providers of varying sizes and types; MCI would bring nothing unique to that mix. In fact, MCI never built more than a minimal consumer DSL customer base, *see* Huyard Decl. ¶ 19, and it has yet to deploy a mass-market VoIP service even though other traditional wireline carriers have done so, *see id.* ¶ 20; Huyard Reply Decl. ¶ 5 (noting that MCI is currently scheduling only a trial of VoIP service, which itself will target only 5,000 customers).

Ultimately, the claims of the merger opponents boil down to the wishful thinking that MCI's "very existence as an independent company would discipline the prices Verizon charges." Cbeyond et al. at 35. But, even absent this transaction, MCI would not be one of a small number of most significant participants in the mass market, and the transaction accordingly cannot harm mass-market competition.

C. The Merger Will Not Result in Adverse Effects in Competition for Long Distance Services

Retail. As Verizon and MCI explained, as a result of technological and marketplace developments such as the proliferation of integrated all-distance offerings, it

no longer makes sense to separate out a discrete product market for long distance services. But even if the transaction is analyzed in more traditional terms, the transaction will not harm competition for long distance services. As the Commission has reaffirmed, there has long been extensive competition for retail long distance services.[92] Dozens of long distance providers offer retail long distance services today over just wireline networks.[93] Nevertheless, several commenters suggest that the merger will somehow undermine this competition. In particular, they point to so-called market shares for wireline long distance voice and assert that the combined firm would have an unacceptably high share. *See, e.g.*, ACN et al. at 22, 24; CFA at 21-22; Cbeyond Wilkie Decl. ¶ 41. But these assertions are fundamentally flawed in at least two respects. First, the market shares to which the commenters point fail to account for MCI's declining presence in the mass market. As Verizon and MCI previously explained, current market shares are not an appropriate basis for analysis when they do not accurately reflect future competitive strength. *See* Carlton et al. Decl. ¶¶ 40-42.

Second, they ignore intermodal alternatives. There can be little question that intermodal competition is particularly extensive in the context of long distance. *See* Public Interest Statement at 55-58. Cable operators, VoIP providers, and wireless carriers all offer packages of voice service that include large bundles of long distance minutes. *See* Hassett et al. Decl. Exh. 2. As a result, much long distance traffic has

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[92] *See, e.g.*, *Triennial Review Remand Order* ¶ 36 & n.107.

[93] *See* Indus. Anal. & Tech. Div., WCB, FCC, *Statistics of the Long Distance Telecommunications Industry*, at 1(May 2003) ("More than 1,000 companies now offer wireline long distance service.").

moved to intermodal providers. For example, the 70 percent of households that have wireless phones now use those phones to make 60 percent of their long distance calls. *See id.* ¶¶ 7, 9. And competition for long distance extends to data applications: e-mail and instant messaging now substitute for a large and growing fraction of long distance voice traffic. *See* Hassett et al. Decl. ¶¶ 88-89; Carlton et al. Decl. ¶ 30. As a result of this competition, consumers reduced the number of long distance minutes of use on wireline phones by approximately 40 percent between 1997 and 2002. *See* Hassett et al. Decl. ¶ 80; Crandall/Singer Decl. ¶¶ 15-16. Thus, any purported market share analysis that fails to account for these intermodal competitors cannot be taken seriously. *See* Crandall/Singer Reply Decl. ¶¶ 22-26.

Wholesale. Some commenters take a different tack and argue that the merger will harm wholesale long distance competition. However, as discussed above, the transaction will *benefit* wholesale customers by creating a strong facilities-based provider with a national reach. Further, as Verizon and MCI demonstrated in their application, and as the Commission has repeatedly found, the wholesale long distance business is highly competitive. The merger will not reduce the number of significant providers because Verizon has very limited long-haul facilities of its own. Although opponents do not seriously contest these facts, a few nevertheless claim that the merger will harm wholesale competition either because other competitors somehow will not survive if Verizon moves more of its traffic to MCI's network or because the combined company will stop offering wholesale services. Neither claim withstands even cursory scrutiny.

As an initial matter, the wholesale long distance business is intensely competitive. Numerous carriers, including AT&T, Sprint, Qwest, Level 3, Global Crossing, WilTel, and others, operate national wireline long-haul networks and compete with MCI in providing long distance capacity at wholesale to other carriers.[94] Indeed, the industry continues to suffer from a "glut" of fiber, with one estimate being that less than percent of the total transmission capacity of fiber lines in the ground is being put to use.[95] The result has been "persistent pricing pressure" that has caused wholesale voice prices to fall by 10-12 percent annually.[96] The Commission has consistently reiterated that the availability of long-haul capacity from numerous national providers demonstrates that no individual firm or group of firms has the ability to exercise market power for wholesale long distance services.[97] Because Verizon does not have a national long-haul network and generally does not provide wholesale long distance services, the merger will not reduce competition in the wholesale business.

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[94] Jeff Halpern, Bernstein Research Weekly Notes, *U.S. Telecom: Wholesale Segment Is Declining, But Still Significant* at 2 (Jan. 21, 2005) ("*Bernstein Wholesale Report*") ("[T]he markets for wholesale long-distance voice and data services are highly competitive. The established long-haul carriers – AT&T, MCI and Sprint – compete not only with each other, but also with relative upstarts such as Level3, Global Crossing, 360networks, Wiltel, and a host of others."); *see also* Leucadia National Corp., SEC Form 10-K Statement, at 12 (filed Mar. 4, 2005) (stating that WilTel engages in "fierce competition" with, among others, "AT&T, MCI, Sprint, Qwest, Level 3, Global Crossing and Broadwing").

[95] Shawn Young, *Why the Glut in Fiber Lines Remains Huge*, Wall Street J. at B1, May 12, 2005.

[96] *See* Halpern, *Bernstein Wholesale Report* at 4, 8; *see also* Kende Reply Decl. ¶ 19.

[97] *See*, *e.g.*, *MCI/WorldCom Order* ¶¶ 42-43, 67-76; Order, *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995).

Notwithstanding this intense competition, some opponents suggest that the merger will be harmful because it will permit Verizon to move its long distance traffic onto MCI's network and thereby harm the providers from which Verizon currently purchases wholesale service. *See, e.g.*, ACN et al. at 27-29. But, to the extent Verizon migrates its traffic to MCI, this will be a benefit to consumers because it will permit more efficient provision of long distance services. *See, e.g.*, Hassett et al. Decl. ¶ 24. And the suggestion that Verizon's diversion of traffic would mean that "independent facilities-based long distance providers may no longer have a viable market in which to participate," ACN et al. at 28, is ludicrous. The amount of wholesale long distance service that Verizon purchases today amounts to a small fraction – less than **[Begin Proprietary]** **[End Proprietary]** – of the total amount of U.S. voice long distance wholesale revenues, let alone the total for all wholesale traffic that traverses carriers' long-haul networks.[98] In any event, these claims at most show the presence of excess competitive capacity in the market, not a lack of competition, and "the government should intervene in the marketplace only "for the 'protection of competition, not competitors.'" *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (*Brown Shoe*, 370 U.S. at 320).

A few commenters also wrongly suggest that the merger will harm competition because the combined company allegedly would have an incentive to stop offering wholesale services to its retail competitors, particularly cable companies or other VoIP

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[98] *See* Pilgrim Reply Decl. ¶ 5; *see also* Halpern, *Bernstein Wholesale Report* at 3-4 (total U.S. long distance wholesale revenues in 2004 were more than $18.5 billion and total wholesale market exceeded $45 billion).

providers. This claim too fails on several levels. First, as Verizon already stated in its application, Verizon intends to honor MCI's existing contracts to provide wholesale services, so there will be no disruption to any customer that today purchases wholesale service from MCI. *See* Lew/Lataille Decl. ¶ 12.

Second, and more fundamentally, even if the combined entity were to stop providing wholesale services once these contracts expire, providers of VoIP and other services would have numerous competitors from which to choose. Indeed, cable and other VoIP providers today obtain wholesale long haul services from numerous carriers other than MCI, including Level 3, Sprint, Teleglobe, and Global Crossing. *See* Hassett et al. Reply Decl. ¶¶ 34-35. For example, Comcast purchases wholesale transport services from Level 3 and Sprint, *see id.* ¶ 31; Time Warner buys wholesale services from Sprint, *id.* ¶ 33; Charter uses Level 3, Sprint, and Accenture, *id.* ¶ 32; AOL buys wholesale service from Level 3, *id.* ¶ 45; and Skype obtains wholesale service from Teleglobe, *id.* ¶ 54. Further, a growing number of VoIP providers, including cable companies such as Cablevision and Cox, use their own network facilities to provide VoIP service. *See id.* ¶¶ 29-30. Thus, the concern that the combined entity somehow could handicap its retail competitors by ceasing to provide wholesale long-haul services founders on the facts.

Finally, these same market facts create strong incentives for all carriers with long-haul networks, including the combined entity, to provide wholesale services in order to fill their networks with revenue-producing traffic. While a carrier would generally prefer to have the end user as its customer and collect the resulting retail revenues, it is a simple

fact of life that it is going to lose customers to retail competitors. That being so, a carrier would rather collect revenue generated by having some of the wholesale traffic on its network than forfeit this revenue entirely because that traffic ended up on alternative facilities. *See* Crandall/Singer Reply Decl. ¶ 25; Lew/Lataille Decl. ¶ 12. That is particularly true given that carriers with long-haul wireline networks already are losing so much traffic to intermodal alternatives and therefore have ample capacity. That is why, for example, MCI currently sells wholesale long distance capacity to wireless carriers, even though those carriers use that capacity to sell services that compete against MCI's retail long distance services. This has long been true: when the long distance business was opened for competition, AT&T developed a wholesale offering for other long distance providers in order to keep as much long distance traffic as possible on its network rather than having traffic migrate to competing facilities. This transaction will not undermine that wholesale market; rather, all carriers, including the combined Verizon-MCI, will continue to have economic incentives to provide wholesale service. *See* Crandall/Singer Reply Decl. ¶ 25.

V. INTERNET-RELATED SERVICES

As Verizon and MCI demonstrated in their initial application, the combination of the two companies will not undermine the robust competition among providers of Internet connectivity services.[99] *See* Public Interest Statement at 61-66. Rather, the

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[99] Such services involve "the transporting and routing of packets between and among ISPs and regional backbone networks." *MCI/WorldCom Order* ¶ 148.

merger will promote the public interest by combining complementary assets to provide innovative services efficiently and effectively.

Those parties that raised Internet issues in their comments generally argue that the combined company will be so large that it will have the incentive and the ability to harm competitors by raising prices, degrading service, and/or de-peering rivals. However, the combined firm would not have near the share that could conceivably permit it to engage in such discrimination successfully. Concerns that the transaction would increase the combined company's incentives or ability to discriminate against unaffiliated content and application providers (such as VoIP providers) or independent ISPs through its last-mile broadband facilities are similarly groundless. Cable modem service is the market leader, accounting for most residential and small business broadband customers, and any attempt by the combined firm to discriminate against content or application providers would drive away its broadband customers to a competing platform that did make such content or applications available. In fact, Verizon has endorsed the connectivity principles set forth by the High-Tech Broadband Coalition and the "Net Freedoms" articulated by former Chairman Powell because they make good business sense. In any case, the proposed transaction does not raise any merger-specific competitive concerns, and issues of general applicability should be considered in industrywide proceedings.

A. The Share of the Combined Company Will Be Too Small To Give Rise to Any Plausible Competitive Concern

As explained in the original application and further confirmed in the attached Reply Declaration of Michael Kende, whether measured by traffic, revenues, or connections, the proposed merger will not change the fact that backbone-based services

are highly competitive. The best estimate of the combined company's share, based on a study by RHK, is that it would carry less than 10 percent of North American Internet traffic.[100] The combined company would be only the fourth largest Internet backbone operator − in the middle of a pack of seven firms having comparable shares, with major competitors including firms such as AT&T, Sprint, Level 3, Qwest, SAVVIS, and AOL. Kende Reply Decl. ¶ 8. Combined the seven top backbone operators would carry only about 65 percent of total Internet traffic.[101] *See id.* Moreover, the transaction would not significantly increase MCI's share from where it stands today – as some parties acknowledge, Verizon has only a small backbone business and does not qualify as a "Tier 1" backbone.[102] Thus, this transaction does not present the types of concerns raised in *WorldCom/Sprint* and other previous mergers:[103] unlike the combined company here, a combined WorldCom-Sprint would have been by far the largest Internet backbone operator − carrying over 50 percent of all Internet traffic by some estimates − and more

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[100] Kende Reply Decl. ¶ 8. RHK estimates that MCI currently carries approximately 7-8 percent of Internet backbone traffic. *Id.* And, even after the transaction closes, that share would increase to less than 10 percent. *Id.*

[101] Due to confidentiality obligations, RHK has not shared with the parties the identity of the ISPs it lists in its study. The parties believe, although cannot be certain, that the list of largest backbone providers in North America by traffic volume likely would include the firms listed in the text.

[102] Broadwing/SAVVIS at 42. Some commenters overestimate Verizon's share due to characteristics of the underlying data upon which they rely. The IDC revenue data reported in the Kende Declaration, for example, overstates Verizon's revenues relative to those of other Internet backbone providers. *See* Kende Reply Decl. ¶¶ 12-13.

[103] Broadwing/SAVVIS mistakenly refer to DOJ's "findings" in WorldCom/Sprint. *See* Broadwing/SAVVIS at 48. The Department did not make findings, however; it merely filed a complaint which did not result in a judicial decision.

than three times as large as its next largest competitor.[104] Under no theory would a merged Verizon-MCI have the share necessary to "tip" the market, or engage successfully in other anticompetitive activities.[105] *See* Carlton et al. Reply Decl. ¶¶ 80-81.

Moreover, the competition for backbone services is only growing more intense, as evidenced by the steady decline in the transit prices charged by backbone service providers. Kende Reply Decl. ¶ 16. The continuing growth in Internet traffic,[106] combined with relatively low entry barriers, make it easier than ever for smaller players and new entrants to win customers from more established providers and compete successfully in offering Internet connectivity services.[107] In fact, Internet service providers and cable companies are increasingly taking advantage of the plentiful

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[104] *See United States v. WorldCom, Inc. and Sprint Corp.*, No. 1:00-cv-01526-RMU ¶¶ 33, 35 (D.D.C. filed June 27, 2000).

[105] *See* D. Malueg & M. Schwartz, *Interconnection Incentives of a Large Network,* Working Paper 01-05, Georgetown University Dep't of Economics, Aug. 2001, revised Jan. 2002) at 16-17 (*available at* www.georgetown.edu/faculty/schwarm2/papers/InterconnectionIncentives.pdf) (demonstrating that a dominant provider, facing only one rival, would be very unlikely to pursue a global degradation strategy, unless its market share exceeded 70%.); *id* at ii (demonstrating that with multiple rivals to the dominant firm, the market has the potential for tipping *against* the largest provider, even if its share is well in excess of 50%.).

[106] *See, e.g.,* Kende Reply Decl. ¶ 6 & Ex. 1 (citing RHK study showing that total Internet traffic grew from 276 petabytes per month in the fourth quarter of 2003 to 416 petabytes per month in the fourth quarter of 2004); Shawn Young, *Why the Glut in Fiber Lines Remains Huge*, Wall St. J., May 12, 2005, at B1 (citing estimates that monthly Internet traffic has grown from 16 terabytes ten years ago to over 300,000 terabytes today).

[107] Kende Reply Decl. ¶¶ 18-29 (noting the relatively low cost of fiber, routers and other equipment needed to provide backbone services, and the availability of efficient interconnection points with other networks); Carlton et al. Reply Decl. ¶ 81.

availability of fiber to use their own or leased facilities not only to carry their own traffic but to sell transit to other companies. For instance, the cable companies are beginning to lease capacity to other ISPs and are even issuing their own peering policies and peering with one another.[108] That trend is likely to continue as cable companies and other providers continue to experience rapid growth in IP traffic as a result of services such as VoIP. Indeed, the growth in IP traffic over these numerous independent providers – each of which can choose among many backbone operators other than Verizon-MCI – belies TOPUC's assertion (at 9) that Verizon's VoIP traffic will drive a dramatic increase in Verizon-MCI's share of Internet backbone traffic.

Some opponents, implicitly acknowledging that the combined Verizon-MCI would not by itself harm competition among Internet backbone operators, speculate that the Verizon-MCI and SBC-AT&T mergers would create two "mega-peers" that *together* would have the incentive and ability to "tip" the market. *See, e.g.,* Broadwing/SAVVIS at 48, 51-52; CompTel/ALTS at 8-9. This claim is both unsupported and implausible. Commenters offer no explanation for how two firms could act collaboratively to tip the market. "Tipping" theories typically have been based on the premise that a *single* firm that is near-dominant could gain a dominant position in the provision of Internet connectivity services by raising its rivals' costs through anticompetitive policies

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[108] Kende Reply Decl. ¶ 23; *see also* Shawn Young, *Why the Glut in Fiber Lines Remains Huge*, Wall St. J., May 12, 2005, at B1 (noting that low prices have led Internet companies to decide it is cheaper to own their lines than to rent capacity from network operators).

involving interconnection.[109] These theories do not apply when there are two Internet backbones of roughly equal size. *See* Carlton et al. Reply Decl. ¶ 82. Further, such synchronized tipping would require extraordinarily coordinated strategies of degradation serially targeted at specific competing backbones. Commenters offer no explanation of how the two companies could coordinate with SBC-AT&T to drive out all competitors without being detected by regulators, or why, particularly given the low barriers to entry discussed above, others would not step in to use the existing fiber and other assets to re-enter the market if the two merged firms then tried to capitalize on their strategy by raising prices. In reality, any attempt by the merged firms to raise transit prices or degrade services would simply cause customers of the merged firms to switch to other providers as competitors would take advantage of inflated prices or poor service to win customers away from the offending companies. *See id.* ¶ 85.

Finally, given the difficulties inherent in two firms trying to coordinate tipping strategies, the combined share of two firms would have to be even higher than for a single firm for any claim of coordinated effects to gain even a semblance of plausibility. Yet Verizon/MCI's and SBC/AT&T's combined share of North American traffic would be approximately 28 percent – and in any event, significantly less than half of the Internet backbone traffic – far less than would be necessary under any tipping theory for even a single firm. *See* Kende Reply Decl. ¶ 8; Carlton et al. Reply Decl. ¶¶ 80, 84.

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[109] *See, e.g.,* J. Cremer, P. Rey, and J. Tirole, *Connectivity in the Commercial Internet*, 48 J. of Indus. Econ. 433 (Dec. 2000).

B. The Combined Company Would Not Have the Ability or Incentive To Discriminate Successfully Against Other Internet Backbone Providers

All of the Internet-related concerns that commenters raise depend on the assumption that the combined company will have a dominant share in the Internet backbone business that it will be able to leverage to harm competition. This fundamental premise is wrong. As a result, commenters are also incorrect in their speculation that the merged company would discriminate against or otherwise harm competing backbone providers in various ways.

Transit Pricing. Given the market position of the combined company, claims that it could eliminate competition by imposing unwarranted increases in transit prices are misplaced because transit customers could switch to another backbone. As discussed above, the customer will have its choice of at least six other backbones of comparable size, as well as numerous smaller providers. Moreover, because entry barriers are low, any attempt to raise prices may simply result in additional entry. *See* Kende Reply Decl. ¶¶ 18-29; Carlton et al. Reply Decl. ¶ 81. Nor is switching backbone providers difficult; in fact, many customers now "multi-home" by connecting to more than one transit provider. *See* Kende Reply Decl. ¶ 27. Multi-homing, combined with technologies that allow customers to change IP addresses seamlessly, allows customers to move traffic from one transit provider to another at little or no cost. *See id.* ¶¶ 26-27. Thus, a customer faced with increased prices could easily respond by simply switching transit providers. In addition, transit customers (including ISPs and enterprise customers) can use technologies, such as mirroring and caching, and other means to reduce their need for transit services. *See id.* ¶¶ 24-25. For example, some ISPs, including cable companies,

are increasingly engaged in "secondary peering" by exchanging traffic directly with one another and bypassing the transit provider. *See id.* ¶ 23.

Peering. Parties' fears that Verizon-MCI could harm competition by de-peering other providers are misplaced. *See, e.g.*, Broadwing/SAVVIS at 46-47; Earthlink at 7-8. As discussed above, the combined firm will be one of seven comparably sized backbone providers and will not have anything approaching a dominant position among Internet connectivity providers. As a result, its decision whether to peer with a particular backbone provider will be driven not by the anticompetitive exercise of market power – which it will not have – but by the same economic considerations of efficiency, cost, and other factors that apply today.

In that environment, there is no basis for claims that Internet backbone providers that rely on peering arrangements have an inherent competitive advantage over providers that use transit services (which, as explained above, are and will be competitively priced).[110] Indeed, the concerns expressed by SAVVIS are particularly ironic given that it has expressly refused to peer with Verizon. Pilgrim Reply Decl. ¶ 6. In fact, transit is a rational and efficient economic choice for providers that do not wish to make the required investment to build the facilities necessary to qualify under standard peering policies. In addition, transit has the advantage of ensuring universal connectivity to customers on all networks, whereas peering only provides connectivity to customers

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[110] *See, e.g.,* Broadwing Dovens Decl. ¶ 14; Letter from A. Sheba Chacko, BT to Marlene H. Dortch, FCC, Exhibit B at 17. (May 6, 2005) (filed in WC Docket Nos. 05-65 and 05-75).

served by the peering partner's network. Transit prices are competitive, and firms can make rational build/buy (*i.e.,* peering/transit) decisions based on their needs.

By contrast, requiring providers to peer with networks that lack sufficient geographic scope, capacity, or traffic volumes or that originate a far greater volume of traffic than they terminate would be inefficient. Peering relationships are economically rational only when the mutual benefits are sufficient to justify exchanging traffic on a settlement-free basis. *See* Carlton et al. Reply Decl. ¶¶ 88-89. Providers incur significant costs to peer, including the costs of physical facilities used for interconnection, maintaining a network, and terminating traffic from the peered network. If two providers entered into a peering relationship without having networks that provided comparable benefits, one provider would be "free riding" on the network investment of the other. *See id.* In order to avoid such "free riders," the published peering policies of MCI and other backbone providers (including some of those that raise concerns about de-peering here) generally require that a potential peer's network meet certain minimum requirements, which can include: minimum geographic scope, minimum traffic volume, roughly balanced traffic flows, minimum capacity on inter-hub links, and a Network Operations Center open at all times. *See* Cerf Decl. ¶ 16.

Broadwing/SAVVIS and others suggest that the requirement of roughly balanced traffic flows will lead the company to de-peer other providers because the proposed merger would result in an inherent traffic imbalance.[111] In particular,

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[111] Broadwing/SAVVIS at 51; Letter from A. Sheba Chacko, BT to Marlene H. Dortch, FCC, Exhibit B at 17. (May 6, 2005) (filed in WC Docket Nos. 05-65 and 05-75).

Broadwing/SAVVIS posit that the merged Verizon-MCI would produce an "eyeball-heavy" "mega-peer." Broadwing/SAVVIS argue that "eyeball" customers (primarily residential customers) are characterized by high incoming traffic flows and low outgoing traffic flows, in contrast to content providers, which Broadwing/SAVVIS claim generate high volumes of outgoing traffic and relatively low volumes of incoming traffic. Broadwing/SAVVIS at 39. According to Broadwing, if the merged company is "eyeball-heavy," two possible harms will result. First, Broadwing/SAVVIS speculate that the preponderance of eyeball customers will create a traffic imbalance between Verizon-MCI and other providers and may cause the "eyeball-heavy" company to de-peer content-heavy backbone service providers that originate significantly more traffic than they terminate. *Id.* at 51-52. Alternatively, Broadwing/SAVVIS express concern that the eyeball-heavy provider could exploit the alleged advantages it has over content-heavy providers to drive out competition from rivals that serve fewer "eyeballs." *Id.* at 53-54.

Broadwing's concerns are entirely unfounded. As an initial matter, Broadwing's theory is based on the incorrect premise that content providers need eyeballs more than eyeballs need content. However, as Broadwing/SAVVIS itself seem to recognize, that is not true: end users will not stay on a network that does not provide them access to the content they seek.[112] As a result, a backbone that is "eyeball heavy" has strong incentives to ensure that its peering and transit decisions enable its customers to deliver to end users the content they want at the highest possible speed and quality. Otherwise, given the

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[112] Broadwing/SAVVIS at 53; *see also* Michael Kende, *The Digital Handshake: Connecting Internet Backbones*, FCC OPP Working Paper No. 32, at 4 (2000) ("*Digital Handshake*").

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competitive nature of the business, the backbone provider will lose customers (and revenue) to other backbones.

Broadwing/SAVVIS's argument is also wrong on the facts. In particular, the assumption that the merged company would have substantially higher volumes of terminating traffic than originating is false. Although Verizon's network has substantially more inbound than outbound traffic, MCI's does not. *See* Kende Reply Decl. ¶ 9. Because MCI currently carries far more traffic than Verizon, the combined Verizon-MCI network would terminate only slightly more traffic that it would originate, with an inbound/outbound ratio of approximately **[Begin Proprietary]** **[End Proprietary]**. *See id*. This slight imbalance would not have a material effect on any provider's ability to peer with the combined network. (MCI's peering policy, for example, requires an inbound-to-outbound ratio of no more than 1.8:1.)

Broadwing's theory also fails to take into account the fact that cable companies and other providers are likely to control more eyeballs than Verizon − particularly given that significantly more end users rely on cable modem service than on DSL. Hassett et al. Reply Decl. ¶ 38. If there were a benefit to serving eyeball customers rather than content customers, competing backbone operators would have every incentive to attract traffic from these eyeball-heavy networks.

Finally, Broadwing/SAVVIS assume that peering or pricing decisions based on the relative balance of traffic are somehow anticompetitive. Just the opposite is true, however. A decision to de-peer a backbone provider that originates substantially more traffic than it terminates would promote efficiency, not reduce competition. Because of

the convention of "hot-potato routing," whereby a backbone provider hands off traffic bound for a customer of another provider at the point of interconnection closest to the point of origin, a backbone provider that terminates substantially more traffic than it originates ends up bearing a greater burden and must incur higher network costs.[113] Accordingly, in a competitive market, an Internet backbone provider may well refuse to peer with another backbone that hands off significantly more traffic than it accepts. *See* Carlton et al. Reply Decl. ¶¶ 88-89. A backbone provider cannot be expected to maintain a settlement-free peering relationship with another when the burdens and benefits of such interconnection are not roughly equal.

Degradation of Service. Several parties express concern that the merged company − either alone or in conjunction with SBC-AT&T − will engage in targeted degradation of service to other providers. *See, e.g.*, Vonage at 9; Broadwing/SAVVIS at 47. Other parties cast their degradation arguments as a concern that the merged company would give priority to traffic from its own end-user customers and provide inferior service to its competitors.[114] In either form, the argument is unsupported by the facts.

Given the competition for Internet backbone services, a backbone operator faced with targeted degradation by Verizon-MCI could simply turn to another top-level

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[113] *See Digital Handshake* at 6.

[114] *See* ACN et al. at 39 (arguing that the merged companies could engage in various forms of non-price discrimination, including priority routing); Vonage at 9 (discussing the risk that the combined company could prioritize packets associated with applications it provides to end users over packets generated by third parties.); New York Attorney General at 21 (claiming there is a risk that the combined company would "tag" traffic originating on its own network in order to discriminate against content originating on other networks).

backbone operator to obtain the transit services it needs. *See* Carlton et al. Reply Decl. ¶ 86. And, as discussed above, there is no basis for the claim that the combined firm could engage in some form of coordinated degradation with AT&T-SBC. *See id.* ¶¶ 84, 87. In addition, by degrading service to another backbone, the degrading provider runs the risk of losing end-user customers to other broadband access providers that use backbone operators that are not engaging in degradation. *See id.* ¶ 85.

The "tagging" argument raised by the New York Attorney General is simply the flip side of the degradation argument. The New York Attorney General appears to be concerned that the combined company will use "tagging" as a means of providing a higher quality of service to its own end-user customers than to customers of other networks. *See* New York Attorney General at 22. But nothing about the combination of the two networks would increase either the incentive or ability of the merged company to give priority to certain traffic in an unreasonably discriminatory or anticompetitive way, and neither MCI nor Verizon tag traffic on their backbones today.[115] As with degradation, the combined company would not have anywhere close to the market power to make this strategy successful and instead would lose customers or traffic.[116]

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[115] The New York Attorney General cites no evidence that either Verizon or MCI tags traffic on its backbone today, and neither company does so.

[116] To be sure, companies might decide to offer a value-added service to customers interested in obtaining a guaranteed higher quality of service for certain traffic (as opposed to the "best efforts" standard that prevails today). Indeed, quality of service ("QoS") options may be necessary for VoIP, streaming video, and other bandwidth-intensive applications. These QoS options would give customers the ability to pay a fee in exchange for priority treatment of their traffic – just like some airline passengers choose to pay a premium to travel first class instead of coach, for example. But such a service would enhance efficiency, not be anticompetitive.

C. The Merger Will Not Affect the Incentive or Ability To Discriminate Against Unaffiliated Content and Application Providers or ISPs

Contrary to the claims of some commenters, *see*, *e.g.*, Vonage at 9-10; Global Crossing at 21; Earthlink at 10-11, the merger will not create an incentive for the combined company to discriminate against independent ISPs, unaffiliated VoIP providers, and other content and application providers through its last mile broadband facilities. Nothing about this merger would create or increase any such incentive, and non-merger specific issues should be dealt with in rulemakings or other industrywide proceedings, not in merger reviews. Moreover, attempts by the combined company to engage in such discrimination would drive away users who wanted access to those services and content to an alternative broadband access provider such as cable modem service that did make such services and content available. Verizon's view that it lacks the incentive to discriminate is confirmed by the fact that it has endorsed the "Net Freedoms" proposed by former Chairman Powell and the connectivity principles proposed by the High Tech Broadband Coalition, which expressly reject discrimination against unaffiliated providers.

As an initial matter, opponents' speculation that the combined company might discriminate is entirely unrelated to the merger. Because MCI is not a significant competitor with respect to broadband Internet access services, *see* Public Interest Statement at 48-49, the transaction will not increase concentration in the broadband

access market or in last-mile facilities.[117] As a result, the merger would not increase the combined company's ability to discriminate. Similarly, opponents point to no reason why the merger would increase any theoretical incentive to discriminate. As discussed above, "merger review is limited to consideration of merger-specific effects,"[118] not issues of industrywide applicability. Accordingly, concerns about open access and "network neutrality" are not a proper subject to address in this proceeding.

In any case, cable modem service is the market leader for broadband services, accounting for more than 61 percent of residential and small business customers receiving download speeds of 200 Kbps and 83 percent of customers that receive more than 200 Kbps in both directions. Hassett et al. Reply Decl. ¶ 38. Cable alone now makes broadband access available to more than 90 percent of the population in Verizon's top 50 MSAs. Hassett et al. Decl. ¶ 58. Moreover, new technologies offer the promise, and increasingly the reality, of alternative forms of broadband, including Wi-Fi, WiMax, satellite technologies, 3G wireless, fiber-to-the-home, and broadband over power lines.[119] Hassett et al. Reply Decl. ¶¶ 39-40. The result is that approximately 90 percent of *all* U.S. households now have access to broadband service from a provider *other* than their local telephone company. Hassett et al. Decl. ¶ 58. As the Commission has observed,

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[117] *See* Earthlink at 10 (acknowledging that merger "would not cause a significant diminution in wholesale last mile broadband competition").

[118] Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 22633, ¶ 11 (2002).

[119] *See* Fourth Report to Congress, *Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, 20547 (2004) ("*Fourth Report to Congress*").

"the competitive nature of the broadband market, including new entrants using new technologies, is driving broadband providers to offer increasingly faster service at the same or even lower retail prices."[120] The Commission has rejected claims that "BOCs either are not subject to competition with respect to their broadband offerings, or are constrained only by a duopolistic relationship with cable operators. . . . broadband technologies are developing and we expect intermodal competition to become increasingly robust, including providers using platforms such as satellite, power lines, and fixed and mobile wireless in addition to the cable providers and BOCs."[121]

As a result, the combined company will have strong business incentives to provide customers with access to unaffiliated VoIP providers, ISPs, and other content and application providers.[122] If it failed to provide its customers with access to valuable

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[120] *Fourth Report to Congress*, 19 FCC Rcd at 20552.

[121] *Section 271 Forbearance Order* ¶ 29; *see also id.* ¶ 22 (the "broadband market is still an emerging and changing market, where . . . the preconditions for monopoly are not present"); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, 14 FCC Rcd 2398, ¶ 48 (1999) ("The preconditions for monopoly appear absent . . . [W]e see the potential for this market to accommodate different technologies such as DSL, cable modems, utility fiber to the home, satellite and terrestrial radio"); *Triennial Review Order* ¶ 246 ("There appear to be a number of promising access technologies on the horizon and we expect intermodal competition to become increasingly a substitute for . . . wireline broadband service."); *id.* ¶ 263 (noting that "the fact that broadband service is actually available through another network platform and may potentially be available through additional platforms helps alleviate any concern that competition in the broadband market may be heavily dependent upon unbundled access").

[122] This is particularly true given that the FCC has demonstrated it can move quickly to stop a discriminatory practice. *See* Order, *Madison River Communications, LLC and Affiliated Companies*, File No. EB-05-IH-0110, DA 05-543 (rel. Mar. 3, 2005) (consent order preventing telephone company from interfering with service of independent VoIP provider).

content or applications, they would flock to competing broadband platforms such as cable modem that did make such content or applications available. The combined company could ill afford to adopt a strategy that led to cable modem increasing its already substantial lead in the broadband access market, as well as increasing the share of emerging rivals such as satellite and wireless.

In fact, Verizon has endorsed the "Net Freedoms" proposed by former Chairman Powell[123] and the connectivity principles set forth by the High Tech Broadband Coalition as principles with which all providers should abide.[124] These principles recognize that consumers generally should have the freedom to access content of their choice, run their applications of choice, attach devices of their choice to the connection in their homes, and receive meaningful information regarding service plans. *Net Freedoms Speech* at 5; *HTBC Letter*, Att. at 1. Verizon's public endorsement of these principles – made well before this transaction – belies the unmoored speculation that the combined company will discriminate against unaffiliated application and content providers or ISPs. At the same time, the Commission should reject the invitation of a few commenters, *see, e.g.*, ACN et

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[123] *See* Reply Comments of the Verizon Telephone Companies, *IP Enabled Services, Petition of SBC Communications Inc. for Forbearance Under 47 U.S.C. § 160 from Application of Title II Common Carrier Regulation to "IP Platform Services,"* WC Docket Nos. 04-36 & 04-29, at 18-19 (filed July 14, 2004); *see also* Remarks of Michael K. Powell, Chairman, FCC at the Silicon Flatirons Symposium on The Digital Broadband Migration, *Preserving Internal Freedom: Guiding Principles for the Industry*, at 4-5 (Feb. 8, 2004) *at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf ("*Net Freedoms Speech*").

[124] *See* Letter from Susanne Guyer to Michael Powell, Chairman, FCC (Sept. 29, 2003); Letter from High Tech Broadband Coalition to Michael Powell, Chairman, FCC (Sept. 25, 2003) (both filed in CC Docket Nos. 95-20, 98-10, 02-33, and 02-52) ("*HTBC Letter*").

al. at 55, to impose these or similar principles of "network neutrality" as conditions to the merger. Former Chairman Powell has stated that the "Net Freedoms" are "guiding principles" to which all industry participants should (in their own self-interest) voluntarily submit, not heavy-handed regulations that need to be imposed by the Commission. *See Net Freedoms Speech* at 1; *see also HTBC Letter* at 2.

The combined company likewise will have business incentives to continue offering wholesale DSL transport services to unaffiliated ISPs or other content providers, because it will need to find ways to keep traffic on its networks in order to recover its enormous capital investments. The Commission concluded as much in the *Section 271 Forbearance Order* when it found that "the evidence currently before us, taken as a whole, leads us to conclude that competition from multiple sources and technologies in the retail broadband market, most notably from cable modem broadband providers, will pressure the BOCs to utilize wholesale customers to grow their share of the broadband markets and thus the BOCs will offer such customers reasonable rates and terms in order to retain their business."[125]

VI. OTHER ISSUES

Verizon Is Qualified To Acquire MCI's Licenses and Authorizations. The Commission should reject some commenters' attempts to question Verizon's fitness to accept transfer of MCI's licenses and authorizations under section 310 of the Act. The

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[125] *Section 271 Forbearance Order* ¶ 26; *see also Fourth CMRS Order* ¶ 20 ("[T]he increasing degree of [broadband] competition should provide incentives for facilities-based [broadband] providers to agree to [provide wholesale access] to increase their revenues.").

Commission has found Verizon qualified to acquire and hold licenses numerous times previously, and Verizon continues to deal truthfully with the Commission and to comply with its rules and orders.[126] While this Commission, state regulators, or courts have at times disagreed with Verizon's interpretations of its obligations under the law, those instances can not be used to call into question Verizon's character or fitness to hold Commission licenses and authorizations.[127]

The CLECs' claims are based upon evidence that the Commission has repeatedly held to be irrelevant to a determination of character. Cbeyond and CompTel/ALTS attempt to call into question Verizon's character by claiming that Verizon has violated prior merger conditions intended to minimize anti-competitive effects.[128] Cbeyond also contends that Verizon has demonstrated a propensity to engage in predatory and anticompetitive conduct. Cbeyond at 2. However, they fail to support these allegations with relevant proof. Instead, they focus on the fact that Verizon has entered into consent decrees with the Commission to settle disputes concerning the application of the

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[126] *See Cingular/AT&T Wireless Order* ¶ 47 (citing Commission standard for evaluating character qualifications).

[127] Cox Communications criticizes Verizon for positions taken in several state arbitrations from as long ago as 1999. *See* Cox at 8. However, the good faith positions Verizon has taken in arbitrations do not call into question its character or qualifications to hold Commission licenses. As the Commission has noted, restricting the right of parties appearing before this Commission or other agencies to make good faith arguments would chill "the open expression of views before this Commission, as well as other agencies, and may raise questions of constitutional propriety." Memorandum Opinion and Order, *Referral of Questions from Gen. Communication Inc. v. Alascom, Inc. in the United States Dist. Court for the W. Dist. of Wash.*, 4 FCC Rcd. 7447, ¶ 13 (1988).

[128] *See* Cbeyond at 15; CompTel/ALTS at 52, 54-58 (alleging that Verizon has "a history of violating the pro-competitive provisions of the Act and Commission rules").

Commission's rules. *See* Cbeyond at 12; CompTel/ALTS at 54-55. Yet the Commission unequivocally has stated that voluntarily entered consent decrees do not call into question a carrier's authority to hold Commission licenses and authorizations. *See Cingular/AT&T Wireless Order* ¶¶ 53-54. As the Commission has explained, "the act of consenting to [a consent decree] is not a wrongful act and does not imply wrongful conduct." *1986 Character Qualifications Policy Statement*, 102 FCC 2d at 1205 n.64.

CompTel/ALTS grudgingly acknowledge this Commission policy, but nonetheless contends that the Commission should consider the conduct leading up to a consent decree as reflecting on an applicant's fitness to hold a Commission license. CompTel/ALTS at 58. CompTel/ALTS also attempts to make much of the fact that Verizon agreed to make voluntary contributions to the U.S. Treasury in connection with some consent decrees. *Id.* at 54-57. However, these charges fail to give full force to the Commission's clear language that "[t]he Commission does not consider matters resolved in consent decrees adjudicated misconduct for the purposes of assessing an applicant's character qualifications."[129]

Furthermore, commenters' complaints are little more than attempts to relitigate prior proceedings. In every case that Cbeyond and CompTel/ALTS cite, including consent decrees or section 208 proceedings, *see* Cbeyond at 12-18, the Commission has investigated the infractions alleged and taken appropriate enforcement actions. In no case, however, did the Commission impose the penalty of license revocation. As the

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[129] *Cingular/AT&T Wireless Order* ¶ 53 (citing *1986 Character Qualifications Policy Statement*, 102 FCC 2d at 1205).

Commission determined in its recent *Cingular/AT&T Wireless Order*, the Commission should not use merger proceedings as an occasion to second-guess prior decisions in which it has determined that license revocation was not an appropriate penalty.[130]

Finally, CloseCall America alleges, without providing any support, that Verizon has engaged in anticompetitive behavior involving its handling of local service change orders, resale pricing, and dialing parity. *See* CloseCall at 2-5. CloseCall's allegations are entirely unsupported, however, and irrelevant to the issues in this proceeding.[131] Disputes such as these should be handled either through intercarrier negotiations or in appropriate proceedings before this Commission or state regulators where a record can be created to assess the claims at issue.

The Verizon-MCI Merger Will Not Impede the Ability of Regulators to Make Policy Decisions. A few commenters claim that the application should be denied because the merger will "diminish the diversity of voices in the telecommunications public policy

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[130] *Cingular/AT&T Wireless Order* ¶ 53. For the same reason, the Commission should reject the claim that Verizon's character should be called into question because "BOCs already provide inferior service quality special access services to non-affiliated entities, as shown by the Section 272 audits that have been conducted." Broadwing/SAVVIS at 31. In fact, the Commission has generally found few significant issues with carriers' compliance, and where compliance issues have been identified those issues have been remedied without determining that license revocations were justified. *See* Ernst & Young, *Report of Independent Accountants on Applying Agreed-Upon Procedures*, in *In re Section 272(d) Biennial Audit of SBC Communications Inc.*, EB Dkt No. 03-199, App. B at 7 (filed Dec. 18, 2003).

[131] Indeed, the Maryland state commission already has rejected CloseCall's claim that Verizon entered into "secret" interconnection agreements that it should have filed. Order No. 79638, *CloseCall America, Inc. v. Verizon Maryland Inc.*, Case No. 8927 at 13 (Md. PSC Nov. 30, 2004). And CloseCall's complaints concerning dialing parity were the result of a software issue that was resolved more than a year ago. *See* Hassett et al. Reply Decl. ¶¶ 69-70.

arena" and diminish the ability of regulators to make informed decisions.[132] This claim is both wrong on the facts and irrelevant to the merger.

As evident from the numerous comments filed in this very proceeding, the rapidly changing telecommunications marketplace will continue to be a forum for open, vibrant policy dispute following the Verizon-MCI merger. Even absent MCI (and AT&T), numerous CLECs and their trade associations will remain, each of which can express their positions to regulators. Further, the "CLEC v. ILEC" model is quickly becoming outdated. As intermodal competition continues to grow, the regulatory debate increasingly will shift to issues affecting a much more diverse set of players, including well-financed cable companies, wireless carriers, VoIP providers, IP-enabled service providers, systems integrators, and numerous others, all of which are fully capable of protecting their interests. Further, the assumption of a monolithic "ILEC position" is itself dying as the ILECs pursue different business strategies and provide new services. Indeed, both mergers themselves will accelerate this process as each combined company will have to develop positions that account for their increased national and international presence. All of these changes inevitably will alter old alliances, infuse new ideas into

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[132] *See* Global Crossing at 22-23. *See also* U.S. Cellular at 2-3 ("[W]hen AT&T and MCI disappear as independent companies, their absence in regulatory proceedings and industry negotiations will substantially strengthen the advocacy and negotiating position of the RBOCs and other national carriers in such matters, and significantly weaken the advocacy and negotiating position of the smaller carriers that have business interests which conflict with the business interests of the RBOC and other national carriers."); New Jersey Ratepayer Advocate at 2 ("MCI's metamorphosis from a competitor to an incumbent would silence an important voice."); Cox Communications at 11 ("The independent existences of AT&T and MCI have been vital to the regulatory framework of checks and balances established since the break-up of Ma Bell.").

existing regulatory debates, and create entirely new policy issues in which the "CLEC v. ILEC" division will be beside the point.

Finally, the Commission should likewise reject Global Crossing's suggestion that the Commission should use this merger review as an opportunity to "reinvigorate" its section 208 accelerated docket process by adopting "baseball arbitration" rules. Global Crossing at 22-23. This suggestion should be dismissed out of hand: it clearly is not merger-related but instead should be considered, if at all, in an industry-wide proceeding.[133] Nothing about the merger will change the existing section 208 complaint process, which already includes an accelerated docket procedure, or prevent any carrier from utilizing it. Nor will it alter what Global Crossing terms a "Hobson's choice" between incurring the costs of litigation or obtaining resolution of a dispute – a choice any prospective complainant must make. As for Global Crossing's assertion that "baseball arbitration" rules would be more efficient, that too is both unrelated to the merger and an unsupported assertion. Indeed, Verizon's own experience with baseball arbitration rules during the Virginia interconnection arbitration belies Global Crossing's assumption that such rules necessarily lead to streamlined adjudications.

Payphones. The American Public Communications Council asks the Commission to deny the applications because the combined entity will supposedly have less incentive to comply with its obligations under the Commission's payphone compensation rules. In the alternative, APCC asks that the Commission impose additional reporting and compliance requirements on the combined entity, or even require

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[133] *See Cingular/AT&T Wireless Order* ¶ 183.

divestiture of payphone assets, to prevent cheating. APCC's requests should be denied in their entirety.

The Commission's payphone compensation rules are clear, and they are enforceable. Competing carriers – usually the last IXC to deliver a dial-around call to the terminating LEC – must compensate payphone service providers ("PSPs") for all payphone-originated calls for which the PSP is not otherwise compensated. 47 C.F.R. §§ 64.1300 *et seq.* The Commission recently adopted more stringent reporting requirements to ensure that PSPs are able to identify the carrier responsible for compensation on particular payphone-originated calls.[134] APCC has no evidence that the current rules are inadequate to ensure that PSPs are fairly compensated for the calls originated from their payphones. Furthermore, APCC has no basis for suggesting that a combined Verizon/MCI will fail to comply with its obligation to pay per-call compensation. Both companies – Verizon and MCI – are already significant payors of per-call compensation, and APCC does not claim that either company has failed to live up to its obligations. The fact that APCC has no complaints about Verizon's compliance with its per-call compensation obligations is particularly significant, because Verizon already faces precisely the same supposed incentives.

Because the Commission's payphone compensation rules already contain adequate enforcement mechanisms, and because any problems that may arise with those

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[134] *See* Report and Order, *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd 19975 (2003); Order on Reconsideration, *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 19 FCC Rcd 21457 (2004).

rules can be addressed in the payphone docket, there is no basis for addressing the issue in this proceeding.

Puerto Rico Telephone Company. One commenter, WorldNet Telecommunications, raises a hodgepodge of concerns relating to Puerto Rico Telephone Company ("PRTC"). Only one of those concerns is even merger-related: the assertion that any merger conditions imposed on Verizon and MCI apply equally to PRTC. WorldNet at 2. Of course, as explained above, no merger conditions are warranted at all. Nor should any conditions be imposed on PRTC, 60 percent of which is owned by parties other than Verizon.[135] Indeed, although WorldNet asserts that the failure to apply the Bell Atlantic/GTE merger conditions to PRTC was a mere "oversight," WorldNet at 2, PRTC's omission was a conscious decision based on that same consideration, which the merging parties specifically discussed with the Commission.

WorldNet's remaining concerns are unrelated to the merger and are already the subject of ongoing unrelated proceedings. Thus, as discussed above, they are not proper subjects for this merger review. WorldNet first asserts that the Commission should

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[135] *Puerto Rico Telephone Authority, Transferor, and GTE Holdings (Puerto Rico) LLC, Transferee, for Consent to Transfer Control of Licenses and Authorizations Held by Puerto Rico Telephone Company and Celulares Telefonica, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 3122, 6 (1999); *see also COSA History Page, at Telecommunications of Puerto Rico, Inc.*, <http://www.fcc.gov/wcb/armis/carrier_filing_history/COSA_History/prtc.htm> (last visited May 16, 2005) (noting that GTE "acquired a controlling interest in Puerto Rico Telephone Company (approximately 40 percent). The Government of Puerto Rico, Popular, Inc., and PRTC employees, through an employee stock ownership plan and trust, own the remaining interest in PRTC."); *see also id.* (reporting that "Verizon Communications (formerly GTE Corporation) does not include Telecommunications of Puerto Rico, Inc. in the holding company ARMIS reports").

impose a condition restricting PRTC's ability to enter into contract tariffs for *intrastate* services with large enterprise customers. WorldNet at 5-7. But this claim is irrelevant to the merger and involves services outside the Commission's jurisdiction. Indeed, the Puerto Rico Board is currently considering a complaint filed by WorldNet on this very issue, *WorldNet Telecommunications, Inc.'s Request for Suspension and Investigation of Tariff Pursuant to Art. III-7(c) of Act 213*, JRT-2003-Q-0143 (filed Aug. 15, 2003), and there is no basis to use this merger review to interfere with that proceeding. Similarly, WorldNet's request that PRTC should be required to make non-telecom services available for resale (WorldNet at 8-9) is not merger-specific, but an issue of general applicability that the Commission already resolved when it concluded that such services are not subject to resale under Section 251.[136] Furthermore, this issue is also the subject of adjudicatory proceedings involving WorldNet that are currently pending before a federal district court. *WorldNet Telecommunications, Inc. v. Telecommunications Regulatory Board of Puerto Rico et al.*, Nos. 04-2051 & 04-2073 (D.P.R.) (consolidated cases).

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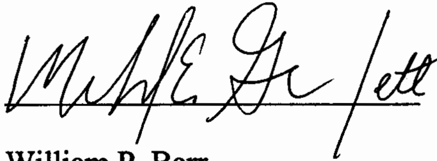
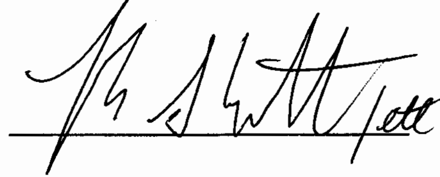
[136] *Petition of WorldNet Telecomms., Inc. for Arbitration Pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act*, Second Order on Reconsideration, Docket No. JRT-2003-AR-0001 (released Jan. 11, 2005).

VII. CONCLUSION

For the foregoing reasons, the Commission should reject the petitions to deny and grant the application to transfer control of the licenses and authorizations at issue.





William P. Barr
Michael E. Glover
Edward Shakin
Karen Zacharia
Sherry Ingram
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
1615 M Street, N.W.
Washington, D.C., 20036
(202) 326-7900

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Anastasia Kelly
Carol Ann Petren
Richard S. Whitt
Curtis L. Groves
Alan Buzacott
MCI, Inc.
22001 Loudoun County Parkway
Ashburn, Va. 20147
(202) 887-3845

Jenner & Block
601 Thirteenth Street, N.W.
Washington, D.C. 20005
202-639-6000