

Before the  
**Federal Communications Commission**  
Washington, DC

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

**REPLY COMMENTS OF COX COMMUNICATIONS, INC.**

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.<sup>1</sup> Cox files these brief reply comments to highlight the issues of greatest competitive concern to facilities-based competitors like Cox. First, it is plain from review of the other parties’ filings that the concerns described in Cox’s initial comments are significant and must be addressed, particularly in light of the level of consolidation that will result if the Commission approves both this merger application and the SBC/AT&T transaction. Second, the Commission should ensure that any conditions or other remedies it adopts specifically address the concerns of facilities-based providers described by Cox because many of the remedies proposed by other parties would be inadequate to do so.

Initially, it is evident that many of the other commenters recognized the concerns that Cox addressed in its comments. For instance, several parties demonstrated that the merged Verizon/MCI will have significantly enhanced ability and incentive to interfere with the development of local competition.<sup>2</sup> In particular, NASUCA and others noted that MCI has been a significant force in

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<sup>1</sup> See *Public Notice*, “Commission Seeks Comment on Applications for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc.,” DA 05-762 (released Mar. 24, 2005).

<sup>2</sup> See, e.g., Comments of the Independent Alliance (“Independent Alliance Comments”) at 5 (“Whereas in the past some degree of Verizon’s market power may have been neutralized by MCI’s market strength, and Verizon may have wielded similar power when negotiating with MCI, the combination of those companies would eliminate, to the detriment of smaller carriers, any check or balance to their respective power in their markets.”).

residential competition and, as an independent company, retains the potential to continue to play that role well into the future.<sup>3</sup> The loss of MCI as a competitor therefore will harm residential retail customers directly by removing competition and choice. The merger also will stifle the development of the remaining competitive carriers by removing one of the strongest voices in interconnection negotiations and arbitrations, thereby reducing the likelihood that reasonable terms for wholesale services like interconnection will be available to competitive LECs.<sup>4</sup> In this context, the importance of considering concurrently both the instant merger and the SBC/AT&T merger is manifest. This consideration was recognized even by Qwest, an incumbent LEC:

MCI (along with AT&T) acts as a key bellwether in negotiating and arbitrating interconnection agreements with Verizon. MCI's and AT&T's agreements provide benchmarks for interconnection terms. Even with the elimination of "pick and choose," their agreements provide vehicles by which smaller competitors can opt into new agreements of their own without lengthy and expensive processes. Post-merger MCI no longer will play that vital role.<sup>5</sup>

Indeed, the destructive effects of losing both AT&T and MCI on both Section 252 negotiations and regulatory processes at both the state and federal level cannot be overstated.

Other commenters also recognized that the merger would diminish competition in the Internet backbone transmission marketplace.<sup>6</sup> For instance, ACN noted that Verizon will have less

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<sup>3</sup> See Comments of the National Association of State Utility Consumer Advocates at 11-12; Comments of Qwest at 21; Comments of ACN, *et al.* at 23-24 ("ACN Comments").

<sup>4</sup> Comments of Cox ("Cox Comments") at 12-13; Qwest Comments at 18; Comments of United States Cellular Corporation at 1-2 ("US Cellular Comments"); Comments of Global Crossing at iii; Comments of CompTel/ALTS at 32; Comments on Behalf of the New Jersey Division of the Ratepayer Advocate at 11-12.

<sup>5</sup> Qwest Comments at 18. See also US Cellular Comments at 1-2 ("when 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").

<sup>6</sup> Comments of Vonage Holdings, Corp. at 6-7; Comments of Eliot Spitzer, Attorney General of the State of New York at 13-16; Petition to Deny of the Consumer Federation of America, *et al.* at 23-35.

incentive to peer with other non-Tier 1 providers following the merger – and greater ability and incentive to abuse the IP-interconnection process to squelch competition – because it will have gained access to Tier 1 peering.<sup>7</sup> As Cox explained, this change is particularly significant (and potentially costly) to non-Tier 1 competitors because today they can peer with Verizon, while after the merger it is likely they will be unable to do so.<sup>8</sup> The comments demonstrate that the Commission must analyze and address these issues and it must do so in the context of the similar and cumulative effects on the Internet backbone market that will be produced by both the Verizon/MCI and the SBC/AT&T mergers.

While the comments confirm the importance of the issues raised by Cox, most of the other commenters are not facilities-based competitors. As a consequence, their proposed remedies often do not address the needs of Cox and other facilities-based providers because they do not generally focus on the fundamental requirements for facilities-based competition, notably economically efficient interconnection and traffic exchange.<sup>9</sup> If the merger is approved without appropriate interconnection conditions, it likely will become significantly more difficult for facilities-based providers to compete with Verizon. Accordingly, the consideration of conditions on the Verizon/MCI merger that would protect competitive LECs' interconnection and access rights should be a priority. ACS's suggestion that all agreements between Verizon, MCI, SBC, and AT&T should be available on an opt-in and pick-and-choose basis is a reasonable place to begin that consideration.<sup>10</sup>

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<sup>7</sup> *Id.* at 54-55; *see also* Independent Alliance Comments at 6-8.

<sup>8</sup> Cox Comments at 14.

<sup>9</sup> *Id.* at 13.

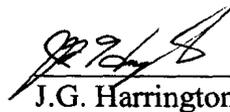
<sup>10</sup> ACN Comments at 52-53.

Furthermore, most of the other commenters do not suggest remedies that would address the potential damage to competition in Internet traffic exchange and transport. Proposals for separate subsidiaries or build-out requirements will not prevent Verizon from imposing supra-competitive transit rates on unaffiliated IP service providers. Rather, any remedy must focus on these potential harms, such as the Cox proposal for a continuation of settlement-free Internet peering during a reasonable transition period.<sup>11</sup>

For all these reasons and the reasons described in Cox's comments in this proceeding, the proposed merger should be found to harm the public interest unless the Commission adopts the conditions described herein.

Respectfully submitted,

COX COMMUNICATIONS, INC.



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<sup>11</sup> Cox Comments at 15, 16. ACN's suggestion that the merged entity continue to offer peering to Verizon's current customers that have established a certain number of peering points, ACN Comments at 55, is generally consistent with Cox's proposal. Cox Comments at 14.

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## CERTIFICATE OF SERVICE

I, Cynthia M. Forrester, a legal secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 24th day of May, 2005, copies of the foregoing Reply Comments of Cox Communications, Inc. were served via hand delivery and electronic mail or first-class mail postage prepaid (denoted by \*), upon the following:

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