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

In the Matter of	)	
	)	WC Docket No. 05-75
Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer Of Control	)	DA 05-762

RESPONSE OF T-MOBILE USA, INC.

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SUMMARY

The Commission should not approve the proposed Verizon-MCI merger without imposing certain targeted remedial conditions. Especially in conjunction with the proposed SBC-AT&T merger, a Verizon-MCI merger has the potential to harm U.S. telecommunications competition and the consumers who benefit from that competition. In performing its public interest analysis of this merger, the Commission should analyze it in the context of the larger consolidation trend ongoing in U.S. telecommunications.

The Verizon-MCI merger at issue in this proceeding and the pending SBC-AT&T merger, if approved as filed, would result in the two largest incumbent local exchange carriers in the United States owning the two largest interexchange carriers and controlling the two largest wireless carriers. This will result in the highest degree of telecommunications consolidation in this country since an antitrust court broke up the Bell System more than twenty years ago.

T-Mobile, as one of only a few independent nationwide wireless providers, is especially concerned about this merger because T-Mobile is both a customer and competitor of Verizon. T-Mobile relies substantially on Verizon, the dominant provider of wireline telecommunications in twenty-nine states plus the District of Columbia, for telecommunications services that are critical inputs to T-Mobile's downstream wireless offerings. T-Mobile competes on an intramodal basis against Verizon Wireless, the second-largest U.S. wireless provider, and T-Mobile is beginning to compete on an intermodal basis against Verizon's wireline dial-tone offerings. If the Commission does not impose remedial conditions on this merger, the post-merger Verizon will have increased incentives and ability to discriminate against T-Mobile and similarly situated competitors. Verizon will be able to raise the costs and lower the quality of the services it provides its rivals, potentially harming competition and consumers.

In Verizon's service area, Verizon is T-Mobile's primary source for special access services that are critical to the operation of T-Mobile's network. Few alternatives to Verizon exist in its service area for several types of high-capacity links that connect T-Mobile's facilities, especially base station-to-central office links and interoffice transport links. In most areas where T-Mobile operates, the Commission currently imposes little effective oversight over Verizon's special access services that furnish these links.

The Commission should not approve the Verizon-MCI merger without either rigorously regulating the rates for these special access services or treating them as UNEs when provided to carriers such as T-Mobile that are attempting to compete with Verizon and its affiliates. To avoid the potential for discriminatory provisioning of these services, the Commission should require strict performance measures and enforcement mechanisms for Verizon's special access services. Because the merger could have immediate anticompetitive effects, the Commission should not defer adoption of these conditions to the conclusion of other, more general proceedings that touch on these basic competition concerns.

The Commission also should impose nondiscrimination safeguards on Verizon's wholesale long distance offerings as a condition to approving the Verizon-MCI merger. A Verizon-MCI merger will eliminate MCI as an independent long distance provider. This merger, considered with the proposed SBC-AT&T merger, will eliminate the *two* largest, nationwide independent providers of wholesale long distance services. MCI has competed to provide wholesale long distance services to T-Mobile. MCI is a major competitor because of its nationwide network and because it is not affiliated with any of T-Mobile's wireless competitors. Post-merger, T-Mobile's options for obtaining wholesale long distance service from nationwide, independent suppliers will narrow drastically. Without competitive safeguards in place, the post-

merger Verizon-MCI will have the incentive and ability to discriminate against T-Mobile as a consequence of MCI's integration into Verizon, a competitor of T-Mobile.

The merger of Verizon and MCI will further restrict the introduction of new technologies and services in the U.S. telecommunications marketplace. In particular, potential customers of future advanced services require cost-based broadband pipes, such as stand-alone or "naked" DSL offerings, that do not include additional charges for bundled voice services. The increased concentration of the wireline industry as a result of the various proposed mergers requires the Commission to enable competition in this sector as broadly as possible. The Commission should therefore act to promote development of intermodal competition to the services offered by the wireline companies. As a condition of approval of the merger, Verizon should be required to make naked DSL offerings available to all customers on a cost-based, nondiscriminatory basis.

Without these important remedial conditions, the proposed Verizon-MCI merger would harm the public interest. The conditions described herein are the bare minimum necessary to protect existing and emerging competition to Verizon's wireless and wireline businesses. T-Mobile notes that Qwest has urged the Commission not to approve the Verizon-MCI merger without requiring the combined company to divest itself of overlapping assets and operations. T-Mobile supports such a divestiture in principle, but the separate conditions on the merger described herein are needed even if divestiture is ordered. These conditions are narrowly tailored, not burdensome in content or scope, and can be implemented without great cost to either the merging parties or the Commission. Accordingly, the Commission should not approve the proposed Verizon-MCI merger without the remedial conditions described above.

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RESPONSE OF T-MOBILE USA, INC.

I. INTRODUCTION.

T-Mobile USA, Inc. ("T-Mobile")[1] agrees with the commenters opposing the applications for approval of transfer of control of MCI, Inc. and its subsidiaries ("MCI") to Verizon Communications Inc. ("Verizon") (collectively, the "Applicants"). As the record shows, the Verizon-MCI transaction, if approved without remedial conditions, would harm both competition and consumers. Moreover, this transaction is part of a larger consolidation trend in the telecommunications industry that demands ongoing vigilance and oversight on the part of the Commission. The proposed Verizon-MCI merger and the pending SBC-AT&T merger, if permitted to proceed, would result in the two largest incumbent local exchange carriers ("ILECs") in the United States owning the two largest interexchange carriers ("IXCs") and controlling the two largest wireless

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[1] As a national wireless provider, T-Mobile owns licenses covering 253 million people in 46 of the top 50 U.S. markets. T-Mobile currently serves more than 18 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 5,000 convenient public locations, such as Starbucks coffee houses, Hyatt hotels, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world. All filings submitted in this proceeding on May 9, 2005, will hereinafter be short cited.

carriers.[2] Not since an antitrust court broke up the Bell System more than twenty years ago has such telecommunications consolidation been seen in the United States. To protect the consumer benefits that competition brings, especially in terms of increased choice, lower prices, and innovation, the Commission must maintain strict oversight of such far-ranging consolidation.

T-Mobile is one of the few remaining independent national wireless carriers, with a rapidly growing base of mass market and business customers throughout the United States. As such T-Mobile is a customer of Verizon for business and wholesale telecommunications services, and it is a retail competitor of Verizon and its affiliates. Verizon is already the largest telecommunications company in the United States, with a service area encompassing 29 states and the District of Columbia. As Verizon explains on its web page:

> Verizon continues to have the industry's largest national presence - the most customers and most revenues - in both the wireline and wireless markets. Verizon is also the largest directory publisher in the world, as measured by directory titles and circulation, and the company is one of the largest long-distance carriers in the United States.
>
> As of year-end 2003, Verizon's network included more than 55 million wireline access lines in 29 states. Over 1.5 billion phone calls and trillions of bits of data are carried over this nationwide network on an average business day….Verizon's wireline network also includes approximately 9.3 million miles of local, inter-city and long-distance fiber-optic systems -- more than any U.S. local or long-distance company and more than enough to circle the Earth 390 times.[3]

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[2] Verizon owns 55% of Verizon Wireless, currently the second-largest wireless provider, and SBC owns 60% of Cingular, the largest U.S. wireless provider.

[3] *See* http://investor.vzmultimedia.com/profile/history/history_002.aspx (accessed May 23, 2005). Verizon also provides local service in the District of Columbia.

Throughout Verizon's service area, T-Mobile depends on Verizon for special access services that are critical inputs to T-Mobile's competitive wireless offerings. In particular, Verizon provides the links that T-Mobile needs to connect its cellular base stations and Verizon's central offices. Verizon is also T-Mobile's primary provider of special access circuits for the interoffice transport links that T-Mobile requires for backhaul.[4]

T-Mobile also purchases wholesale long distance services to use in its offerings of all-distance wireless service plans and it has relied on today's competitive marketplace for these important inputs. Moreover, T-Mobile is exploring the possibility of offering certain types of Internet Protocol-based ("IP-based") advanced services. For these services to be cost-effective, potential customers need cost-based broadband pipes, such as stand-alone or "naked" DSL offerings,[5] that are available on a nondiscriminatory basis and do not include additional charges for bundled voice services.

T-Mobile is concerned about this merger because T-Mobile is not only a large customer but a competitor of Verizon's. T-Mobile competes vigorously in the mobile wireless marketplace, where one of T-Mobile's competitors is Verizon Wireless, majority-owned by Verizon and the nation's second largest wireless carrier.
T-Mobile also is poised to become an important competitor in the emerging "intermodal" marketplace for the local exchange services for which Verizon is the dominant provider throughout its region. T-Mobile is highly motivated to provide high-quality wireless service to the American public that allows consumers the option to "cut the cord" and

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[4] Attachment A is a schematic diagram of T-Mobile's network, showing these links.

[5] ILECs generally offer dial-tone voice service tied to DSL. In contrast, a "naked" DSL offering from an ILEC does not include the dial-tone voice service.

rely on T-Mobile, rather than Verizon and other dominant wireline dial-tone providers, for their communications needs.[6] But T-Mobile's ability to become an effective force in fostering such nascent intermodal competition depends on its ability to obtain critical services and facilities from ILECs such as Verizon on nondiscriminatory terms and reasonable cost-based prices.

As the Verizon-MCI merger and other pending mergers threaten to radically increase the degree of concentration in the U.S. telecommunications industry, the Commission must continue to promote intermodal competition, and indeed all forms of competition, to benefit consumers. The Commission recently found that while such intermodal competition is beginning to emerge, wireless is not yet an effective competitor to wireline local telephone service.[7] The Competitive Enterprise Institute ("CEI") disagrees and argues that its own analysis shows that the two services are now direct competitors, stating that "if a local phone company raised its rates by just one percent, wireless demand would increase by two percent."[8] Regardless of which analysis correctly describes the present state of intermodal competition, the facts are that (a) T-Mobile and other wireless providers rely on ILECs for inputs to their wireless offerings, and (b) these ILECs have strong incentives to raise the price and degrade the quality of those inputs in order to protect their wireline dial tone offerings from wireless

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[6] In September 2004, the Commission staff cited estimates that 5 to 6 percent of all households have wireless phones only. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, 20683 n.575 (2004). *See also id.* at 20684 ¶ 213 ("Evidence continues to mount, however, that consumers are substituting wireless service for traditional wireline communications.").

[7] *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer of Control*, 19 FCC Rcd 21522, 21611-19 ¶¶ 237-250 (2004).

competition. The Commission should take aggressive steps in the present merger proceedings to control such anticompetitive activity. Specifically, as a condition to approving the mergers, the Commission should require Verizon and SBC to price these input services efficiently and offer them on a nondiscriminatory basis. Only in this way will intermodal competition truly become a reality, to the great benefit of American consumers.

As the petitions and comments show, the proposed Verizon-MCI merger risks harm to competitor/customers like T-Mobile - and to consumers - by increasing Verizon's ability to discriminate in the provision of special access services and wholesale long distance service, and by limiting the potential availability of cost-based broadband service, particularly naked DSL.

Verizon and MCI therefore have not borne their burden of demonstrating that approval of the transaction as proposed would be in the public interest.[9] If approved without conditions, the proposed Verizon-MCI merger would exacerbate the harms to consumers that result today from anticompetitive special access pricing and provisioning (including maintenance, restoration, and repair) and the unavailability of naked DSL. The Commission should only approve the proposed Verizon-MCI merger subject to targeted conditions that: (i) ensure Verizon provides special access services and facilities at reasonable, cost-based rates; (ii) impose performance standards on Verizon's special access provisioning, maintenance, restoration, and repair; (iii) impose nondiscrimination requirements on the post-merger Verizon-MCI's provision of wholesale long distance;

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[8] *See* CEI Reply Comments at 3.

[9] *See* section 214 of the Communications Act of 1934, as amended (the "Act"); *NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee*, 12 FCC Rcd 19985, 20007 ¶ 36 (1997).

and (iv) ensure that Verizon makes naked DSL available to consumers without discrimination and at cost-based rates.

Without these conditions, the proposed Verizon-MCI merger would harm the public interest. Because the merger could have immediate anticompetitive effects, the Commission should not defer adoption of these conditions to the conclusion of other, more general Commission proceedings, such as pending rulemakings, which touch on these basic competition concerns. The conditions described in this response are the bare minimum necessary to protect existing and emerging competition to Verizon's wireless and wireline businesses. In principle, T-Mobile supports divestiture of the combined Verizon-MCI's overlapping assets and operations, but the separate conditions on the merger described herein are needed even if divestiture is ordered. These conditions are narrowly tailored and not burdensome in content or scope. They can be implemented without great cost to either the merging parties or the Commission. The Commission should not approve the proposed Verizon-MCI merger without the remedial conditions described in this response.

II. THE RECORD DEMONSTRATES THAT THE COMMISSION MUST ANALYZE HOLISTICALLY THE EFFECTS OF THE MAJOR PENDING WIRELINE MERGERS.

T-Mobile agrees with numerous petitioners and commenters that, in considering the public interest aspects of the proposed Verizon-MCI merger, the Commission must evaluate this transaction as an integral part of a larger transformation of the U.S. telecommunications industry evidenced by the recent wave of proposed and consummated mergers in this sector.[10]

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[10] *See, e.g.,* Qwest Petition to Deny at 2-5 ("Qwest Petition"); Global Crossing Comments at 1-3; Earthlink Petition at 3-10.

The proposed wireline mergers between Verizon and MCI as well as SBC and AT&T would result in tremendous overall re-consolidation in the U.S. telecommunications industry. As the record indicates, if these mergers are approved as filed, Verizon and SBC would control about 80% of the U.S. wireline business market, more than 50% of all wireless subscribers nationwide, and more than 63% of all ILEC lines.[11]

After promoting competition tirelessly for decades, the Commission should not pause before the finish line and let these mergers proceed as filed. If approved, the mergers would permit Verizon and SBC to absorb the two largest IXCs, which provide competitive discipline for a wide variety of wireline services.

As the record shows, these mergers would increase incentives for Verizon and SBC to "mutually forbear" from competing aggressively against each other for a variety of wireline services, including services purchased by business customers.[12] This is consistent with the past behavior of Verizon and SBC, which, as the record shows, have avoided competing with each other in the provision of wireline services.[13] The potential for an increase in such behavior particularly troubles T-Mobile as a customer of Verizon and SBC business services. Moreover, the record shows that there is a significant risk that Verizon and SBC may act in concert to dominate the Internet backbone and its

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11 *See* Qwest Petition at 2.

12 *See* Qwest Petition at 30-37; Broadwing/Savvis Opposition at 18-19.

13 *See id*.

associated peering arrangements, a matter of vital concern to the future growth and productivity of the telecommunications sector.[14]

At the same time, the wireless industry also is undergoing consolidation, as evidenced by the recent merger of AT&T Wireless into Cingular[15] and the pending Sprint-Nextel merger (where, in contrast to the wireline mergers, Sprint has announced its intention to spin off its local wireline telecommunications business following the merger).[16]

As one of the few independent national providers of wireless voice, data, and broadband services, and as a customer of various wireline services, T-Mobile is concerned about the cumulative effects of the wireline mergers on telecommunications competition. As demonstrated with specificity below, the wireline mergers now before the Commission will, if approved as filed, increase the potential for Verizon and SBC to harm their competitors, like T-Mobile, that rely on these companies for the inputs needed to compete with them on a retail basis.

The analysis necessary to determine the potential public interest impact of the Verizon-MCI merger requires detailed information about the Applicants' existing services, facilities, product markets, geographic markets and other data that, many parties

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14 *See* Broadwing/Savvis Opposition at 37-55; Vonage Comments at 6-8; *see also* BT Americas Inc. Presentation at 3 (attached to Letter from Kristen Verderame, BT, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-75 (May 6, 2005)) (arguing that, if the Verizon-MCI and Verizon-MCI mergers are permitted, the combined companies would have market power over Internet backbone services and global telecommunications services).

15 *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer of Control*, 19 FCC Rcd 21522 (2004).

16 *See* Merger Announcement, *Sprint And Nextel To Combine In Merger Of Equals* (Dec. 15, 2004), *available at* http://sprintnextel.mergerannouncement.com/?refurl=uhp_globalnav_merger.

agree, was missing from the initial application. The Commission staff, to its credit, recently issued an extensive data request to Verizon and MCI, with responses due on May 26, 2005.[17] T-Mobile supports stopping the 180-day merger clock for an additional round of comments on the Applicants' responses to the data request and to provide the Commission staff with adequate time to analyze the responses and comments. T-Mobile urges the Commission to review the public interest implications of this additional information in the context of the larger changes underway in the industry.

III. THE RECORD SHOWS THAT THE VERIZON-MCI MERGER HAS THE POTENTIAL TO HARM CUSTOMERS OF THE MERGING PARTIES, INCLUDING T-MOBILE.

A. The Wireline Mergers Will Further Limit Competitive Provision Of Services That T-Mobile Purchases To Compete Against ILEC-Affiliated Wireless Providers.

1. The Wireline Mergers Will Exacerbate The Existing Limited Competition In The Provision of Special Access.

In Verizon's service area, Verizon is T-Mobile's primary source for special access services that are essential to the operation of T-Mobile's network.[18] Because few competitive alternatives exist, T-Mobile relies on Verizon's special access offerings within Verizon's service area to provide several types of high-capacity links to connect T-Mobile's facilities and create an integrated wireless network. T-Mobile's experience is similar to that of Global Crossing, which notes that:

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[17] *See* Letter from Thomas Navin, Acting Chief, Wireline Competition Bureau, FCC to Michael Glover, Verizon, and Richard Whitt, MCI, WC Docket No. 05-75 (May 5, 2005).

[18] As a general matter, for special access services in an ILEC's service area, T-Mobile relies on services provided by that ILEC, with very limited competitive alternatives available.

> Verizon is, by far, the largest provider of special access services in its BOC service territories. Typical of BOCs, Verizon's ILEC subsidiaries serve as the only connection to a customer throughout the majority of their respective service areas. In many geographic areas, Verizon serves as one of only one or two providers of special access services essential to reach a particular end-user.[19]

Broadwing/Savvis notes that, based on responses it received to a recent request for proposal, no carriers other than the ILECs, AT&T or MCI could serve more than a tiny percent (usually one or two percent) of its special access needs:

> As a practical matter, MCI and AT&T are the primary alternatives to the BOCs when it comes to provisioning special access nationwide. Self-provisioning is not an option. Moreover, in many cases smaller competitive carriers are not a viable option because, as the Commission itself has expressly acknowledged, the large sunk costs and economies of scale associated with the deployment of loop facilities, together with other operational barriers, prevent competitive carriers from offering special access in competition with the BOCs in many markets and on many routes.[20]

This experience confirmed for Broadwing/Savvis that AT&T and MCI are the primary competitors to the BOCs in the special access market.[21] Thus, it would appear that in many markets approval of the merger would result in a "merger to monopoly."[22]

Approval of the merger without conditions will also eliminate any pricing discipline that MCI imposes on Verizon as a reseller of Verizon's special access services. Broadwing/Savvis estimate that as much as 75% of the special access circuits that MCI and AT&T now sell to third parties are resold ILEC circuits that these carriers are able to purchase from ILECs at substantial volume discounts.[23] These resold circuits, which a

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[19] *See* Global Crossing Comments at 13.

[20] *See* Broadwing/Savvis Opposition at 20.

[21] *See id*. at 25.

[22] *See* Global Crossing Comments at 16.

[23] *See* Broadwing/Savvis Opposition at 22.

reseller often combines with circuits in its own network, are known as "Type 2" circuits, as opposed to "Type 1" circuits that a carrier provides entirely using its own facilities. The record indicates that MCI, the nation's second largest IXC and competitive local exchange carrier ("CLEC") after AT&T, has deployed the most alternative local facilities across the country, including in Verizon's territory.[24] As such, MCI plays a key role as a reseller of local access services, as well as being a facilities-based competitor of the ILECs. MCI, like AT&T, is able to combine its own broadly deployed fiber facilities with these leased facilities "to offer comprehensive local transmission solutions to wholesale customers,"[25] providing at least some competitive pressure on Verizon and other ILECs.[26] Thus, as Qwest explains: "Few if any carriers besides MCI and AT&T can purchase access in sufficient volumes to allow them to obtain significant discounts. Verizon is eliminating one of those special access resellers here."[27]

If the Commission permits Verizon to absorb MCI, that competitive discipline will vanish, and the situation will worsen if SBC is permitted to absorb AT&T. Data provided by Cbeyond indicates that removing MCI from the market for special access services would cause a 71-80 percent decline in the number of commercial buildings served by a competitor in New York and other metro areas in Verizon's service

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[24] *See* Qwest Petition at 16; Cbeyond Petition at 21 ("MCI is the most active CLEC bidder in the Verizon regions and appears to have constructed loop facilities to more buildings than any other non-ILEC").

[25] Cbeyond Petition at 23-24.

[26] *See* Broadwing/Savvis Opposition at 23.

[27] Qwest Petition at 18.

territory.[28] Because a post-merger Verizon will have no incentive to compete with itself in its service area and will face no threat from MCI building special access capacity or providing discounted circuits on a resale basis, any pricing discipline that MCI now imposes as a reseller will disappear, [29] resulting over time in higher special access prices to unaffiliated special access customers in Verizon's service area, such as T-Mobile.[30]

One type of special access service of particular concern to T-Mobile is the "last-mile" link between a T-Mobile base station or cell site and the ILEC central office serving that location.[31] In Verizon's territory, T-Mobile typically purchases these links as DS1 channel terminations from Verizon's special access tariffs. These links - which essentially are wireline loops - are critical to T-Mobile's competitive operations against Verizon's wireless affiliate, Verizon Wireless, and other wireless providers. The prices that T-Mobile must pay for these links are a substantial portion of its overall costs and affect the prices it must charge for its retail services.

T-Mobile currently purchases the vast majority of these base station-to-central office links from ILECs – that is, in Verizon's service territory, T-Mobile purchases the links from Verizon. However, as Cbeyond notes, AT&T and MCI also provide these links in some markets, either as Type 1 or Type 2 circuits, and are the most likely non-

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[28] Cbeyond at 27-28; *see e.g.* Broadwing/Savvis Opposition at 22-24.

[29] *See* Global Crossing Comments at 14.

[30] Cbeyond estimates that the rates for some special access services could increase by as much as 100%. *See* Cbeyond Petition at 29. These increases would, presumably, be in addition to the substantial increases in the BOC's special access prices that have occurred since the Commission granted "Phase II" pricing flexibility. *See* Broadwing/Savvis Opposition at 29.

[31] This link is shown on the far right side of the diagram in Attachment A and identified by "CT."

ILEC suppliers to expand in this area.[32] In the Verizon service area, a Verizon-MCI merger likely will eliminate any pricing discipline that MCI exerts.

Another type of special access link critical to T-Mobile's network is the interoffice transport connecting the ILECs' central offices.[33] T-Mobile typically purchases these links, which knit T-Mobile's network together, from ILECs as special access channel mileage services. Although competitors have deployed interoffice facilities connecting ILEC central offices on some routes, for the most part these facilities are provided by ILECs.[34]

To the extent that competition exists for interoffice transport, the record indicates that AT&T and MCI provide much of it.[35] Even where these companies are not currently providing competitive alternatives to ILEC services, their potential to expand discourages some types of anticompetitive behavior by Verizon and other ILECs. That is, if the ILECs increase the prices they charge competitors for these circuits above the costs of these links, AT&T and MCI will find it economic to provide competing facilities. A Verizon-MCI merger, however, will eliminate MCI as a competitor, existing and potential, in Verizon's service area.

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32 *See* Cbeyond Petition at 23-24.

33 These links are those shown on Attachment A, connecting the "CO" to the "SWC" and identified by "IOT."

34 Even where competitors have deployed interoffice facilities, the petitions and comments describe how Verizon is able, because of its region-wide coverage, to force customers into exclusive agreements for region-wide special access services, even if competitors offer less expensive rates for specific individual routes. The record also indicates that Verizon will refuse to sell circuits on non-competitive routes unless the customer also agrees to purchase circuits on the competitive routes. *See* Broadwing/Savvis Opposition at 24-25; Global Crossing Comments at 14-15.

35 *See* Cbeyond Petition at 22-23.

In most areas where T-Mobile operates, the Commission currently exercises little effective oversight over Verizon's special access services that furnish the base station-to-central office and the interoffice transport links. The Commission should not approve the Verizon-MCI merger without either rigorously regulating the rates for these special access services or treating them as UNEs when provided to carriers, such as T-Mobile, that are attempting to compete with Verizon and its affiliates.[36] To avoid the potential for discriminatory provisioning, maintenance, and repair of these services, the Commission should impose as a merger condition strict performance measures and enforcement mechanisms for Verizon's special access services, as proposed by ACN.[37]

2. The Wireline Mergers Will Eliminate The Two Largest Independent Providers of Wholesale Long Distance Service.

T-Mobile, like other wireless carriers that are not affiliated with wireline carriers, must purchase long distance services from IXCs in order to provide their customers with nationwide calling. T-Mobile purchases the majority of its switched long distance service from AT&T, both because AT&T provides excellent quality and service at reasonable prices, and because AT&T is not affiliated with one of T-Mobile's wireless competitors.

This is not to say, however, that T-Mobile is unconcerned about the anticompetitive effects of eliminating MCI as an independent long distance provider. The Verizon-MCI merger, combined with the merger of AT&T and SBC, will eliminate

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[36] *See* Petition for Reconsideration of T-Mobile, WC Docket No. 04-313 at 9-10 (filed Mar. 28, 2005).

[37] *See* ACN Communications Services, Inc. *et al* ("ACN") Comments at 52-55.

the two largest nationwide independent providers of wholesale long distance services.[38] T-Mobile does not currently purchase long distance services from MCI. However, MCI has actively competed for larger T-Mobile's business in the past. MCI's presence in the market provides T-Mobile with increased choice. For T-Mobile, a highly desirable feature of MCI as a possible source of wholesale long distance has been that MCI is not affiliated with one of T-Mobile's wireless competitors.

However, a merged Verizon-MCI would eliminate MCI as a potential independent source of wholesale long distance services for T-Mobile. Following a Verizon-MCI merger, the formerly independent MCI will be part of Verizon, the majority owner of one of T-Mobile's major wireless competitors. A post-merger Verizon-MCI will drastically narrow T-Mobile's competitive options because it would have strong incentives to discriminate against wireless competitors such as T-Mobile.

If the proposed SBC-AT&T merger is approved as well as the Verizon-MCI merger, the potential for competitive harm to T-Mobile would increase dramatically, because T-Mobile now purchases the majority of its long distance service from AT&T. A post-merger SBC-AT&T, with affiliates that provide essential inputs to, and compete directly with T-Mobile, would be more capable of discriminating against T-Mobile, and MCI would no longer be a practical alternative source of long distance service because it too would be affiliated with a competitor of T-Mobile.

Although there are suppliers of wholesale long distance service other than MCI and AT&T, those suppliers do not possess the facilities-based, nationwide networks of MCI and AT&T, and T-Mobile cannot readily substitute their services for those it takes

[38] The United States Cellular Corporation ("USCC") raises similar concerns. *See* USCC Comments at 2-3.

from AT&T. The third major nationwide long distance provider, Sprint, already is affiliated with a wireless provider and itself is merging with Nextel, leaving only smaller interexchange carriers as alternatives, such as XO and Global Crossing. With their established, nationwide networks, AT&T and MCI are able to provide a broader range of long distance services to the entire geographic United States than most of their long distance competitors can.

Moreover, as discussed earlier, the record shows that SBC and Verizon have not competed vigorously against each other in the provision of any wireline service, including special access, long distance, or local dial tone. The removal of MCI and AT&T as independent wireline competitors would make it easier for SBC and Verizon to continue this behavior.

In the earlier Commission proceeding to review the merger of GTE Corporation and Bell Atlantic, the merger that created Verizon, MCI's predecessor company argued that the combined company's market power would make it difficult to impose any "reasonably enforceable behavioral conditions that, individually or in combination, would be sufficient to make the [Bell Atlantic/GTE merger] affirmatively pro-competitive."[39] The Commission is in a worse predicament today. Other than the act of approving the merger applications, there are few regulatory incentives or "carrots" available to encourage Verizon or any other ILEC to agree to commitments or conditions

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[39] *See* ACN Comments at 7 (quoting from the comments of WorldCom. Inc. in *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* CC Docket No. 98-184, at 60-61, Nov. 23 1998).

to protect against anticompetitive behavior.[40] As a result, the need for strict conditions on merger approval has become even more pressing. As MCI's predecessor itself said previously, approving the pending merger of both SBC and AT&T and Verizon and MCI "would be tantamount to carving most of the United States into two huge regions each controlled by a single monopolist."[41]

In light of the significant risk of anticompetitive behavior in the provision of wholesale long distance created by the Verizon-MCI merger, T-Mobile urges the Commission to impose nondiscrimination safeguards as a condition to approving this merger. T-Mobile generally supports the United States Cellular Corporation proposal for conditions that would protect wireless carriers against discrimination by the merged company.[42] The proposal includes: 1) a restriction on sharing with Verizon Wireless any competitively sensitive information obtained by Verizon-MCI in the course of its relationship with wireless carriers; 2) some form of Commission oversight of the combined company's pricing of long distance services; and 3) some formal assurances that competitive wireless carriers will receive fair and nondiscriminatory treatment.[43]

T-Mobile notes that Qwest has urged the Commission not to approve the Verizon-MCI merger without requiring the combined company to divest itself of overlapping

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[40] *See id*. at 7-8. For example, both Verizon and SBC have obtained Section 271 authority to provide in-region long distance services throughout their service territories.

[41] *Id*. at 8 (quoting from the comments of WorldCom. Inc. in *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* CC Docket No. 98-184, at iv, Nov. 23 1998).

[42] *See* USCC Comments at 3-5.

[43] *Id.*

assets and operations.[44] T-Mobile supports such a divestiture in principle, but agrees with Qwest that separate conditions on the merger also are needed. Qwest notes that even if the MCI in-region assets were divested to a single CLEC, "that CLEC would not have the size and scope to replace MCI as an overbuilder of the local network in the Verizon region, or as a reseller of Verizon special access."[45] A post-divestiture competitor consisting only of the spun-off assets of Verizon and MCI would likely be a regional carrier that could not begin to achieve the scale or, or provide the competitive pressure that a pre-merger MCI is now providing. The targeted conditions that T-Mobile recommends in this response therefore are necessary even if divestiture is ordered.

B. The Verizon-MCI Merger Will Permit Greater Discrimination By The Combined Company In Favor of Its Wireline Operations.

1. The Proposed Merger Will Dampen The Emergence of Intermodal Competition By Wireless Providers.

As noted throughout this Response, merging MCI into Verizon will permit Verizon, the largest ILEC, to absorb one of the few companies that pose any competitive threat to it and the other ILECs. As the second largest independent competitor and the most formidable innovator in the telecommunications marketplace, MCI's disappearance will dramatically change the dynamics of the telecommunications market. Although Verizon (like SBC) already is a vertically integrated company providing a comprehensive range of wholesale and retail services to competitors and customers, MCI's ubiquitous presence and nationwide reputation for innovative service have effectively constrained Verizon's ability to exploit its position.

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44 Qwest Petition at 38.

45 *Id.* at 40-41.

By eliminating MCI as a competitor if this merger is permitted to proceed without conditions, Verizon will have greater ability to raise the prices and lower the quality of the services it provides to unaffiliated, independent wireless competitors such as T-Mobile, a grave situation that will be compounded if SBC merges with AT&T. The mergers will harm nascent intermodal competition generally as well as T-Mobile specifically. Because Verizon (like SBC) owns a majority interest in its wireless operations, rate increases for its wireline services used as wireless inputs could affect its own wireless operations as well as unaffiliated wireless competitors. The fact that payments made by Verizon Wireless remain within the Verizon business organization may mitigate the effects on the organization as a whole.

Without action by the Commission to constrain Verizon's ability to raise its rates for critical input services needed by T-Mobile and other unaffiliated wireless providers, these competitors would face the impossible choice of raising their end-user rates or reducing their margins, either of which would harm their ability to compete. The long-term benefits that redound to Verizon if it successfully inhibits the development of competition for its wireline services, as well the potential harm to its existing wireless competitors, could be substantial.

2. T-Mobile Agrees That To Encourage Intermodal Competition, The Commission Should Condition The Merger on The Availability of Naked DSL Offered on a Nondiscriminatory Basis.

As petitioners and commenters demonstrate, the merger of Verizon and MCI has the potential to restrict the introduction of new technologies and services, thereby harming competition and consumers. Qwest observes that:

> Verizon's proposed merger with MCI poses additional competition concerns because independent stand-alone providers, including AT&T and MCI, have behaved as "mavericks" in introducing innovations in telecommunications that have benefited consumers, while Verizon has resisted those innovations. As a result, the proposed Verizon/MCI merger is likely to stifle important innovation that has benefited customers.[46]

MCI has been an important, if not the most important, innovator in the telecommunications industry. Beyond being the company that precipitated the 1984 break-up of the Bell System, MCI has been a prime developer of new and creative rate plans and service offerings while "Verizon has often balked at introducing innovations that might undermine its incumbent ILEC businesses."[47] As Qwest notes, "[i]t is a well-established principle of antitrust law that the elimination of a 'maverick' firm through merger or acquisition is likely to produce anticompetitive effects because of the loss of that maverick behavior."[48] Despite the Applicants' claims that the merger will increase innovation, T-Mobile finds it highly unlikely that approval of the merger will produce results comparable to what the market has seen in the decades since MCI's entry into the marketplace and the Bell System break-up.

T-Mobile is evaluating a number of potential new IP-based services that would compete directly with voice and other broadband offerings of wireline carriers. For these services to be cost-effective, potential customers would need access to cost-based naked DSL if T-Mobile and others are to provide economically viable intermodal competition. T-Mobile is not aware of any technical basis for Verizon and other ILECs to refuse to

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[46] *Id.* at 27-28.

[47] *Id.* at 28.

[48] *See id.* at 28. *See also* Cbeyond Petition at 85-86 ("Indeed, dominant firms are often reluctant to accept change, because it threatens to strand existing investment, erode revenues from existing services, or provide opportunities for competitors").

provide naked DSL in a cost-based, nondiscriminatory manner.[49] Rather, the refusals and restrictions, including the restrictions contained in Verizon's recent announcement that it will provide a form of stand-alone DSL on a limited basis, appear to part of a misguided effort to restrict the use of DSL by potential competitors or limit its use in conjunction with potentially competitive services.[50] As Qwest notes:

> We have seen Verizon's recent announcements on this topic, but that is not a substitute for enforceable merger conditions across the Verizon service territory. In particular, announcements of a willingness to begin to provide stand-alone DSL are meaningless if the terms are not sufficient to allow competitive service offerings by non-Verizon VoIP providers and others.[51]

Withholding naked DSL from the marketplace would limit the development of intermodal competition for many new products that will rely on higher speed access lines. Because many consumers have little choice in selecting a broadband service provider, it is especially important that DSL be readily available from ILECs without the incumbents' bundled voice offerings. As Cbeyond demonstrates in its petition, Verizon and the other ILECs have a history of refusing to provide DSL service in an effort to protect their own potentially competitive services.[52]

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[49] To date only Qwest among the RBOCs offers naked DSL similar to that described above, although it apparently imposes some restrictions on the offering.

[50] Verizon has announced a very limited form of stand-alone DSL that apparently is available only to customers in the company's Northeastern region and is offered only to existing Verizon phone and DSL customers. *See* Shawn Young, *Verizon to Offer 'Stand-Alone' DSL Web Service,* Wall St. J., Apr. 19, 2005, at D2.

[51] *See* Qwest Petition at 42.

[52] *See* Cbeyond Petition at 86-87 ("Indeed, the RBOCs sat on DSL and related technologies for over 20 years and had no incentive to roll out the service until cable modem providers and DLECs began to offer consumer broadband…Until then, RBOCs were content to sell T1 circuits at much higher prices").

Given the potentially dramatic increase in concentration of the wireline industry as a result of the various proposed mergers, the public interest requires that the Commission act to promote development of intermodal competition as an alternative to the services offered by the wireline companies. T-Mobile concurs with the recommendation of other parties[53] and urges the Commission to require Verizon to make naked DSL available on a nondiscriminatory basis at cost-based prices.[54] Accordingly, failure to impose this condition will permit Verizon to prevent the development of potentially competitive services, thereby reinforcing its position as the dominant provider of both wireline and wireless telecommunications services.

IV. CONCLUSION.

The Commission should not approve the proposed Verizon-MCI merger without imposing strict remedial conditions to address the potential harms that the post-merger Verizon could inflict on customers of special access and wholesale long distance service

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[53] *See* Vonage Comments at 11-12; Attorney General of the State of New York Comments at 12-13 ("the Commission should condition the merger on the combined Verizon/MCI offering stand-alone DSL service to all customers, existing or otherwise, not later than 30 days following Commission approval); New Jersey Division of the Ratepayer Advocate Comments at 16 ("Verizon should commit to providing 'naked DSL' to promote customer choice at reasonable rates, terms, and conditions").

[54] The pricing standard for naked DSL offerings should be forward-looking economic cost.

that are its competitors. The Commission should also condition approval of the merger on the availability of efficiently priced naked DSL. Without such conditions, the proposed merger would harm competition and U.S. consumers.

Respectfully submitted,

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May 24, 2005

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I hereby certify that on May 24, 2005 a copy of the foregoing Response was served by electronic mail upon the following:

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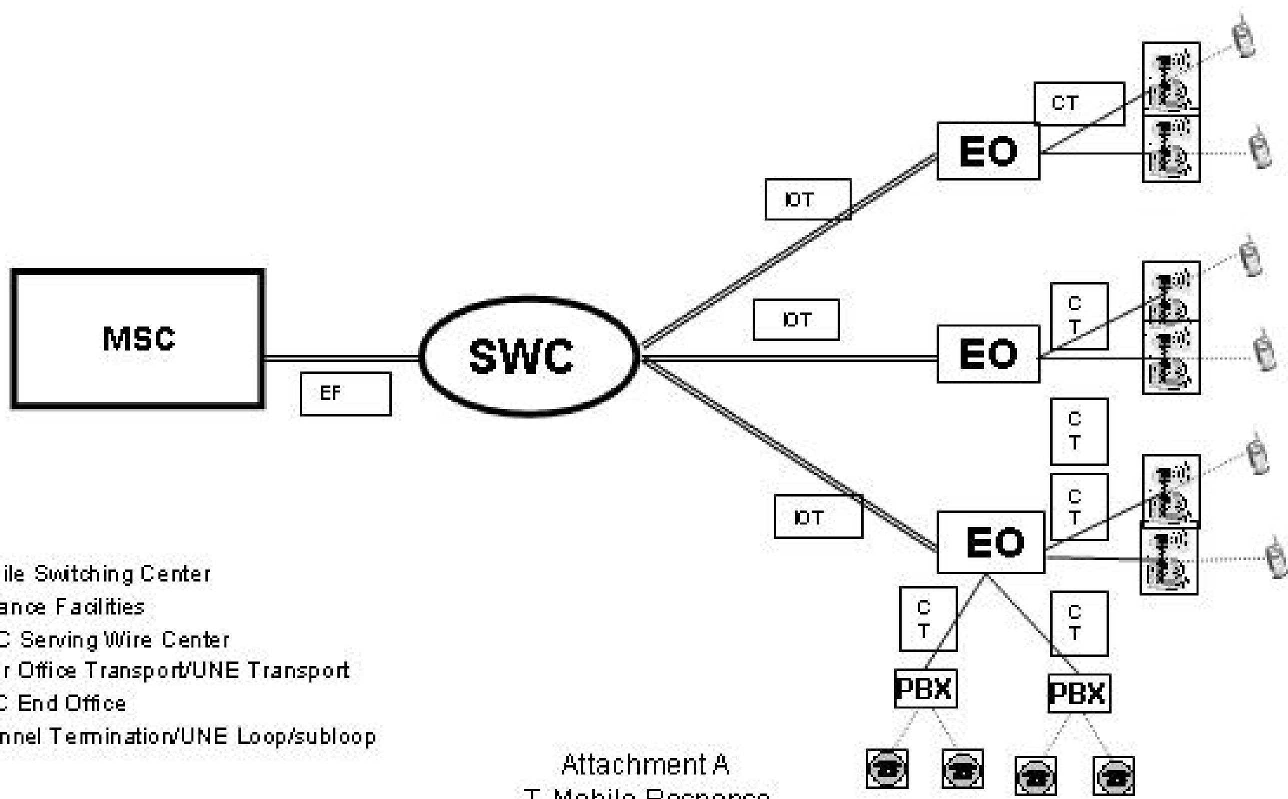
ATTACHMENT A

Schematic View of CMRS Network



MSC - Mobile Switching Center
EF - Entrance Facilities
SWC - ILEC Serving Wire Center
IOT - Inter Office Transport/UNE Transport
EO - ILEC End Office
CT - Channel Termination/UNE Loop/subloop

Attachment A
T-Mobile Response
WC Docket No. 05-65