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June 2, 2005

Ex Parte

Marlene H. Dortch - Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Applications for Consent to Transfer Control of Filed by Verizon Communications, Inc. and MCI, Inc.*, WC Docket No. 05-75**

Dear Ms. Dortch:

The attached letter was provided to Chairman Kevin Martin and I am respectfully requesting it be placed on the record in the above proceeding. Please let me know if you have any questions.

Sincerely,

Attachment

cc: Commissioner Martin
Dan Gonzalez
Michelle Carey
Sam Feder
Jessica Rosenworcel
Scott Bergmann
Jim Bird
Julie Veach
Marcus Maher
Tom Navin
Gail Cohen
Bill Dever

June 2, 2005

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Applications for Consent to Transfer Control of Filed by Verizon Communications, Inc. and MCI, Inc.*, WC Docket No. 05-75

Dear Chairman Martin:

The parallel requests submitted by various competitors that ask the Commission to "stop the clock" on its review and to consolidate this proceeding with the Commission's review of the SBC/AT&T transaction should be denied.[1]

These requests amount to little more than stalling tactics. Our initial Application - filed over two months ago - was well supported with detailed and substantial information and supporting data, and our Reply contained additional hard evidence addressing claims raised by other parties. Rather than produce any evidence to counter this showing, merger opponents have instead largely relied on unsupported rhetoric. They now seek to delay the proceeding in the apparent hope that they can conjure some basis for the Commission to deny, or impose conditions on, the transfer application. But the opponents' failure to produce evidence in support of their erroneous claims is not a basis for delay.

Moreover, the only specific claims that these parties make have nothing to do with Verizon and MCI, but instead consist of quarrels with the manner in which SBC and AT&T made documents available for review by other parties. Whatever the merits of those claims – and we are in no position to comment on them other than to note that SBC and AT&T have addressed them directly – they have nothing to do with this case. Verizon and MCI have each made their documents available for review at a single location in accordance with the Commission's direction in the protective orders in this proceeding and staff's May 5, 2005, letter seeking additional information. Indeed, the parties seeking delay have not yet even reviewed the documents we have produced. Thus, they have provided no basis to stop the clock in this case, and their request should be denied.

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[1] *See* Letter from Brad E. Mutschelknaus, Counsel for Cbeyond Communications, Eschelon Telecom, TDS Metrocom, and XO Communications, and Christopher J. Wright, Counsel for SAVVIS Communications to Kevin Martin, Chairman, FCC, WC Docket No. 05-75 (May 25, 2005); Letter from Gary Lytle, Sr. Vice President for Federal Relations, Qwest, to Kevin Martin, Chairman, FCC, WC Docket No. 05-75 (May 25, 2005) ("*Qwest Letter*").

1. As an initial matter, any claim that Verizon and MCI have failed to provide evidence in support of their Application is specious. The issue in this proceeding is whether Verizon and MCI have shown that the transfer is in the public interest. Verizon and MCI have more than met this burden. In both the Application itself and in the Reply addressing specific claims by other parties, we put forth overwhelming evidence both of the public interest benefits that this transaction will bring and the absence of harm to competition in the properly defined relevant markets. Indeed, we not only defined the relevant markets and provided concrete evident that there would be no harm in those markets, but also demonstrated in the alternative that the transaction will not harm competition even if the Commission disagrees with our market definitions and instead analyzes the transaction using more traditional market segments. On every issue that might be of significance in the Commission's review, Verizon and MCI produced hard evidence in our Application to support our showing. Although others might take differing views on some of the issues given their own business interests, they cannot seriously contend that we did not provide supporting data or make a substantial evidentiary showing in the Application.

In particular, in the enterprise market, as defined by the Commission, we demonstrated, using both our own market analyses and confirming analyses from independent analysts, that the combined company would have a share of large enterprise and mid-sized business revenues of roughly 16 to 22 percent. We also demonstrated that the combined company would have to compete with numerous other large aggressive competitors, including both domestic and foreign carriers such as AT&T, Sprint, Qwest, Global Crossing, Level 3, XO, Deutsche Telekom, NTT and BT, as well as major system integrators, equipment vendors and application providers, such as EDS, Lockheed Martin, Accenture, IBM, Nortel and Microsoft to name just a few . *See, e.g.*, Public Interest Statement at 22-29; Taylor Decl. ¶¶ 3-20 & Exhs. 1-2. We further made a detailed evidentiary showing – based on the best publicly available information concerning which carriers have local fiber facilities on a wire center by wire center basis – that the companies have limited overlapping facilities; in the 39 areas where overlap does exist, there are a total of 92 other fiber providers, there is at least one competing fiber provider in all but one of those areas (and that one area consists of a single wire center), there are competing providers in 89 percent of the individual wire centers where MCI has fiber, and there are an average of 6 competing fiber providers in those wire centers. *See* Public Interest Statement at 31-34; Powell/Owens Decl. ¶¶ 6-9, 16-18; Lew/Lataille Decl. ¶¶ 18-24.

With respect to the mass market, Verizon and MCI demonstrated that there is significant and growing intermodal competition and that such competition is particularly prevalent in Verizon's service areas. As we showed, cable companies already offer voice telephone service to more than 23 million homes in Verizon's services areas alone, and according to independent analysts, by the end of 2006, the major cable companies will be offering voice telephone services in all of their markets. Cable companies report that they have attracted 20-40 percent of all subscribers in some markets where they offer telephone service. *See* Public Interest Statement at 39-41; Hassett et al. Decl. ¶¶ 30-51. We also provided evidence that wireless carriers are competing with wireline carriers for both lines and, even more significantly, for minutes of use. Analysts estimate that by year-end 2004 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. *See* Public Interest Statement at 41-44; Hassett et al. Decl. ¶¶ 72-81; Crandall/Singer Decl. ¶¶ 14-21. And we showed that 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. *See* Public Interest Statement at 44-45; Hassett et al Decl. ¶¶ 57-67, 88-89; Crandall/Singer Decl. ¶ 32; Carlton et al. Decl. ¶¶ 26, 30. In addition to these market facts demonstrating the growth and significance of intermodal competition, we provided extensive evidence showing that MCI's own mass market business is in an irreversible decline and that it will not be one of a small number of significant competitors for mass market customers going forward. *See* Public Interest Statement at 46-51; Huyard Decl. ¶¶ 2-20.

Finally, as to the Internet backbone business, we showed that MCI's relative position has declined substantially since the prior mergers the Commission examined; that the market for backbone services is highly competitive as shown, for example, by the 55 percent drop in price for Internet bandwidth in major U.S. cities between the second quarter of 2003 and the second quarter of 2004; and that numerous other operators provide backbone services comparable to those offered by MCI. *See* Public Interest Statement at 61-66; Kende Decl. ¶¶ 2-8. We further demonstrated that the transaction would not undermine competition in this business because Verizon does not operate a significant Internet backbone. *See* Public Interest Statement at 65; Lack/Pilgrim Decl. ¶ 17.

In contrast to this detailed evidentiary showing in our Application, the parties that now seek delay chose to rely on unsupported rhetoric as to the effect of this transaction in the enterprise and other markets. But, as we showed in our Reply, their claims are facially flawed and cannot stand up to the actual market facts and rational analysis. For example, our opponents repeatedly assert that the transaction will result in a duopoly in the enterprise market in which the combined company would tacitly collude with the combined SBC/AT&T. But, as described above and as we further showed in the Reply, the combined Verizon/MCI will have a small minority of the business in the enterprise market, and there are numerous other strong competitors. *See* Reply at 17-22; Bruno et al. Reply Decl. ¶¶ 11-12, 21-22. Further, we also explained that a key reason for the transaction is to increase the ability of the combined company to compete more effectively on a nationwide and global basis, including with companies such as SBC/AT&T. *See* Reply at 22-24; Carlton et al. Reply Decl. ¶¶ 57-62. Opponents' claims that the transaction will enable the combined company to discriminate in the provision of special access are similarly unsubstantiated. As we showed in the Reply, the transaction will not create or increase any supposed theoretical incentives to discriminate, and regulatory safeguards already protect against that risk. And in particular, under circumstances such as those present here where competitive facilities are available from numerous providers, the Commission and the courts have recognized that a price squeeze strategy is unlikely even to be attempted, let alone succeed. *See* Reply at 40-47.

We further demonstrated that opponents' assertions as to the mass market are similarly groundless. As we showed, their claims that intermodal competition is insignificant because it may not be a perfect substitute for every user in every case ignores the market facts: analysts have observed that the incumbents are losing access lines at accelerating levels – up to 8% annually – and even greater amounts of revenue producing traffic to cable telephony, wireless, VoIP, and other non-traditional services such as e-mail and instant messaging. *See, e.g.*, Reply at 49-60; Hassett et al. Reply Decl. ¶¶ 11-26, 30-31, 41, 72-75. 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. *See id.* The Reply also provided evidence that MCI's mass market business has continued to decline even in the few months between the Application and Reply and that opponents' speculation about alternative

strategies MCI could pursue amounted to little more than wishful thinking. *See, e.g.*, Reply at 60-62; Huyard Reply Decl. ¶ 3. Finally, claims that the combined company could harm competing Internet backbone operators founder on the fact that the combined company will not have anything approaching the dominant share needed to harm competition. Rather, as we showed, the combined company would carry less than 10 percent of North American Internet traffic, it would rank fourth in traffic share among seven larger or comparable providers, and operators other than those seven would carry approximately 35 percent of Internet traffic. *See* Reply at 70-80; Kende Reply Decl. ¶ 8. Likewise, we explained that, contrary to claims of some commenters, the combined company could not discriminate against unaffiliated content or application providers because any attempt to do so would merely drive customers that wanted access to such content or applications to switch to an alternative broadband provider such as cable modem service. *See* Reply at 82-86.

2. The few specific claims that the parties seeking delay make in support of their request to stop the clock are either facially erroneous or irrelevant to Verizon and MCI and cannot provide a basis to stop the clock. Indeed, the only allegation they make that even ostensibly relates to Verizon/MCI is the assertion that the Commission staff's promulgation of data requests somehow demonstrates that the parties' Application was flawed or deficient. *Qwest Letter* at 1. But that is wholly incorrect. Many of the questions that the staff asked concerned issues that the Application extensively addressed, such as market definitions (*see, e.g.*, Public Interest Statement at 5-10, 19-21, 29, 34-36), the share of the enterprise business served by the two companies (*see, e.g.*, *id.* at 23-24), and the scope of facilities overlap (*see, e.g.*, *id.* at 31-34), while others asked for additional data to the extent the companies had it. Such requests are a normal part of the process of reviewing significant transactions as the staff works to understand the current state of the market and tests the applicants' showing. The mere existence of those follow up requests does not suggest that the Applicants failed to make a prima facie showing. To the contrary, the Commission now routinely issues such data requests in its review of significant transactions,[2] just as they routinely asked follow-up questions to the parties in the 271

[2] *See, e.g.*, Letter from Carol E. Mattey, Chief, Policy and Program Planning Division, Common Carrier Bureau, to G.R. Evans, Bell Atlantic Corp., and Alan Ciamporcero, GTE Service Corp., CC Docket No. 98-184 (Nov. 24, 1998) (Bell Atlantic-GTE); Letters from Carol E. Mattey, Chief, Policy and Program Planning Division, Common Carrier Bureau, to Lynn Shapiro Star, Ameritech (Jan. 7, 1999) and Dale (Zeke) Robertson, SBC Telecommunications Inc. (Jan. 5, 1999), CC Docket No. 98-141 (SBC-Ameritech); Letters from Donald Abelson, Chief, Int'l Bureau, to Cheryl A. Tritt, Counsel for VoiceStream Wireless Corp., John T. Nakahata, Counsel for Voicestream Wireless Corp., and Jill Dorsey, Counsel for Powertel, Inc. IB Docket No. 00-187 (Feb. 2, 2001) (Deutsche Telekom-Voicestream); Letter from W. Kenneth Ferree, Chief, Media Bureau, to Pantelis Michalopoulos, Counsel to EchoStar Communications Corp. and Gary M. Epstein, Counsel for General Motors Corp. and Hughes Electronic Corp., CS Docket No. 01-348 (Feb. 4, 2002) (DIRECTV-Echostar); Letter from W. Kenneth Ferree, Chief, Media Bureau, to Gary M. Epstein, Counsel for General Motors Corp. and Hughes Electronic Corp., and William M. Wiltshire, Counsel for the News Corp. Limited, MB Docket No. 03-124 (Jul. 8, 2003) (GM-Hughes-News Corp.); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, to David C. Jatlow, AT&T Wireless Services, Inc. and David G. Richards, Cingular Wireless LLC, WT Docket No. 04-70 (June 30, 2004) (Cingular-AT&T Wireless); Letter from James Ball, Chief, Policy Division, Int'l Bureau, to Tom W. Davidson, Counsel for Zeus Holdings Limited, and Bert W. Rein, Counsel for Intelsat, Ltd., IB Docket No.

application process. The extensive evidence and data that Verizon and MCI have now produced in their Application, Reply, and responses to the staff's requests stand in stark contrast to the opponents' unsupported assertions — the same types of assertions that the Commission has said in the 271 context are entitled to little weight.[3]

3. The remainder of both letters consists of various allegations concerning SBC/AT&T that have nothing to do with Verizon or MCI. Their principal claim appears to be that SBC/AT&T allegedly designated all or most of their documents as copying prohibited and otherwise purportedly have made access to the documents difficult. As noted above, we are not in a position to comment on those claims. But they do not apply here.

As an initial matter, Verizon and MCI have been very judicious in classifying documents as "copying prohibited": they have marked only about 12% and 30% of their documents respectively with that designation. The remainder of the documents are available for parties or their counsel to copy and review at their offices at their convenience in accordance with the terms of the applicable protective orders. While many of the documents are designated "highly confidential" pursuant to the Commission's second protective order, and therefore are available only to outside counsel and experts rather than in-house personnel, that should not be surprising. The Commission's specifications call for some of the companies' most competitively sensitive and proprietary information, including financial data and business strategies. If such information were seen by business people at competitor companies, it could result in extraordinary and irreparable harm to Verizon and MCI by, among other things, "allow[ing] competitors to target customers and gain an unfair competitive advantage."[4]

The CLECs and Qwest also complain that SBC/AT&T have produced the documents in multiple locations in a disorganized form. Whatever the merits of those claims in the case of SBC/AT&T (about which we are not in a position to express any view), Verizon and MCI are producing the documents and making them available for review in a single location for each respective company. Those documents are being made available in accordance with the terms of

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04-366 (Oct. 19, 2004) (Intelsat-Zeus); Letter from William W. Kunze, Chief, Spectrum and Policy Division, Wireless Telecommunications Bureau, to Doane F. Kiechiel and Kathryn A. Zachem, Counsel for Western Wireless Corp. and ALLTEL Corp., WT Docket No. 05-50 (Mar. 1, 2005) (Western Wireless-ALLTEL); Letters from Scott D. Delacourt, Deputy Chief, Wireless Telecommunciations Bureau, to Vonya McCann, Sprint Corp., and Larry Krevor, Nextel Communications, Inc., WT Docket No. 05-63 (Apr. 29, 2005) (Sprint-Nextel).

[3] *See, e.g.*, *New York 271 Order* ¶ 50 ("Mere unsupported evidence in opposition will not suffice."); *Updated Filing Requirements For Bell Operating Company Applications Under Section 271 Of The Communications Act*, 18 FCC Rcd 18245 (2001) ("Anecdotal evidence or unsupported assertions in opposition to an application are not persuasive.").

[4] *See Second Protective Order* ¶ 3; *see also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816 ¶ 26 (1998) (recognizing that "when specific future business plans are involved" it is appropriate to "limit[] access to outside counsel and experts so as to minimize the potential for inadvertent misuse of such information").

the Commission's protective orders and the staff's May 5, 2005, letter containing the data and information requests. Moreover, no party has yet even reviewed the documents Verizon/MCI have produced. Thus, these claims simply do not apply to Verizon/MCI and cannot supply a basis to toll the clock in this proceeding.

Finally, the Commission also should reject the suggestion of the CLECs that it consolidate this proceeding with its review of the SBC/AT&T transaction. As the Commission explained in rejecting the argument that it should consolidate the AT&T/MediaOne and AOL/Time Warner merger proceedings, it generally will not consolidate proceedings to review transfers of control unless the two applications are "mutually exclusive," which obviously is not the case here.[5] That rule is entirely sensible because such applications are necessarily fact-specific, and a number of key facts differ between these two transactions. In any event, to the extent the two transactions do present overlapping legal issues, the Commission obviously is capable of addressing those issues without resorting to consolidation.

Accordingly, the Commission should reject the requests to stop the clock and to consolidate this proceeding with the review of the SBC/AT&T transaction.

Sincerely,

/S/
Richard S. Whitt
MCI

/S/
Michael E. Glover
Verizon

[5] *See, e.g.*, *In re Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations From MediaOne Group, Inc. to AT&T Corp.*, 15 FCC Rcd. 9816 ¶ 181 (2000).