

July 18, 2005

**Ex Parte**

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

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

Dear Ms. Dortch:

We write in response to a recent ex parte filed by Level 3, in which it argues that the combination of Verizon and MCI will eliminate competition for high-capacity services used by larger business customers and that the Commission should impose onerous conditions on the parties as a result.<sup>1</sup> The Commission should reject Level 3's arguments. Verizon and MCI have demonstrated that this transaction, on balance, serves the public interest, and nothing in Level 3's latest submission calls that showing into question. Therefore, there is no basis for the Commission to impose conditions on the combination of Verizon and MCI. In any event, Level 3 does not address the practical difficulties that would result from the specific conditions it proposes.

There is no merit to Level 3's assertion that the market to provide high-capacity services to these customers is "highly concentrated." Level 3 June 17 Ex Parte Attach. at 1. Verizon and MCI have demonstrated that the combination of their 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. In addition, there is extensive and accelerating competition for all different types and sizes of such customers, and for the various services they purchase. 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; cable companies such as Time Warner and Cablevision; 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. The combined company will be just one among many other competitors in this segment of the industry, which is widely recognized as the most competitive.

Although Level 3 asserts that "barriers to entry . . . are dauntingly high" for carriers seeking to deploy fiber networks, Level 3 June 17 Ex Parte Attach. at 1, Verizon and MCI have

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<sup>1</sup> Letter from John T. Nakahata, Harris, Wiltshire & Grannis LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-75 *et al.* (June 17, 2005) ("Level 3 June 17 Ex Parte").

also shown that there is already extensive competition from other fiber networks where MCI has deployed local fiber facilities in Verizon’s region (what Level 3 terms “In-Region Transport Assets”<sup>2</sup>). Specifically, in all but one of the 39 groupings of contiguous wire-center areas in which Verizon and MCI have overlapping fiber, there are already other competing carriers with comparable facilities, and competing carriers are clearly capable of deploying facilities in these areas given that MCI itself did so.<sup>3</sup> 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 additional suppliers in 92 percent of the areas; at least one additional 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.<sup>4</sup> All of this existing competition, along with the fact that MCI’s local fiber is deployed in areas of high concentration and with high traffic volumes, where the Commission has previously found that other competing carriers can deploy new fiber facilities,<sup>5</sup> thoroughly refutes Level 3’s claim.<sup>6</sup>

Level 3 also repeats other claims that Verizon and MCI have conclusively rebutted. For example, Level 3 continues to contend that MCI passes on unique volume discounts it receives on special access purchased from Verizon (*i.e.*, its “off-net supply contracts”) by reselling those facilities as an “alternative supplier[.]” of high-capacity services. Level 3 June 17 Ex Parte Attach. at 1. But the reality is that MCI provides such resale of ILEC special access to only a minimal extent today, and does not resell circuits obtained entirely from Verizon as special access. Nor are there any “unique” discounts available to MCI. The overwhelming majority of Verizon’s discount plans — including the plans from which MCI purchases the channel terminations that it resells — are *term* and not *volume* based, so that the same significant discounts are available to all carriers on an order of a single DS1 or 1000 DS1s.<sup>7</sup>

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<sup>2</sup> *Id.* Attach. at 2. Despite the name, Level 3’s proposal addresses *both* the loops and the transport that MCI has deployed in Verizon’s region to serve customers that purchase high-capacity services.

<sup>3</sup> The only exception is a single wire center in Carbondale, Illinois.

<sup>4</sup> See Public Interest Statement at 31; Joint Opposition to Petitions to Deny and Reply to Comments at 29; Lew/Lataille Decl. ¶¶ 22-23; Lew Reply Decl. ¶ 7 & Exh. 2.; Powell/Owens Decl. ¶¶ 7, 18; Powell et al. Reply Decl. ¶ 16.

<sup>5</sup> See Joint Opposition to Petitions to Deny and Reply to Comments at 31-33; Powell et al. Reply Decl. ¶¶ 21-31.

<sup>6</sup> Level 3 claims that the market for high-capacity services is “characterized by . . . high prices.” Level 3 June 17 Ex Parte Attach. at 1; *see id.* at 2 (proposing special access price regulation). First of all, such a claim is only appropriate as an issue in the ongoing special access rulemaking, and not in a proceeding on the impacts of this transaction, where there will be no impact on Verizon’s special access prices. *See, e.g.*, Joint Opposition to Petitions to Deny and Reply to Comments at 41 (citing decisions). Regardless, as Verizon has explained, Verizon’s average revenue per line for both special access services in the aggregate and DS1 and DS3 services individually have decreased substantially, and have done so faster than the change in the Price Cap Index, in the post-pricing flexibility period. *See* Lew Reply Decl. ¶ 37.

<sup>7</sup> *See* Joint Opposition to Petitions to Deny and Reply to Comments at 37-39; Powell et al. Reply Decl. ¶ 11.

Similarly, Level 3 repeats the tired old saw that Verizon and SBC do not compete in each others' regions and, therefore, that MCI will "not . . . continue as a significant competitor in SBC's territory." Level 3 June 17 Ex Parte Attach. at 1. But it is simply not credible to suggest that Verizon and MCI would combine and then abandon their business in the extensive SBC region, as this would not only eliminate a key purpose of this transaction, but also would result in the loss of business to competitors willing and able to provide service in both Verizon's and SBC's regions.<sup>8</sup> In addition, Verizon has demonstrated that it and SBC currently compete extensively, including in the specific areas that Level 3 highlights. To take just one example, Verizon has deployed 300 miles of optical network facilities in Los Angeles to compete directly with SBC and has also extended its optical fiber into SBC's region in the Dallas MSA.<sup>9</sup>

For these reasons, Level 3 has not come close to undermining the showing by Verizon and MCI, "by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest, considering both its competitive effects and other public interest benefits and harms."<sup>10</sup> Therefore, it is entirely unnecessary for the Commission to address the conditions Level 3 proposes.<sup>11</sup>

We do note, however, that Level 3 does not address the practical difficulties that would result from its proposed facilities divestiture. As Level 3 acknowledges — albeit with considerable understatement — any divestiture of MCI's customers in Verizon's region would, from a practical standpoint, be "not feasible" for a number of reasons, the most significant of which is that customers would object to being "involuntarily" conveyed" to another carrier.<sup>12</sup> Indeed, the enterprise customers that have chosen MCI, from among the possible suppliers, as the carrier for their mission-critical high-capacity services did so for a reason, and are unlikely to accept any regulatory fiat that forces them to have those services disruptively transferred to another carrier.

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<sup>8</sup> See Public Interest Statement at 11-12; Carlton et al. Reply Decl. ¶¶ 57-62, 65. SBC and AT&T have likewise informed the Commission that they in fact plan to compete aggressively with Verizon if their merger is approved. 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).

<sup>9</sup> See Bruno et al. Reply Decl. ¶ 15; see also Verizon News Release, *Verizon Plugs In New National Broadband Network* (Apr. 14, 2004) (Verizon operates an IP/MPLS backbone with routers in several SBC cities, including Dallas-Fort Worth and Los Angeles); see also Joint Opposition to Petitions to Deny and Reply to Comments at 23-24 (providing an extensive list of other examples of competition for enterprise customers, wireless and wireless broadband customers, and VoIP customers).

<sup>10</sup> Memorandum Opinion and Order, *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control*, 13 FCC Rcd 18025, ¶ 10 (1998).

<sup>11</sup> See, e.g., *id.*

<sup>12</sup> Level 3 June 17 Ex Parte Attach. at 2-3. Global Crossing has recently told the Commission the same thing, that "[d]ivestiture of customers presents . . . challenges," chief among them being "[c]ustomer opposition." Ex Parte Letter from Teresa D. Baer, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75, at 23 (FCC filed June 2, 2005) ("June 2, 2005 Global Crossing Ex Parte").

But the facilities divestitures that Level 3 proposes also would result in substantial challenges from a practical standpoint. Specifically, Level 3 proposes requiring divestiture of all of MCI's "fiber, transport equipment and collocation space" in Verizon's region, as well as "intangible assets," such as "MCI's off-net transport purchase agreements or rights" in Verizon's region. Level 3 June 17 Ex Parte Attach. at 2. Global Crossing has stated that facilities divestitures are "extremely complex," as "[f]acilities are not easily segregated" and complicated issues of coordination arise with respect to "[m]aintenance of facilities and equipment."<sup>13</sup> Level 3 makes the blithe assertion that this divestiture would be "straightforward," Level 3 June 17 Ex Parte Attach. at 4, but it does not begin to discuss how implementation issues would be addressed.

The divestitures Level 3 proposes are not a path to competition, but instead are attempts to acquire local facilities on favorable terms.<sup>14</sup> This proposal is intended to benefit competitors, not consumers, and the Commission should protect the public interest, not the private interests of carriers like Level 3.

Please let us know if you require any additional information.

Sincerely,



Dee May  
Verizon



Curtis Groves  
MCI

cc: Julie Veach  
William Dever  
Ian Dillner  
Gail Cohen  
Michelle Carey  
Tom Navin  
Don Stockdale

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<sup>13</sup> June 2, 2005 Global Crossing Ex Parte at 23.

<sup>14</sup> See Level 3 June 17 Ex Parte Attach. at 3 n.4.