

August 12, 2005

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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 are writing in response to an *ex parte* filed by British Telecom (“BT”) in which BT argues that the rates BT charges in the United Kingdom for high-capacity special access services are significantly lower than what Verizon charges for these services and that the merger between Verizon and MCI will provide the combined entity an opportunity to price squeeze and to delay and degrade service to its competitors. *See* Letter from A. Sheba Chacko to Marlene H. Dortch, WC Docket Nos. 05-65, 05-75 (dated May 6, 2005).

As an initial matter, BT’s claims are not appropriate for consideration in this proceeding as they are already being addressed by the Commission in other, industry-wide rulemaking proceedings. *See* Joint Opposition of Verizon Communications Inc., and MCI, Inc. to Petitions to Deny and Reply to Comments at 40 (“Joint Reply”). 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.” *See* 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”). And the Commission has repeatedly and consistently “declined to consider in merger proceedings matters that are the subject of other proceedings before the Commission.” *See* 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”). BT fails to explain why the Commission should change its practice in this proceeding.

BT’s claims are also unsupported and without merit, empirically and as a matter of policy. First, BT’s claim about Verizon’s wholesale access rates – of which BT has no direct experience, not having bought any such services from Verizon – is empirically unsubstantiated; indeed, an analysis conducted by Verizon and MCI shows that Verizon’s rates for access services, far from being higher than BT’s own rates for comparable access services, are actually *lower* than BT’s rates. Second, there is no sound basis on which to draw an inference of a plausible competitive harm from the Verizon/MCI combination to the downstream retail markets in which BT expresses concern about competing. For one thing, BT can hardly complain of excess input prices when its own prices for the same input are higher. In any event, as we explained in our Reply comments in support of our application and address briefly below, regulatory constraints and market place conditions would make it impossible for the combined company to engage in a price squeeze or to delay or degrade services, and BT offers no evidence to the contrary.

**A. Verizon's and MCI's Analysis Demonstrates that BT's Pricing Claims are Unsupported and Contradicted by Rates Offered by Verizon.**

As noted above, an analysis conducted by Verizon and MCI shows that BT's pricing claims are unfounded and that the prices charged by Verizon are lower than the prices BT charges for comparable services.

BT claims that, in 2004, Verizon's rate for a DS1 for a five-year term was \$523 in Verizon's North serving territory and \$489 in Verizon's South serving territory, while BT's rates for DS1 comparable services were \$124 and \$128. Similarly, BT claims that Verizon's rate for a DS3 for a five-year term in 2004 was \$3456 in Verizon's North territory and \$3979 in Verizon's South serving territory, while BT's rate for a DS3 comparable service was only \$1057. BT, however, provides no data to support the rates it cites.

Because of this lack of supporting data, Verizon and MCI have been unable to duplicate the rates BT cites either for Verizon's DS1 and DS3 services or for BT's comparable services. Accordingly, Verizon and MCI conducted their own analysis to determine how Verizon's rates for DS1 and DS3 services compare with the rates BT charges MCI for equivalent services. Although the differences in circuit types and capacity levels Verizon and BT offer and the lack of comparable data prevent us from constructing a perfect comparison of the rates the two companies charge for these high-capacity services, the analysis Verizon and MCI have conducted is nonetheless instructive. Our analysis shows that while the prices Verizon and BT charges for these services are fairly comparable in terms of the monthly recurring charge for these services, when non-recurring charges are taken into account, the prices Verizon charges for

DS1 and DS3 services are much lower than the prices BT charges MCI for equivalent services, and the prices BT actually charges are much higher than the prices BT quotes in its *ex parte*.

We examined prices BT offers MCI for comparable DS1 and DS3 services in the London metropolitan area. BT does not offer a one-to-one circuit equivalent for Verizon's DS1 or DS3 services. Verizon's DS1 service has a capacity of 1.544 Mbps, while BT offers a T1 of roughly 1 Mbps and an E1 of roughly 2 Mbps. Similarly, Verizon's DS3 has a capacity of 44.736 Mbps, while BT offers an E3 of 34 Mbps or a T3 of 45 Mbps. Accordingly, we looked at prices BT offers MCI for both BT's 1 Mbps T1 and 2 Mbps E1 service, as well as prices BT offers MCI for BT's E3 and T3 services.

We assumed a circuit with one channel termination connecting the end user premises to the serving wire center and 5 miles of DS1 transport, the average mileage in New York, a location comparable to the London metropolitan area. For this circuit, the prices BT offers MCI for its T1 or E1 service includes a monthly recurring charge of between \$175.20 and \$240.05.<sup>1</sup> In contrast, for a comparable DS1 circuit in New York City, the price Verizon offers for a five-year term includes a monthly recurring charge of \$208.06. *See* FCC Tariff No. 11, Sections 31.7.9 and 7.4.10(b)(2)(b). Although BT offers its services for one-year terms only and, therefore, does not have a five-year term as Verizon does, once a customer purchases the circuit from BT, it may renew at the one-year term rate for five-years or more, making these rates

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<sup>1</sup> All BT prices referenced in this *ex parte* filing are taken from BT's wholesale Carrier Price List, section B8 (Partial Private Circuits), available at [www.btwholesale.com](http://www.btwholesale.com), and assume an exchange rate of £1=\$1.75. Monthly recurring charges are found in Part 8.03, section 1.1. The monthly recurring charges referenced in the text reflect (1) one "local end fixed charge," (2) one "main link fixed charge," and (3) five miles (or 8 km) of either "terminating segment

comparable to the rates Verizon offers for a five-year term. Accordingly, the BT rates quoted above are the rates a customer would receive if the customer placed the circuit with BT for five years. In contrast, Verizon does not offer services for one-year terms but instead offers services on a month-to-month basis or for terms ranging from 2 to 10 years. As a result, Verizon offers several plans that provide even greater discounts and, therefore, even lower prices per circuit than the Verizon prices quoted above for Verizon's five-year term. Thus, the monthly recurring charges BT offers for its T1 and E1 circuits and Verizon offers for its DS1 services for a five-year term, the term BT used for comparison in its *ex parte*, are comparable. The difference is in the non-recurring charge for these services.

BT's non-recurring charge for its T1 and E1 services is \$7,086.84<sup>2</sup> while Verizon's non-recurring charge for its DS1 service is only \$275. Accordingly, even if one spreads the costs of BT's \$7,086.84 non-recurring charge over 60 months (i.e a five-year term), the non-recurring charge increases the monthly price of BT's T1 and E1 services by \$118.11, so that the price of BT's T1 and E1 services are actually \$293.31 and \$358.16 a month respectively. In contrast, the \$275 non-recurring charge for Verizon's service increases the monthly cost for Verizon's DS1 by only \$4.58, from \$208.06 to \$212.64. Therefore, when the non-recurring charges are taken into account, BT's prices for its T1 and E1 services are roughly 38 to 68 percent higher than the price Verizon offers for DS1 service, and two to four times higher than the prices BT cited in its *ex parte*.

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charge" or "trunk segment charge." The price is given as a range because the mix of "terminating segment charge" or "trunk segment charge" varies by circuit.

<sup>2</sup> Nonrecurring charges are found in Part 8.02 of BT's wholesale carrier price list. The nonrecurring charge referenced in the text assumes (1) one 1M/2M "provision charge" (Part

We conducted a similar comparison of the prices BT's offers MCI for E3 and T3 services in the London metropolitan area compared to prices Verizon offers for comparable DS3 service in New York. Assuming a circuit with one channel termination connecting the end user premises to the serving wire center and 5 miles of DS3 transport, the prices BT offers MCI for its E3 and T3 services includes a monthly recurring charge of between \$1,348.66 and \$1,409.10.<sup>3</sup> Again, while BT offers its services for one-year terms, these rates are also the rates a customer would pay were the customer to maintain the service with BT for five years. Verizon's price for a DS3 service in New York, for a five-year term, is \$1989.72, thus, also within the range of prices BT offers for its E3 and T3 service. *See* FCC Tariff No 11, Sections 31.7.9 and 7.4.10(b)(2)(a). When the non-recurring charges are taken into account, however, the prices Verizon and BT charge for the services differs dramatically.

BT's non-recurring charge for its E3 and T3 service is \$49,639,<sup>4</sup> while Verizon's non-recurring charge for its DS-3 service is only \$1 (with the non-recurring cost recovered instead through the recurring rate). Assuming that the non-recurring charge for BT's E3 service is spread across 60 months, it increases the price of BT's E3 or T3 circuit by \$827.32 a month and, therefore, effectively increases the price of BT's E3 or T3 service to between \$2175.98 and \$2236.42 a month, depending upon the circuit capacity. When the non-recurring charges for BT's E3 or T3 service are taken into account then, BT's prices for its E3 services are actually higher than the price Verizon charges for Verizon's DS3 service, roughly 9 to 12 percent higher,

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8.02, section 1.1); and (2) one 2Mbit/s "new circuit on spare capacity charge" (Part 8.02, section 1.5).

<sup>3</sup> BT wholesale Carrier Price List, Section B8, Part 8.03, section 1.1.

and more than twice the price BT suggests in its *ex parte*. Furthermore, Verizon also offers term plans for its DS3 services that provide even greater discounts than the five-year term rates noted above.

**B. BT's Claims That the Combined MCI and Verizon Company Will Engage in a Price Squeeze or Delay or Degrade Service to Competitors Are Without Merit.**

Verizon and MCI demonstrated in their Public Interest Statement and Reply that the combination of Verizon's and MCI's highly complementary networks would provide significant benefits to large enterprise and medium business customers alike. Rather than refute this evidence, BT argues that a combined Verizon and MCI entity will have an incentive and the ability to price squeeze its special access competitors and delay or degrade services to them, thereby harming competition in the downstream markets for which access services are used. Such projections of future market harm are particularly suspect against the background of the uncontroverted efficiencies of the Verizon/MCI combination. In any event, BT's arguments should be rejected on their own merits for a number of reasons.

As explained above, BT's claims about special access pricing and discrimination are not appropriately addressed in this proceeding. Relatedly, as we previously explained in our Reply in response to similar claims by others, BT has failed to demonstrate that the Verizon/MCI transaction materially increases the risks of discrimination in the provision of special access services. *See* Joint Reply at 42-43.

More particularly, BT's claims that the combination enhances the risk of a price squeeze or discrimination are inconsistent with Commission precedent and the specific facts presented

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<sup>4</sup> BT wholesale Carrier Price List, Section B8, Part 8.02, section 1.3, assuming (1) one "SMA-1 with no trib interfaces (dual fibre working 1550nm) – existing site;" and (2) one 34M/45M

here. First, BT ignores Commission findings on the regulatory safeguards in place. *See* Joint Reply at 43-44. Contrary to BT's suggestion, 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 discrimination, and has rejected challenges analogous to BT's 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 conduct." *See* 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."). 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." *See* *Access Charge Reform Order* ¶ 279; *see also* *Bell Atlantic/GTE Order* ¶ 198 n. 454 (same). Moreover, the Commission has recognized that any theoretical incentives or ability that Verizon has to discriminate already exist by virtue of its current vertical integration, but the Commission has never endorsed claims that Verizon has already been engaging in these practices since Verizon became vertically integrated as a result of receiving section 271 authority, and Verizon has provided evidence that demonstrates the contrary both here and elsewhere. *See* Lew Reply Decl. ¶¶ 28-37. Regulation has been effective. *Cf. Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 22 (1st Cir. 1990)

(price squeezes ordinarily not anticompetitive generally; broadly rejecting antitrust claim where regulation at wholesale and retail levels).

Second, even aside from regulation, 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. *See* Joint Reply at 44-46. BT apparently assumes that the combined entity could reduce its retail rates, 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 is analogous to a predatory pricing scheme – it involves forgoing profits on retail sales, or profitable sales of special access in the hope of longer-term profitability that can occur only if the combined entity could (i) force competitors from the wholesale and retail markets and (ii) later raise prices enough in the retail market to recoup the lost short-term profits. *See* 3A *Areeda* ¶ 767c, at 126-27. The preconditions for recoupment cannot be satisfied here. In all of the areas where MCI currently has deployed facilities and provides service, there is robust existing competition and easy entry at both the wholesale and retail level. Assuming that Verizon were free to raise its special access prices in these locations (contrary to regulatory restrictions), doing so would attract entry by competitive providers, because MCI's facilities are invariably located in areas where other carriers have deployed facilities and that would only attract further entry in the event of an attempted price increase because they are areas of high concentration that are uniquely suited to competitive supply. In short, the combined company will not have the ability to drive all competition from the market for DS1 and DS3 services, let alone preclude re-entry, which is essential for any alleged price squeeze to succeed.

Finally, BT's claims that the combined company's performance in provisioning special access services will decline as a result of this transaction are also without merit. *See* Joint Reply at 46-47. These claims are likewise 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 we have explained elsewhere, the 1996 Act and the Commission's rules require Verizon to provide to competing carriers performance comparable to that which Verizon 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)." *See* Memorandum Opinion and Order, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, 17 FCC Rcd 26869, ¶ 1 (2002). BT wrongly assumes that the Commission will cease effectively regulating in this area. Indeed, any issues regarding Verizon's performance with respect to special access are not merger-specific and should be addressed as part of the Commission's existing rulemaking proceedings.

Sincerely,



Curtis Groves  
MCI



Dee May  
Verizon