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September 29, 2005

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

Re: Notice of *ex parte* Presentation in Docket No. 05-75, In the Matter of Verizon Communications and MCI, Inc., Applications For Approval of Transfer of Control

Dear Secretary Dortch:

On September 28, 2005, Mr. Arthur C. Orduna, Vice President-Strategic Initiatives for Advance/Newhouse Communications, Martin F. Petraitis of Sabin, Bermant & Gould, LLP, and Bruce D. Sokler and the undersigned of Mintz Levin Cohn Ferris Glovsky & Popeo, P.C. met separately with Scott Bergmann, Legal Advisor to Commissioner Adelstein; Russell Hanser, Legal Advisor to Commissioner Abernathy; Jessica Rosenworcel, Legal Advisor, and Jamie Wolszon, Intern, of Commissioner Copps's office; and with Bill Dever, Gail Cohen, Pamela Megna, and Marcus Maher of the Wireline Competition Bureau, Joel Rabinovitz of the Office of General Counsel, and Donald Stockdale of the Office of Strategic Planning.

In each meeting, we presented the attached slides and discussed the perceived harms and potential remedies contained therein and in the Reply Comments of Advance/Newhouse Communications filed in this proceeding.

Pursuant to the Commission's rules, a copy of this letter and the slide presentation is being filed with the Secretary via ECFS; a courtesy copy of the letter alone is also being provided via E-mail to all attendees from the Commission.

Sincerely,

Robert G. Kidwell

cc: Jessica Rosenworcel
Russell Hanser
Scott Bergmann
Gail Cohen
Bill Dever
Joel Rabinovitz
Pamela Megna
Donald Stockdale
Marcus Maher

WDC 375728v.1

Competitive Concerns Related to the Merger of Verizon and MCI

Presentation of Advance/Newhouse Communications

September 28, 2005

Overview

- The Applicants make dozens of references to intermodal competition from cable VoIP providers in their Application, Opposition, and many *ex parte* submissions.
- In the areas served by Bright House Networks ("BHN"), which is managed by Advance/Newhouse Communications, the merger has the potential to stop intermodal competition in its tracks.
- The Commission must address this stark public interest harm before it can find that this transaction serves the public interest.

The Applicants Claim That Intermodal Competition Will Preserve Sufficient Competition

- "With respect to the mass market, intermodal alternatives such as cable and wireless are major factors today and will provide the most significant competition going forward. **The transaction will not affect the rapid growth of these competitive alternatives in the slightest.**" *Public Interest statement at p. 4.*
- "Merger opponents offer no reason either to discount the significance of this growing facilities-based competition from intermodal alternatives or to suggest that this transaction will somehow undermine it." *Opposition to Petitions to Deny at p. 49.*
- "[F]acilities-based intermodal alternatives such as cable, wireless, and VoIP provide extensive and increasing competition for mass-market customers, and this transaction will not affect that competition." *September 7, 2005 ex parte at p. 4.*

BHN's Provision of Facilities-Based Local Telephone Competition is Dependent Upon Its Relationship With MCI

- BHN is a facilities-based local exchange carrier currently offering a full range of voice services to customers in the Tampa Bay and Central Florida markets, which are two of the fastest growing areas in the country.
- BHN relies heavily upon its partnership with MCI. As a practical matter, BHN could not have entered the voice market as quickly as it has, nor on the scale that it has, absent its partnership with MCI.
- The services as provided by MCI are critical to our current voice product and its evolution. Most notable are network interconnection, long distance, and order processing services, including MCI's proven expertise in number porting. Indeed, MCI's expertise in service order processing fulfills a key function in BHN's Digital Phone business process.

BHN's Business Partner Will Become Its Primary Competitor

- Fundamentally, the merger changes MCI's incentives from supporting new competition to being better off, as part of Verizon, without it.
- MCI's dedication to working with BHN to make BHN Digital Phone a better and more widely available product is an essential aspect of its service; that dedication is in serious jeopardy post-merger.

Any Degradation in the Quality of the Services BHN Purchases from MCI —Whether Unintended or Purposeful—Will Have Serious Competitive Effects

- BHN Digital Phone is a new and fast-growing residential service. As a new entrant, the difference between BHN's success and failure can be profoundly affected by even marginal decreases in service quality or dedication to improvement.
- BHN has already experienced the detrimental effects of past failures by MCI to meet its performance commitments. While they lasted, these failures severely impacted our competitiveness -- and, therefore, competition.
  - Between August of 2004 and February of 2005, MCI was unable to process BHN service orders in a timely manner. The result of this slowdown was a 50% shortfall in Digital Phone subscriber growth during this period, which translates into a loss of nearly 20,000 potential subscribers. It was only due to MCI's dedicated effort to get "back on track," after being confronted by BHN, that BHN's Digital Phone product has been able to grow rapidly since then.
- BHN plans to provide new competition in commercial and business voice products and to offer an integrated wireless broadband service relying upon the same partnership elements.

MCI's Performance Has Already Shown Signs of the Merger's Effect on Service

- Since the announcement of the merger, MCI's performance, investment, and responsiveness have declined.
  - On June 20, 2005, BHN customers experienced a drastic service outage—affecting an estimated 20,000 calls per hour—due to a failure of MCI facilities. MCI failed to respond in a timely manner as it has in the past.
  - On June 27, 2005, BHN customers again experienced a nearly identical outage due to a failure of MCI facilities. In ensuing discussions, BHN management pressed MCI for an explanation and an action plan to avoid future outages. MCI blames Verizon for the outages, and has accepted Verizon's explanation that a single Verizon employee's mistake was responsible for both outages. MCI has refused to take any steps to insure that Verizon will not cause future outages, and considers the matter closed.
- MCI personnel have suggested to BHN that MCI is unwilling to expend further resources to grow with BHN's Digital Phone business and is decreasing service levels.
  - Unwilling to make any additional investment to provide a carrier-grade suite of telecommunications services.
  - No Product Development or Roadmap offerings.
  - No additional improvements to provisioning or service delivery processes since merger announcement.

There are No Realistic Alternatives to MCI for BHN that Leave Competition Unaffected

- MCI has the highest rate center coverage -- by far -- of any alternative provider in Florida.
- There are only two other “possible” providers of services at all similar to those MCI offers BHN today: Sprint and Level 3.
  - Sprint is an incumbent LEC in BHN’s Central Florida market, and thus also one of its primary competitors. This presents a similar dynamic in type to that BHN faces with the proposed MCI/Verizon merger.
  - BHN considered Level 3 when it began development of its Digital Phone service and found that Level 3 had poor rate center coverage in BHN markets. Since that time, Level 3 is in the process of severely limiting its products for the residential wholesale provisioning market, has withdrawn an offer to provide commercial voice services, and has never provided the necessary services at the scale BHN requires for a competitive offering.
- MCI has continued to increase Rate Center coverage nationally because of BHN and Time Warner Cable business – disparity is now even larger versus alternatives.

Self-Provisioning is Not a Realistic Near-Term Alternative for BHN

- If BHN constructed redundant capabilities to replace those that MCI provides today independently, it would significantly impact its ability to compete with Verizon in at least the following ways:
  - Transitioning from one service provider to another (or a host of others) would likely result in service outages, improperly processed orders, and diminished service availability and performance.
  - It would hinder BHN's ability to expand and enrich its product offerings, limiting its focus to replacing and launching a simpler "single service" and leaving consumers without a robust competitive alternative.
  - Competition would wane significantly, as the task of simply maintaining service to the installed base during the transition period would preclude any substantial expansion of the customer base.
  - Substantial transition costs include the costs of purchasing duplicative services during the transition period, new construction and substantial extra labor, substantial startup costs with the new providers, and significant lost revenues due to inevitable customer service problems resulting from the complete overhaul of a network relied upon by over 120,000 subscribers on a day-to-day basis.

Reasonable Conditions are Necessary to Insure that Competition Continues to Exist in the Retail Market for Voice Telephony

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- Approval of the merger should be conditioned upon Verizon's pre-closing negotiation of thorough and comprehensive interconnection agreements with competing carriers.
- Conditions must incorporate meaningful performance standards for services provided to competing providers, with penalties paid directly to affected competitors.

The Commission Should Require Verizon to Honor Certain Terms

- Going forward, interconnection agreements with Verizon must contain certain enumerated terms that are absolutely essential to the preservation of competition post-merger. Their inclusion should be mandatory, and final approval of the merger should be conditioned on the finalization of agreements including such terms with any requesting competitor.
  - Automatic renewal upon expiration, subject to either party's ability to petition a state PSC for material changes in terms for good cause shown at the time of renewal; existing terms must be extended pending resolution of any such proceeding before a PSC;
  - Inter-carrier compensation must be "bill and keep," with no additional charges for interconnection, transport, trunking, termination, or origination;
  - Verizon must allow each competitor to interconnect at a single point of interconnection ("POI") in each LATA;
  - Network neutrality--a carrier's use of IP or circuit-switched technology must never affect the cost or terms of interconnection, and must never be considered good cause for a material change in terms.

A Start Toward a Solution in BHN Areas is Easy: Allow BHN to Opt Into and Continue the Terms of MCI's Existing Interconnection Agreement with Verizon

- In the Florida markets in which Verizon and BHN compete, Verizon should provide BHN a five-year interconnection agreement with terms identical to those found in the current agreement between Verizon and MCI.
- BHN has asked Verizon to enter into such an agreement.

Other Conditions Are Necessary to Preserve Competition

- Verizon should be required to purchase long distance and international long distance service from MCI at the same rate at which MCI sells these services to competing carriers, with competitors enjoying full "most favored nation" status to demand any discount provided to Verizon by MCI.

Other Conditions Are Necessary to Preserve Competition

- Verizon should be prohibited from entering into any exclusive contract with a third-party provider of provisioning services, so that it cannot extend by contract the harms inherent in the merger.
- MCI should continue to provide fair and non-discriminatory access to the Internet backbone to competing carriers at the same rate at which it sells such access to Verizon, with competitors enjoying full "most favored nation" status to demand any discount provided to Verizon by MCI.

Conclusion

- For the Commission to determine that approval of the merger is, on balance, in the public interest, it must first assure that these public interest harms are prevented.