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October 7, 2005

BY HAND AND ECFS

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

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Federal Communications Commission
Office of Secretary

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

Dear Ms. Dortch:

A recent ex parte filed by Level 3 purports to analyze the effect of this transaction on competition to serve individual buildings containing large business customers.¹ The record in this proceeding, however, demonstrates that the combination of Verizon and MCI will not reduce competition to provide high-capacity services to large business customers, regardless of whether the transaction is analyzed using an economically meaningful market definition or whether it is instead analyzed (incorrectly) on a building-by-building basis. Nothing in Level 3's recent ex parte calls any of that into question.

As an initial matter, it bears repeating that no party to this proceeding has access to complete data on the full extent to which carriers have deployed fiber to serve buildings in Verizon's region. Nor does the record here contain complete data on alternative fiber. Although Verizon and MCI have put extensive and detailed data on the record based on their own internal data, data that had been made available by other carriers, and publicly available data, the carriers that oppose this transaction have repeatedly refused to provide data on their own networks. Nonetheless, it is clear that Level 3's data do not take into account even the data that *is* in the record — data which, even without all competitive carriers' networks being counted, shows robust competitive alternatives. In addition, because Level 3's data are presented only in summary form, without any of the underlying detail necessary to analyze those data fully, it is impossible

¹ Ex Parte Letter from John T. Nakahata, Harris, Wiltshire & Grannis LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (filed Sept. 23, 2005) ("Level 3 Sept. 23, 2005 Ex Parte").

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to tell the extent to which those data add to the data in the record, rather than merely repeat an incomplete portion of the data that are already in the record.

In fact, Level 3's data vastly understate the extent of existing competition in Verizon's region by carriers using their own or third-party fiber. Where Level 3's data show only [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings in Verizon's region that are served by at least one carrier other than Verizon,² the limited data available to Verizon and MCI show that there are at least *twice* as many such buildings. Those data, despite their limitations, show that there are more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings in Verizon's region known to be served by another provider's fiber, *excluding* buildings to which MCI has deployed fiber.

Because Level 3's data understates so significantly the extent to which carriers other than MCI have lit buildings in Verizon's region, its "after merger" analysis is thoroughly flawed. Level 3 claims that, following this transaction, there will be [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings in Verizon's region where Verizon/MCI will be the only carrier with fiber to the building.³ In fact, as Verizon and MCI have shown, of the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] office buildings in Verizon's region to which MCI has deployed fiber, at least [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of those buildings are already served by at least one other provider's known fiber, leaving only [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] not known to be served by another provider — meaning that Level 3's figure is almost *40 percent* higher than the number produced by detailed evidence already in the record.⁴ In addition, because Level 3 has not provided the backup detail for its data, it is possible that some buildings that Level 3 identifies as being served by a carrier other than Verizon and MCI are not included in the data available to Verizon and MCI, with the result that Level 3's data would be even further overstated.

In addition to this, Level 3's data ignore that, of the office buildings in Verizon's region to which MCI has deployed fiber and that are not known to be served by another provider's fiber, at least [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] are within one-half mile of either a known fiber route of, or a building served by, a fiber provider other than MCI. And at least [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] are within one-quarter mile of either a known fiber route of, or a building known to be served by, a fiber provider other than MCI.⁵ In addition, Verizon

² See *id.* Attach. at 3.

³ See *id.* Attach. at 5.

⁴ See Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 28, 2005) ("Verizon/MCI Sept. 28, 2005 Ex Parte").

⁵ See *id.*

and MCI have shown that, when the characteristics that the Commission has concluded will support entry are taken into account, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the MCI-supplied office buildings that do not already have another known provider are either within one-half mile of alternative fiber or meet one of the Commission's criteria for competitive supply. And [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] are either within a quarter mile or meet one of the Commission's criteria for competitive supply.⁶ Verizon/MCI will not have any market power following this transaction with respect to those few individual buildings, which are scattered across a dozen or more MSAs.

In any event, even Level 3's limited data show that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the buildings it identifies as served by fiber deployed by a carrier unaffiliated with Verizon — [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] — will still be served by an unaffiliated carrier after this transaction.⁷ Level 3 attempts to discount this by noting that its data show that, for [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings known to be served by only one unaffiliated carrier, that carrier is AT&T.⁸ But this claim is based on the oft-repeated — but never-substantiated and, in fact, repudiated⁹ — allegation that SBC/AT&T and Verizon/MCI will collude and refrain from competing with each other following their respective mergers. We have repeatedly refuted this assertion at length.¹⁰ In short, it would not only be economically irrational for the two companies to engage in such collusion — as they would each lose business to carriers that operate in both regions — but also the unfounded speculation about supposed collusion is insufficient as a matter of law.¹¹ In fact, the evidence shows that Verizon and SBC have competed, and continue to compete, extensively with one another.¹²

⁶ *See id.*

⁷ *See* Level 3 Sept. 23, 2005 Ex Parte Attach. at 5.

⁸ *See id.*

⁹ *See* Opinion of the Attorney General on Competitive Effects of the Proposed Merger of Verizon Communications Inc. and MCI, Inc., *Joint Application of Verizon Communications Inc. and MCI, Inc. to Transfer Control of MCI's California Utility Subsidiaries to Verizon*, No. 05-04-020, at 17-18 (Cal. PUC filed Sept. 16, 2005).

¹⁰ *See, e.g.*, Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, at 11-12 (filed Sept. 9, 2005) (“Verizon/MCI Sept. 9, 2005 Ex Parte”).

¹¹ *See Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126, 1130 (D.C. Cir. 2001) (in the absence of evidence that “collusion has in fact occurred or is likely to occur,” assumption that parties could collude was “mere conjecture”).

¹² *See, e.g.*, Verizon/MCI Sept. 9, 2005 Ex Parte at 11-12.

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For the foregoing reasons, as well as those we have set forth in record previously, the Commission should find that this transaction is in the public interest and the license transfer applications to permit the combination of MCI and Verizon should be expeditiously granted.

Sincerely,



Dee May



Curtis Groves

cc: Julie Veach
William Dever
Ian Dillner
Gail Cohen
Tom Navin
Don Stockdale
Gary Remondino

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