

October 18, 2005

EX PARTE

Marlene Dortch
Secretary
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; and In the Matter of Developing A Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

Verizon and MCI submit this *ex parte* in response to National Telecommunications Cooperative Association's (NTCA) *ex parte* proposing regulatory action to address billing issues surrounding "phantom traffic," filed on October 6, 2005, in the above-reference dockets. As an initial matter, NTCA's proposals regarding "phantom traffic" have nothing to do with the pending merger between Verizon and MCI and should not be considered as part of the merger proceedings. Moreover, as discussed below, the Commission should reject NTCA's proposals in any event. The heavy-handed regulatory intervention sought by NTCA cannot be justified in light of the tools that carriers already have available to address billing for "phantom traffic."

First, NTCA's *ex parte* materials regarding "phantom traffic" should not be considered in the Verizon/MCI merger docket. NTCA's proposals for "phantom traffic" have nothing to do with the fact that the Verizon/MCI merger will promote the public interest and will not harm competition, and therefore NTCA's proposals are not appropriate for consideration in the merger proceedings. Moreover, issues surrounding "phantom traffic" are already being addressed by the Commission in other, industry-wide rulemaking proceedings in which numerous carriers have been actively involved. As the Commission has recognized, it is more appropriate for the Commission to address such concerns in the existing rulemaking proceedings so that the Commission may develop a comprehensive approach based on a full record. Indeed, the Commission has repeatedly and consistently declined to consider in merger proceedings matters that are the subject of other proceedings before the Commission.¹ The same approach should prevail here.

Second, NTCA's "phantom traffic" proposals should be rejected in the context of the Commission's intercarrier compensation rulemaking docket in any event. Allegations of "phantom traffic" have come almost exclusively from rural local exchange carriers (RLECs), such as NTCA's members, that are often indirectly connected to other LECs, interexchange

¹ See, e.g., 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); Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Copr. to SBC Communications, Inc.*, 13 FCC Rcd 21292 (1998).

carriers (IXCs), and wireless carriers through an incumbent LEC's tandem. These RLECs have used the term "phantom traffic" to encompass a broad range of traffic that they claim is unbillable or underbilled because the terminating LEC allegedly cannot determine the appropriate carrier to bill or the jurisdiction of the call. However, as Verizon has explained in prior submissions, terminating LECs already have the tools needed to identify the carrier responsible for payment and to determine appropriate billing rates for that traffic.²

For example, the terminating carrier can identify the carrier responsible for payment by using "terminating access records," which are standardized records created by tandem providers and designed for use in billing. Well-established industry standards govern the creation and format of terminating access records. Pursuant to these standards, Verizon identifies the carrier to be billed based on which carrier owns the trunk group delivering traffic to Verizon's tandem. If the carrier to be billed is an IXC, Verizon determines the carrier's Carrier Identification Code ("CIC"); if the carrier to be billed is not an IXC, Verizon determines the carrier's Operating Company Number ("OCN"). Verizon then inserts the derived CIC or OCN in the terminating access record, which is provided to the terminating carrier.³

Once a terminating carrier has identified the carrier responsible for payment, the terminating carrier can and should resolve any remaining billing issues – such as questions regarding the jurisdiction of traffic – directly with the responsible carrier. Again, the industry has developed methods for determining the appropriate billing rate when the jurisdiction of a call may be unclear. For example, Verizon and many other carriers use a technique known as "factoring" to determine the applicable intercarrier compensation rates to charge originating LECs or IXCs when the jurisdiction of traffic cannot be determined by the calling party's telephone number (CPN). Typically in factoring arrangements, the originating carrier or IXC is required to develop estimates as to what percentage of its traffic delivered to the other carrier is local, intrastate toll, or interstate toll. These percentages, or factors, are commonly referred to in

² See Reply Comments Of Verizon in Response To Further Notice Of Proposed Rulemaking, CC Docket No. 01-92, at 15-19 (July 20, 2005); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Aug. 1, 2005) (discussing meeting about phantom traffic); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Aug. 9, 2005) (discussing factoring); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Sept. 26, 2005) (responding to CBeyond *ex parte*); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Oct. 5, 2005) (discussing meeting about solutions to phantom traffic).

³ See Reply Comments Of Verizon in Response To Further Notice Of Proposed Rulemaking, CC Docket No. 01-92, at 15-19 (July 20, 2005); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Aug. 1, 2005) (discussing meeting about phantom traffic); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Sept. 26, 2005) (responding to CBeyond *ex parte*); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Oct. 5, 2005) (discussing meeting about solutions to phantom traffic).

tariffs as “percent local usage (PLU) factors” and “percent interstate usage (PIU) factors.”⁴ These factors are then used to determine the jurisdiction of the traffic in question and to calculate the appropriate intercarrier compensation that the originating carrier or IXC must pay. For example, a carrier may use CPN to determine the jurisdiction of the traffic for which CPN is available and use factoring to determine the jurisdiction for calls that lack a valid CPN. In other cases, carriers may agree to use factoring to determine the jurisdiction of all traffic originating from a particular carrier. Such an arrangement is often used for wireless-originated traffic, because the parties recognize that CPN will not necessarily reflect the geographic location of the calling party. Factoring arrangements are commonly used throughout the industry, both in contracts and access tariffs, to determine the applicable rate to bill for traffic. Indeed, the NECA tariff in which many RLECs participate already provides for factoring to be used to jurisdictionalize access traffic.⁵

By using terminating access records and factoring arrangements, RLECs can identify the carrier responsible for payment and determine the appropriate intercarrier compensation rate for billing. But, despite the fact that carriers already have these tools at their disposal, NTCA asks the Commission to relieve RLECs of their responsibility to handle their own billing by requiring tandem providers to act as billing agents and establishing additional rate regulations. *First*, NTCA asks the Commission to order that RLECs may bill tandem providers for all “unlabeled” traffic that tandem providers deliver.⁶ As an initial matter, NTCA does not explain what “labeling” would be required to prevent triggering this new rule. To the extent that NTCA means to suggest that tandem providers should insert the derived CIC or OCN into the SS7 signaling stream, it is neither feasible nor consistent with well-established industry standards for the transit provider to do so. Terminating carriers must look to the terminating access record – *not* the SS7 signaling stream – to identify the carrier responsible for billing.⁷

And, to the extent that NTCA’s proposal for “unlabeled” traffic is meant to suggest that the tandem provider should be held responsible for missing or invalid jurisdictional information received from third parties, that proposal also should be rejected because terminating RLECs already have methods, such as factoring, to deal with such traffic. Terminating access records

⁴ See, e.g., Verizon FCC Tariff No. 1 § 2.3.10 (discussing the use of percent interstate usage factors, or PIU factors, to determine the jurisdiction of switched access traffic); National Exchange Carrier Association, Inc. (NECA), FCC Tariff No. 5 §§ 2.3.11, 6.3.1(A) (same).

⁵ See Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Aug. 1, 2005) (discussing meeting about phantom traffic); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Aug. 9, 2005) (discussing factoring); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Sept. 26, 2005) (responding to CBeyond *ex parte*); Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Oct. 5, 2005) (discussing meeting about solutions to phantom traffic).

⁶ See NTCA Phantom Traffic Ex Parte Handout, at 1 & 2.

⁷ See also Letter to Marlene Dortch from Donna Epps with attachments, filed in CC Docket No. 01-92 (Sept. 26, 2005) (responding to CBeyond *ex parte*).

identify the carrier responsible for payment, and *that* is the carrier to which the RLEC must address concerns about jurisdictional information and from which the terminating RLEC carrier must seek payment. There is no justified basis for requiring tandem providers, which merely serve as middlemen passing along the traffic and call detail they receive from third parties, to pay an RLEC's terminating fees when the RLEC can and should seek payment directly from the responsible carrier.

Second, NTCA asks the Commission to establish a "default termination rate" to apply anytime the RLEC does not have an interconnection agreement with the carrier responsible for payment. Such hands-on rate regulation cannot be justified when RLECs already have the tools to establish factoring arrangements to determine the appropriate rates for billing. For example, billing for access traffic received from IXCs is governed by access tariffs, which can include provisions for factoring – indeed, many of them already do.⁸ Factoring arrangements for non-access traffic can be negotiated in contractual agreements. Indeed, such arrangements can be included in the negotiations that are already occurring between RLECs and wireless carriers under the Commission's *T-Mobile Order*.⁹

Sincerely,



Donna Epps
Verizon



Curtis Groves
MCI

cc: Michelle Carey
Julie Veach
William Dever
Ian Dillner
Gail Cohen
Tom Navin
Don Stockdale
Gary Remondino
Tamara Preiss
Steve Morris

⁸ See, e.g., NECA, FCC Tariff No. 5 §§ 2.3.11, 6.3.1(A).

⁹ Memorandum Opinion & Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855 (rel. Feb. 24, 2005).