October 19, 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

Ms. Dortch:

A recent ex parte filed by SAVVIS asserts that this transaction will reduce competition for special access and among operators of Internet backbones.[1] The record in this proceeding, however, demonstrates that MCI is not a unique source of competition for special access[2] and that the combination of Verizon and MCI will have no material effect on competition among Internet backbone operators.[3] SAVVIS's latest filing adds nothing to the record here and does nothing to call into question the extensive showing by Verizon and MCI that this transaction is in the public interest.[4] Therefore, there is no basis for the Commission to impose conditions on the combination of Verizon and MCI. In any event, the conditions that SAVVIS proposes are fraught with practical and other difficulties, are unjustified, and in many cases are not even merger-related. Accordingly, the Commission should reject the proposed conditions.

A. Special Access

First, SAVVIS asserts that we have provided "no evidence" that other carriers can provide special access services in those areas where MCI has deployed its local fiber networks.[5] But nothing could be further from the truth. Verizon and MCI have submitted extensive data — including detailed maps and building-by-building lists — showing where MCI's local fiber networks are deployed in Verizon's region, which buildings MCI serves using its own fiber, and where other carriers are known to have deployed their local fiber networks and are serving

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[1] Ex Parte Letter from Christopher J. Wright, Harris, Wiltshire & Grannis LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (filed Oct. 4, 2005) ("SAVVIS Oct. 4, 2005 Ex Parte").

[2] *See*, *e.g.*, Special Access White Paper, *attached to* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (filed Aug. 25, 2005) ("Special Access White Paper").

[3] *See*, *e.g.*, Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket Nos.05-75 (filed Sept. 12, 2005) ("Verizon/MCI Sept. 12, 2005 Ex Parte"); Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 7-8 (filed Aug. 8, 2005)) ("Verizon/MCI Aug. 8 2005 Ex Parte").

[4] The same is true of a recent ex parte filed by TelePacific, which makes similar claims about special access competition, although those claims are directed almost exclusively at the SBC/AT&T transaction. *See* Ex Parte Letter from Richard M. Rindler, Swidler Berlin LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (filed Oct. 6, 2005) ("TelePacific Oct. 6, 2005 Ex Parte")

[5] SAVVIS Oct. 4, 2005 Ex Parte Attach. at 8.

buildings.[6] Although the data available to Verizon and MCI necessarily is incomplete and understate (perhaps significantly) the extent to which other carriers have deployed local fiber networks, those data show that, in the 39 groupings of contiguous wire centers in Verizon's region where MCI has deployed its local fiber, 92 percent of the groupings have at least two or more competing providers, other than MCI, and all but one have at least one other supplier.[7] Even at the individual wire center level, the wire centers where MCI's local fiber networks overlap with Verizon's network contain an average of six competing providers, in addition to MCI.[8] In addition, even though a building-by-building analysis of this transaction does not reflect any economically meaningful market, Verizon and MCI have submitted extensive, detailed evidence demonstrating that virtually all of the buildings with MCI fiber — nearly 98 percent — either already are served by another fiber provider or demonstrably could be.[9] SAVVIS simply ignores this massive body of evidence in making its own assertions about the effects of this transaction — assertions that it does not support with even a single data point.[10]

Second, equally meritless are SAVVIS' claims that this transaction will slow innovation in the information technology marketplace.[11] On the contrary, the combination of Verizon's and MCI's complementary assets and expertise will strongly promote the public interest, promising immediate efficiencies and long-term innovations that neither company could achieve on its own.[12] As we have explained, this transaction promises medium- and long-term benefits as the combined entity will bring increased investment to critical network infrastructure and accelerate the delivery of innovations to all consumers. Indeed, Verizon has already committed to an investment of $2 billion to enhance MCI's network and information technology platforms.[13]

For these reasons, there is no basis for the Commission to impose on Verizon and MCI any of the conditions that SAVVIS proposes. Those conditions should be rejected for additional reasons as well.

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[6] *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 (filed Sept. 28, 2005) ("Verizon/MCI Sept. 28, 2005 Ex Parte"); Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 12, 2005); Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 9, 2005); Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 7, 2005).

[7] *See* Public Interest Statement at 32; Lew/Lataille Decl. ¶ 22: Joint Opposition and Reply at 29. That one area is in Carbondale, Illinois, where MCI's local fiber network overlaps with only a single Verizon wire center. *See* Lew/Lataille Decl. ¶ 22.

[8] *See* Lew/Lataille Decl. ¶ 23.

[9] *See* Verizon/MCI Sept. 28, 2005 Ex Parte at 2-3 & Attach.

[10] *See*, *e.g.*, SAVVIS Oct. 4, 2005 Ex Parte Attach. at 9 (asserting without evidentiary support that MCI is a "significant supplier[] of special access circuits"). TelePacific similarly asserts that "AT&T and MCI" provide "the majority of competitive alternatives to reach Tele[P]acific's customers' buildings," without providing any supporting data, distinguishing between AT&T and MCI, or making clear whether these buildings are in SBC's region or Verizon's. TelePacific Oct. 6, 2005 Ex Parte Attach. at 1.

[11] *See id.*

[12] *See* Public Interest Statement at 10-11.

[13] *See id.* at 15-18.

Because Verizon and MCI have already stated that the combined entity intends to honor MCI's existing contracts, there is no reason for the Commission to impose a regulatory obligation compelling the combined entity to do so, as SAVVIS proposes.[14] In addition, because the rates and other provisions in MCI's existing contracts are inextricably linked with the length of those contracts, there can be no basis for extending those contracts for five years, as SAVVIS proposes. Nor is there any basis, as implied by SAVVIS's proposal, to impose any conditions on MCI's operations outside Verizon's region, which would be "unrelated to the transaction."[15]

The Commission should also reject SAVVIS's suggestion that the Commission alter its existing, industry-wide rules regulating special access rates by mandating annual reductions in Verizon/MCI's prices.[16] Claims about the need to alter those rules are already being addressed by the Commission in other, industry-wide rulemaking proceedings. 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."[17] Indeed, the Commission is legally required to do so. *See*, *e.g.*, *United States Telecom Ass'n v. FCC*, 400 F.3d 29, 39 (D.C. Cir. 2005) (holding that, when the Commission makes "a substantive change from [a] rule announced in" an earlier rulemaking or order, the Commission "must comply with the procedural requirements of the APA"); *see id.* at 39 n.19 (citing cases). In any event, those claims are wrong on the merits. Verizon has explained that the average revenue per special access line has decreased by an average of 16.6 percent per year in real terms since 2001. And Verizon has shown that average revenue per special access line for DS1 and DS3 circuits experienced significant declines as well, averaging annual reductions of 5.7 and 7.6 percent per year respectively in real terms between 2002 and 2004. *See* Reply Comments of Verizon, *In the Matter of Special Access Rates for Price Cap Local Exchange Carrier*, WC Docket No. 05-25, at 4-5. Indeed, Verizon has stated that average revenue per line for both special access services in the aggregate and DS1 and DS3 services individually decreased *faster* than the change in the Price Cap Index (that is, faster than inflation minus the X factor) in the post-pricing flexibility period.[18]

Finally, the Commission should reject SAVVIS's proposal to regulate Verizon/MCI's corporate structure, by requiring that MCI's IXC operations are separate from Verizon's BOC

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[14] *See* SAVVIS Oct. 4, 2005 Ex Parte Attach. at 10.

[15] Memorandum Opinion and Order, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent To Transfer Control*, 19 FCC Rcd 21522, ¶ 43 (2004) ("*AT&T Wireless-Cingular Order*").

[16] *See* SAVVIS Oct. 4, 2005 Ex Parte Attach. at 10.

[17] *AT&T Wireless-Cingular Order* ¶ 183; *see* Joint Opposition to Petitions to Deny and Reply to Comments at 41 (citing decisions); Public Interest Statement at 33 n.33 (same). There is no merit to TelePacific's assertion that MCI's participation is necessary in special access pricing proceedings, *see* TelePacific Oct. 6, 2005 Ex Parte Attach. at 1, which assumes that this Commission cannot perform its statutory role of assessing comments submitted without assistance. Regardless, other CLECs have actively participated both in this proceeding and in the special access rulemaking.

[18] *See* Lew Reply Decl. ¶ 37.

obligations.[19] As an initial matter, the Commission has existing rules — and a pending rulemaking — governing when BOCs may provide long-distance services on an integrated basis, and what rules should apply to them if they do. As noted above, the Commission's policy is to consider such industry-wide issues through industry-wide proceedings, not in the context of a single transaction. In any event, in those areas where Verizon is a BOC, § 272(e) requires it fulfill requests from unaffiliated carriers within the same time and at the same price that it provides such service to itself, whether or not MCI operates as a separate affiliate.[20] FCC rules also prevent Verizon from offering a new contract tariff for special access service to one of its long-distance affiliates until Verizon "certifies to the [FCC] that it provides service pursuant to that contract tariff to an unaffiliated customer."[21] Given these existing anti-discrimination provisions, there is no basis for SAVVIS's proposal that the Commission permit unaffiliated carriers to obtain the benefits of rates and terms available to MCI even when they do not satisfy the volume requirements that exist in a few of Verizon's special access tariffs.[22]

B. Internet Backbone

SAVVIS's claims concerning the Internet backbone likewise repeat the same allegations they have made before and that Verizon and MCI have already refuted.[23] SAVVIS is simply wrong in its assertion (at 7, 11) that the combined company will "dominate" the Internet backbone business. In fact, as we have shown, the transaction will not materially alter the *status quo* in terms of the backbone business, which will remain highly competitive. The combined company will carry less than 10 percent of North American Internet traffic; it will rank fourth among seven comparable or larger backbone operators; and operators other than those seven will carry approximately 35 percent of Internet traffic.[24] As a result, the transaction will not, as SAVVIS suggests (at 11), enable the combined company to disconnect other backbones or degrade competitors' traffic. As the record demonstrates, any such strategy would not make business sense because it would harm Verizon/MCI's own customers by negatively affecting the large majority of traffic that they receive or want to receive and provide strong incentives for them to switch to competing backbone operators.[25] Consequently, there is no basis for the proposed requirement (at 12) that the Applicants continue to peer with the same number of companies with which they peer today.

Finally, SAVVIS's claims concerning transit and the use of traffic ratios in peering decisions (at 11-12) are not merger-specific and do not provide any basis for finding that the

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[19] *See* SAVVIS Oct. 4, 2005 Ex Parte Attach. at 10.

[20] *See* 47 U.S.C. § 272(e)(1), (3).

[21] 47 C.F.R. § 69.727(a)(2)(iii).

[22] *See* SAVVIS Oct. 4, 2005 Ex Parte Attach. at 10; *see also*, *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 18-19 (filed Sept. 9, 2005) (describing Verizon's special access tariff discount plans).

[23] *See, e.g.*, Verizon/MCI Sept. 12, 2005 Ex Parte at 1-7.

[24] *See* Joint Opposition to Petitions to Deny and Reply to Comments at 70-80; Kende Reply Decl. ¶ 8; Verizon/MCI Sept. 12, 2005 Ex Parte at 1-3.

[25] *See, e.g.*, Verizon/MCI Sept. 12, 2005 Ex Parte at 4-6; Verizon/MCI Aug. 8, 2005 Ex Parte at 4-7.

transaction would undermine competition in the backbone business.[26] The use of transit is not, as SAVVIS asserts, "ruinous": transit pricing is competitive (and has come down rapidly in the past few years), and technological and commercial developments such as mirroring and secondary peering have also reduced transit costs.[27] And SAVVIS's claim that the ratio of outgoing to incoming traffic should not be a factor in peering decisions is belied by the fact that, according to its own filings in this proceeding, SAVVIS itself uses traffic ratios as one of its criteria for peering decisions.[28] In any event, as we have explained, traffic ratios are just one of a variety of economic and cost factors used by network operators generally to determine whether to enter into peering or transit relationships.[29] Nothing about the transaction changes that or provides a basis for the Commission now to start regulating what factors should be considered in making peering and transit decisions.

For the foregoing reasons, as well as those we have set forth in record previously, SAVVIS's latest filing does nothing to call into question our showing that this transaction is in the public interest and provides no basis for the remedies that it seeks to have imposed.

Sincerely,

Dee May
Verizon

Curtis Groves
MCI

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

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[26] *See, e.g.*, Verizon/MCI Sept. 12, 2005 Ex Parte at 6-8.

[27] *See* Joint Opposition to Petitions to Deny and Reply to Comments at 75-77; Kende Reply Decl. ¶¶ 16, 18-29.

[28] *See* Broadwing/SAVVIS Opp. at 41. Indeed, the concerns expressed by SAVVIS are particularly ironic given that it has expressly refused to peer with Verizon. See Pilgrim Reply Decl. ¶ 6.

[29] *See, e.g.*, Joint Opposition to Petitions to Deny and Reply to Comments at 75-81.