

October 19, 2005

BY HAND AND ECFS

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

In recent filings, Qwest, T-Mobile, CTC, CompTel, Global Crossing, and a group of CLECs (“Joint CLECs”) propose a laundry list of conditions that they assert the Commission should impose in this proceeding.¹ Most recently, many of these same carriers have repeated their proposed conditions in a joint filing.² As an initial matter, these filings put the cart before the horse: these so-called remedies cannot be justified absent a showing that the transaction will cause competitive harm. To the extent these ex partes even purport to address this threshold question, they merely repeat claims in earlier filings by CLECs to which we have already responded at length.³ These filings neither respond to our extensive evidentiary showing rebutting those claims or even purport to have identified new evidence.

¹ See Letter from Paul Kouroupas, Global Crossing, *et al.*, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (filed Oct. 7, 2005) (“Global Crossing/T-Mobile”); Letter from Jonathan D. Lee, CompTel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 29, 2005); Letter from Brad E. Mutschelknaus, Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 22, 2005); Letter from Melissa E. Newman, Qwest, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 1, 2005); Letter from Edward W. Kirsch, CTC Communications, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 21, 2005) (“CTC Sept. 21”); Letter from James W. Hedlund, T-Mobile, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 1, 2005); Letter from Edward W. Kirsch, CTC Communications, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Aug. 31, 2005) (“CTC Aug. 31”).

² See Letter from Melissa Newman, Qwest, *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (Oct. 17, 2005).

³ See, *e.g.*, Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75, at 2-5 (FCC filed Sept. 15, 2005); Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 9, 2005) (“Verizon/MCI Sept. 9, 2005 Ex Parte”); Letter

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As we have shown, the record establishes that the transaction will not cause any competitive harm, whether one looks at wholesale services such as special access sold to CLECs, retail services for business and mass market customers, or Internet-related services. As a result, the fundamental predicate for the imposition of conditions is missing. Even beyond that, however, as we discuss below, the various proposed conditions 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.

Asset and Customer Divestitures. Qwest offers no basis for its proposal (at 3-4) that the Commission require broad divestitures of both assets and customers. As we have explained, the considered choices of customers to purchase services from MCI, over MCI facilities, should not be overridden by a divestiture unless absolutely necessary to solve a serious competitive problem — conditions that are not remotely present here.⁴ Opponents of the transaction have focused on overlapping local fiber in certain areas. But, as we have shown, there already is competing fiber in those limited areas where Verizon and MCI have overlapping facilities. MCI has deployed its local fiber in 39 identifiable areas in Verizon’s region, which are made up of groupings of contiguous wire centers. These groupings are located in only 30 MSAs, and in some cases are as small as one or two wire centers, such as in Albany and Trenton, and in some of the most competitive areas that have been targeted most heavily by numerous other providers, such as New York or Boston, cover parts of 30 or more wire centers.⁵ Based on the limited data available to Verizon and MCI that identifies other carriers’ local fiber networks, there are at least two or more competing providers, other than MCI, in 92 percent of these groupings of wire centers, and at least one other supplier in all but one.⁶ And, 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.⁷ The result is that in virtually all of the locations where MCI has deployed fiber there are other competitive fiber suppliers that are

from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 7, 2005) (“Verizon/MCI Sept. 7, 2005 Ex Parte”); Verizon and MCI, Response to Analysis of the Alliance for Competition in Telecommunications (ACTel) (June 2005), *attached to* Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (filed June 30, 2005) (“Verizon/MCI June 30, 2005 Ex Parte”); Special Access White Paper, *attached to* 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”).

⁴ See Special Access White Paper at 93-98.

⁵ See Lew/Lataille Decl. Exh. 10B.

⁶ 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.

⁷ See Lew/Lataille Decl. ¶ 23.

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either already serving those exact locations, or that have nearby fiber facilities that could readily be extended to such locations.

This is true even if this transaction were analyzed — and it should not be — on a building-by-building basis.⁸ Virtually all of the buildings with MCI fiber either already are served by another fiber provider or demonstrably could be. There are only [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] office buildings in Verizon’s region to which MCI has deployed fiber.⁹ Based on the limited data available to Verizon and MCI [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of those buildings are already served by at least one other provider’s known fiber.¹⁰

Of the remaining [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] office buildings to which MCI has deployed 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

⁸ A focus on individual buildings does not reflect any economically meaningful market and therefore is inconsistent with the Commission’s past approach in the merger, pricing flexibility, and UNE contexts. In past merger reviews, the Commission has found that the relevant geographic market for large business customers is “a single national market.”⁸ See, e.g., Memorandum Opinion and Order, *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control*, 13 FCC Rcd 18025, ¶ 30 (1998) (“*MCI/WorldCom Order*”); Memorandum Opinion and Order, *Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent To Transfer Control*, 12 FCC Rcd 19985, ¶ 54 (1997). Outside the merger context, but in the specific context of high-capacity services, the Commission has considered Metropolitan Statistical Areas (“MSA”) as the appropriate geographic market, explaining that an MSA “best reflect[s] the scope of competitive entry, and therefore [is] a logical basis for measuring the extent of competition.” See Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, 14 FCC Rcd 14221, ¶ 72 (1999), *aff’d*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). The Commission has also used a wire-center approach with respect to high-capacity facilities in the context of its unbundling analysis. See Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶¶ 167-173 (2005) (“*TRRO*”), *petitions for review pending, Covad Communications Co. v. FCC*, Nos. 05-1095 *et al.* (D.C. Cir.). Although that approach is too narrow for present purposes — given the fact that carriers deploy local fiber networks across groups of wire centers and large business customers purchase high-capacity service to serve locations in multiple wire centers (if not multiple states or countries) — using either an MSA or a wire center approach makes clear that there is no issue with respect to this transaction.

⁹ See Attachment A; see also Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, at 3 (filed Sept. 28, 2005) (“*Verizon/MCI Sept. 28, 2005 Ex Parte*”). Attachment A provides an update of the building analysis that Verizon and MCI previously submitted based on additional information that the parties have been able to gather about those locations. In particular, we discovered that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings did not have MCI fiber in use, either because the building was vacant, demolished, or because MCI had decommissioned its fiber in the building.

¹⁰ See Attachment A; *Verizon/MCI Sept. 28, 2005 Ex Parte* at 2-3 & Attach.

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building known to be served by, a fiber provider other than MCI.¹¹ These distances are significant because MCI's own experience as an independent CLEC serving these buildings demonstrates that carriers can deploy laterals that span these distances and connect their fiber to these buildings. As we have shown, since the beginning of 2003, about 40 percent of MCI's approved building adds were within a quarter mile of its fiber routes, and another 35 percent were between a quarter and a half mile. To put it another way, this means that 60 percent of MCI's approved building adds were a quarter mile or more from its fiber, and 25 percent were more than a half mile from its fiber.¹²

Moreover, there is no need to speculate about whether customers in the MCI-served buildings that are in close proximity to alternative fiber generate sufficient demand to attract a second supplier. Actual marketplace experience has shown that they do. The fact that MCI deployed fiber to these buildings shows that they can support another provider if, following the combination of MCI and Verizon, the customers in these buildings decide they want an alternative or second provider.¹³ Thus, any MCI-supplied buildings within a half or quarter mile of known alternative fiber have proven to be susceptible to competitive supply, and do not raise an issue.

The number of buildings that are susceptible to competitive supply gets even larger, and the number as to which there is any conceivable issue shrinks even further, if the characteristics that the Commission has concluded will support entry are taken into account. At least **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of the buildings already have customer special access demand of at least 2 DS3s.¹⁴ This figure necessarily understates demand from customers in the buildings at issue, because it excludes customers currently served by Verizon

¹¹ See Attachment A; Verizon/MCI Sept. 28, 2005 Ex Parte at 2.

¹² Verizon/MCI Sept. 9, 2005 Ex Parte, Attach. 3 ¶ 6 (Decl. of Edwin A. Fleming) and Attach. 3 Exh. 1 (Approved Verizon-Region Building Adds: 2003-2006, *exhibit to* Decl of Edwin A. Fleming).

¹³ Since 2003, MCI has constructed fiber laterals that have cost between **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**. At this cost, MCI obtains a **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** month payback from customers of as little as **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** a month. Verizon/MCI Sept. 9, 2005 Ex Parte, Attach. 3 ¶ 6 (Decl. of Edwin A. Fleming). Some have pointed to a WorldCom filing from 2001, more than four years ago, in which different cost figures were cited. But regardless of what the estimated costs may have been in 2001, the costs cited here are supported by specific detail of actual building adds and costs since 2003. See Verizon/MCI Sept. 9, 2005 Ex Parte, Attach. 3 Exh. 1 (Approved Verizon-Region Building Adds: 2003-2006, *exhibit to* Decl of Edwin A. Fleming). And as the Declaration of Thomas J. McCambridge attached here explains, the costs of deploying fiber have decreased considerably since 2001.

¹⁴ See Attachment A. Verizon's previous analysis found that 490 of the buildings already have customer special access demand of at least 2 DS3s, considering only MCI's customers and those served by other carriers using UNEs or special access obtained from Verizon. See Verizon/MCI Sept. 28, 2005 Ex Parte Attach. The revised analysis also includes special access demand from Verizon's retail customers.

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retail or by other carriers using their own or third-party facilities. In addition, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the buildings are located in a wire center where the Commission has not required Verizon to unbundle DS3 loops.¹⁵

In sum, [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. These numbers reflect the most meaningful analysis for these purposes because a building could be served by another provider following this transaction if it is *either* in close proximity to another provider's fiber *or* has sufficient demand that the Commission has not required unbundling to the building, as the Commission's determination that other carriers could deploy fiber to those buildings means that customers in those buildings would still have competitive options after this transaction.¹⁶

In any event, whether the Commission considers the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings for which Verizon and MCI cannot identify another fiber provider serving the building, fiber within one-half mile of the building, or demand of at least 2 DS3s, or the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] buildings for which Verizon and MCI cannot identify another provider either serving the building or with fiber within one-quarter mile of the building, it remains the case that 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 these circumstances, there is absolutely no justification for requiring the divestiture of customers. The enterprise customers that have chosen MCI as their carrier from a robustly competitive field are sophisticated businesses and government agencies who are not going to be willing to be forcibly transferred to Qwest or other providers that they already have decided not

¹⁵ *See id.*

¹⁶ Some have claimed that only buildings that are *both* in close proximity to another carrier's known fiber *and* that have significant demand for high-capacity services are likely to generate additional competitive fiber deployment following this transaction. But this makes little sense given the fact that MCI's own decision to deploy fiber to these buildings demonstrates that *all* of the MCI-served buildings in close proximity to another carrier's known fiber have sufficient demand to justify deployment. In addition, because the data available to Verizon and MCI necessarily understates the amount of fiber deployed by other carriers — and, therefore, the number of buildings within a half-mile or a quarter-mile of another carrier's fiber — using a conjunctive test would exacerbate the limitations of the data. And, of course, individual buildings are not economically meaningful markets in the first place, given the manner in which the large business customers purchase and competing providers supply high capacity services. So any attempt to conduct a building-by-building analysis should not compound matters by applying screens that are out of step with actual marketplace experience that shows the buildings can in fact be competitively supplied.

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to use — particularly during the term of contracts that fully protect them. The Commission cannot override these carefully considered choices and by doing so threaten disruption in transfers of customers or services.¹⁷ Again, even other merger opponents such as Level 3, Global Crossing, XO, and Eschelon (a member of this group of Joint CLECs) have acknowledged the difficulties associated with divestiture of customers.¹⁸ Although customers can be required to switch to a new provider, they cannot be required to stay with that provider, and will switch back if they choose. Qwest’s proposed manner (at 4) of addressing the reluctance of customers to change carriers — by guaranteeing it a revenue commitment irrespective of whether it is providing service to customers — demonstrates that its sole interest is in gaining unearned benefits as a competitor without regard to the welfare of the customers.

Qwest likewise fails to address the significant costs, obstacles, and customer disruption that would result from the facilities divestitures it seeks, which even other opponents have acknowledged. Global Crossing has stated that facilities divestitures are “extremely complex,” as “[f]acilities are not easily segregated” and complicated issues of coordination arise with respect to “[m]aintenance of facilities and equipment.”¹⁹ XO and Eschelon have likewise analogized divestiture to “trying to divide one child between multiple mothers,” given the logistical issues involved. XO/Eschelon Press Release. If Verizon/MCI were required to divest facilities but not customers, they would have to transfer affected customers to other facilities. Because service to business customers involves complicated service arrangements through a combination of shared and customer-specific fiber facilities, any such transfer would create a significant risk of disruption during the term of contracts that fully protect the customers.²⁰

Fresh Look. Qwest (at 5) and CompTel (at 2) propose that the Commission require a “fresh look” for “all” carrier and retail enterprise customers of Verizon. The Joint CLECs (at 7-8), on the other hand, propose a fresh look for all of MCI’s business customers. The recent group filing (Attach. at 2), unsurprisingly, supports both proposals. Both proposals misapprehend the purpose of a “fresh look” remedy. In those rare instances in which the Commission has imposed such a requirement, there was some showing that existing contracts

¹⁷ See Special Access White Paper at 97-98; Verizon/MCI Sept. 7, 2005 Ex Parte at 3-4.

¹⁸ See Letter from John T. Nakahata, Harris, Wiltshire & Grannis LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-75 *et al.*, Attach. at 2-3 (June 17, 2005); Letter from Teresa D. Baer, Counsel to Global Crossing, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75, at 23 (FCC filed June 2, 2005) (“Global Crossing June 2, 2005 Ex Parte”) (acknowledging that “[d]ivestiture of customers presents . . . challenges,” chief among them being “[c]ustomer opposition.”); XO Communications and Eschelon Telecom Press Release (Sept. 22, 2005) (“XO/Eschelon Press Release”) (explaining that “divestiture of local network assets [is] economically unattractive and unfeasible”).

¹⁹ Global Crossing June 2, 2005 Ex Parte at 23.

²⁰ See Special Access White Paper at 95-97.

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were the product of an environment in which a carrier had sufficient market power that enabled it to “lock up” customers and a new regulatory change has created additional competitive choices.²¹ Here, however, Qwest’s assertion is not that the existing contracts need to be reopened because they were the product of a non-competitive regime, but that the transaction itself will lead to *less* competition going forward — that is, the converse of the situation for which “fresh look” is even arguably an appropriate remedy. Indeed, because the only real issue could arise in buildings where customers had a competitive choice (or else the transaction could not by definition be reducing competition), the relevant customers already have the benefit of competitive prices. For that reason, the Joint CLECs have no possible basis for suggesting that businesses that selected MCI as their service provider were “locked up.” In addition, customers of both Verizon and MCI received the prices they are paying in exchange for purchasing service for the contract term so as to produce the revenues needed to help pay for providing the circuit(s). Neither Qwest nor the Joint CLECs offers any reason to abrogate these existing bargains. In any event, of course, as contract terms run, customers will retain the option of using other providers.

Wholesale Pricing. All of the various carriers similarly fail to justify their proposals (Qwest at 6-7; T-Mobile at 8; CTC Aug. 31 at 9; CTC Sept. 21 at 7; CompTel at 1-2, Joint CLECs at 3-4; Group Letter Attach. at 1-2) to regulate pricing in various arbitrary ways, such as the imposition of a 50% discount or the reversion to rate-of-return regulation.²² As we have explained, the issue of how to regulate Verizon’s special access pricing is not merger-specific and should be decided in the industrywide rulemaking already underway.²³ Indeed, the Commission has consistently reached this conclusion in previous merger proceedings,²⁴ and because a different conclusion would mean the Commission would modify its special access rules outside the context of a notice and comment rulemaking, it cannot lawfully abrogate that decision here.

²¹ See, e.g., Report and Order, *Direct Access to the INTELSAT System*, 14 FCC Rcd. 15703, 15751 ¶¶ 118-19 (1999).

²² The most recent group filing (Attach. at 2), like CompTel (at 2), proposes that the Commission impose conditions on the discounts that Verizon offer. But if Verizon is not free to offer higher discounts to carriers that, for example, want to purchase special access services subject to pricing flexibility bundled with channel terminations (where the channel terminations are not subject to pricing flexibility) or want to agree to volume and term conditions, then those carriers will simply be unable to obtain those discounts. That is because these discounts are inextricably linked to the terms and conditions under which the discounts are offered. The carriers proposing these conditions attempt to render this lack of flexibility less competitively relevant by proposing up to a 50 percent reduction on all of Verizon’s special access rates, but there is plainly no justification on this record for such a remedy.

²³ See, e.g., Joint Opposition and Reply at 41.

²⁴ See, e.g., *AT&T Wireless/Cingular Order* ¶ 183.

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T-Mobile's only justification for its contrary proposal is its claim (at 7) that it is highly dependent on ILEC special access to provide interoffice links *today*. That claim does not relate to this transaction. In any case, Verizon's special access prices already are regulated in various ways. Most fundamentally, special access is subject to price cap regulation, modified by pricing flexibility only in those MSAs where competitive fiber-based carriers are already in place. In addition, a BOC must impute to itself special access rates that are equivalent to those charged to unaffiliated providers. Moreover, as Verizon has shown, through pricing flexibility and other discounts, Verizon's average revenue per special access line has fallen, and at a faster rate than would have otherwise been required by price cap regulation.²⁵

UNEs. CTC and the Joint CLECs argue for various revisions to the unbundling rules the Commission adopted in the *Triennial Review Remand Order*. See CTC Sept. 21 at 6; CTC Aug. 31 at 6, 10; Joint CLECs at 5-7. Many of these same proposals — such as to exclude MCI and AT&T fiber-based collocation in determining whether a wire center meets the no-impairment tests for loops and transport or to eliminate the DS1 loop and transport caps — are presently before the Commission on motions for reconsideration, precisely because they would require changes to the Commission's considered determinations not to require unbundling. Even beside the fact that those issues should be addressed on an industry-wide basis, Verizon has shown in responding to those petitions for reconsideration that the CLECs' claims in these regards have no merit. Verizon has explained that the fact that AT&T and MCI, while unaffiliated with any incumbent, established fiber-based collocation arrangements in particular wire centers is evidence that competition is possible in those wire centers. The subsequent acquisition of those companies changes nothing about the characteristics of the wire centers at issue that led AT&T and MCI to establish fiber-based collocation there in the first place.

The Commission should also reject the Joint CLECs' proposals to require Verizon, for the next five years, to provide UNEs even if today's unbundling requirements are eliminated and also to cap UNE prices in Verizon's region for that same period. Because, as the Commission and the D.C. Circuit have held, excessive unbundling *harms* competition,²⁶ Verizon should not be required to provide UNEs absent a determination by the Commission that impairment exists and that unbundling should be required given the costs it entails. The same is true with respect

²⁵ See Letter from Dee May, Verizon and Curtis Groves, MCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 4-5 (July 1, 2005). The Joint CLECs (at 4 n.7) assert that Verizon is not in compliance with 47 U.S.C. § 271(c)(2)(B)(iv)-(v) insofar as those provisions require Verizon to provide “[l]ocal loop transmission” and “[l]ocal transport” “unbundled from . . . other services.” But Verizon's special access tariffs provide access to both loops (*i.e.*, channel terminations) and transport on a stand-alone basis. Moreover, because the same standard, set forth in 47 U.S.C. § 201, applies to *both* special access rates and the rates for elements made available under § 271, see *Triennial Review Order* ¶ 656, Verizon's special access offerings satisfy its obligations under § 271.

²⁶ See, e.g., *Triennial Review Remand Order* ¶ 220 & n.600; *USTA v. FCC*, 359 F.3d 554, 579-82 (D.C. Cir.) (“*USTA II*”), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

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to requiring Verizon to provide UNEs at rates below those that would result from a proper application of the Commission’s pricing methodology — UNE rates that are too low undermine the development of facilities-based competition. In any event, the Joint CLECs’ position is based on the insulting proposition that state commissions cannot be trusted to perform the task of setting UNE rates that Congress assigned to them without help from MCI.²⁷

Non-Discrimination. Qwest’s, T-Mobile’s, and CompTel’s claim (Qwest at 8-9; T-Mobile at 8; CompTel at 2), repeated in the recent group filing (Attach. at 2) that the Commission should impose conditions related to non-discrimination and “reciprocity” also fails. As we have recently reiterated, various regulatory safeguards protect against the types of discrimination Qwest and T-Mobile hypothesize.²⁸ For example, Section 272(e) requires Verizon to provide special access to unaffiliated providers on terms and conditions that are no less favorable than those made available to affiliated providers. Furthermore, Commission regulations 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.” 47 C.F.R. § 69.727(a)(2)(iii).

Final Offer Arbitration. Global Crossing and T-Mobile, and the Joint CLECs (at 3-4) propose that the existing Commission rules governing Verizon’s rates, terms, and conditions for its special access offerings be replaced by a detailed set of “final offer” arbitration rules. The Commission, however, lacks the legal authority, in the context of its review of this transaction, to adopt the proposed arbitration regime for Verizon’s special access services. The Commission currently has established price cap and pricing flexibility rules that govern the manner in which Verizon and other price cap carriers sets their special access rates. These rules reflect the Commission’s decision, starting in 1990 and continuing to the present, to cease directly setting prices for special access services, instead allowing carriers to set prices. The final offer arbitration that some carriers have proposed would expressly conflict with the Commission’s existing special access pricing rules, by having the Commission resume the role — abandoned long ago — of reviewing and establishing special access rates, terms, and conditions. Under basic principles of administrative law, the Commission cannot modify either its regulations or its interpretations of those regulations without proceeding through a notice-and-comment rulemaking, which this proceeding is not. *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

²⁷ CTC (Aug. 31 at 5, 10; Sept. 21 at 5-6) contends that the Commission should require Verizon to maintain copper loops in areas where it overbuilds with fiber. But this proposal has absolutely nothing to do with the Verizon/MCI transaction and is nothing more than a transparent attempt to achieve a result here that the Commission has already rejected in the applicable industry-wide rulemakings. *See* 47 C.F.R. § 51.319(a)(3).

²⁸ *See* Verizon/MCI Sept. 7, 2005 Ex Parte at 3-4.

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the procedural requirements of the APA”); *see id.* at 39 n.19 (citing cases). Indeed, the fact that the Commission currently has an on-going rulemaking in which it is considering whether to revise its existing regulations, including whether to grant carriers such as Verizon *more* freedom in setting special access rates, makes the impermissibility of modifying those rules outside of a rulemaking proceeding even clearer.

The CLECs’ proposal also is inconsistent with the tariffing regime of the Communications Act. Under the statutory scheme, common carriers propose tariffed rates that automatically become effective after a specified number of days, unless the Commission acts to suspend those rates.²⁹ There is no advance approval requirement under the Act, and it would be inappropriate to impose such a requirement, whether structured as a resolution of arbitration disputes or otherwise.

It would be no answer for the carriers proposing final offer arbitration to respond that it would be the arbitrator, and not the Commission, that establishes the rates in the first instance. That is because, as these carriers recognize, any decision by an arbitrator could be presented to the Commission for its review and approval or rejection.³⁰ In order to comply with the D.C. Circuit’s decision that the Commission cannot subdelegate tasks assigned to it by Congress to individuals outside the agency³¹ and with its own precedent,³² the Commission would have to review *de novo* the arbitrator’s determination of the proper rates, terms, and conditions for Verizon’s interstate special access services. As a result, the Commission, itself, would ultimately be directly establishing rates, terms, and conditions by selecting between Verizon’s and the other carrier’s “final offers.”³³

²⁹ *See* 47 U.S.C. §§ 203-204.

³⁰ *See* Global Crossing/T-Mobile Oct. 7, 2005 Ex Parte at 6.

³¹ *See United States Telecom Ass’n v. FCC*, 359 F.3d 554, 565-68 (D.C. Cir.) (“*USTA II*”) (“federal agency officials . . . may not subdelegate to outside entities — private or sovereign — absent affirmative evidence of authority to do so”), *cert denied*, 125 S. Ct. 313, 316, 345 (2004). There is no affirmative evidence that Congress intended to permit the Commission to subdelegate its authority under §§ 201 and 202 over interstate special access rates, terms, and conditions.

³² *See* Memorandum Opinion and Order, *General Motors Corp. and Hughes Electronics corp. and The News Corp. Ltd. for Authority to Transfer Control*, 19 FCC Rcd 473, ¶ 177 (2004) (“A party aggrieved by the arbitrator’s award may file with the Commission a petition seeking *de novo* review of the award.”) (“*Hughes/News Corp. Order*”).

³³ When the Commission imposed a final offer arbitration requirement on News Corp., that obligation did not conflict with any existing Commission regulatory regime. Similarly, although the Joint CLECs (at 3 n.6) imply that a comparable arbitration requirement was included in the *Bell Atlantic/GTE Merger Order*, the condition to which they refer involved using arbitration, managed by the “Chief of the Common Carrier Bureau” in the event “a collaborative process to address OSS interface or business rule uniformity issues within the Bell Atlantic Service Areas or separately within the GTE Services Areas” did not reach consensus on all issues. Memorandum Opinion and Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer*

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For the same reasons, the Commission also has no legal authority to mandate that Verizon engage in commercial arbitration under the Federal Arbitration Act, as that would not permit *de novo* review by the Commission, but instead would provide for extremely limited review of arbitration awards in federal court. *See* 9 U.S.C. §§ 1-14. In addition, mandating commercial arbitration is inherently unlawful. As the Supreme Court has repeatedly held, commercial arbitration is “a matter of consent, not coercion.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (quoting *Volt Info. Scis., Inc. v. Board of Trustees*, 489 U.S. 468, 479 (1989)); *see also AT&T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648-49 (1986) (“[A]rbitrators derive their authority to resolve disputes *only because the parties have agreed* in advance to submit such grievances to arbitration.”(emphasis added)).

Even aside from the fact that the Commission therefore lacks authority to impose the “final offer” arbitration that these carriers propose, the Commission should reject such proposals.

First, to be consistent with the Commission’s existing rules any rates, terms, and conditions for Verizon’s special access services established through final offer arbitration would have to be tariffed and would be available to other carriers. (If, on the other hand, these carriers envision that the results of any final offer arbitration would *not* be tariffed and available to similarly situated carriers, their proposal would conflict with the Commission’s current tariffing rules and, therefore, be beyond the Commission’s authority to adopt in this proceeding for that reason as well.) Carriers, therefore, would have the incentive to use the arbitration process to *ratchet-down* Verizon’s special access rates, terms, and conditions. Any “wins” by a carrier would presumably be available to other carriers as a contract tariff. “Losses,” on the other hand, would at most affect only the arbitrating carrier — assuming it was bound to abide by the arbitration result, and could not choose to purchase instead from another available tariff. Contrary to the assertions of the carriers proposing final offer arbitration, such a one-way ratchet is not consistent with the manner in which competitive markets operate.

Second, the regulated common carrier nature of Verizon’s special access services raises a significant distinction with the *Hughes/News Corp. Order*. In that case, the Commission imposed an arbitration requirement to eliminate News Corp.’s ability to use “programming withdrawal” — *i.e.*, to refuse to offer its Regional Sports Network (“RSN”) programming at all to a particular cable system — “as a bargaining tool.” *Hughes/News Corp. Order* ¶ 174; *see id.* ¶ 175 (noting that the “staff analysis has found that the allure of temporary withholding to News Corp. is substantial”). Here, in contrast, Verizon has no right to use “temporary withholding” of its special access services as a bargaining tool. Nor could Verizon do so credibly in any event, given the extensive competitive fiber that Verizon and MCI have demonstrated has already been

Control, 15 FCC Rcd 14032, App. D, ¶¶ 19b, 21 (2000). This procedure — which was never invoked — bears no relationship at all to the final offer arbitration proposed here for special access rates, terms, and conditions.

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(or could be) deployed in those few areas in Verizon's region where MCI has deployed its local fiber networks.

Third, there are additional factual distinctions between the Hughes/News Corp. merger and this transaction, which make the arbitration requirement imposed there unworkable in the context of this transaction. The arbitration requirement imposed on News Corp. applied only to the price that cable companies would pay for access to News Corp.'s 12 RSN offerings, and contracts would last at least three years. *See id.* ¶¶ 49 n.172, 177. In contrast, the final offer arbitration proposal here would extend to all of the many facilities and services that Verizon offers in its special access tariffs; to terms and conditions, as well as rates; and for a maximum of three years (despite the current availability of longer term agreements with higher discounts). As a result, arbitrations of Verizon's special access rates, terms, and conditions would be more frequent and vastly more complicated than under the *Hughes/News Corp. Order*.

In addition, the Commission mandated arbitration for RSN programming only after determining that the Hughes/News Corp. transaction involved a “*unique combination* of News Corp.'s RSN programming assets and DirecTV's nationwide distribution platform” and that its existing “program access rules” would *not* be “sufficient to protect against the[] likely *transaction-specific* harms.” *Id.* ¶¶ 147, 172 (emphasis added). Here, there is nothing unique about the combination of Verizon and MCI, nor are there any transaction-specific harms, let alone harms with respect to all of Verizon's rates, terms, and conditions for all of the services it offers in its special access tariffs.

Service Quality. Qwest's and CTC's proposals (Qwest at 11-12; CTC Aug. 31 at 9, 11) that the Commission impose a hodgepodge of performance metrics are inappropriate as well. Special access performance metrics are already the subject of an ongoing industrywide rulemaking and do not raise merger-specific concerns.³⁴ In any case, as noted above, section 272(e) already imposes a non-discrimination requirement, and both MCI and Verizon have proposed metrics to compare special access performance.³⁵

Standalone DSL. Both Qwest (at 10) and T-Mobile (at 11-12) assert that the Commission should impose conditions requiring the provision of standalone DSL. But this claim is unjustified. As an initial matter, its assertion that “competing VoIP providers cannot compete without access to stand-alone DSL” simply cannot be true when, as we have explained, more than 90 percent of U.S. households are able to obtain a broadband connection from a provider other than their incumbent local telephone company, principally cable modem service.³⁶

³⁴ *See* Joint Opposition and Reply at 41.

³⁵ *See id.* at 46-47.

³⁶ *See* Hassett *et al.* Decl. ¶ 58.

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That is equally true in Verizon's local service areas. Cable alone now makes broadband access available to more than 90 percent of the population in Verizon's top 50 MSAs.³⁷ And, as the Commission itself has recognized repeatedly, alternative technologies offer the promise, and increasingly the reality, of alternative forms of broadband, including 3G wireless, satellite technologies, fixed wireless, Wi-Fi, Wi-Max, fiber to the home, and broadband over power lines.³⁸ Consumers can use those broadband connections to obtain VoIP either from cable companies or independent providers such as Vonage regardless of the availability of standalone DSL.³⁹

In any case, as we have also described, Verizon made the business decision some time ago to offer stand-alone DSL service and has been rolling the service out in stages as the necessary development work is completed.⁴⁰ This reflects Verizon's business incentive in a highly competitive market to find ways to keep traffic on its network in order to help recover its substantial investments. The process of rolling out a stand-alone DSL offering is not a simple one, however, and requires overcoming significant technical hurdles. Verizon's DSL service was originally designed to comply with the Commission's line sharing rules, and line sharing was only available where Verizon also provided voice service on the line. As a result, the introduction of a stand-alone DSL service requires the development of new systems and processes for each of the various scenarios where stand-alone DSL will be offered. Likewise, because of differences in the systems and processes used in the former GTE and Bell Atlantic serving areas, the work required in order to roll out stand-alone DSL is essentially doubled, requiring the development of new systems and processes for the different parts of Verizon's local service areas.

Because of this, Verizon has taken a staged approach to deploying DSL in a series of steps as the various technical hurdles are overcome and as the developmental work is completed and tested. Verizon started by making stand-alone DSL service available in April of this year to existing customers of Verizon's voice and DSL service who transferred their existing Verizon voice service to another facilities-based provider, such as a cable or wireless provider, or to a VoIP provider.⁴¹ This summer and early fall, Verizon further expanded the availability of this service in the former Bell Atlantic serving areas. Verizon did so first by expanding the

³⁷ *See id.*

³⁸ *See, e.g.,* Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, FCC 05-150, CC Docket Nos. 02-33 *et al.*, ¶¶ 33, 56-61 (rel. Sept. 23, 2005).

³⁹ *See* Joint Opposition and Reply at 57-58.

⁴⁰ *See, e.g.,* Letter from Dee May, Verizon and Curtis Groves, MCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 5-6 (filed Oct. 11, 2005).

⁴¹ *See* Hassett *et al.* Reply Decl. ¶ 65.

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availability to include new customers who do not have either voice or DSL service from Verizon, and second by expanding availability to customers served by carriers that have signed commercial agreements to provide voice service using elements of Verizon's network and that agreed to allow Verizon to use the high frequency portion of the loop to provide DSL.⁴² Verizon expects to roll out additional standalone DSL offerings going forward as it resolves the technical issues.

Wholesale Long Distance. T-Mobile's assertion (at 9-10) that the Commission should impose conditions related to wholesale long distance services also is unsupported by the record. As we have shown, the wholesale long distance business is intensely competitive and includes numerous carriers other than MCI, including Sprint, Qwest, Level 3, Global Crossing, WilTel, and others.⁴³ Because Verizon does not have a national long-haul network of its own and generally does not provide wholesale long distance, the transaction will not reduce competition to provide these services, and no conditions are justified.

* * *

In sum, the conditions suggested in all of these filings are unjustified and unnecessary because the transaction will not harm competition in the relevant markets. Their proposals accordingly should be rejected.

Sincerely,



Curtis Groves
MCI



Dee May
Verizon

⁴² See Tariff F.C.C. No. 1, Sections 16.8(D)(4)(b) and (c); Tariff F.C.C. No. 20, Sections 5.1.2(D)(2) and (3); Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 7-8 (filed July 1, 2005).

⁴³ See, e.g., Joint Opposition and Reply at 65-67.

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ATTACHMENT A

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT B

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Verizon Communications Inc. and)	WC Docket No. 05-75
MCI, Inc.)	
Applications for Approval of)	
Transfer of Control)	

DECLARATION OF THOMAS J. MCCAMBRIDGE

1. My name is Thomas J. McCambridge. I am Vice President, Network Technical Solutions, at MCI. I have 35 years of telecommunications experience, including nine years with MCI or its predecessor companies. As the Vice President of Network Technical Solutions, I am responsible for all operations activities in the United States, which includes the major markets of Boston, New York City, Washington, DC, Chicago, San Francisco and Los Angeles.

2. The purpose of this Declaration is to address the changes in MCI's costs of deploying fiber extensions (or "laterals") from metropolitan fiber rings to office buildings. It explains that MCI's costs of deploying fiber laterals have decreased considerably since 2000-01. This is due both to changes that MCI made to some of its practices in deploying laterals – often in response to steps building owners have taken to facilitate entry – that have reduced costs, as well as to industry-wide cost reductions for a number of the key components of deploying laterals.

For example, during this time:

- MCI no longer attempts to build its own enclosed riser in every building, but instead uses the building’s so-called “free space” wherever possible;
- MCI has sought to reduce the number of instances in which it constructs a stand-alone room to house its fiber equipment in the building;
- MCI no longer attempts to build its own conduit into every building, but instead leases spare conduit wherever possible;
- The costs of the electronics used to “light” fiber have decreased due to the declining costs of component parts such as semiconductors and increased competition among equipment vendors;
- The costs of the equipment used to provide power in a building for the electronics have decreased due to technological advances; and
- MCI’s average labor costs have decreased, due to MCI’s decision to rely more heavily on internal versus contracted labor and to reduced demand associated with the dot-com collapse.

A. MCI’s Costs of Deploying Laterals: 2000-01 vs. 2004-05

3. MCI’s internal records kept in the ordinary course of business document that MCI’s average budgeted cost of deploying a fiber lateral – which is the cost MCI uses to evaluate whether to deploy the lateral in the first instance – was **[BEGIN PROPRIETARY END PROPRIETARY]** per building in 2000 and **[BEGIN PROPRIETARY END PROPRIETARY]** per building in 2001, compared to **[BEGIN PROPRIETARY END PROPRIETARY]** per building in 2004. With respect to the nine building laterals that MCI has completed in Verizon’s region in 2005, the average budgeted cost was **[BEGIN PROPRIETARY END PROPRIETARY]** per building. *See Figure.*

[BEGIN PROPRIETARY END PROPRIETARY]

4. Each time that MCI seeks to deploy a new fiber lateral it starts by creating

- a “Building Add Request” or “BAR” that is used to evaluate the economics of the lateral. This evaluation process compares the estimated budgeted costs of deploying a lateral with the minimum monthly recurring revenue or “MMRR” that MCI can expect to earn from providing a circuit to the customer that MCI is seeking to serve. Although the principal consideration is whether the MMRR exceeds budgeted costs for the particular building, MCI will also look at other factors in some cases, such as the overall revenue that could be earned from that customer, both in that building and elsewhere.
5. MCI maintains records on the budgeted construction costs and MMRR for each lateral that it deployed in 2000 and 2001, and for the budgeted *and actual* costs and MMRR for each lateral that it has deployed since 2003.¹ MCI does not have records on actual construction costs in 2000 and 2001. MCI submitted a declaration to the FCC in June 2001 in which it estimated that MCI’s actual construction costs were approximately [BEGIN PROPRIETARY END PROPRIETARY] at that time.² This estimate was based on MCI’s experience that actual construction costs were somewhat lower than budgeted construction costs during that time. By contrast, MCI’s actual construction costs in 2004 were an average of [BEGIN PROPRIETARY END PROPRIETARY] per building – substantially less than the average budgeted cost of [BEGIN

¹ Attachment 1 contains the spreadsheets that MCI uses to track BARs, which include for each BAR the customer name, building address, budgeted construction costs, actual construction costs (for buildings added from 2003 to 2005 only), MMRR, and the date the building was approved for construction, among other things.

² See Declaration of Edwin A. Fleming on Behalf of WorldCom, Inc., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, ¶ 8 (FCC filed June 11, 2001).

PROPRIETARY **END PROPRIETARY**].³ And with respect to the nine building laterals that MCI has completed in Verizon's region in 2005, the actual construction costs were an average of **[BEGIN PROPRIETARY** **END PROPRIETARY]** per building – again substantially less than the average budgeted cost of **[BEGIN PROPRIETARY** **END PROPRIETARY]** per building.⁴

B. Reasons for Cost Decreases

6. There are two main categories of costs in deploying a lateral – the costs associated with deploying fiber to the building (which MCI refers to collectively as outside plant costs) and the costs of the optical electronics used to light the fiber. Both types of costs have decreased in the past five years. MCI's costs of deploying new fiber laterals have decreased for two main reasons. First, MCI has changed a number of its practices in deploying laterals – often in response to steps building owners have taken to facilitate entry – that have reduced costs. While MCI first began implementing some of these changes around or before 2000-01, MCI has

³ The gap between MCI's budgeted costs and actual construction costs was larger in 2003 and 2004 than in 2000 and 2001. This was due, in part, to practices that MCI adopted during the later period. For example, during 2003 and the early part of 2004, MCI had a large stockpile of electronics that had been purchased in earlier periods at higher prices than were currently available in the market. MCI's practice during this period was to calculate budgeted costs for all laterals using the original purchase price for these electronics. To the extent that MCI actually used those old electronics for a lateral, MCI would calculate actual costs using the same original price. In many cases, however, MCI's engineers decided to use either brand new equipment or used equipment that had been pulled from another lit building. Where new equipment was employed, the lower purchase price of that equipment was used to calculate actual costs. Where used equipment was employed, MCI did not charge any electronics costs to the lateral.

⁴ With respect to laterals of up to one-quarter mile that MCI deployed in 2004 and 2005, MCI's budgeted costs were an average of **[BEGIN PROPRIETARY** **END PROPRIETARY]** per building and actual costs were an average of **[BEGIN PROPRIETARY** **END PROPRIETARY]** per building. See Attachment 1. *Cf.* Declaration of Edwin Fleming, *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, ¶ 5 (FCC filed Sept. 9, 2005) (“In MCI's experience, the all-inclusive cost of deploying a typical fiber lateral of up to one-quarter mile in a major urban area (where fiber deployment is typically most expensive) is approximately **[BEGIN PROPRIETARY** **END PROPRIETARY]** or less.”).

- sought to apply these changes to larger numbers of buildings since that time.
- Second, there have been industry-wide cost reductions in a number of the key components used to deploy a lateral.
7. *First*, MCI has reduced the number of instances where it builds its own enclosed riser in a building, and instead uses the building's so-called "free space" wherever possible. Regardless of whether MCI collocates its equipment in tenant space or landlord space, fiber entrance facilities are usually below grade in the basement of a building, and MCI must run fiber from the basement to the customer's floor using the building's riser system. MCI's original practice was to deploy stand-alone protective sheaths – typically four-inch aluminum tubes – in the riser space, which involves very difficult and time-intensive labor. MCI now generally tries to deploy fiber in the common riser space and without a stand-alone protected sheath, unless the building owner or customer insists otherwise.
 8. *Second*, MCI has sought to reduce the number of instances in which it constructs a stand-alone room to house its fiber equipment in the building. At one time, it was MCI's practice to construct these rooms in many of the buildings in which MCI deployed a lateral. Indeed, building landlords often mandated this practice. These rooms – which are made of cinderblocks and sealed with a steel door – are very costly, averaging as much as **[BEGIN PROPRIETARY END PROPRIETARY]** per building. MCI rarely deploys these stand-alone rooms today, but instead uses the common space or telecom room in the building, which most commercial office buildings now have.
 9. MCI also deploys more so-called "restricted collocation arrangements"

today than in 2001, which are arrangements where MCI locates electronics on the customer's floor in the tenant's leased space and deploys fiber straight to that location, obviating the need to place any equipment in common space. In these cases, MCI can avoid the cost of leasing space from a landlord, as well as the time those negotiations typically take.

10. *Third*, MCI has reduced the number of instances where it builds its own conduit into a building, and instead tries to lease spare conduit wherever possible. It was MCI's original practice to use all of its own conduit between its fiber rings and buildings. In an effort to be more efficient, MCI now leases spare conduct where it is available, and MCI is aggressive about finding such conduit. In addition, many new office buildings are designed with the telecom needs of their tenants in mind and therefore have built-in conduit systems for entry from the street into the building, which reduce the costs for providers seeking to light those buildings.
11. *Fourth*, the cost associated with optical electronics has decreased.⁵ To begin, MCI has reduced lateral costs by changing the way it deploys electronics at a building. In 2000-01, MCI typically deployed excess lit capacity at most buildings at which it deployed laterals in the expectation that such capacity would be used to serve increased future demand. Today, by contrast, MCI typically deploys only the minimum amount of lit capacity that it needs to serve the

⁵ The cost of fiber-optic cable itself also has declined considerably, though this represents a small portion of total costs. See, e.g., G. Kubes, Marconi, *Fiber-to-the-Home: Is It Too Expensive?*, Lightwave (July 2002), available at http://lw.pennnet.com/Articles/Article_Display.cfm?Section=Archives&Subsection=Display&ARTICLE_ID=147996&KEYWORD=A-PON ("The fiber media is another component of the total picture that has experienced a drastic cost reduction. Fiber production has moved from mystical and magical to normal business, whereby fiber is now viewed as a commodity primarily impacted by market demand."); O. Graydon, *Fiber Industry Still in Turmoil*, Optics.org (Feb. 26, 2004), available at <http://optics.org/articles/news/10/2/22/1> (noting that according to a study by KMI, "worldwide average price for conventional singlemode fiber fell from \$35 per km in 2001 to a record low of \$15 per km in 2003").

- customer for which the lateral is being built. This change has the effect of increasing MCI's reported per-building costs of electronics in 2000-01 vis-à-vis 2004-05.
12. Moreover, the cost of the electronics themselves has decreased. In 2001, the prices that MCI paid for an OC48 multiplexer used to provide DS3 services was approximately [BEGIN PROPRIETARY END PROPRIETARY] from Fujitsu and [BEGIN PROPRIETARY END PROPRIETARY] from Nortel for comparable products. In 2005, MCI was paying approximately [BEGIN PROPRIETARY END PROPRIETARY] from Fujitsu and approximately [BEGIN PROPRIETARY END PROPRIETARY] from Nortel for comparable products.
13. The sharp reduction in the price of optical electronics over the past five years is attributable to a number of factors. The prices of the components used in these electronics – particularly semiconductors – have declined steadily and significantly over this period.⁶ Further, the market for optical electronics changed significantly in 2000-01 due to the addition of Cisco as a new competitor and price leader, the drop in demand due to the dot-com collapse, and the flooding of the market with used equipment that bankrupt telecom firms were selling at fire sale prices.
14. *Sixth*, the costs of power supply equipment for optical electronics have

⁶ See, e.g., J. Kovar, *AMD's Ruiz Presses Industry to Stop Pushing Tech for Tech's Sake*, CRN (Nov. 20, 2002), available at <http://www.crn.com/sections/breakingnews/dailyarchives.jhtml?articleId=18829484> (citing AMD President and CEO Hector Ruiz); see also *The Amazing Microchip*, ECN (Nov. 1, 2004), available at http://www.ecnmag.com/article/CA449867.html?filename=ECN20040901ec49eal_.xml (“Remarkably, the price of semiconductors has also declined 30 percent per year over the past 30 years.”).

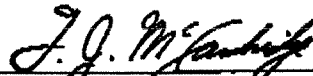
dropped considerably. In each building at which MCI deploys fiber, it is necessary to have an independent power source that powers the electronics that light the fiber. Technological advances have significantly reduced the cost of power supply equipment. Whereas MCI used to have to build and reserve an entire equipment bay just to house power equipment, the new generation of power equipment that MCI uses today is about the size of a VCR and requires only a single shelf in an equipment bay. The newer equipment is therefore much less labor-intensive and expensive to install. According to MCI's records, power costs (including labor) were approximately [BEGIN PROPRIETARY END PROPRIETARY] per building in 2001 but have declined to approximately [BEGIN PROPRIETARY END PROPRIETARY] per building in 2005.

15. *Finally*, MCI's average labor costs have decreased since 2001 due to reduced demand for such labor in the industry generally as a result of the dot-com collapse. Competing carriers (MCI included) were deploying considerably more fiber and other types of equipment in 2000-01 than in 2004-05. As a result, telecom construction contractors were able to extract higher average prices. For example, in 2001, in order to secure a contractor to complete its work, MCI was required to guarantee a very large volume of work over the course of a year, which MCI was able to satisfy only by giving all of its construction work to a single national firm. Even with this large volume commitment, however, the only contractor that MCI was able to find insisted upon flat rates based on the amount of construction, rather than a time-and-materials or cost-plus method of pricing. Today, by contrast, MCI is able to obtain competitive bids for each individual

- construction project and also is able to insist that contractors bill based on time and materials rather than at a flat rate.
16. MCI also relies on more internal labor today, which for MCI is generally less expensive than contracted labor. In 2001, MCI generally used outside contractors to perform installation and testing of the electronics used to light fiber. Today, this work is invariably performed in-house using internal MCI labor, thereby reducing absolute costs. In addition to these real declines in labor costs, the costs attributed to labor have decreased still further on MCI's books since 2000-01 due to changes in MCI's accounting practices. Between 2001 and 2005, MCI changed from a "fully loaded" internal labor rate (that includes overhead such as rent, office supplies, telephone, etc.) to a "direct" rate that reflects only salaries, benefits, and payroll taxes. Based on this change, costs associated with MCI's internal labor rates decreased from an average of **[BEGIN PROPRIETARY END PROPRIETARY]** /hour in 2001 to **[BEGIN PROPRIETARY END PROPRIETARY]** /hour in 2005, which would have the effect of increasing reports costs in 2000-01 vis-à-vis 2004-05.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2005


Thomas J. McCambridge