October 21, 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**

Dear Ms. Dortch:

We write to respond briefly to the latest filings of British Telecom Americas Inc. ("BT"), as well as the Rural Alliance, in which they again assert that the transaction will harm competition in the Internet backbone business and propose a series of conditions. [1/] As we have previously demonstrated, these arguments are without merit, and there is no basis for the imposition of their proposed conditions. Indeed, the European Commission ("EC") already has rejected the same arguments BT makes here.[2/]

As we recently explained, BT's arguments that the transaction will undermine competition in the Internet backbone business are without basis. *See* Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Oct. 20, 2005) ("VZ/MCI Response to BT"). As the evidence demonstrates, the combined company will carry less than 10% 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. *See id.* at 1. In fact, BT has *conceded* that "neither firm [i.e., Verizon/MCI or SBC/AT&T] will be large enough to profitably degrade quality alone" and that "neither of the merged entities could acquire dominance without coordination." Letter from A. Sheba Chacko, BT Americas Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, Attachment at 7 (Oct. 7, 2005).

BT's latest filing does not address our response and instead largely replies to SBC/AT&T, and we are not in a position to comment on those arguments. However, we note two points in response to particular allegations BT makes concerning Verizon/MCI. First, BT asserts (White Paper Response at 5) that it has shown that Dr. Kende's arguments concerning why the transaction will not significantly affect competition in the Internet backbone business do not "withstand scrutiny" because, while Dr. Kende showed that MCI's share has declined by any

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1/ *See* Letter from A. Sheba Chacko, British Telecom Americas Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Oct. 20, 2005) ("White Paper Response"); Letter from A. Sheba Chacko, British Telecom Americas Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Oct. 20, 2005) ("Proposed Conditions"); Letter from Ken Pfister, Great Plains Communications, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Oct. 20, 2005).

2/ *See* Case No. COMP/M.3752, ¶¶ 27-29, 33, 42-43 (Commission of the European Communities) ("EC Decision").

measure, he focused on traffic share, rather than revenue, as the most reliable basis to assess share information for the combined company. There is nothing inconsistent about this argument. Rather, Dr. Kende simply demonstrated (1) that no matter what metric is used, MCI's share of the Internet backbone business has declined substantially since the prior mergers that gave rise to concerns, and (2) that current traffic data are in fact the most reliable available measure of share and, by that measure, the transaction clearly would not harm competition. *See* Vz/MCI Response to BT at 2-3; Kende Reply Decl. ¶¶ 4, 8. Indeed, BT itself quotes (White Paper Response at 5-6) a Department of Justice official who noted that DOJ had to revise backbone revenue figures in a prior merger proceeding in an "attempt[] to eliminate the double counting and irrelevant revenues." Because the IDC revenue figure for Verizon likewise had "irrelevant revenues," and we had no basis to exclude similarly irrelevant revenues for other companies, using revenue data to measure shares would have been inaccurate. Second, while BT claims (White Paper Response at 5) that the RHK traffic report on which we have relied was "not submitted for public inspection," that is simply false. Verizon/MCI submitted that report in this docket over two months ago. *See* Letter from Ann Berkowitz, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Aug. 5, 2005).

BT's proposed conditions in connection with the Internet backbone business (Proposed Conditions at 2) fail at the threshold because none of the conditions is needed to address any competitive harm as a result of the transaction. *First*, BT claims that the combined company should have to comply with particular conditions related to special access that it and others proposed in an October 17 letter. However, as we demonstrated in our response to that letter, those conditions are unjustified and unnecessary because BT's premise that the transaction will give the combined company bottleneck control over business connectivity is contrary to the evidence. *See* Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (October 19, 2005); Vz/MCI Response to BT at 3-4.

Second, BT asserts that the combined company should be required to file various reports and information concerning its backbone operations, including its peering policy. But, as MCI has noted on the record, its peering policy already is published. *See* Cerf Decl. ¶ 16. BT's remaining proposals, such as having the Commission select a research company to prepare reports on Verizon/MCI's backbone traffic and revenues, have no basis. Because the backbone business will remain highly competitive following the transaction, there is no justification for requiring Verizon/MCI to specially prepare various regulatory reports and filings that other backbone providers need not submit and that are not needed to alleviate any competitive problem.

Third, BT and the Rural Alliance propose that the Commission impose on the combined company a variety of conditions on its peering policies for a period of five years, including that the company adopt the "more permissive peering policy" as between Verizon and MCI, that the combined company continue to peer with any backbone with which either of the companies alone currently peers, and that the combined company eliminate any requirement of geographical scope from its peering policy. There is no justification for these draconian and intrusive proposals. As we have explained, the Internet backbone business is inherently dynamic, and declining to peer where the conditions that make peering economically efficient are not present is a natural occurrence in the Internet backbone business, not the consequence of market power.

See, e.g., Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 4-5 (October 18, 2005); Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 5-6 (Sept. 12, 2005). Indeed, as we have noted, Level 3 recently decided that it would no longer peer with another backbone operator (Cogent), presumably because it determined that continuing to peer was no longer in its economic interest. Level 3 Press Release, *Statement Concerning Internet Peering and Cogent Communications* (Oct. 7, 2005). The combined company's backbone will have different characteristics (e.g., traffic flows) than either company's backbone alone (particular Verizon's), and characteristics of other backbones with which Verizon or MCI currently are peering may change going forward. Thus, the suggestion that the combined company should be required to continue to peer with all backbones that currently peer with one of the companies makes no sense, let alone for a period of five years. Rather, as with any other backbone operator, Verizon/MCI should be permitted to decide — like all other backbone operators — whether to enter into a peering or transit relationship based on a variety of economic and technical criteria, such as traffic volumes, the relative geographic scope of the networks, and similar attributes. *See* Reply at 75-81.

Finally, BT reiterates other parties' suggestion that the transaction should be conditioned on the combined company offering standalone DSL. As we have repeatedly explained elsewhere, there is no basis for imposing such a condition. *See, e.g.*, Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 2-3 (October 18, 2005); Letter from Dee May, Verizon and Curtis Groves, MCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 5-6 (Oct. 11, 2005).

In sum, BT's (and the Rural Alliance's) last-gasp effort to justify the imposition of conditions related to the Internet backbone business is no more successful than earlier attempts, and their proposals should be rejected.

Sincerely,

Dee May
Verizon

Curtis Groves
MCI

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