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Federal Communications Commission
Office of Secretary

October 18, 2005

EX PARTE

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

ORIGINAL

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

Ms. Dortch:

We are writing in response to the ex parte filed by Advance/Newhouse Communications claiming that the transaction will harm its ability to provide cable VoIP service through its affiliate Bright House Networks.^{1/} As we have previously demonstrated, Bright House's claims are incorrect, and there is no evidence to support of its claim or to justify its proposed conditions, which are unrelated to the transaction. Accordingly, the Commission should reject Bright House's proposed conditions.

Wholesale Services to Bright House. Bright House's primary claim (at 4-9) is that its ability to provide VoIP service is "dependent upon its relationship with MCI" and that MCI's "dedication" to Bright House will wane as a result of this transaction. Both prongs of this claim are incorrect. *First*, as the evidence demonstrates, neither Bright House nor any other carrier is "dependent" on MCI for wholesale services because numerous other competitors — including Level 3, Sprint, Global Crossing, WilTel, Teleglobe, and many others — already provide such wholesale services in locations throughout the country. *See* Letter from Dee May, Verizon and Curtis Groves, MCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, Attachment at 64-70 (Sept. 1, 2005) ("Mass Market White Paper"). Bright House's suggestion that MCI somehow is a unique wholesale provider because it offers service more broadly than others is incorrect: in fact, as we previously described, MCI's CableNet wholesale service is offered in a very limited number of local areas. *See id.* at 65-66.

Bright House's claim (at 8) that Level 3 is not a viable competitor because it is in the "process of severely limiting its products for the residential wholesale provisioning market" is belied by the fact that within the last year Level 3 has reached agreements to provide wholesale service to AOL and Comcast among others.^{2/} Likewise, Bright House's suggestion that Sprint is

^{1/} *See* Letter from Robert G. Kidwell, Counsel for Advance/Newhouse to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Sept. 29, 2005).

^{2/} AOL Press Release, *America Online Introduces AOL Internet Phone Service* (Apr. 7, 2005); Level 3 Press Release, *Level 3 Reports Fourth Quarter Results and Full Year 2004 Results* (Feb. 8, 2005).

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not a viable option because it competes with Bright House in one of its markets overlooks the fact that retail competitors often provide wholesale services to competitors (as AT&T did for many years to other long distance carriers). As the Commission recently noted, “facilities-based wireline carriers will have business reasons to continue making broadband Internet access transmission services available to ISPs The record makes clear that such carriers have a business interest in maximizing the traffic on their networks, as this enables them to spread fixed costs over a greater number of revenue-generating customers.”^{3/} The same incentives will exist in the context of voice services. Finally, while Bright House asserts (at 9) that self-provisioning is not a realistic alternative because of the time and costs it will require, numerous other cable operators have concluded that it is realistic and are in fact taking, or have announced plans to take, that route. See Mass Market White Paper at 68-69.

Second, contrary to its claim, Bright House may continue to receive wholesale service under its contract with MCI following the transaction. **[BEGIN PROPRIETARY]**

[END PROPRIETARY]

And Verizon/MCI have stated generally that they intend to honor MCI’s existing agreements. Thus, Bright House will have ample time to transition to alternative arrangements if it chooses to do so.

Further, as noted above, like other providers, Verizon/MCI will have business incentives to continue to provide wholesale services to other retail providers so as to keep traffic on its network and collect revenue that would be entirely lost if the traffic migrated to other carriers’ networks. There is no evidence that, as Bright House assert (at 7), the transaction has caused MCI’s performance to “decline[.]” Although Bright House did experience a service outage twice in June 2005 as it notes, this was the result of an inadvertent miscommunication between MCI and Verizon concerning when to disconnect certain trunks that MCI was using to provide service, not some plan to degrade performance. As for Bright House’s claim (at 7) that MCI “is unwilling to expend further resources to grow with [Bright House’s] business,” MCI has remained committed to growing with Bright House’s business in the manner contemplated by the existing contract. An expansion of MCI’s offering would necessarily require the parties to negotiate a new contract.

Interconnection. Bright House further suggests (at 11-13) that various conditions should be imposed with respect to interconnection. In particular, it claims (at 13) that Verizon should be required to enter into an interconnection agreement with Bright House in Florida for a five-year term with provisions otherwise identical to the Verizon-MCI agreement. Of course, like any other CLEC, Bright House can request to opt in to the Verizon-MCI interconnection agreement pursuant to 47 U.S.C. § 252(i), including all the terms and provisions of that agreement (which do not include a five-year term). Indeed, Bright House’s counsel contacted Verizon on September 22, 2005 — just one week before filing its *ex parte* — and requested to opt in to the Verizon-MCI interconnection agreement in Florida. Verizon responded the next day by providing Bright House with the standard form requesting basic information that it needs from

^{3/} Report and Order, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 et al. ¶¶ 64, 76 (rel. Sept. 23, 2005).

any CLEC seeking to adopt an existing agreement, and Bright House's counsel provided the completed form on September 30, 2005. On October 3, 2005, Verizon sent to Bright House a draft adoption agreement (incorporating, among other things, such basic information provided by Bright House). Since that time, the parties' respective counsel have had several calls about the adoption, and Verizon anticipates that the adoption should be completed shortly.

Bright House's adoption would be governed by the term and termination provisions of the current Verizon-MCI interconnection agreement, and there is no basis for why Bright House should automatically be entitled to extend the terms of the agreement for five years instead of engaging in the negotiation/arbitration process under the Act and the Commission's rules. Indeed, the Commission and the courts have made clear that a "carrier opting-into an existing agreement takes all the terms and conditions of that agreement (or the portions of that agreement), *including its original expiration date.*"^{4/} Bright House's own counsel, in his September 22, 2005 e-mail to Verizon, recognized this fact and expressly acknowledged that Bright House and Verizon would need to negotiate a successor agreement if only a short time were left on the original Verizon-MCI deal.

Likewise, there is no justification for Bright House's proposed condition (at 11-12) that the combined company be forced to agree to various terms in interconnection agreements. Indeed, most of the proposed terms have nothing at all to do with the transaction (e.g., whether Verizon should be required to interconnect at a single point of interconnection in each LATA) and/or are already the subjects of ongoing industrywide rulemaking (e.g., intercarrier compensation). Both the Act and the Commission's rules provide a detailed process for arriving at the terms of interconnection agreements, and like any other requesting carrier, Bright House must follow those processes for arriving at interconnection terms.

"Other Conditions." Bright House's other proposals (at 14-15) fare no better. It asserts that Verizon should be required to purchase long distance service from MCI at the same rates at which MCI provides those services to competing carriers. But while section 272(e) requires a BOC to impute the same access charge to itself as other carriers pay, it imposes no such requirement with respect to long distance charges. This is so for good reason: as the Commission has found, the long distance business is highly competitive, and accordingly no such "imputation" requirement is necessary. Other carriers can obtain a market-based, competitive long distance rate from numerous carriers other than MCI. *See, e.g.,* Public Interest Statement at 55-56; Reply at 65-69. Similarly, Bright House's proposal (at 15) to regulate the pricing for access to the Internet backbone is unjustified because, among other things, the evidence demonstrates that the Internet backbone business will remain highly competitive following this transaction and thus carriers can obtain access to backbones at competitive prices

^{4/} Memorandum Opinion and Order, *Global NAPs, Inc. Petition for Preemption Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc.*, 14 FCC Rcd 12530, 12534 n.5 (1999) (emphasis added); *Bell Atlantic-Delaware, Inc. v. Global NAPS South, Inc.*, 77 F.Supp.2d 492, 505 (D.Del. 1999) (holding that PSC violated federal law when it extended term of "opted into agreement" and finding that "original termination date . . . must apply").

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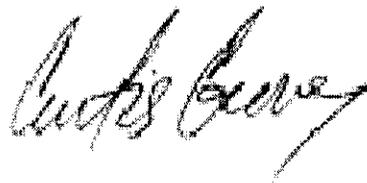
without regulation. *See, e.g.*, Reply at 70-81; Letter from Dee May, Verizon and Curtis Groves, MCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 1-4 (Sept. 12, 2005). Bright House does not begin to try and refute this evidence.^{5/}

For all of foregoing reasons, the Commission should reject Bright House's proposals.

Sincerely,



Dee May
Verizon



Curtis Groves
MCI

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

^{5/} Bright House also proposes (at 15) that Verizon "should be prohibited from entering into any exclusive contract with a third-party provider of provisioning services." However, it is not at all clear to what "provisioning services" Bright House is referring or what this proposal has to do with this transaction or what competitive harm it purportedly would alleviate. In any event, there is no basis for imposing limitations on contracts entered into with third-party vendors.