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May 10, 2006

VIA HAND DELIVERY

Honorable Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

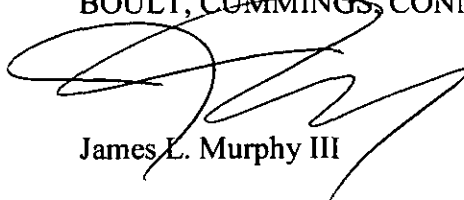
In Re: ***Docket No. 05-00066 – Petition for Approval of Verizon
Communications Inc's Acquisition of MCI, Inc.***

Dear Chairman Jones:

Pursuant to the TRA order of April 10, 2006 in the above-captioned proceeding, attached is the Memorandum Opinion and Order of the FCC dated November 17, 2005 in WC Docket Number 05-75.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC



James L. Murphy III

cc: Dulaney O'Roark, Esq. (via email)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

MEMORANDUM OPINION AND ORDER

Adopted: October 31, 2005

Released: November 17, 2005

By the Commission: Chairman Martin and Commissioner Abernathy issuing separate statements;
Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. INTRODUCTION

1. Verizon Communications Inc. (Verizon) and MCI, Inc. (MCI) (collectively, "the Applicants") have filed a series of applications¹ pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Communications Act or Act)² and section 2 of the Cable Landing License Act³ in connection with their proposed merger. This merger would combine one of the largest regional Bell Operating Companies (BOCs) with one of the largest providers of interexchange and competitive local service. This proposed merger occurs against the backdrop of ongoing change in the industry, including the pending merger of SBC and AT&T, and the recent merger of Sprint and Nextel.⁴ Verizon and MCI

¹ *Commission Seeks Comment on Application For Consent to Transfer of Control Filed By Verizon Communications Inc. and MCI, Inc.*, WC Docket No. 05-75, Public Notice, DA 05-762 (rel. Mar. 24, 2005) (*Public Notice*).

² 47 U.S.C. §§ 214, 310(d).

³ *Id.* § 35; *see generally* An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

⁴ This merger is one of three in little more than a year involving the former "Big 3" long distance carriers (AT&T, MCI, and Sprint), which faced rapidly declining revenues in some of their core retail markets in the past few years as a result of increasing competition from local carriers, wireless carriers, cable companies, and others. *See SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183 (rel. Nov. 17, 2005) (*SBC/AT&T Order*); *Applications of Nextel* (continued....)

offer competing services in many communications markets, and each also supplies wholesale inputs relied upon by the other Applicant and other competitors in various retail markets. Thus, the proposed merger requires us to examine its effects on competition – which are both horizontal and vertical in nature – in a wide range of significant communications markets.

2. In accordance with the terms of sections 214(a) and 310(d), we must determine whether the Applicants have demonstrated that the proposed transfers would serve the public interest, convenience, and necessity.⁵ Based on the record before us, and as discussed more fully below, we find that the transaction meets this standard. After analyzing the record, we conclude that significant public interest benefits are likely to result from this transaction. These benefits, which are likely to flow to consumers, relate to enhancements to national security and government services, efficiencies related to vertical integration, economies of scope and scale, and cost savings. We further conclude that, in light of the consent decree executed between the Department of Justice and the Applicants (DOJ Consent Decree),⁶ the transaction is not likely to have anticompetitive effects in the relevant markets discussed below. Moreover, to the extent that the merger increases concentration in relevant markets, we find that the public interest benefits of the merger outweigh any potential public interest harms. Finally, we note that the Applicants have offered certain voluntary commitments.⁷ Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.

II. EXECUTIVE SUMMARY

3. As discussed below, our analysis of the competitive effects of the merger, which focuses on the following key services, finds that the merger is not likely to result in anticompetitive effects in relevant markets:

- **Special access competition.** The record indicates that, in a limited number of buildings where Verizon and MCI are the only carriers with direct connections, the merger is likely to have an anticompetitive effect on the market for Type I wholesale special access services. We find, however, that the DOJ Consent Decree adequately addresses these likely anticompetitive effects. With respect to Type II wholesale special access services, we find that other competitors with similar types of local facilities will remain post-merger to help mitigate the loss of MCI.
- **Retail enterprise competition.** We find that the merger will not likely have anticompetitive effects for enterprise customers, even though we find that the Applicants currently compete

(Continued from previous page) _____

Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, File Nos. 0002031766, *et al.*, Memorandum Opinion and Order, FCC 05-148 (rel. Aug. 8, 2005) (*Sprint/Nextel Order*).

⁵ *Sprint/Nextel Order*, FCC 05-148 at para. 20; *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987 at para. 2 (1997) (*Bell Atlantic/NYNEX Order*); *Merger of MCI Communications Corp. and British Telecommunications PLC*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15351, 15353 at para. 2 (1997) (*BT/MCI Order*).

⁶ *United States v. Verizon Communications Inc.*, Civil Action No. 1:05CV02103, Final Judgment (D.D.C. filed Oct. 27, 2005) (*DOJ-Verizon/MCI Consent Decree*); *see also United States v. Verizon Communications Inc.*, Civil Action No. 1:05CV02103, Complaint (D.D.C. filed Oct. 27, 2005) (*DOJ-Verizon/MCI Complaint*).

⁷ *See generally* Letter from Ann D. Berkowitz, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Oct. 31, 2005) (Verizon Oct. 31 *Ex Parte* Letter).

against each other with respect to a range of enterprise customer classes and enterprise services. We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there will remain a significant number of carriers competing in the market. We find that MCI had significantly reduced its marketing to small enterprise customers, and we conclude, after examining the record, that it was not exerting significant competitive pressure with respect to those customers.

- **Mass market competition.** We conclude that the merger will not likely have anticompetitive effects in the mass market. While MCI currently retains a significant share of mass market customers, we find, as with small business customers, that MCI has significantly reduced its marketing of mass market services. Consequently, we find that, immediately prior to the announcement of the merger, MCI was not exerting significant competitive pressure on Verizon within Verizon's own region. Moreover, we note the rapid growth of intermodal competitors – particularly cable telephony providers (whether circuit-switched or voice over IP (VoIP)) – as an increasingly significant competitive force in this market, and we anticipate that such competitors likely will play an increasingly important role with respect to future mass market competition.
- **Internet backbone competition.** Based on the record, we are persuaded that the merger is not likely to result in anticompetitive effects in the Internet backbone market. We do not find that the Tier 1 backbone market is likely to tip to monopoly or duopoly based either on market share or on other factors, such as changes in relative traffic volumes or through targeted de-peering or degraded interconnection. Rather, we expect a number of Tier 1 backbones to remain as competitive alternatives to the merged entity. We also are not persuaded that the merger will increase the Applicants' incentive and/or ability to raise rivals' costs. Given the level of competition we expect to remain in the Tier 1 backbone market, we are not persuaded that such actions would be viable.
- **Wholesale interexchange competition.** We find that the merger is not likely to result in anticompetitive effects for wholesale interexchange services. We conclude that the market will remain competitive post-merger, due primarily to the presence of numerous competitive nationwide fiber networks with excess capacity.
- **International competition.** We find that the merger is not likely to result in anticompetitive effects for international services provided to mass market, enterprise or global telecommunications services customers.⁸ Additionally, we find that the merger is not likely to result in anticompetitive effects in the international transport, facilities-based IMTS, or international private line markets.

⁸ Because the proposed transfer of control would result in MCI acquiring affiliations with Verizon's market-power affiliates in the Dominican Republic, Gibraltar and Venezuela, our rules require that we condition grant of the international section 214 transfer applications on MCI's compliance with the dominant carrier safeguards set out in section 63.10 of our rules for the provision of service on each of these routes. See 47 C.F.R. § 63.10. Similarly, for the U.S.-Dominican Republic and U.S.-Venezuela routes, our rules require that we condition grant of the submarine cable transfer applications on MCI's compliance with the competitive safeguards contained in section 1.767(1) of our rules. See 47 C.F.R. § 1.767(1). We find that, as conditioned, grant of the international section 214 and submarine cable transfer applications is unlikely to cause vertical harms due to Verizon's market-power affiliates in the Dominican Republic, Gibraltar and Venezuela. See *infra* Part V.G (U.S. International Services Competition).

- **Applicants' commitments.** The Applicants offered certain voluntary commitments related to special access, stand-alone DSL, the Commission's Internet Policy Statement, and Internet backbone services. Because we find these commitments serve the public interest, we accept them and adopt them as express conditions of our merger approval.

4. Accordingly, based on the record, we find that the merger of Verizon with MCI is in the public interest and we grant the applications for transfer of control.

III. BACKGROUND

A. Description of the Applicants

1. MCI, Inc.

5. MCI (formerly known as WorldCom, Inc. or WorldCom),⁹ a publicly-traded Delaware corporation headquartered in Ashburn, VA, serves as a holding company for its direct and indirect domestic subsidiaries and foreign affiliates.¹⁰ Through its subsidiaries, the company offers mass market and business customers a variety of services including local voice services; domestic and international long-distance services; data services, including Frame Relay, Asynchronous Transfer Mode (ATM), IP virtual private networks (IP-VPN), and private lines; and managed services that include network design, maintenance, security, web hosting and desktop implementation.¹¹ MCI owns, operates, monitors and maintains extensive communications networks, and holds numerous Commission licenses and authorizations, including domestic and international section 214 authorizations, wireless and earth station licenses, and interests in submarine cable landing licenses, with facilities in countries and cities throughout North America, Latin America, Europe, Africa, and the Asia-Pacific region.¹²

6. On July 21, 2002, WorldCom, Inc. and substantially all of its domestic subsidiaries ("Debtors") filed voluntary petitions for relief in the U.S. Bankruptcy Court for the Southern District of New York under Chapter 11 of the U.S. Bankruptcy Code.¹³ The company emerged from Chapter 11 on April 20, 2004 and changed its legal name to MCI, Inc.¹⁴ In March 2004, MCI realigned its operations into three

⁹ See MCI, Inc., Form 10-Q/A at 4 (filed Aug. 30, 2005) *available at* http://global.mci.com/about/investor_relations/sec/ (MCI Form 10-Q/A).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* See *Public Notice* at 2-3 (listing international section 214 authorizations, cable landing licenses, satellite earth station authorizations, and wireless radio service licenses for which MCI is seeking authority to transfer control to Verizon); see also Letter from Curtis L. Groves, MCI, Inc., and Karen Zacharia, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed June 23, 2005) (Verizon June 23 *Ex Parte* Letter) (including name changes); Letter from Curtis L. Groves, MCI, Inc., and Karen Zacharia, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 16, 2005) (including additional name changes) (Verizon Sept. 16 *Ex Parte* Letter); Letter from Curtis Groves, MCI, and Karen Zacharia, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. (filed Oct. 14, 2005) (updating list of MCI subsidiaries holding domestic section 214 authorizations that are to be transferred to Verizon).

¹³ MCI Form 10-Q/A at 4.

¹⁴ *Id.*

new business segments – Enterprise Markets;¹⁵ U.S. Sales and Service;¹⁶ and International and Wholesale Markets.¹⁷

2. Verizon Communications Inc.

7. Verizon, a publicly-traded corporation incorporated under the laws of the State of Delaware and headquartered in New York, New York,¹⁸ is a holding company that owns operating subsidiaries that provide a range of communications services in the United States and select foreign countries.¹⁹ Verizon offers local, long-distance, high-speed Internet and wireless services to residential customers on a stand-alone basis or in various packages, including “all-distance” voice packages that include local and long distance services.²⁰ Verizon provides these services, including broadband, in 28 states and the District of Columbia.²¹ Verizon also provides a variety of services to other telecommunications carriers as well as large and small businesses.²² Verizon has investments in international wireline and wireless operators, primarily in the Americas and Europe.²³

8. Verizon is also a majority owner of Verizon Wireless, which serves 43.8 million voice and data subscribers across the United States.²⁴ Verizon’s domestic wireless business provides wireless voice and

¹⁵ MCI’s Enterprise Markets segment includes Global Accounts, Government Markets and System Integrators. *Global Accounts* provides communications and network solutions to large multinational corporations requiring complex international network services. *Government Markets* provides similar services to various government agencies, while *System Integrators* serves customers through partnerships with third-party network solutions providers. *Id.*

¹⁶ MCI’s U.S. Sales and Service segment includes Mass Markets and Commercial Accounts. The Mass Markets division is responsible for such services as subscription-based residential and certain small business accounts, and transactional products which include 10-10-987, 10-10-220, 1-800-COLLECT, and MCI prepaid cards. MCI’s Commercial Accounts provides services to small, mid-sized, and large business accounts. Commercial Accounts also includes MCI’s SkyTel business, which provides wireless e-mail, interactive two-way messaging, wireless telemetry services and traditional text and numeric paging to customers throughout the United States. *Id.*

¹⁷ *Id.* MCI’s International and Wholesale Markets segment provides voice, data, Internet and managed network services to domestic and international wholesale accounts, as well as to retail and government customers in Europe, the Middle East and Africa, the Asian Pacific region, Latin America and Canada. *Id.*

¹⁸ Verizon Communications Inc., Form 10-Q at 1 (filed Aug. 8, 2005) *available at* http://investor.verizon.com/sec/sec_frame.aspx?fid=3837584 (Verizon Form 10-Q).

¹⁹ Verizon/MCI Application at 2.

²⁰ See <http://investor.verizon.com/business/wireline.aspx>. Verizon has been able to offer long distance services in all of the states in which it operates since 2003. See http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/.

²¹ Verizon/MCI Proxy Statement at 1 (Aug. 31, 2005) *available at* <http://investor.verizon.com/SEC/> (Verizon/MCI Proxy Statement).

²² *Id.*

²³ Verizon/MCI Application at 2.

²⁴ *Id.*

data products and services across the United States.²⁵ Verizon's subsidiary, Information Services, operates directory publishing businesses and provides electronic commerce services.²⁶ Verizon employs approximately 214,000 people.²⁷ For the six months ended June 30, 2005, Verizon reported \$36.7 billion in operating revenues and net income of \$3.9 billion.²⁸ For the year ended December 31, 2004, Verizon reported \$71.3 billion in operating revenues and a net income of \$7.8 billion.²⁹

B. Description of the Transaction

9. On February 14, 2005, Verizon and MCI announced an Agreement and Plan of Merger ("Merger Agreement")³⁰ under which MCI will become a wholly-owned subsidiary of Verizon.³¹ According to the terms and conditions of the Merger Agreement, a wholly-owned subsidiary of Verizon will merge with and into MCI.³² MCI will be the surviving corporation, thereby becoming a wholly-owned subsidiary of Verizon.³³ MCI shareholders will receive cash and stock worth at least \$23.50, consisting of \$8.75 in cash, including MCI's March 15 dividend payment of \$0.40 per share.³⁴ In addition, MCI shareholders will receive at least 0.4062 shares of Verizon common stock for each MCI share owned.³⁵ On October 6, 2005, a majority of MCI shareholders voted to approve the merger.³⁶

10. Following consummation of the transaction, MCI will continue to own the stock of its subsidiaries, and MCI and its subsidiaries will continue to hold all of the Commission licenses and

²⁵ Verizon/MCI Proxy Statement at 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Verizon/MCI Application at ii. The Merger Agreement was amended as of March 4, 2005, March 29, 2005, and May 1, 2005. See MCI Form 10-Q/A at 5.

³¹ Verizon/MCI Application at 1.

³² *Id.*

³³ *Id.*

³⁴ See Letter from Michael Glover, Verizon Communications Inc., and Richard Whitt, MCI, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Apr. 1, 2005).

³⁵ *Id.* Separately, on April 9, 2005, Verizon entered a stock purchase agreement with eight entities affiliated with Carlos Slim Helu to purchase 43.4 million shares of MCI common stock for \$25.72 per share in cash plus an additional cash amount of 3% per annum from April 9, 2005 until the closing of the purchase of those shares. The transaction closed on May 17, 2005 and the additional cash payment was made through May 13, 2005. The total cash payment was \$1.121 million. See Verizon Form 10-Q at 1.

³⁶ See "Verizon-MCI Merger Receives Overwhelming Majority of Shareholder Vote" (Oct. 6, 2005) *available at* <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=92916>.

authorizations that they held prior to the merger.³⁷ As such, the transaction does not involve any assignment of MCI's licenses and authorizations or any change in the licensees that hold such licenses and authorizations.³⁸ Similarly, the transaction will not result in any assignment of Verizon's existing licenses and authorizations or any change in the licensees that hold such licenses and authorizations.³⁹

11. The Applicants contend that the transaction is in the public interest. They assert that the transaction will combine Verizon's broadband, wireless and local wireline networks with MCI's Internet backbone and global reach.⁴⁰ The Applicants claim that this combination will benefit large enterprise customers by creating a strong new competitor with the network reach and financial resources to compete in this technologically intensive and highly competitive market segment.⁴¹ They argue that the transaction will benefit government customers and promote national security by enhancing investment in the national and international communications infrastructure that is used by the Departments of Defense and Homeland Security, as well as other federal and state agencies.⁴²

12. The Applicants further contend that, as a result of the transaction, Verizon will bring to the large enterprise and governmental businesses the same commitment to innovation and investment that it has brought to its mass market wireline and wireless businesses, and that it has already committed to a \$2 billion investment in MCI's network and information technology platforms.⁴³ The Applicants state that the transaction will also benefit mass market consumers by establishing the nation's most advanced broadband platform, capable of delivering next-generation multimedia services in markets across the country.⁴⁴ The Applicants also assert that the transaction is expected to generate synergies in the form of both cost savings and enhanced revenue opportunities that will yield a net present value of \$7 billion, which will further the companies' ability to provide new and improved services faster and more efficiently.⁴⁵

13. The Applicants argue that the combined company will be just one among many other competitors in the large enterprise segment that represents the core of MCI's business.⁴⁶ Further, the Applicants assert that, with respect to the mass market, the transaction will not affect the rapid growth of

³⁷ Verizon/MCI Application at 2. On July 21, 2005, Verizon and MCI notified the Commission, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, that networkMCI, Inc., formerly a wholly-owned subsidiary of MCI, Inc., was merged into MCI Network Services, Inc., effective June 30, 2005. See Letter from Curtis L. Groves, MCI, Inc. and Karen Zacharia, Verizon to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed July 21, 2005).

³⁸ Verizon/MCI Application at 2.

³⁹ *Id.*

⁴⁰ Verizon/MCI Application, Public Interest Statement, Exh. 1, at 3 (Verizon/MCI Public Interest Statement).

⁴¹ *Id.* See *infra* para.67.

⁴² Verizon/MCI Public Interest Statement at 3.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 4.

competitive intermodal alternatives, such as cable and wireless, VoIP, e-mail, and other technologies that consumers are increasingly using in place of their traditional wireline phone.⁴⁷ The Applicants state, by contrast, that MCI's mass market business is in a continuing and irreversible decline thereby prompting MCI to exit the consumer business.⁴⁸

C. Applications and Review Process

1. Commission Review

14. On March 11, 2005, Verizon and MCI jointly filed a series of applications seeking Commission approval of the proposed transfer of control of licenses and authorizations held by MCI and its subsidiaries to Verizon.⁴⁹ On March 24, 2005, the Wireline Competition Bureau released a Public Notice seeking public comment on the proposed transaction.⁵⁰ In response to the Public Notice, more than 50 parties filed petitions to deny the applications or comments supporting or opposing grant of the applications.⁵¹ On May 5, 2005, Wireline Competition Bureau staff requested additional information from the Applicants (Information Request).⁵² On May 26, 2005, the International Bureau staff requested additional information from the Applicants (International Information Request).⁵³ The Applicants'

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Pursuant to section 214 of the Communications Act, Verizon and MCI filed applications seeking Commission approval to transfer to Verizon control of domestic and international section 214 authorizations held by MCI and its subsidiaries. 47 U.S.C. § 214. The Applicants also filed applications for consent to transfer control of MCI's interests in submarine cable landing licenses to Verizon pursuant to section 2 of the Cable Landing License Act. 47 U.S.C. § 35. Pursuant to section 310(d) of the Communications Act, Verizon and MCI filed applications seeking Commission approval to transfer of control of wireless and earth station licenses and authorizations held by MCI and various subsidiaries to Verizon. 47 U.S.C. § 310(d).

⁵⁰ See Public Notice. The Public Notice set due dates of May 9, 2005 for the filing of Comments and Petitions to Deny and May 24, 2005 for Responses and Oppositions. The Wireline Competition Bureau (Bureau) adopted protective orders under which third parties would be allowed to review confidential or proprietary documents. *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Order Adopting Protective Order, 20 FCC Rcd 5232 (2005) (First Protective Order); *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Order Adopting Second Protective Order, 20 FCC Rcd 10420 (2005) (Second Protective Order).

⁵¹ The parties that filed formal pleadings in this proceeding are listed in Appendix A. In addition to those formal pleadings, we have received informal comments and *ex parte* submissions. All pleadings and comments are available on the Commission's Electronic Comment Filing System (ECFS) website at www.fcc.gov/cgb/ecfs/.

⁵² See Letter from Thomas Navin, Acting Chief, Wireline Competition Bureau, FCC, to Michael Glover, Senior Vice President and Deputy General Counsel, Verizon, and Richard Whitt, Vice President of Federal Law and Policy, MCI, WC Docket No. 05-75 (May 5, 2005) (FCC May 5 Information Request).

⁵³ See Letter from James Ball, Chief, Policy Division, International Bureau, FCC, to Michael Glover, Senior Vice President and Deputy General Counsel, Verizon, and Richard Whitt, Vice President of Federal Law and Policy, MCI, WC Docket No. 05-75 (May 26, 2005) (FCC May 26 Information Request).

responses to the Information Request, along with their responses to additional Commission requests, are included in the record.⁵⁴

2. Department of Justice Review

15. The Antitrust Division of the U.S. Department of Justice ("DOJ") reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.⁵⁵ The Antitrust Division's review is limited solely to an examination of the potential competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Verizon and MCI and entered into a consent decree with the Applicants on October 27, 2005.⁵⁶ Under the DOJ Consent Decree, the Applicants agreed to divest certain assets in the form of Indefeasible Rights of Use (IRUs) to certain buildings where only Verizon and MCI had direct connections.

IV. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

16. Pursuant to sections 214(a) and 310(d) of the Communications Act,⁵⁷ and the Cable Landing License Act,⁵⁸ the Commission must determine whether the proposed transfer of control to Verizon of

⁵⁴ Several petitioners and commenters raised various objections to the manner in which information provided by the Applicants was made available for their review. See Letter from Brad E. Mutschelknaus *et al.*, Counsel for Cbeyond *et al.*, to Kevin J. Martin, Chairman, FCC, WC Docket Nos. 05-65, 05-75 (filed June 7, 2005); Letter from Gary R. Lytle, Senior Vice President – Federal Relations, Qwest, to Kevin J. Martin, Chairman, FCC, WC Docket Nos. 05-65, 05-75 (filed June 7, 2005); Letter from Yaron Dori, Counsel for Qwest, WC Docket Nos. 05-65, 05-75 (filed Aug. 1, 2005) (describing *ex parte* meeting of July 29, 2005). These complaints elicited a vigorous defense from the Applicants. See Letter from Richard S. Whitt, MCI, and Michael E. Glover, Verizon, to Kevin J. Martin, Chairman, FCC, WC Docket No. 05-75 (filed June 2, 2005). The Commission reviewed the pleadings filed on both sides, met with both the Applicants and those opposing the applications, and considered the merits of the complaints, including potential alternative mechanisms to balance the risks of granting access to certain highly confidential sensitive competitive information in electronic form against the additional benefit of such access in providing material support on issues of real controversy. We note that the letters from the petitioners and commenters were filed in both this docket and in WC Docket 05-65 and that most of the complaints arose with regard to WC Docket No. 05-65. Under the particular circumstances of this case, including the risks, the procedural difficulties, and the apparent success of the opponents in obtaining sufficient information on key points, either from that provided by the Applicants or from other sources (such as their own confidential records or third-party sources), we chose not to intervene further in the production process).

⁵⁵ 15 U.S.C. § 18.

⁵⁶ DOJ-Verizon/MCI Consent Decree; see also DOJ-Verizon/MCI Complaint.

⁵⁷ 47 U.S.C. §§ 214(a), 310(d).

⁵⁸ 47 U.S.C. §§ 34-39. The Cable Landing License Act provides that approval of a license application may be granted "upon such terms as shall be necessary to assure just and reasonable rates and service . . ." 47 U.S.C. § 35. The Commission does not conduct a separate public interest analysis under this statute. See, e.g., *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, Memorandum Opinion and Order, 18 FCC Rcd 26484, 26492, para. 12 (2003) (*WorldCom Order*); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1998) (*WorldCom/MCI Order*).

licenses and authorizations held by MCI will serve the public interest, convenience, and necessity.⁵⁹ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.⁶⁰ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁶¹ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we may designate the application for hearing.⁶²

17. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"⁶³ which include, among other things, a deeply rooted preference for preserving and enhancing

⁵⁹ 47 U.S.C. § 310(d) requires that we consider the applications for transfer of Title III licenses (wireless licenses and earth station authorizations in this case) under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138, para. 17 (rel. July 19, 2005) (*Alltel/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21542, para. 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 485, para. 18 (2004) (*News Corp./Hughes Order*). Thus, we must examine the Applicants' qualifications to hold licenses. See discussion *infra* at Part V.H (Verizon's Qualifications to Acquire Control of MCI's Licenses).

⁶⁰ See, e.g., *Sprint/Nextel Order*, FCC 05-148 at para. 20; *Alltel/Western Wireless Order*, FCC 05-138 at para. 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-43, para. 40; *News Corp./Hughes Order*, 19 FCC Rcd at 483, para. 15; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14046, paras. 20, 22 (2002) (*Bell Atlantic/GTE Order*); *Applications of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789, para. 17 (2001) (*Deutsche Telekom/VoiceStream Order*); *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, CC Docket No. 98-141, 14 FCC Rcd 14712, 14737, para. 48 (1999) (*SBC/Ameritech Order*); *WorldCom/MCI Order*, 13 FCC Rcd at 18031, para. 10; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19987, para. 2.

⁶¹ See, e.g., *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-43, para. 40, and cases cited therein.

⁶² We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications. See *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may, however, do so if we find that a hearing would be in the public interest. However, with respect to the applications to transfer licenses subject to Title III of the Act, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); see *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar/DirecTV Order*); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, para. 40.

⁶³ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41 and cases cited therein; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc.*, (continued...)

competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁶⁴ Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁶⁵ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁶⁶

18. In determining the competitive effects of the merger, our analysis is informed by, but not limited to, traditional antitrust principles.⁶⁷ The Commission and the DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of the DOJ.⁶⁸ As stated above, the DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce.⁶⁹ The Commission, on the other hand, as stated above, is charged with determining whether the transfer of control serves the broader public interest. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁷⁰ In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant

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Transferor, to AT&T Corp., Transferee, CS Docket No. 99-251, Memorandum Opinion and Order, 15 FCC Rcd 9816, 9821, para. 11 (2000) (AT&T/MediaOne Order).

⁶⁴ See 47 U.S.C. §§ 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (1996 Act)), 254, 332(c)(7); 1996 Act, Preamble; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41; see also *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to subsidiaries of Cingular Wireless LLC*, WT Docket No. 03-217, Memorandum Opinion and Order, 19 FCC Rcd 2570, 2583, para. 29 (2004) (*Cingular/NextWave Order*); *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, para. 9; *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, 16 FCC Rcd 22668, 22696, para. 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)); cf. 47 U.S.C. §§ 521(4), 532(a)).

⁶⁵ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41, and cases cited therein.

⁶⁶ *Id.*

⁶⁷ See, e.g., *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *News Corp./Hughes Order*, 19 FCC Rcd at 484, para. 17; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14046, para. 23; *WorldCom/MCI Order*, 13 FCC Rcd at 18033, para. 13.

⁶⁸ See, e.g., *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *News Corp./Hughes Order*, 19 FCC Rcd at 484, para. 17; see also *Satellite Business Systems*, 62 FCC 2d 997, 1088 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply.").

⁶⁹ 15 U.S.C. § 18.

⁷⁰ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, MB Docket No. 02-70, Memorandum Opinion and Order*, 17 FCC Rcd 23246, 23256, para. 28 (2002) (*AT&T/Comcast Order*).

communications markets and the merger's effect on future competition.⁷¹ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁷²

19. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁷³ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁷⁴ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."⁷⁵ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest.⁷⁶ Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)⁷⁷ and that are related to the Commission's responsibilities under the Communications Act and related statutes.⁷⁸ Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.

⁷¹ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14046-47, para. 23; *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses*, IB Docket No. 98-212, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19147-48, para. 15 (1999) (*AT&T/British Telecom Order*).

⁷² See, e.g., *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner, Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6550, 6553, paras. 5, 15 (2001) (*AOL/Time Warner Order*); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42.

⁷³ See, e.g., *Alltel/Western Wireless Order*, FCC 05-138 at para. 21 (conditioning approval on the divestiture of operating units in specified markets); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21545, para. 43 (same); see also *WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10 (conditioning approval on the divestiture of MCI's Internet assets).

⁷⁴ 47 U.S.C. § 303(r).

⁷⁵ 47 U.S.C. § 214(c); see also *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21545-46, para. 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14047, para. 24; *AT&T/British Telecom Order*, 14 FCC Rcd at 19148, para. 15.

⁷⁶ 47 U.S.C. § 303(r); see, e.g., *Alltel/Western Wireless Order*, FCC 05-138 at para. 21; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21545-46, para. 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14047, para. 24; *WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10; *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989).

⁷⁷ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 43; *News Corp./Hughes Order*, 19 FCC Rcd at 534, para. 131.

⁷⁸ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 43.

V. POTENTIAL PUBLIC INTEREST HARMS

A. Analytical Framework

20. In this section, we consider the potential public interest harms, including potential harms to competition, arising from the merger. Because Verizon and MCI currently compete with respect to a wide variety of services and groups of customers, we must consider the potential horizontal effects of this merger.⁷⁹ In addition, because both Verizon and MCI provide critical inputs, particularly special access services, to various communications markets, we need to consider the potential vertical effects of the merger – specifically, whether the merged entity will have an increased incentive or ability to injure competitors by raising the cost of, or discriminating in the provision of, inputs sold to competitors.⁸⁰

21. With respect to the horizontal effects, consistent with Commission precedent, we first perform a structural analysis of the merger to examine whether it is likely to result in anticompetitive effects.⁸¹ We begin by defining the relevant product markets⁸² and relevant geographic markets.⁸³ We next identify market participants and examine market concentration and how concentration will change as a result of the merger. We also consider whether entry conditions are such that new competitors could likely enter and defeat any attempted post-merger price increase.

22. If our structural analysis suggests that the merger may have anticompetitive effects, we must then examine in more detail whether and how the merger might affect competitive behavior. In performing this behavioral analysis, we consider whether the merger is likely to have anticompetitive effects either through unilateral actions of the merged entity or through coordinated interaction among firms competing in the relevant market.⁸⁴

⁷⁹ A transaction is said to be horizontal when the firms in the transaction sell products that are in the same relevant markets and are therefore viewed as reasonable substitutes by purchasers of the products. *News Corp./Hughes Order*, 19 FCC Rcd at 507, para. 69.

⁸⁰ *Id.* at 508, para. 71.

⁸¹ Structural merger analysis, as the name suggests, considers structural characteristics of the merging firms and the relevant markets, such as market shares and entry conditions, to make predictions about the likely competitive effects of a proposed merger.

⁸² A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a “small but significant and nontransitory” increase in price.” Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, (Apr. 2, 1992, revised Apr. 8, 1997) §§ 1.11, 1.12 (*DOJ/FTC Guidelines*); see also *EchoStar/DirectTV Order*, 17 FCC Rcd at 20605-6, para. 106.

⁸³ A relevant geographic market has been defined “as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a ‘small but significant and nontransitory’ increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change.” *EchoStar/DirectTV Order*, 17 FCC Rcd at 20609, para. 117 (citing *DOJ/FTC Guidelines* § 1.21).

⁸⁴ *Id.* at 20619, para. 151. As the Commission explained in the *EchoStar/DirectTV Order*:

Unilateral effects arise when the merging firm finds it profitable to alter its behavior following the merger. Examples of unilateral effects include a merging firm’s raising its price or reducing the quantity it supplies. Coordinated effects, in contrast, arise when competing firms, recognizing their interdependence, take actions “that are profitable for each of them only as a result of the (continued....)

23. With regard to potential vertical effects, we will examine how the merger affects the Applicants' incentives and ability to discriminate in provisioning inputs to competitors. In particular, we will consider the effect of the merger on the merged entity's incentives and ability to discriminate in the provision of special access services.

B. Wholesale Special Access Competition

24. In this section, we consider the effects of the merger of Verizon and MCI on the provisioning and pricing of wholesale special access services. The Commission has previously defined special access as a dedicated transmission link between two places.⁸⁵ As discussed below, wholesale special access service is a critical input for: competitive LECs in providing services to their retail enterprise customers, wireless and competitive LECs in connecting their networks to other carriers, long distance carriers seeking to connect customers to their long-distance networks, and entities seeking to connect with Internet backbones.⁸⁶ Firms needing dedicated transmission links essentially have three choices: to deploy their own facilities, to buy special access service from incumbent LECs, or to purchase such service from a competing special access provider. As discussed below, we find that MCI provides special access services in competition with Verizon's special access services, and that the merger, absent appropriate remedies, is likely to result in anticompetitive effects for wholesale special access services offered wholly over MCI's own facilities to certain buildings. We conclude, however, that the consent decree entered into between the Applicants and the DOJ, pursuant to which the Applicants agreed to certain divestitures in the form of IRUs for loops and transport necessary to reach to certain buildings where MCI is the only competitive LEC that has a direct wireline connection, should remedy any likely anticompetitive effects. Moreover, we find further comfort in certain voluntary commitments, which the Applicants have offered. Accordingly, we adopt the proffered commitments as express conditions of our approval of the transfer of licenses and authorizations from MCI to Verizon.

1. Relevant Markets

a. Relevant Product Markets

25. As previously indicated, special access is a dedicated transmission link between two locations, most often provisioned via high-capacity circuits. Such services are used for various purposes, such as direct connection between tenants of commercial buildings and a competing carrier's network or between

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accommodating reactions of others." Because coordinated effects generally are more likely the smaller the number of firms in a market, mergers may significantly increase the likelihood of coordinated effects by reducing the number of firms. Examples include explicit collusion, tacit collusion, and price leadership. *Id.* at 20619, para. 152 (footnotes omitted).

⁸⁵ See *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1997, para. 7 (2005) (*Special Access NPRM*). We recognize that different companies, particularly carriers that are not incumbent LECs, may use slightly different terms to refer to dedicated loop and transport links between two points. For example, MCI uses the term "Metro Private Line" to refer to services consisting of loops and transport, typically in combination that generally compete directly with Verizon's special access services. Verizon/MCI Application, Declaration of Jonathan P. Powell and Stephen M. Owens, Attach. 13 at para. 14. For simplicity, we will use the term "special access" to refer to all services provided by any carrier that involves such dedicated links.

⁸⁶ See *infra* Part V.C (Retail Enterprise Competition); Part V.D (Mass Market Competition); and Part V.E (Internet Backbone Competition).

different facilities of the same firm. Both voice and data may be carried using special access services. The facilities used to provide special access service typically consist of three different segments: (1) an entrance facility, which connects the purchasing carrier's point of presence ("POP") to the nearest wire center, carrier hotel, or similar location ("entrance facility"); (2) local transport; and (3) a "last mile" connection or local loop, also known as a channel termination, which runs from the transport facility to the end-user customer.

26. The record demonstrates that there are at least two separate relevant product markets for special access services: "Type I" special access services, which are offered wholly over a carrier's own facilities, and "Type II" special access services, which are offered using a combination of the carrier's own facilities for two of the segments and the special access services of another carrier for the third segment.⁸⁷ The record evidence suggests that many purchasers of wholesale special access services view Type I services as substantially superior to Type II services due to differences in performance, reliability, security, and price, and that these differences are sufficiently large that Type I special access services fall into a separate relevant product market from Type II.⁸⁸

⁸⁷ See, e.g., Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 8 (filed June 15, 2005) (Qwest June 15 *Ex Parte* Letter). MCI offers two additional types of special access: Type III and Type IV. Type III services use two incumbent channel terminations and MCI "fiber connection in the middle." Type IV services use no MCI facilities, being "simply resale of the incumbent's special access service." More than [REDACTED] of MCI's wholesale special access revenue is derived from Type I service, and most of the rest is from Type II service. Less than [REDACTED] of MCI's wholesale special access revenue is derived from Type III services, while MCI does not currently offer Type IV service except for a "handful" of grandfathered services. Verizon/MCI Reply, Declaration of Jonathan P. Powell, Peter H. Reynolds, and Edwin A. Fleming, (Verizon/MCI Powell/Reynolds/Fleming Reply Decl.), Tab 9, at paras. 8-12 & n.2.

We decline to find that the limited Type III and Type IV services constitute separate relevant product markets. Type III service is a mix of MCI network and purchased Verizon services, much like Type II service and, thus, Type II and Type III services will be considered as essentially the same service in the current proceeding. MCI does not currently market Type IV service, and only a residual number of grandfathered customers are in existence. Therefore we conclude that any sale of Type IV service is *de minimis* and will not be considered.

In this Order, "REDACTED" indicates that confidential or proprietary information that is subject to a Protective Order in this proceeding has been redacted from the public version of this Order. *First Protective Order*, 20 FCC Rcd at 5196; *Second Protective Order*, 20 FCC Rcd at 8876. The unredacted text is included in the confidential version of this Order, which is available upon request only to those parties who have executed and filed with the Commission signed acknowledgments of the protective orders. Qualified persons who have not yet signed the required acknowledgments may do so in order to obtain the confidential version of this Order.

⁸⁸ See, e.g., *Cbeyond et al. Petition*, Declaration of Simon Wilkie (*Cbeyond et al. Wilkie Decl.*) at para. 19 n.10 ("[O]ther things being equal, buyers have a preference to purchase Type I circuits to avoid any reliance on the ILEC who may degrade quality or be unresponsive to service problems."); Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 8 (filed June 15, 2005) (Qwest June 15 *Ex Parte* Letter); Letter from Thomas W. Cohen, Counsel for XO *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 2-4 (filed Oct. 3, 2005) (XO *et al.* Oct. 3 *Ex Parte* Letter) ([REDACTED]); Letter from Brad E. Mutschelknaus, *et al.*, Counsel for Eschelon *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 6 (filed June 6, 2005) (Eschelon *et al.* June 6 *Ex Parte* Letter) (asserting that the fact that wholesale services are provisioned using Type II, rather than Type I, offerings "does not significantly diminish the competitive significance" of those offerings, and that criticisms of Type II offerings do not "account for the important role played by those facilities in the wholesale market").

27. We also recognize that the services provided over different segments of special access (e.g., channel terminations and local transport) constitute separate relevant product markets, which may be subject to varying levels of competition.⁸⁹ In the competitive analysis section below, we will discuss the competitiveness of the different special access services.

b. Relevant Geographic Markets

28. Consistent with Commission precedent and the record before us, we conclude that the relevant geographic market for wholesale special access services is a particular customer's location, since it would be prohibitively expensive for an enterprise customer to move its office location in order to avoid a "small but significant and nontransitory" increase in the price of special access service.⁹⁰ In order to simplify its

⁸⁹ We do not, however, analyze separate product markets for different capacities of special access services. See Letter from Brad E. Mutschelknaus, Counsel for Conversent *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 3 (filed Aug. 31, 2005) (Conversent *et al.* Aug. 31 *Ex Parte* Letter) (asserting that different capacity services should be different relevant product markets). While customers in certain circumstances may be able to substitute different capacity services in different combinations to meet their needs if the price of a particular capacity circuit were raised (for example, customers could substitute multiple DS1 loops for a single DS3 loop), we believe that, in general, different capacity circuits are likely to constitute separate relevant product markets. However, we find comparable competitive alternatives for varying capacities of special access circuits, and thus for administrability purposes we do not separately analyze different capacity services. Where competing carriers offer Type I service using their own facilities, the facilities can be "channelized" to provide service at all capacity levels. See, e.g., *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2585-86, para. 86 (2005), petitions for review filed (*Triennial Review Remand Order*). Where carriers seek to offer Type II service, they can purchase the required capacity of special access service from the incumbent or from any competitive access providers.

We note that, in prior orders addressing our section 251 unbundling rules, we conducted a capacity-based analysis. See, e.g., *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2625, para. 166 (rel. Feb. 4, 2005), petitions for review filed (*Triennial Review Remand Order*) (describing the capacity-based analysis used for DS1, DS3, and dark fiber loops); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17102, para. 197 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), *aff'd in part, vacated and remanded in part, and remanded in part*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (describing the capacity-based analysis used for DS1, DS3, OCn, and dark fiber loops). Our approach to product definitions here differs in key respects from our unbundling analysis, however. Our merger analysis focuses on special access competition generally (whether through facilities deployment or partial reliance on other carriers' special access services), whereas our high-capacity loop impairment analysis focused solely on the likelihood of competitive facilities deployment. Moreover, our location-specific analysis in the merger context focuses on those locations where MCI offers competing special access services today, whereas the Commission applied a wire center test for high-capacity loop unbundling because a building-by-building test would not be administrable. Thus, we find no need to perform separate analyses for different capacity circuits based on the record and analytical framework here, notwithstanding our prior unbundling analyses.

⁹⁰ See, e.g., *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 69; *Applications of Teleport Communications Group Inc., Transferor, and AT&T Corp., Transferee, For Consent to Transfer Control of Corporations Holding Point-to-Point Microwave Licenses and Authorizations to Provide International Facilities-Based and Resold Communications Services*, CC Docket No. 98-24, Memorandum Opinion and Order, 13 FCC Rcd 15236, 15248, para. 21 (*AT&T/TCG Order*). Our geographic market definition is consistent with the arguments made by certain (continued....)

analysis, however, the Commission has traditionally aggregated or grouped customers facing similar competitive choices, and we will do so in our discussion below to the extent appropriate.⁹¹

29. In addition, however, we will consider the potential effect of the merger on Verizon's special access prices, which are generally set on a wider geographic basis. Because Verizon has gained Phase II pricing flexibility for its special access services in some metropolitan statistical areas (MSAs),⁹² but not others, Verizon's rates for special access may vary from MSA to MSA.⁹³ Accordingly, we will also examine on an MSA basis how the merger is likely to affect Verizon's special access prices.

c. Market Participants

30. Verizon can access all or virtually all of the buildings and transport routes in its territory. Although the record is not clear as to what extent other competitive LECs compete in the special access market in Verizon's territory, it is clear that, in addition to MCI, 360 Networks, AboveNet, AT&T, Broadwing/Focal, Cablevision Lightpath, Con Ed, Cox, CTC Communications, CTSI, Elantic/Dominion, Edison Carrier Solutions/SCE, Electric Lightwave, Fiber Net, FPL Fibernet, Interstate Fibernet/ITC Deltacom, DMC Telecom, Level 3, Looking Glass, McLeod USA, Neon, NTS Communications, On Fiber, PPL Telecom, Progress Telecomm, Qwest, SBC Communications, Sprint, TelCove, Time Warner, Wiltel and XO provide wholesale Type I, and in some cases Type II, special access services.⁹⁴ The record does not, however, clearly indicate the extent to which individual buildings are served by one or more of these competitive LECs.

2. Competitive Analysis

31. In this section, we separate our discussion of the competitive effects of the merger into the effects on the in-region special access market, both horizontal and vertical, and the effects on out-of-

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commenters. See Global Crossing Comments at 8-13; Conversent *et al.* Aug. 31 *Ex Parte* Letter at 3; *cf.* *EchoStar/DirecTV Order*, 17 FCC Rcd at 20609-12, paras. 117-125; *AT&T/Comcast Order*, 17 FCC Rcd at 23282, para. 90 (finding that the relevant geographic market was individual customer residences but that it is reasonable to aggregate to a larger geographic area); *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20016-19, para. 54-57 (finding that separate geographic areas were appropriately defined by the availability of similar set of services at similar prices).

⁹¹ See, e.g., *AT&T/Comcast Order*, 17 FCC Rcd at 23282, para. 90; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20016-19, paras. 54-56; *EchoStar/DirecTV Order* 17 FCC Rcd at 20610-11, para. 120; *SBC/Ameritech Order* 14 FCC Rcd at 14746, paras. 67-68.

⁹² Verizon/MCI Reply, Declaration of Quintin Lew (Verizon/MCI Lew Reply Decl.), Tab 4, at paras. 38-43; Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. Special Access White Paper at 61-65 (filed Aug. 25, 2005) (Verizon/MCI Special Access White Paper).

⁹³ We recognize that Verizon also offers various volume and term discount plans, which offer percentage discounts off the tariffed rate. Some discounts are based on a carrier's total spend over a larger geographic market while other discounts may vary from MSA to MSA. See, e.g., CompTel/ALTS Petition at 14 (suggesting a regional analysis is appropriate given Verizon pricing strategies); Global Crossing Comments at 8-13.

⁹⁴ Verizon/MCI Lew Reply Decl., at Exh. 1A.

region special access markets.⁹⁵ We begin by considering whether the merger is likely to result in a meaningful reduction in competition or increase in price for special access services to particular locations.

32. As discussed below, we find that the elimination of MCI as a provider of wholesale special access services is likely to result in anticompetitive effects in the provision of Type I special access services to particular buildings where MCI is currently the sole carrier, besides Verizon, with a direct wireline connection to the building, and where barriers to entry make it unlikely that other carriers will build their own facilities. Absent appropriate remedies, these building-specific effects may also lead to increases in Verizon's MSA-wide special access prices.

33. With respect to Type II special access services, we conclude that the ability of remaining carriers in the market to offer competitive special access services through a combination of their own transport facilities and an incumbent LEC's special access or high-capacity unbundled loops, or a competing carrier's loop facilities, alleviates concerns about the loss of MCI as a provider of Type II special access services to particular buildings. Further, because MCI provides such a relatively small amount of wholesale Type II special access services within Verizon's region and because other competitive providers should be able to move in quickly to fill any void left by MCI, we conclude that the merger is unlikely to result in an increase in the price of Type II services within Verizon's region.

34. We next consider whether the merger is likely to result in anticompetitive effects in the provision of wholesale special access services in areas outside Verizon's territory. In particular, we consider arguments made by certain commenters that, after the Verizon/MCI and SBC/AT&T mergers are consummated, Verizon and SBC will have an incentive to forbear from competing in the provision of wholesale special access services within each other's territories. We conclude that the merger will not result in competitive harm in SBC territory. We find that a variety of actual and potential competing providers will remain post-merger to fill any void left by MCI if the merged entity does not continue to offer wholesale special access services in SBC's territory.

35. Finally, we consider possible vertical effects of the merger. Verizon is already a vertically integrated company. We conclude that the merger, as conditioned by the DOJ Consent Decree, will not increase the merged entity's ability to increase prices for or decrease quality of wholesale special access services. To the extent that Verizon, prior to the merger, had any incentive or ability to raise rivals' costs or discriminate in the provision of wholesale special access services, those issues are better addressed in pending general rulemaking proceedings.

a. Horizontal Effects

36. *Unilateral Effects.* Several commenters claim that, as a result of the merger, wholesale special access prices are likely to rise at specific buildings where MCI is currently offering either Type I or Type II special access services.⁹⁶ As discussed in greater detail below, we believe these claims are correct in

⁹⁵ By "in-region," we mean the franchise areas where Verizon is the incumbent LEC. Thus, "out-of-region" refers to all other regions in the U.S.

⁹⁶ See, e.g., Verizon/MCI Public Interest Statement at 33-34; ACN *et al.* Comments at 32-37; Broadwing and SAVVIS Petition at 22-30; Cbeyond *et al.* Petition at 22-25; CompTel/ALTS Petition at 13-20; Global Crossing Comments at 13-18; NASUCA Comments at 14-16; Qwest Petition at 15-21; Ad Hoc Telecom Users Reply at 19-23; Letter from Richard M. Blau and Edward W. Kirsch, Counsel for CTC Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 4-5 (filed Sept. 21, 2005) (CTC Sept. 21 *Ex Parte* Letter); Letter from Brad E. Mutschelknaus, Counsel for BridgeCom, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 2 (filed Sept. 22, 2005) (BridgeCom *et al.* Sept. 22 *Ex Parte* Letter); Letter from John T. (continued....)

part. The record suggests that the merger will result in a reduction in the number of competitors offering Type I services in buildings where MCI is currently connected via its own facilities, and that, absent remedial measures, this is likely to lead to an increase in the price of special access service to buildings where only Verizon and MCI own or control a direct wireline connection, and where conditions make additional facilities-based entry unlikely.⁹⁷ We further find, however, that the merger is not likely to result in anticompetitive effects in the provision of Type II services. Competing carriers can use their existing collocation facilities in the relevant wire center (or contract with a competitor that has such collocation facilities) and can purchase special access circuits or UNE loops to provide Type II services.

37. *Type I Services.* We disagree with the Applicants' assertion that "the absolute number of buildings served by MCI is so small that MCI's facilities cannot be considered competitively significant."⁹⁸ As discussed above, the relevant geographic market for wholesale special access services is a particular customer's location. Thus, where MCI is the only carrier besides Verizon that is directly connected to a particular building and where entry is unlikely, MCI's elimination as a competitor may lead to an increase in the price of Type I special access services to that building. Thus, absent appropriate remedial measures, like those imposed by the DOJ Consent Decree, the proposed merger is likely to have anticompetitive effects in buildings where MCI is the only competitive LEC with a direct wireline connection and where entry appears unlikely.

38. MCI is directly connected via its own facilities to at least [REDACTED] buildings in Verizon's territory where MCI has local facilities.⁹⁹ MCI has provided data indicating that MCI is the only competitive provider to approximately [REDACTED] of those buildings.¹⁰⁰

39. The record also indicates that, for many buildings, there is little potential for competitive entry, at least in the short term. As the Commission has previously recognized, carriers face substantial fixed and sunk costs, as well as operational barriers, when deploying loops, particularly where the capacity demanded is relatively limited.¹⁰¹ Given these barriers, it appears unlikely that a carrier would be willing to make the significant sunk investment without some assurance that it would be able to generate

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Nakahata, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 2 (filed Sept. 23, 2005) (Level 3 Sept. 23 *Ex Parte* Letter).

⁹⁷ In the 39 wire center clusters in the 30 in-region MSAs where MCI has local facilities, Verizon estimates that it serves over 246,000 commercial buildings, and states that MCI provides Type I service to only [REDACTED] of them using its own facilities – less than [REDACTED]. See Verizon/MCI Special Access White Paper at 24; 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 *Ex Parte* Letter); Verizon/MCI Reply, Declaration of Gustavo E. Bamberger, Dennis W. Carlton and Allan L. Shampine, (Verizon/MCI Bamberger/Carlton/Shampine Reply Decl.), Tab 1, at para. 19.

⁹⁸ Verizon/MCI Powell/Reynolds/Fleming Reply Decl. at paras. 5; Verizon/MCI Special Access White Paper at 13-14.

⁹⁹ Letter from Dee May and Curtis Groves, Counsel for Verizon and MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, at 4 (filed Sept. 9, 2005) (Verizon/MCI Sept. 9 *Ex Parte* Letter).

¹⁰⁰ *Id.* We note that MCI's data is likely to overestimate the number of buildings where MCI is the sole competitive LEC with a direct connection, because the data only count competitive LECs with whom MCI has wholesale contracts. See, e.g., *id.* at 3-4, n.11.

¹⁰¹ See *Triennial Review Remand Order*, 20 FCC Rcd at 2615-18, paras. 149-54; see also *Triennial Review Order*, 18 FCC Rcd at 17160-62, paras. 303-306. See also ACN *et al.* Aug. 10, 2005 *Ex Parte* Letter, Attach. at 3.

revenues sufficient to recover that investment.¹⁰² Consistent with this analysis, there is evidence in the record that carriers generally are unwilling to invest in deploying their own loops unless they have a long-term retail contract that will generate sufficient revenues to allow them to recover the cost of their investment.¹⁰³ Moreover, even where there is adequate retail demand, the costs of constructing the loop may be sufficiently high, or there may be other operational barriers, that may deter entry.¹⁰⁴

40. This analysis is consistent with the analysis contained in the complaint that the DOJ filed in connection with this merger. In its complaint, the DOJ alleged that, in certain buildings where “Verizon and MCI are the only firms that own or control a direct wireline connection to the building,” the merger was “likely to substantially reduce competition for Local Private Lines and telecommunications services that rely on Local Private Lines to those buildings.”¹⁰⁵ The DOJ’s complaint goes on to allege that “[a]lthough other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process.”¹⁰⁶ The complaint further alleges that “[a]lthough entry may occur in response to a post-merger price increase in some of the buildings where MCI is the only connected CLEC, the conditions for entry are unlikely to be met in hundreds of those buildings.”¹⁰⁷ To remedy this problem, the DOJ in the consent decree required that MCI divest IRUs to those buildings where it was the sole CLEC with a direct connection to the building and where DOJ found entry unlikely.¹⁰⁸ We find that the terms of the consent decree should adequately remedy any likely anticompetitive effects in the provision of Type I wholesale special access services.

41. *Type II.* In buildings where a competitive LEC is not directly connected to a building via its own facilities and where customer demand may not justify the construction of competitive facilities (such as where demand is less than the OCn level), competing carriers can either combine competitive transport with special access loops or, where available, high-capacity loop UNEs purchased from Verizon (*i.e.*,

¹⁰² See, e.g., Verizon/MCI Sept. 9 *Ex Parte* Letter, Attach. 3, Declaration of Edwin A. Fleming, at paras. 6-7; Letter from Thomas Cohen, Counsel for XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at paras. 15-21 (filed Oct. 21, 2005) (XO Oct. 21 *Ex Parte* Letter).

¹⁰³ See *id.*

¹⁰⁴ We are not persuaded by the Applicants’ argument that Commission findings that network elements need not be unbundled pursuant to the “impairment” standard of section 251(d)(2) demonstrate that the special access market has sufficiently low entry barriers to permit sufficient and timely competitive, facilities-based entry to defeat any attempted post-merger price increase. See, e.g., Verizon/MCI Bamberger/Carlton/Shampine Reply Decl. at paras. 14-22, Verizon/MCI Reply, Reply Declaration of Jonathan P. Powell, Peter H. Reynolds, and Edwin A. Fleming (Verizon/MCI Powell/Reynolds/Fleming Reply Decl.), Tab 9, at para. 31. As the Commission explained in the *Triennial Review Order*, “[t]he purposes of a market power analysis are not the purposes of section 251(d)(2). . . the Act requires only that network elements be unbundled if competing carriers are impaired without them, regardless of whether the incumbent LEC is exercising market power or the unbundling would eliminate this market power.” *Triennial Review Order*, 18 FCC Rcd at 17051 at para. 109.

¹⁰⁵ DOJ-Verizon/MCI Complaint at para. 3.

¹⁰⁶ *Id.* at para. 27.

¹⁰⁷ *Id.* at para. 29.

¹⁰⁸ DOJ-Verizon/MCI Consent Decree, App. A.

Type II offerings).¹⁰⁹ Carriers can use their existing collocation facilities in the relevant wire center (or contract with a competitor that has such collocation facilities) and can purchase special access loops or UNEs to provide Type II services.

42. Commenters claim that MCI has three unique advantages in supplying Type II special access services to other competing carriers: (1) MCI obtains greater special access discounts from Verizon for the loop portion of the circuit;¹¹⁰ (2) MCI has more collocations than other competitive LECs so it can use the incumbent LEC special access to a greater number of buildings;¹¹¹ and (3) MCI has a more extensive fiber network and therefore can reach more commercial buildings.¹¹² We do not find these arguments persuasive.

43. First, there is no evidence that MCI has access to a discount plan that is not available to other providers. The Applicants assert, and opponents do not rebut, that the volume and term discount plans under which MCI takes Verizon special access circuits are also available to other competitive LECs.¹¹³ Indeed, these plans are made available to others pursuant to contract tariffs or generally available tariffs. Further, Verizon provides special access discounts in a variety of ways with differing conditions in different regions, including discounts available even to those carriers that might not qualify for the precise discount plan used by MCI.¹¹⁴ Finally, we note that regardless of whether competitors are able to

¹⁰⁹ While UNEs are not available solely for the provision of long distance or mobile wireless services, they are available for the provision of local exchange and exchange access services. *Triennial Review Remand Order*, 20 FCC Rcd at 2551-58, paras. 34-40. Carriers that obtain UNEs for the provision of local exchange or exchange access services may also provide other services using those UNEs. 47 C.F.R. § 51.309(d).

¹¹⁰ CompTel/ALTS Petition at 14-15 (arguing that because of the size of its fiber resources and massive amount of wholesale circuits, MCI "can credibly threaten to groom circuits off the ILEC network and onto its own fiber" to get lower prices); Broadwing and SAVVIS Petition at 22-23 (MCI's volume of demand, combined with the implicit threat that MCI could deploy more circuits of its own, exerts some discipline on Verizon's access rates in general); Cbeyond *et al.* Petition at 23-24.

¹¹¹ Letter from Mark C. Del Bianco, Counsel for Paetec, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 at 1-2 (filed Oct. 6, 2005) (Paetec Oct. 6 *Ex Parte* Letter).

¹¹² CompTel/ALTS Petition at 14-15; Letter from Teresa D. Baer, Counsel for Global Crossing, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 at 8 (filed June 2, 2005) (Global Crossing June 2 *Ex Parte* Letter) (asserting that no other competitive LEC matches the breadth of MCI's and AT&T's local access networks).

¹¹³ Verizon/MCI Low Reply Decl. at paras. 24-48; Verizon/MCI Powell/Reynolds/Fleming Reply Decl. at paras. 13-14; Verizon/MCI Special Access White Paper at 18. The Applicants also assert that non-carriers have entered the market aggregating the demand from several buyers to take advantage of Verizon discounts. *Id.* at 60.

¹¹⁴ Verizon provides special access services under tariffed rates as well as through individual contracts, as Verizon has gained pricing flexibility in certain MSAs. Various volume and term discounts may apply to individual purchases or for all purchases in particular regions. Other discounts are dependent on maintaining minimum purchasing levels over several years. Verizon/MCI Low Reply Decl. at paras. 24-48; Verizon/MCI Reply Powell/Reynolds/Fleming Reply Decl. at 13-14; Verizon/MCI Sept. 9 *Ex Parte* Letter at 8. See also Letter from Dee May and Curtis Groves, Counsel for Verizon and MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, at 2 (filed Sept. 15, 2005) (Verizon/MCI Sept. 15 *Ex Parte* Letter). While it is not always clear how much each buyer pays, it is clear that the simple tariff rate sometimes used by commenters for comparing prices is not adequate for that purpose. See, e.g., Letter from Thomas Cohen, Counsel for SAVVIS and XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 5 (filed July 29, 2005) (SAVVIS/XO July 29 *Ex Parte* Letter); XO *et al.* Oct. 3 *Ex Parte* Letter, Attach. at 2-4; see also Cbeyond *et al.* Wilkie Decl. at para. 15 (discussing the review of special access RFP bid data, and stating that the incumbent LEC "rarely actively underbid[s] the posted special access rates").

negotiate significant discounts, where competitive duplication of the last-mile facility is not economic, competing carriers will be able to rely on high-capacity loop and transport UNEs priced at Total Element Long Run Incremental Cost (TELRIC) where they are available.¹¹⁵

44. Second, existing competitive collocations and the threat of competitive entry through collocation allow for special access competition in Verizon's in-region wire centers where MCI competes today. Indeed, in the 30 MSAs in Verizon's territory where MCI currently has local facilities,¹¹⁶ the Applicants indicate that MCI only has collocations in [REDACTED] wire centers compared to the total of [REDACTED] collocations by other competing carriers in Verizon wire centers.¹¹⁷ Thus, other competing carriers collectively have almost [REDACTED] times the number of Verizon wire center collocations compared with MCI. In addition, there are nearly 100 competing carriers that have between [REDACTED] collocations per MSA, with an average of [REDACTED] collocations, in each of the 30 MSAs where MCI has local facilities.¹¹⁸ Moreover, of the [REDACTED] wire centers in the 30 MSAs in Verizon's territory in which MCI has collocations, other competing carriers are collocated in [REDACTED].¹¹⁹ Even in those wire centers where MCI currently is the only collocated carrier, competitors after the merger are likely to have incentives to construct substitute collocations. The extensive local fiber networks¹²⁰ already deployed by other competitors in Verizon's territory indicate that these competitors are likely to find it both technically and economically feasible to construct additional collocations.¹²¹

45. Third, the Applicants submitted maps showing the local fiber routes of MCI and other competing carriers in the 30 MSAs where MCI provides special access in Verizon's region.¹²² These maps further

¹¹⁵ In addition, we note that the Commission has found that "the availability of UNEs is itself a check on special access pricing." *Triennial Review Remand Order*, 20 FCC Rcd at 2574, para. 65.

¹¹⁶ These MSAs are Albany, Allentown, Baltimore, Boston, Bridgeport, Buffalo, Dallas, Durham, Los Angeles, Manchester, New York, Philadelphia, Pittsburgh, Portland (ME), Portland (OR), Poughkeepsie, Providence, Reading, Richmond, San Francisco, San Jose, Santa Barbara, Seattle, Springfield (MA), Syracuse, Tampa, Trenton, Washington (DC), Worcester, and York. Verizon/MCI Aug. 25 *Ex Parte* Letter, Special Access White Paper at 12 nn.30-32.

¹¹⁷ Letter from Dee May, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. Collocation Supplement (filed Aug. 5, 2005) (Verizon Aug. 5 *Ex Parte* Letter, Collocation Supplement); MCI Info. Req. Exh. 6(a)(3); Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 at 9 (filed Sept. 5, 2005) (Verizon/MCI Sept. 5 *Ex Parte* Letter).

¹¹⁸ Verizon Aug. 5 *Ex Parte* Letter, Collocation Supplement.

¹¹⁹ *Id.*

¹²⁰ See *infra* para. 45 (discussing evidence of competitive fiber deployment).

¹²¹ As we have found in both the special access and UNE contexts, the presence of fiber-based collocators is a good proxy for sunk investment in fiber rings, which we find competitors are able to use in conjunction with special access or, where available, UNEs in the provision of Type II offerings. See, e.g., *Triennial Review Remand Order*, 20 FCC Rcd at 2589-95, 2625-26, paras. 96-105, 167 (discussing the inferences drawn from fiber-based collocations for purposes of our UNE rules); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14265-69, paras. 81-86 (1999) (*Pricing Flexibility Order*) (describing the correlation between fiber-based collocation and sunk investment in competitive transport facilities).

¹²² Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. Fiber Location Maps (filed Sept. 14, 2005) (Verizon/MCI Sept. 14 *Ex Parte* Letter).

demonstrate that other carriers besides MCI have fiber networks in these geographic areas. In many MSAs, some competitors appear to have more extensive networks than MCI.¹²³ We conclude, therefore, that there are existing competitors with local fiber networks that reasonably could provide wholesale special access in MSAs where MCI now operates local facilities.¹²⁴ We note that our findings here are consistent with the findings underlying the Commission's high-capacity loop impairment analysis in the *Triennial Review Remand Order*.¹²⁵

46. We are also not persuaded by certain study results cited by commenters that purport to show that the removal of MCI as a special access competitor in Verizon territory would result in significant increases in bid prices for wholesale special access services.¹²⁶ Commenters have alleged that their analysis of particular carriers' special access bid data shows that AT&T and MCI were the most frequent bidders to offer competitive special access services and that regression analyses of a large sample of bids submitted in response to competitors' RFPs demonstrates that removal of MCI from Verizon territory

¹²³ We recognize, however, that one must take care in interpreting such maps. For example, in the *Triennial Review Remand Order*, we expressed reluctance to rely on these sort of maps in the context of loop unbundling because "they fail to indicate the capacity of service being provided over the facilities described, or whether those facilities are in fact being used to provide services for which competitive LECs may use UNEs." See *Triennial Review Remand Order*, 20 FCC Rcd at 2621, para. 158 n.445. In addition, the MSA-level maps did not correspond to the wire center analysis the Commission conducted. *Id.* In the current merger context, we are simply using the maps to supplement the quantifiable collocation data and to identify the existence of competitive LEC facilities in the MSA.

¹²⁴ Indeed, MCI itself purchases special access from several competing carriers. See Verizon/MCI Reply, Declaration of Jonathan P. Powell, Peter H. Reynolds, and Edwin A. Fleming (Verizon/MCI Powell/Reynolds/Fleming Reply Decl.) at para. 17; Verizon Special Access White Paper at 17-18; see also Verizon Special Access White Paper at 26-47 (listing wholesale special access competitors to MCI).

¹²⁵ In the *Triennial Review Remand Order*, the Commission drew inferences that requesting carriers were not impaired without unbundled access to DS1 and DS3 loops in wire centers with a significant number of business lines and fiber-based collocators. See *Triennial Review Remand Order*, 20 FCC Rcd at 2622-23, para. 161. The Commission further noted that in those wire centers where high-capacity loop unbundling was eliminated, carriers could compete using incumbent LEC or third party special access to serve particular buildings to the extent that competitive facilities cannot economically be deployed. See *id.* at 2623-24, para. 163. For various reasons, the Commission did not directly rely on the availability of special access as precluding the need for unbundling. See generally *id.* at 2560-71, paras. 46-63. In the *Triennial Review Remand Order*, the Commission was evaluating whether a requesting carrier would be impaired without access to a UNE, whereas here we are evaluating the merger's effects on competition in the market for special access. Consequently, we find it appropriate here to rely on competing carriers' ability to use Type II special access facilities given the evidence in the record on all sides regarding successful special access competition provided by Type II service offerings. Cf. Verizon/MCI Reply at 33 (contending that the Commission's high-capacity loop impairment analysis suggests that competitive alternatives would remain for MCI's lit buildings).

¹²⁶ ACN *et al.* Comments at 35; Broadwing and SAVVIS Petition, Declaration of Mark Pietro (Broadwing and SAVVIS Pietro Decl.) at para. 18; CompTel/ALTS Petition at 27; Ad Hoc Telecom Users Reply at 20-22; BT Americas Reply at 15-16; Letter from Richard M. Blau and Edward W. Kirsch, Counsel for CTC Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 4-5 (filed Sept. 21, 2005) (CTC Sept. 21 *Ex Parte* Letter); Letter from Brad E. Mutschelknaus, Counsel for BridgeCom *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 2 (filed Sept. 22, 2005) (BridgeCom *et al.* Sept. 22 *Ex Parte* Letter); Letter from John T. Nakahata, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 2 (filed Sept. 23, 2005) (Level 3 Sept. 23 *Ex Parte* Letter).

would result in a doubling of bid prices.¹²⁷ As an initial matter, Applicants have noted the difficulty in relying on these assertions since neither the majority of commenters' source data nor even the underlying methodologies used for the analyses are in the public record and have not been subject to examination by opposing parties.¹²⁸ Further, these analyses appear to conflate Type I and Type II special access offerings, which, as we find above, are in separate relevant product markets.¹²⁹ Consequently, we do not accept the commenters' bid data analyses as demonstrating that the merger will lead to special access price increases at particular buildings.

47. In summary, within Verizon's region, we find that collectively, other competing carriers have more fiber and many more collocations than does MCI.¹³⁰ In the limited number of MSAs where MCI has local facilities in the Verizon region, MCI represents about [REDACTED] percent of the competitive collocations. Moreover, the record clearly shows that MCI's collocations are located exclusively in MSAs with many other competitive collocations. Therefore, we conclude that elimination of MCI as a provider of Type II wholesale special access services should not have an appreciable effect on price or availability of Type II wholesale special access services.

¹²⁷ Cbeyond *et al.* Wilkie Decl. at paras. 14-16, 23-27 ("[f]or those circuits where competition is eliminated and the requesting carrier is left with the current special access tariff, prices will rise approximately 100%."); *see also* Letter from Brad E. Mutschelknaus, *et al.*, Counsel for Eschelon *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 21 (filed May 10, 2005) (Eschelon *et al.* May 10 *Ex Parte* Letter); SAVVIS/XO July 29 *Ex Parte* Letter, Attach. at 5; Letter from Teresa D. Baer, Counsel for Global Crossing, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 3 (filed Sept. 7, 2005) (Global Crossing Sept. 7 *Ex Parte* Letter) (comparing certain AT&T, MCI, and BOC T-1 prices for two states); XO *et al.* Oct. 3 *Ex Parte* Letter, Attach. at 3-4; *see also* Letter from Sherry Ingram, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75) (filed Oct. 18, 2005) (Verizon/MCI Oct. 18 *Ex Parte* Letter) (arguing that the RFP data submitted by competitive LECs are inadequate to prove that MCI is a price leader in the sale of wholesale or retail special access).

¹²⁸ Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. at 1-4 (filed June 30, 2005) (Verizon/MCI June 30 *Ex Parte* Letter); Verizon/MCI Sept. 9 *Ex Parte* Letter at 21-22. It is not clear how similar the bid process was between the several companies, whether there were substantial negotiations after the bids, or whether the bids were conducted in several rounds. Understanding these, and possibly other, considerations could be important in interpreting the data.

¹²⁹ *See, e.g.*, XO *et al.* Oct. 3 *Ex Parte* Letter, Attach.; SAVVIS/XO July 29 *Ex Parte* Letter, Attach. at 5.

¹³⁰ We reject EarthLink's assertion that the proposed merger will eliminate MCI as a potential wholesale DSL competitor. EarthLink contends that MCI made acquisitions in 2001 which positioned itself as "a facilities-based provider of DSL service in over 700 central offices covering 31 markets across the United States." Letter from Jennifer L. Phurrough, Counsel for EarthLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 22-23 (filed Sept. 26, 2005) (EarthLink White Paper). As an initial matter, we note that EarthLink relies on statements about MCI's intentions regarding DSL from 2001, *see id.* at 23, many years prior to its determination to discontinue pursuing its consumer DSL line of business. *See infra* Part V.D (discussing MCI's decision to reduce marketing of mass market services). Consequently, EarthLink's outdated evidence does not persuade us that MCI was likely to begin offering wholesale DSL services in the absence of the merger. Moreover, we conclude that MCI is not uniquely positioned to become a wholesale DSL provider. The Commission previously has found that "competitors are actively deploying their own packet switches, including routers and DSLAMs to serve both the enterprise and mass markets, and that these facilities are much cheaper to deploy than circuit switches," suggesting that MCI likely is not unique in its ownership of DSLAMs and networking equipment. *Triennial Review Order*, 18 FCC Rcd at 17321-22, para. 538. Further, as we find above, there are numerous other competitive LECs with collocations. Given that unbundled DS0 loops are available throughout Verizon's region, those other carriers can also use their collocations in conjunction with unbundled loops to offer wholesale DSL service.

48. *MSA-wide effects.* To the extent that the elimination of MCI as a competitor in the Type I wholesale special access market causes competitive harm, this also could result in increases in the MSA-wide prices that Verizon sets for its own special access services.¹³¹ However, as discussed above, we find that the divestitures contained in the consent decree executed by the Department of Justice and the Applicants should adequately address any competitive concerns that we might have relating to this market. Thus, in light of the DOJ Consent Decree, we conclude that the merger is not likely to result in increases in the MSA-wide prices that Verizon charges for special access services. Moreover, the voluntary commitments that the Applicants have offered,¹³² and which we accept and make conditions of our approval of this order, provide us with further comfort that the merger is not likely to result in anticompetitive effects either in the building-specific markets for Type I wholesale special access services, or derivatively in the MSA-wide market for Verizon's special access services.

49. We note that certain commenters have submitted special access market share and HHI calculations for selected MSAs in Verizon territory to demonstrate that the merger will lead to competitive harm for those MSAs.¹³³ We find certain weaknesses with this analysis and data, however. First, we share some of the concerns expressed by the Applicants concerning the reliability of the underlying data.¹³⁴ In addition, it appears that the commenters' market share calculations include all capacity, regardless of whether it is used to provide wholesale special access or to support MCI's own retail services.¹³⁵ Finally, as discussed above, we find that any increase in Verizon's MSA-wide special access prices would only result from a reduction in competition in building specific markets for Type I or Type II wholesale special access services. Because we find that the consent decree adequately remedies any likely anticompetitive effects on Type I wholesale special access services and that the merger is unlikely to result in anticompetitive effects in the provision of Type II wholesale special access services, we find that no additional measures are required to protect against increases in Verizon's special access prices resulting from the merger.

¹³¹ As previously discussed, each building represents a separate relevant geographic market, and competitors frequently charge different prices for special access services to different buildings. To the extent that Verizon has received Phase II pricing flexibility, but nevertheless sets special access prices that are geographically averaged over an entire MSA, we would expect that Verizon would set a geographically uniform price that maximizes its profits given competitive conditions that vary from building to building. If competition is reduced to a number of buildings, this is likely to cause Verizon to raise its MSA-wide price. *See, e.g.,* Global Crossing Comments at 17, n.34; *see also EchoStar/DirectTV Order*, 17 FCC Rcd at 20629, para. 185 (providing a formula that describes how the profit-maximizing, uniform price that is averaged over multiple geographic markets will rise in response to a decrease in competition in particular local markets).

¹³² *See generally* Verizon Oct. 31 *Ex Parte* Letter; *see also* Appendix G.

¹³³ *See, e.g.,* SAVVIS/XO July 29 *Ex Parte* Letter, Wilkie Presentation at 9-11.

¹³⁴ Verizon/MCI Reply at 35; Verizon/MCI Sept. 9 *Ex Parte* Letter at 21.

¹³⁵ We reject the national private line market share calculations submitted by commenters. *See* Letter from Thomas W. Cohen, Counsel for XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 13 (filed Sept. 21, 2005) (attached excerpts from a January 2004 Yankee Group study). As an initial matter, it is not clear what data Yankee Group used to calculate market shares. Because we expect MCI to be in the best position to know its revenues, we believe that the revenue submitted by MCI in response to the Commission's information request, showing lower revenues, is more accurate than the Yankee Group's earlier estimate. Second, even if the market shares reported for MCI were accurate, the national market shares likely mask variations in market share among narrower geographic regions. The study states that other competing carriers' market shares vary among "Tier 1" to "Tier 4" metropolitan markets, for example. *Id.*

50. We also reject commenters' assertions that MCI, because of its extensive local transport network, has a unique ability to handle short and intermediate haul traffic.¹³⁶ As shown above, MCI faces competition from many other competitive LECs, which also possess extensive local transport facilities and collocations.¹³⁷ As explained above, local fiber facility maps show that there are other competing carriers besides MCI in the 30 MSAs where MCI provides special access in Verizon's region. These maps demonstrate that other carriers besides MCI have fiber networks in these geographic areas and are possible suppliers of short and intermediate haul traffic.¹³⁸ Thus, we do not find that MCI is able to provide local transport on an MSA-wide basis more efficiently than other competing carriers.¹³⁹

¹³⁶ See, e.g., CompTel/ALTS Petition at 17; Broadwing and SAVVIS Petition at 25-26 n.42, 33; Broadwing and SAVVIS Pietro Decl. at paras. 12-16; Qwest July 7 *Ex Parte* Letter, Attach. at 7; Paetec Oct. 6 *Ex Parte* Letter at 1-2.

¹³⁷ See *supra* para. 45 (discussing evidence of competitive fiber networks); para. 44 (discussing competitive collocation in the same wire centers as MCI within the 30 MSAs where MCI has local facilities). The Commission has previously concluded that "fiber-based collocation is a key indicator of competitive fiber deployment, and the D.C. Circuit has affirmed this use as reasonable. Fiber-based collocation in a wire center very clearly indicates the presence of competitive transport facilities in that wire center." *Triennial Review Remand Order*, 20 FCC Rcd at 2589-90, para. 96.

¹³⁸ Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. Fiber Location Maps (filed Sept. 14, 2005) (Verizon/MCI Sept. 14 *Ex Parte* Letter).

¹³⁹ Based on our findings regarding the ability of other carriers with fiber networks to offer competing special access services where MCI offered such services pre-merger, we are not persuaded by commenters' assertions that the merger is likely to result in anticompetitive effects because the remaining competitive LECs are unlikely to re-create MCI's facilities, or replicate its ability to expand, in the near future. See, e.g., Letter from Melissa Newman, Vice President Federal Relations, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65 at 7, 13 (filed July 7, 2005) (Qwest July 7 *Ex Parte* Letter) (contending that MCI (and AT&T) were each expected to deploy more local facilities so as to reduce their dependence on the incumbent carrier's facilities based on their unique, comparatively larger networks). We also reject CTC Communications' assertion that we should, in this proceeding, revise the unbundling rules adopted in the *Triennial Review Remand Order*. Specifically, CTC contends that the Commission should revise its unbundling rules so that MCI's fiber-based collocations are counted as "affiliated" for purposes of high-capacity loops and dedicated transport unbundling. Letter from Edward W. Kirsch, Counsel for CTC Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 8 (filed Aug. 31, 2005) (CTC Aug. 31 *Ex Parte* Letter); see also Letter from Brad E. Mutschelknaus, Counsel for Bridgecom *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 3-4 (filed Oct. 18, 2005). This issue currently is pending before the Commission on reconsideration of the *Triennial Review Remand Order*, and we believe that is the appropriate forum to address our unbundling rules. See, e.g., CTC Communications Corp. *et al.* Petition for Reconsideration, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, at 5-8 (filed Mar. 28, 2005). While we decline to revise our unbundling rules, as requested by commenters, we note that the Applicants have voluntarily committed to exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers in which Verizon claims there is no impairment. See Verizon Oct. 31 *Ex Parte* Letter, Attach. at 3; see also Appendix G.

Our finding above that the merger will not likely have anticompetitive effects with respect to wholesale transport services generally applies with even greater force in the context of entrance facilities. As the Commission has found in the past, entrance facilities "are less costly to build, are more widely available from alternative providers, and have greater revenue potential than dedicated transport between incumbent LEC central offices," and no significant concerns regarding entrance facilities were raised in the record. *Triennial Review Remand Order*, 20 FCC Rcd at 2612, para. 141.

51. We find further comfort in certain voluntary commitments which the Applicants have made relating to unbundled network elements and special access services.¹⁴⁰ First, the Applicants commit not to seek any increase in state-approved rates for UNEs that are currently in effect, with the exception of rates that are subject to specified currently pending appeals. Second, the Applicants commit to exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers in which Verizon claims there is no impairment pursuant to section 51.319(a) and (e) of the Commission's rules. Third, the Applicants commit that Verizon's incumbent local operating companies will implement a performance metrics plan for interstate special access services, under which they will provide performance data on a quarterly basis. Fourth, the Applicants commit not to raise rates paid by existing customers of MCI's DS1 and DS3 wholesale metro private line services that MCI provides in Verizon's incumbent local telephone company service areas. Fifth, the Applicants commit that Verizon's incumbent local telephone companies will not provide special access offerings to their wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions. Sixth, the Applicants commit that, before Verizon/MCI provides a new contract tariff to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than SBC or its wireline affiliates. Finally, the Applicants commit that Verizon/MCI will not increase the rates set forth in Verizon's interstate tariffs, including contract tariffs, for DS1, DS3 and OCn special access services that Verizon's incumbent local telephone companies provide in their local service areas and that are set forth in tariffs on file at the Commission on the Merger Closing Date.¹⁴¹ These commitments and their duration are described in greater detail in Appendix G. Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.

52. *Coordinated Effects.* We also do not believe that the merger increases the likelihood of coordinated interaction. It is generally recognized that the likelihood of coordinated effects depends on a number of factors, including the ease with which firms can reach tacit agreement, the incentive of firms to cheat, and the ability of the remaining firms to detect and punish such cheating.¹⁴² Carriers that purchase wholesale special access services, whether Type I or Type II, are sophisticated customers that often rely on a competitive bid process or negotiate individual contracts, and that enter into long-term contracts.¹⁴³ Further, by virtue of the fact that MCI will be divesting assets pursuant to the DOJ Consent Decree, there need not be significant reduction in the number of competitive providers of Type I wholesale special access services to specific buildings. Moreover, as noted above, there will remain numerous competitors that are able to provide Type II wholesale special access services. We find that these factors make it unlikely that the merger will lead to tacit collusion or other coordinated effects in the relevant special access markets in Verizon's region.¹⁴⁴

¹⁴⁰ See Verizon Oct. 31 *Ex Parte* Letter, Attach. at 2-4.

¹⁴¹ This condition does not apply to Advanced Services that would have been provided by a separate Advanced Services affiliate under the terms of the *Bell Atlantic/GTE Order*. See *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14032, App. D.

¹⁴² JEAN TIROLE, *THE THEORY OF INDUSTRIAL ORGANIZATION* 239 (1988); GEORGE STIGLER, "A Theory of Oligopoly," in *THE ORGANIZATION OF INDUSTRY* 39 (1968); ALEXIS JACQUEMIN AND MARGARET E. SLADE, "Cartels, Collusion, and Horizontal Merger," in *THE HANDBOOK OF INDUSTRIAL ORGANIZATION* 415 (1989).

¹⁴³ Verizon/MCI Bamberger/Carlton/Shampine Reply Decl. at paras. 56-67. See, e.g., Broadwing and SAVVIS Pietro Decl. at paras. 12-16 (discussing the use of a bidding process for certain special access services); Cbeyond *et al.* Wilkie Decl. at para. 15 (discussing the use of a bidding process for special access).

¹⁴⁴ See DOJ/FTC *Guidelines* § 2.12.

53. *Mutual Forbearance.* Commenters assert that, if their respective mergers are consummated, Verizon/MCI and SBC/AT&T are likely to “mutually forbear” from competing against each other in the provision of wholesale special access services in the other’s service territory.¹⁴⁵ They claim that the revenues Verizon/MCI could earn by offering competing special access services in SBC’s region would be dwarfed by the revenues that would be lost if SBC/AT&T responded by offering competitive special access services in Verizon’s territory. Commenters assert that both Verizon/MCI and SBC/AT&T would recognize that it is in their mutual interest not to compete.¹⁴⁶ As support, commenters assert that Verizon and SBC have failed to compete significantly with each other in geographic areas where they already have adjacent network facilities, such as Southern California, Dallas and Irving, Texas, and along the Connecticut/New York border.¹⁴⁷

54. While we recognize that mutual forbearance is possible in theory, we reject commenters’ allegations that this merger is likely to result in anticompetitive effects in SBC’s region. As an initial matter, Verizon is spending billions of dollars to buy MCI’s nationwide network and global enterprise and business reach, including facilities in SBC’s region. In light of this investment, it is reasonable to expect Verizon to have strong incentives to utilize fully its assets in SBC’s territory.¹⁴⁸ More significantly, however, we find, as discussed above, that there are numerous competitors with local facilities that will remain post-merger, that can offer competing special access services to the buildings in Verizon’s region where MCI offered special access services.¹⁴⁹ Nothing in the record suggests that the conditions would be significantly different in SBC’s territory. Thus, we conclude that, even if Verizon/MCI forbears from offering competing special access services in SBC’s region, competitive alternatives will remain for those locations where MCI offered competing special access services.¹⁵⁰

b. Vertical Effects

55. We disagree with commenters that the merger will increase the Applicants’ incentive and/or ability to raise rivals’ costs or engage in a price squeeze.¹⁵¹ As an initial matter, where UNEs are

¹⁴⁵ Cbeyond *et al.* Petition at 45-51; Qwest Petition at 30-33; Eschelon *et al.* June 6 *Ex Parte* Letter at 12.

¹⁴⁶ Cbeyond *et al.* Wilkie Decl. at para. 32, *see also id.* at paras. 28-39; Qwest Petition at 35-37; Eschelon *et al.* May 10 *Ex Parte* Letter, Attach. at 29-30.

¹⁴⁷ Eschelon *et al.* May 10 *Ex Parte* Letter, Wilkie Attach. at 30-34; SAVVIS/XO July 29 *Ex Parte* Letter, Attach. at 14-15.

¹⁴⁸ Verizon/MCI Bamberger/Carlton/Shampine Reply Decl. at paras. 56-67; Verizon/MCI Aug. 25 Special Access White Paper at 31-33; Verizon/MCI Sept. 9 *Ex Parte* Letter at 11-12.

¹⁴⁹ Professor Wilkie submitted a declaration that contained calculations suggesting that SBC and Verizon will have an incentive to engage in mutual forbearance. *See* Letter from Thomas Cohen, Counsel for XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. (filed Oct. 18, 2005) (XO Wilkie Supp. Decl.). Professor Wilkie’s declaration fails to address the role of competing providers of special access, however.

¹⁵⁰ We note in this regard that, in order to address potential competitive harm from the elimination of AT&T as a competitive Type I service provider in SBC’s region, the DOJ required certain divestitures. *See generally* Final Judgment, *United States v. SBC Communications Inc.*, Civil Action No. 1:05CV02102 (D.D.C. filed Oct. 27, 2005) (*DOJ-SBC/AT&T Final Judgment*).

¹⁵¹ *See, e.g.,* ACN *et al.* Comments at 32-33 (claiming not only that the merged entity will have the ability to impose a price squeeze, but that the mere fact that the merger combines Verizon’s access facilities with MCI’s enterprise customers poses competitive problems because competitors will be forced to pay Verizon’s prices for special access, while Verizon itself will face only the actual economic cost of providing special access services to itself); (continued....)

available, they provide an alternative for special access service and might serve to constrain, at least to some extent, special access price increases and other raising rivals' costs strategies.¹⁵² For areas where UNEs are not available, we note that competing carriers have invested heavily in the 30 MSAs where MCI has local facilities.¹⁵³ As described above, we have analyzed the likely impacts of this merger with regard to the provision of special access services and have determined that this merger, as conditioned by the DOJ Consent Decree, is not likely to result in anticompetitive effects in the markets for special access services. As the Applicants point out, Verizon and other incumbent LECs *already* are vertically integrated participants in both input and downstream markets.¹⁵⁴ Second, as we have found previously, "[t]o the extent that certain incumbent LECs have the incentive and ability under our existing rules to discriminate against competitors" using special access inputs, "such a concern is more appropriately addressed in our existing rulemaking proceedings on special access performance metrics and special access pricing."¹⁵⁵ In fact, a voluminous record on industry-wide special access pricing issues (along with specific pricing information) has only recently been submitted to the Commission in one of these proceedings.¹⁵⁶ By addressing these issues in the context of a rulemaking, we will be able to develop a comprehensive approach based on a full record that applies to all similarly-situated incumbent LECs.¹⁵⁷

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Broadwing and SAVVIS Petition at 6 (expressing the concern that Verizon will provide relatively slower and poorer provisioning and repair of circuits supplied to its competitors, which along with price, are critical benchmarks customers use to select suppliers); *see also, e.g.*, Global Crossing Comments at 17-18; Broadwing and SAVVIS Petition at 28-35; Consumer Federation of America *et al.* Petition at 24; Ad Hoc Telecom Users Reply at 13-16; Letter from Patrick Donovan, Counsel for ACN *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 5 (filed Aug. 10, 2005) (ACN *et al.* Aug. 10 *Ex Parte* Letter).

¹⁵² *See Triennial Review Remand Order*, 20 FCC Rcd at 2625-33, paras. 167-181 (discussing the general criteria used to determine whether UNE DS1 and DS3 loops must be made available); *id.* at 2570-75, paras. 62-65 (discussing the potential for UNEs to act as a constraint, to some extent, on special access prices).

¹⁵³ MCI Info. Req., Exhibit 6(e)(1). While exact fiber route miles for the competitive LECs are not available for the 30 MSAs where MCI has local fiber facilities, it appears that a number of competitive LECs have substantial national fiber facilities, some even greater than MCI's. Verizon Aug. 5 *Ex Parte* Letter, Collocation Supplement; Verizon/MCI Sept. 14 *Ex Parte* Letter, Attach. Fiber Location Maps.

¹⁵⁴ Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 at 2 (filed Sept. 7, 2005) (Verizon/MCI Sept. 7 *Ex Parte* Letter). This includes vertical integration in both input and downstream markets.

¹⁵⁵ *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183 (citing *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001) (inviting comment on whether the Commission should adopt metrics to prevent discrimination in the provision of special access services); *AT&T Corp., Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593 (filed Oct. 15, 2002)); *Special Access NPRM*, 20 FCC Rcd at 1994. Similar issues also are raised in the pending proceeding dealing with the sunset of BOC section 272 requirements. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd at 10914 (2003) (*Section 272 FNPRM*); *see also* 47 U.S.C. § 272(e)(1).

¹⁵⁶ *Special Access NPRM*, 20 FCC Rcd at 1994 (special access comments filed June 13, 2005 and reply comments filed July 29, 2005).

¹⁵⁷ *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183; *see also Alltel/Western Wireless Order*, FCC 05-138 at paras. 104, 109 (The broad scope of concerns raised that the merger "would create the opportunity for Alltel to engage in anticompetitive roaming practices . . . are more appropriately addressed in the context of a rulemaking proceeding. . . . [The rulemaking] proceeding will afford interested parties an opportunity to comment (continued....)

C. Retail Enterprise Competition

56. In this section, we analyze the potential competitive effects of the proposed merger on enterprise services. As discussed below, we find that the Applicants compete against each other with respect to various types of enterprise services and various classes of enterprise customers, and that the merger will lead to increased concentration in certain relevant markets. We conclude, however, that the merger is not likely to result in anticompetitive effects for enterprise customers. We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there will remain a significant number of carriers competing in the market. With respect to small enterprise customers, we find that MCI had significantly reduced its marketing to those customers prior to the announcement of the merger, and we conclude, after examining the record, that it was not exerting significant competitive pressure with respect to those customers.

1. Relevant Markets

a. Relevant Product Markets

57. The record indicates that retail enterprise customers purchase a variety of different communications services, including local voice, long distance and international voice, and data

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on a variety of roaming issues, including manual and automatic roaming, technical considerations, and small and rural carrier roaming concerns.”); *AT&T/Comcast Order*, 17 FCC Rcd at 23257, para. 31 (“The Commission’s pending rulemaking on cable horizontal ownership is the more appropriate forum for consideration of the potential effects of industry-wide clustering on the distribution of programming by MVPDs to consumers.”); *cf.* *EchoStar/DirecTV Order*, 17 FCC Rcd at 20584, para. 48 (“[W]e find that the specific recommendations made by Consumers Union with respect to public interest set-aside issues are properly addressed in the rulemaking setting rather than a subset thereof in the context of a merger application.”); *SBC/SNET Order*, 13 FCC Rcd at 21306, para. 29 (finding that the Commission need not address in the context of the merger proceeding the allegation that SBC was not providing support necessary for a calling party pays service because the “Commission has regularly declined to consider in merger proceedings matters that are subject to other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceedings of general applicability”); *AT&T/TCI Order*, 14 FCC Rcd at 3183, para. 43 (“We find that digital broadcast signal carriage requirements should be addressed in the Commission’s pending rulemaking proceeding and not here. . . . [T]his is like other cases where the Commission has declined to consider, in merger proceedings, matters that are the subject of rulemaking proceedings before the Commission because the public interest would be better served by addressing the matter in a broader proceeding of general applicability.”) For these same reasons, we reject the claims of commenters seeking special access conditions or raising concerns unrelated to the merger, many of which are the subject of pending rulemaking proceedings. *See, e.g.,* ACN *et al.* Comments at 50-58; NASUCA Comments at 20-27; Texas OPC Comments at 10-12; Broadwing and SAVVIS Petition at 34-35; Global Crossing Comments at 15, 12-14, 17-24; Ad Hoc Telecom Users Reply at 23-25; Global Crossing June 2 *Ex Parte* Letter, Attach. at 11-12; ACN *et al.* Aug. 10 *Ex Parte* Letter, Attach. at 5; Letter from Ad Hoc Telecom Users *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 2-3 (filed Oct. 21, 2005); Letter from Jonathan Lee, Sr. Vice President Regulatory Affairs, CompTel/ALTS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 4-5 (filed Oct. 24, 2005); Letter from Andrew D. Lipman, Richard M. Rindler and Patrick J. Donovan, Counsel to ATX Communications Inc., *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 5-6 (filed October 19, 2005); Letter from Brad E. Mutschelknaus and Chip A. Yorkgitis, Counsel to Bridgecom *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 2 (filed Oct. 18, 2005); ACN *et al.* Aug. 10 *Ex Parte* Letter, Attach. at 5; Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 4-8 (filed Sept. 22, 2005) (Qwest Sept. 22 *Ex Parte* Letter).

services.¹⁵⁸ In addition, enterprise customers frequently purchase high-capacity transmission services,¹⁵⁹ such as Frame Relay,¹⁶⁰ ATM,¹⁶¹ Gigabit Ethernet,¹⁶² and similar services provided via emerging technologies.¹⁶³ Retail enterprise customers also purchase other facilities and CPE.¹⁶⁴

58. The record makes clear that the services offered to enterprise customers fall into a number of separate relevant product markets. For example, it makes little sense that an enterprise customer would shift to making only long distance calls in response to a small, but significant and nontransitory increase in the price of local telephone service. Similarly, an enterprise customer would not shift to relying totally on voice services (whether local, long-distance, or international) if the price of data services rose by a small, but significant and nontransitory amount. Consequently, we find that local voice, long distance voice, and data services constitute distinct product markets.

¹⁵⁸ Evidence in the record shows that enterprise customers purchase [REDACTED] general classes of products and services: [REDACTED] Verizon Info. Req., VZFCC4111148-295 at 4111155. Note that documents submitted by Verizon in response to the Commission's information request include numerical labeling in the following format: VZFCC##### (where # represents a digit). For convenience in citing these documents, we do not include any leading 0s. Thus, a document beginning on page VZFCC0001234 would be cited as VZFCC1234.

¹⁵⁹ The specific technology used by the individual enterprise customer depends on availability, needed capacity, services required, and desired service quality levels. Enterprise services could include some number of DS0 circuits or high-capacity circuits of DS1 or higher bandwidth, such as DS1, DS3, and OCn circuits. See *Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298 (discussing services typically purchased by enterprise customers). A DS0 is a two-wire basic connection, which operates at 64,000 bps, the worldwide standard speed for digitizing voice conversation using pulse code modulation. Harry Newton, *Newton's Telecom Dictionary* 273 (20th ed. 2004) (defining "DS-0") (*Newton's Telecom Dictionary*). A DS1 is a four-wire connection equivalent to 24 DS0s. A DS3 is equivalent to 28 DS1s. These loops may be purchased by customers from state and federal tariffs. *Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298.

¹⁶⁰ Frame Relay is a high speed data service that allows local area networks to be connected across a public network. Frame Relay remains a cost effective service option for smaller businesses that do not generate enough traffic to support a full T-1. See Telecommunications Industry Association, *2005 Telecommunications Market Review and Forecast*, 121 (2005) (*TIA 2005 Market Review*). A T-1 provides the same speed and capacity service as a DS1. *Triennial Review Order*, 18 FCC Rcd at 17104-05, para. 202 n.634. Similarly, a T-3 provides the same speed and capacity service as a DS3.

¹⁶¹ ATM service, which was developed more recently than Frame Relay, has greater availability in urban areas, is currently the most widely-used carrier backbone technology, and can guarantee different quality of service levels to meet various customer needs. ATM offers higher reliability and greater capacity because it combines the advantages of circuit-switched and packet-switched networks, guaranteeing the delivery of information that is intolerant of delays, while allocating bandwidth more efficiently. *TIA 2005 Market Review* at 123-125.

¹⁶² Gigabit Ethernet is a local area network (LAN) connection technique that provides high-speed access to file servers and applications. It facilitates applications that use graphics, large database design, modeling (e.g., engineering/medical imaging applications), and streaming video. *TIA 2005 Market Review* at 99.

¹⁶³ Enterprises are increasing their use of IP-VPNs, and carriers are migrating to Multiprotocol Label Switching (MPLS). *TIA 2005 Market Review* at 118-25. MPLS is similar to other circuit-switched ATM or Frame Relay networks, except that MPLS is not dependent on a particular technology. See, e.g., MPLS Resource Center, *The MPLS FAQ* available at <http://www.mplsresource.com/faq1.shtml#MPLS%20History>.

¹⁶⁴ Verizon/MCI Reply, Declaration of Eric J. Bruno *et al.* (Verizon/MCI Bruno *et al.* Reply Decl.), Tab 5, at paras. 30-31.

59. We have less information about the substitutability of different transmission services. While there is data in the record indicating that the number of customers taking Frame Relay is declining, while the number taking IP transmission services is increasing, we do not have data on elasticities (and cross elasticities) of demand for any particular transmission services.¹⁶⁵ Similarly, there is insufficient information about the migration time, price differences, and service quality differences that customers face when deciding to change from one transmission service to another. Thus, the evidence is insufficient for us to define precisely the boundaries of those transmission service markets.

60. In previous orders, the Commission also has found it appropriate to define separate relevant product markets based on the class of customer (particularly where there is "price discrimination").¹⁶⁶ For example, the Commission previously found that small enterprise customers fall into a separate relevant product market from mid-sized to large retail enterprise customers.¹⁶⁷ This distinction exists because, unlike small enterprise customers, larger businesses often contract for more sophisticated services including Frame Relay, virtual private networks, and enhanced 800 services.¹⁶⁸ Larger businesses also demand a greater volume of minutes, for which they often negotiate discounts.¹⁶⁹ Not only do smaller enterprise customers tend to purchase different services than larger business customers,¹⁷⁰ but carriers treat them differently, both in the way they market their products and in the prices they charge.¹⁷¹

¹⁶⁵ From 1997 through 2002, the use of Frame Relay grew at a faster rate than the use of dedicated leased lines; however, in the past two years, growth in Frame Relay ports has stagnated. *TIA 2005 Market Review* at 120-121. From the year 2000 through the year 2004, ATM service revenues nearly tripled, from \$1.1 billion to \$2.9 billion. *Id.* at 124. The number of ATM ports in the United States rose by 10.5% in 2004 to 42,000, and it is expected to climb to 51,000 by 2008. *Id.* However, as newer technologies emerge, ATM's role as a backbone technology is changing as enterprise customers increase their use of IP-VPNs. *Id.* at 123; *see also* n.163.

¹⁶⁶ *See Bell Atlantic/GTE Order*, 15 FCC Rcd at 14088-89, para. 102 (finding that it is appropriate to define the product market by aggregating customers with similar demand patterns); *see also WorldCom/MCI Order*, 13 FCC Rcd at 18040-42, paras. 24-29; *SBC/Ameritech Order*, 14 FCC Rcd at 14760, para. 100; *SBC/SNET Order*, 13 FCC Rcd at 21301, para. 20; *DOJ/FTC Guidelines* § 1.12. Economists define "price discrimination" as "charging different customers prices that are not in proportion to marginal cost." W. KIP VISCUSI, ET AL., *ECONOMICS OF REGULATION AND ANTITRUST* 284-85 (3d ed. 2000). Economists have distinguished various types of price discrimination. Under second degree price discrimination, all purchasers confront the same price schedule, but pay different prices depending on their demands. *Id.* Volume and term discounts are examples of second degree price discrimination.

¹⁶⁷ *See Bell Atlantic/GTE Order*, 15 FCC Rcd at 14088-89, para. 102. A study produced for the United States Small Business Administration states that "large businesses may be more likely than small ones to use alternatives like Public Branch Exchange (PBX) systems, local area networks (LANs) and dedicated high-speed-data services, like T-1 and T-3 lines." STEPHEN B. POIASK, *A Survey of Small Businesses' Telecommunications Use and Spending* at 2 (Mar. 2004) (*SBA Telecom Report*). Indeed, Verizon reports that the largest enterprise customers typically purchase [REDACTED] Verizon Info. Req., VZFCC413596-97 at VZFCC413596.

¹⁶⁸ *WorldCom/MCI Order*, 13 FCC Rcd at 18040-41, para. 26.

¹⁶⁹ *Id.*

¹⁷⁰ According to one study, for data services, 38% of small business users subscribe to Internet dial-up services, 26% use cable modem, 21% use DSL, and only 4% of small businesses subscribe to T-1 services. *SBA Telecom Report* at 44.

¹⁷¹ *See, e.g., MCI Info. Req.*, MCIFCC4325473-78 (showing the different prices charged to different customer groups for access services); *MCI Info. Req.*, MCIFCC240360064 (showing that businesses of different sizes are paying different rates for conferencing services); *see also infra* note 172 (discussing how both MCI and Verizon (continued....))

61. While the record demonstrates that service providers charge different prices to different customers for particular services, it fails to reveal any standard rules or general principles that dictate how service providers set prices for particular customers. For example, while record evidence indicates that Verizon and MCI have created classes of enterprise customers for pricing, marketing and other purposes, it appears that the two carriers use different break-points between the customer classes.¹⁷² There is evidence in the record, however, suggesting that a number of factors influence how carriers price their services to particular types of customers.¹⁷³ These factors include the customer's total telecom spend; the types of services and technologies ordered; the customer's total employee count; the customer's total annual revenues; and whether the customer obtains customized services.¹⁷⁴ Further, it appears that carriers place varying degrees of importance on each of these factors, and consequently, carriers' pricing to particular enterprise customers may vary. Thus, although we find that there are separate product markets for the different enterprise customer groups, there does not appear to be industry-wide consensus as to how to differentiate one class from another.¹⁷⁵

b. Relevant Geographic Markets

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adopt different marketing approaches for different classes of business customers and showing that, for MCI, customers with higher spending are assigned individual account representatives).

¹⁷² Verizon states that, "[b]usiness customers occupy a continuum, and any attempt to group such customers by size is necessarily arbitrary." Verizon Info. Req. at 4. Indeed, both Verizon and MCI use the term "enterprise" differently in the ordinary course of business. Verizon explains that business operations are broken down into its Enterprise Services Group (ESG) and its Business Solutions Group (BSG). Verizon Info. Req. at 5. ESG is divided into three tiers: Tier I customers spend at least \$1.8 million annually; Tier II customers spend between \$250,000 and \$1.8 million annually; and Tier III customers spend less than \$250,000 annually. Verizon/MCI Bruno *et al.* Reply Decl. at paras. 25-29. BSG customers generally spend less than \$100,000 per year, and are defined as either "managed" or "unmanaged" customers: managed customers have an account manager assigned to them; unmanaged do not. *Id.*; Verizon Info. Req. at 6. Verizon explains that three categories of customers qualify as managed: 1) customers in "Tier 1" MSAs that generate [REDACTED] or more in total billed revenue per year; 2) customers located in "Tier 2" MSAs that generate [REDACTED] or more in total billed revenue per year; and 3) customers located in "Tier 3" MSAs that generate [REDACTED] or more in total billed revenue per year. Verizon Info. Req. at 6.

MCI organizes its business operations into its Global Accounts and Commercial Markets groups. MCI's business customers outside the United States are handled by MCI's Wholesale and International organization. *See supra* note 17; MCI Info. Req. at 1. The Global Accounts group handles the largest multinational customers, and these customers spend between \$2 million and \$180 million annually. The Commercial Markets group is organized into "enterprise," "mid-market," and "small business" segments. MCI Info. Req. at 2. For MCI, enterprise customers are companies with at least 1,000 employees, multiple business locations, and at least \$2 to \$3 million in annual spend on communications services. *Id.* "Mid-market" customers have 100-999 employees, are national in scope, and spend over \$10,000 annually on communications services. *Id.* "Small business" customers have less than 100 employees, buy commodity services, and are largely managed through telemarketing by MCI's Customer Account Management group. *Id.* Very small business customer accounts are managed outside the Commercial Markets group and are overseen by MCI's residential operations. MCI explains that these businesses generally have fewer than 20 employees and spend approximately \$500 per month on communications services. *Id.*

¹⁷³ *See supra* note 171.

¹⁷⁴ *See supra* note 172.

¹⁷⁵ *Cf. WorldCom/MCI Order*, 13 FCC Rcd at 18041, para. 27 (finding that it is unnecessary to define narrow product markets where there is insufficient data in the record on cross elasticities of demand).

62. In prior merger orders, the Commission has recognized that, because a customer is unlikely to physically move its location in response to a small, but significant and nontransitory increase in the price of a communications service, each customer location constitutes a separate relevant geographic market.¹⁷⁶ For reasons of administrative practicality, however, the Commission has aggregated customers facing similar competitive choices to create larger relevant geographic markets.¹⁷⁷ We believe this traditional approach is appropriate for enterprise customers with single locations in Verizon's region. Unfortunately, the data in the record is not sufficiently detailed to define localized relevant geographic markets in which all enterprise customers face the same competitive choices. Rather, the most disaggregated market share data that is available is presented by state for Verizon's former Bell Atlantic/NYNEX territories and by MSA in Verizon's former GTE territories. Accordingly, we will use the most disaggregated data possible in performing our structural analysis for different types of business services and for certain broad classes of business customers, where such data is available. In most cases, the data will be presented at the state level.¹⁷⁸

63. For larger, multi-location enterprise customers, we reach a slightly different conclusion. We find that these customers typically seek service from a provider that can serve all their locations, and generally only a few carriers serving a particular location have such capabilities. In light of the fact that there are relatively few providers that can offer a high level of ubiquitous service, we conclude that this geographic market should encompass all the geographic locations where these multi-location business customers may have a presence. Thus, we consider it appropriate to consider Verizon's various states and regions as the relevant geographic market for regional, multi-location customers, while for business customers with locations throughout the United States, we will perform a structural analysis based upon available data at the national level.

c. Market Participants

64. We find, based on the record, that there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors.¹⁷⁹

2. Competitive Analysis

a. Horizontal Effects

65. *Unilateral Effects.* The lack of precise demand data notwithstanding, there is documentary evidence in the record that allows us to examine the Applicants' assertions regarding the degree to which they compete for enterprise customers.¹⁸⁰ Moreover, there are some data that permit us to identify (with

¹⁷⁶ See, e.g., *EchoStar/DirectTV Order*, 17 FCC Rcd at 20610, para. 119.

¹⁷⁷ *Id.*; see also *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20016-17, para. 54.

¹⁷⁸ Cf. *In the Matter Of 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13724, para. 273 (2003) (finding that the use of a broader geographic area still serves as a rational basis when defining relevant geographic markets), *aff'd in part, remanded in part on other grounds, Prometheus Radio Project v. FCC*, 373 F.3d 372 (D.C. Cir. 2003).

¹⁷⁹ See Verizon/MCI Public Interest Statement at 4; see also *infra* note 188.

¹⁸⁰ ACN *et al.* claim that the application provides neither data about how many small or mid-sized business customers MCI actually serves in Verizon's region, nor data about how many national customers Verizon serves. (continued....)

some level of disaggregation) market participants, as well as to calculate current market shares, and to estimate changes in market share that are likely to result from the merger. Specifically, the Applicants have provided internal documents about their business operations, as well as limited, third-party studies that provide market share data about the carriers serving certain markets. In this section, we use this documentary evidence and data to discuss the horizontal concerns raised in the record. We conclude that, although there is evidence that horizontal concentration will increase as a result of the merger, this increase is not likely to result in anticompetitive effects, given the large number of competitors already participating in this market and the high level of customer sophistication for mid-sized and large enterprise customers. For small enterprise customers, we similarly conclude that the merger is not likely to result in anticompetitive effects, based upon MCI's significantly reduced marketing to those customers, as well as likely increased competition from cable and VoIP providers.

66. Commenters claim that the merger will have adverse competitive effects because Verizon and MCI already compete to a significant degree for the same customers, and thus the merger will cause an increase in the merged entity's market share and in market concentration.¹⁸¹ Commenters further assert that, if the Commission finds that little current competition exists between the two companies, the merger nonetheless eliminates Verizon as a potential competitor in the large enterprise market.¹⁸² Moreover, commenters assert that, after the merger, Verizon and MCI together will have about a 70 percent market share for medium and large enterprise customers.¹⁸³ CompTel/ALTS argue that the merger will increase concentration in this market by 800 points from a pre-merger HHI of 2500 to a post-merger HHI of more than 3300.¹⁸⁴

67. The Applicants contend that there is little overlap between their customer bases or in the services they provide. Specifically, they assert that Verizon is a strong competitor for local services,¹⁸⁵ while MCI

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See ACN *et al.* Comments at 9. As discussed below, however, Verizon has provided some data regarding these markets.

¹⁸¹ ACN *et al.* Comments at 3, 8-10; CompTel/ALTS Petition at 20-22; Qwest Petition at 14-15; Consumer Federation *et al.* Petition at 22-23; Cbeyond *et al.* Petition at 1-2. Specifically, commenters generally assert that, because MCI is one of Verizon's biggest competitors, there will be too much market concentration in the hands of the merged entity; *see also* Letter from Thomas Cohen, Counsel for ACTel, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 (filed Sept. 13, 2005) (ACTel Sept. 13 *Ex Parte* Letter) (alleging that Fortune 1000 companies largely believe that the merger will bring higher rates, less innovation, and poorer customer service). *But see* Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 22, 2005) (Verizon/MCI Sept. 22 *Ex Parte* Letter) (showing sampling bias as well as survey design flaws in the ACTel survey).

¹⁸² ACN *et al.* argue that, even if Verizon serves only a few large enterprise customers today, a merger with MCI is not its only possible means of entry into this market. They assert that Verizon has not demonstrated an inability to compete, but rather, only that it has never attempted to do so. ACN *et al.* Comments at 10.

¹⁸³ Consumer Federation *et al.* Petition at 22. According to these groups, the HHI in the large business segment is just under 4900; *see also* ACN *et al.* Comments at 25 note 74.

¹⁸⁴ CompTel/ALTS Petition at 25.

¹⁸⁵ Verizon explains that its strength lies as a provider of in-region local wireline and wireless, not as a large business provider. Verizon/MCI Public Interest Statement at 11; Verizon/MCI Application, Declaration of Gustavo E. Bamberger, Dennis W. Carlton, and Allan L. Shampine (Verizon/MCI Bamberger/Carlton/ShampineDecl.), Tab 1, at para. 7. Verizon explains that, while it has enjoyed some success in the medium-sized business segment, its success has been largely in-region. Verizon/MCI Application, Declaration of Eric J. Bruno and Shelley Murphy (continued....)

provides primarily national and global services.¹⁸⁶ They further contend that, “[t]he transaction will marry Verizon’s best-in-class broadband, wireless, and local wireline networks with MCI’s Internet backbone and global reach.”¹⁸⁷ The Applicants argue that the number of competitors in the enterprise market is increasing and that competitive intensity levels are rising.¹⁸⁸ Verizon acknowledges that it has attempted to enter the large enterprise market, but claims that it has achieved little success.¹⁸⁹ The Applicants contend that, with regard to the enterprise market, the Verizon/MCI merger will create a carrier no bigger than a single AT&T, let alone a merged AT&T/SBC, and that its merger strengthens competition because a merged Verizon/MCI would serve as the strongest competitor to a merged AT&T/SBC.¹⁹⁰

68. Based upon review of internally produced documents, we find that the two companies in fact compete for a range of customers in the enterprise market. Specifically, contrary to the Applicants’ description of their respective enterprise operations, we find that Verizon competes to a certain extent with MCI for large enterprise customers and that conversely, MCI competes with Verizon for small and mid-sized enterprise customers.¹⁹¹ With respect to the level of competition between the Applicants in the large enterprise market, we agree with ACN *et al.* that it would be extraordinary for Verizon already to have a large share of this market given that it only had region-wide, section 271 authority for approximately 24 months at the time of the merger’s announcement; indeed, Verizon’s revenues in this market are smaller than MCI’s.¹⁹² Documents clearly show, however, that Verizon has achieved some

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(Verizon/MCI Bruno/Murphy Decl.), Tab 3, at para. 58. Verizon is also strong in local access and CPE/professional services, an area where MCI is traditionally weak. *Id.*

¹⁸⁶ MCI describes itself as a provider of global services, focusing on long distance voice and data networks, with an extensive Internet backbone. Verizon/MCI Public Interest Statement at 10. The Applicants argue that MCI has primarily focused on the large enterprise customer segment. *Id.* at 30. MCI caters to customers with national and global operations, including Fortune 1000 companies that have more than 1,000 employees and that generally spend more than \$2 million a year on communications services. Verizon/MCI Application, Declaration of Ronald J. McMurtrie (Verizon/MCI McMurtrie Decl.), Tab 12, at para. 3.

¹⁸⁷ Verizon/MCI Public Interest Statement at 3.

¹⁸⁸ *Id.* at 4. Competitors include several different groups. AT&T, Sprint, and Qwest are the largest competitors. Verizon/MCI Bruno/Murphy Decl. at para. 17. Network integrators, incumbent LECs, competitive LECs, international communications providers, IP network providers, equipment manufacturers, and cable companies are all also active competitors in that same market. *Id.* at paras. 18-26; Verizon/MCI Bruno *et al.* Reply Decl. at paras. 16-19. Interexchange carriers and new network providers also compete in this market. Verizon/MCI Bamberger/Carlton/Shampine Reply Decl. at paras. 8, 58. Verizon references a \$1 billion RFP from the federal government for the Department of the Treasury, and it reports that Northrop Grumman, AT&T, Broadwing, Level 3, and Qwest all submitted responses. Verizon/MCI Reply at 18-19; Verizon/MCI Bruno *et al.* Reply Decl. at para. 12.

¹⁸⁹ Verizon/MCI Bruno/Murphy Decl. at paras. 53-56. Applicants argue that Verizon alone would remain a small actor in the large business market for years to come. *Id.* at 56.

¹⁹⁰ *Id.* at para. 3.

¹⁹¹ [REDACTED] Verizon Info. Req., VZFCC191187-93.

¹⁹² ACN *et al.* Comments at 9, 28; *cf.* Letter from Kristen Verderame, BT Americas, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 6-8 (claiming that Verizon is a potential competitor for GTS customers) (filed May 6, 2005) (BT Americas May 6 *Ex Parte* Letter); *but see* Verizon/MCI Bruno/Murphy Decl. at para. 56 (arguing that Verizon has been precluded from providing interLATA services and that this preclusion, coupled with regulatory limits, has prevented Verizon from winning large enterprise customers). Of the retail enterprise customers who purchased over \$5 million in communications services in 2004, MCI reports that it (continued....)

degree of success with its entry into the large enterprise market, especially in its own region.¹⁹³ Documents in the record further show that MCI has a presence in the small and mid-sized enterprise market, and that it competes for a wide range of customers.¹⁹⁴

69. Using data submitted by the Applicants, staff calculated Herfindahl-Hirschman Indices (HHIs),¹⁹⁵ at the state level for various types of enterprise services and classes of enterprise customers. In keeping with our conclusions about the relevant geographic markets, this analysis is conducted by examining the competitive alternatives of enterprise customers with single or multiple operations within the Verizon franchise area, and also conducting a separate examination of the competitive choices for enterprise customers having multiple operations throughout the country.

70. In general, the market share calculations indicate a high level of concentration in most franchise areas for many relevant services for *large* enterprise customers with significant operations in Verizon's region after the merger.¹⁹⁶ Verizon's median statewide share of local voice services¹⁹⁷ increases from [REDACTED] percent before the merger to [REDACTED] percent after the merger for states within its former Bell Atlantic/NYNEX region.¹⁹⁸ The median pre-merger HHI for these services¹⁹⁹ in Verizon's

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generated [REDACTED] in revenues. MCI Info. Req., Exh. 1(c). For the same class of customer, Verizon's business operations generated only [REDACTED] in revenues. Verizon Info. Req. at 9. For retail enterprise customers that purchased between \$1 and \$5 million in communications services, MCI reported that it generated [REDACTED]. MCI Info. Req., Exh. 1(c). For the same class of customer, Verizon reported that it generated [REDACTED]. Verizon Info. Req. at 9.

¹⁹³ A Verizon report states that Verizon is ranked [REDACTED] Verizon Info. Req., VZFCC20415-24 at VZFCC20416.

¹⁹⁴ One MCI document states that [REDACTED] MCI Info. Req., MCIFCC24360064; *see also* MCI Info. Req., MCIFCC24360755-66 at MCIFCC24360759 [REDACTED]

¹⁹⁵ The HHI is calculated as the sum of the squares of the market shares of each firm participating in a relevant market. The HHI can range from nearly zero in the case of an atomistic market to 10,000 in the case of a pure monopoly. Because the HHI is based on the squares of the market shares of the participants, it gives proportionately greater weight to carriers with larger market shares. Changes in market concentration are measured by the change in the HHI. *See DOJ/FTC Guidelines* § 1.5.

¹⁹⁶ Our analysis of Verizon's position in the large, mid-sized, and small retail enterprise services markets both before and after the merger is based upon analysis of third-party data supplied by Verizon. *See* Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. 1 & Exhs. A-D (filed Sept. 20, 2005) (Verizon Sept. 20 *Ex Parte* Letter). [REDACTED] *See infra* para. 72. For the former GTE territories, [REDACTED] We note that, in these MSAs, Verizon is the incumbent LEC in only a portion of the MSA.

¹⁹⁷ Market share and HHI calculations pre- and post-merger for large enterprise customers in the former Bell Atlantic/NYNEX region are provided in Confidential Appendix C, Tables 1A, 1C, 1E, and 1G.

¹⁹⁸ Market share data was provided in terms of customer sites that used a particular carrier for the named service. However, when more than one carrier serves a customer location, the data reports that each carrier provides the same amount of service when, in fact, there could be large variances. *See* Verizon Sept. 20 *Ex Parte* Letter, Attach 1 at 1.

¹⁹⁹ In the text, we present the median pre-merger HHI and median post-merger HHI over the entire former Bell Atlantic/NYNEX region for each product where data, which were presented at the state level, are available. The pre-merger and post-merger HHIs for each state in this region, as well as the accompanying changes in HHI, are presented in Confidential Appendix C, Tables 1A, 1C, 1E, and 1G. The pre-merger and post-merger HHIs, as well (continued....)

region is [REDACTED], and it increases to [REDACTED] after the merger.²⁰⁰ Verizon's median statewide share of long distance services increases from [REDACTED] percent to [REDACTED] percent within the states in its region. The median pre-merger HHI for these services in Verizon's region is [REDACTED], and it increases to [REDACTED] post-merger.²⁰¹ For Frame Relay services,²⁰² Verizon's median statewide market share increases from [REDACTED] percent to [REDACTED] percent for its in-region states. The median pre-merger HHI for these services in Verizon's region is [REDACTED], and it increases to [REDACTED] post-merger.²⁰³ For T-1 services, Verizon's statewide market share increases from a median of [REDACTED] percent to a median of [REDACTED] percent for its in-region states. The median pre-merger HHI for these services in Verizon's entire region is [REDACTED], and it increases to [REDACTED] post-merger.²⁰⁴ For the six former GTE MSAs, the increases in Verizon's market shares for all services are no larger than those in the Bell Atlantic/NYNEX states.²⁰⁵

71. Similarly, the market share calculations indicate a high level of concentration in most franchise areas for many relevant services for *mid-sized* enterprise customers with significant operations in Verizon's region.²⁰⁶ Verizon's median statewide share of local voice services increases from [REDACTED] percent before the merger to [REDACTED] percent after the merger for states within its former Bell Atlantic/NYNEX region.²⁰⁷ The median pre-merger HHI for these services²⁰⁸ is [REDACTED], and it increases to [REDACTED] after the merger.²⁰⁹ Verizon's median statewide share of long distance services²¹⁰ increases from [REDACTED] percent to [REDACTED] percent within the (Continued from previous page) _____
as accompanying changes in HHI, for the former GTE MSAs are presented in Confidential Appendix C, Tables 1B, 1D, 1F, and 1H.

²⁰⁰ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED]. Specifically, these results provide the lowest and highest HHI ratings in the Verizon region states after the merger.

²⁰¹ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

²⁰² See *supra* note 160.

²⁰³ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

²⁰⁴ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

²⁰⁵ Detailed data for the former GTE MSAs is contained in Confidential Appendix C, Tables 1B, 1D, 1F, and 1H.

²⁰⁶ Our analysis of Verizon's position in the mid-size enterprise services market both before and after the acquisition is based upon analysis of data in a third-party report that was submitted by Verizon in response to our data request. Market share calculations pre- and post-merger for the former Bell Atlantic/NYNEX region are provided in Confidential Appendix C, Tables 2A, 2C, 2E, and 2G.

²⁰⁷ See *supra* note 198.

²⁰⁸ In the text, we present the median pre-merger HHI and median post-merger HHI over the entire former Bell Atlantic/NYNEX region for each product where data, which were presented at the state level, are available. The pre-merger and post-merger HHIs for each state in this region, as well as the accompanying changes in HHI, are presented in Confidential Appendix C, Tables 2A, 2C, 2E, and 2G. The pre-merger and post-merger HHIs, as well as accompanying changes in HHI, for the former GTE MSAs are presented in Confidential Appendix C, Tables 2B, 2D, 2F, and 2H.

²⁰⁹ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

states in its region. The median pre-merger HHI for these services is [REDACTED], and it increases to [REDACTED] post-merger.²¹¹ For Frame Relay services,²¹² Verizon's median statewide market share increases from [REDACTED] percent to [REDACTED] percent for its in-region states. The median pre-merger HHI for these services in Verizon's region is [REDACTED], and it increases to [REDACTED] post-merger.²¹³ For T-1 services, Verizon's median statewide market share increases from [REDACTED] percent to [REDACTED] percent for its in-region states. The median pre-merger HHI for these services in Verizon's entire region is [REDACTED], and it increases to [REDACTED] post-merger.²¹⁴ For the six former GTE MSAs, the increases in Verizon's market shares for all services are no larger than those in the Bell Atlantic/NYNEX states.²¹⁵

72. Market share data pertaining to *small* enterprise customers within Verizon's relevant franchise areas²¹⁶ indicate some increase in concentration for some relevant services.²¹⁷ Specifically, we consider data pertaining to local and long-distance voice services for small enterprise customers.²¹⁸ On average, Verizon's share of local access services increases from [REDACTED] percent to [REDACTED] percent in Massachusetts, New York and Pennsylvania; increases from [REDACTED] percent to [REDACTED] percent in Rhode Island, Vermont, Maine, New Jersey, New Hampshire, and Delaware; and in Virginia, Maryland, West Virginia, and the District of Columbia, Verizon's market share remains unchanged at [REDACTED]. The pre-merger HHI for these services is [REDACTED], and increases to [REDACTED] post-merger in Massachusetts, New York and Pennsylvania; increases from [REDACTED] to [REDACTED] in Rhode Island, Vermont, Maine, New Jersey, New Hampshire, and Delaware; and increases from [REDACTED] to [REDACTED] in Virginia, Maryland, West Virginia,

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²¹⁰ The Verizon survey does not provide a definition for these services, but it is generally accepted that local voice services encompass calls placed to a location within the local service area. See *Newton's Telecom Dictionary* at 488 (defining "local call"). As discussed in greater detail below, see *infra* Part V.D (Mass Market Competition), local voice service provides a connection to a network that the customer can use to place and receive local calls, as well as long distance calls (assuming that the customer also has a long distance service provider).

²¹¹ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

²¹² See *supra* note 160.

²¹³ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

²¹⁴ The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

²¹⁵ Detailed data for the former GTE MSAs are contained in Confidential Appendix C, Tables 2B, 2D, 2F, and 2H.

²¹⁶ See *supra* note 196.

²¹⁷ Our analysis of Verizon's position in the small enterprise market both before and after the acquisition is based upon analysis of data in a third-party report that was submitted by Verizon in response to our data request. See *supra* note 196. Market share calculations pre- and post-merger for the former Bell Atlantic/NYNEX region are provided in Confidential Appendix C, Tables 3A and 3B. Market share calculations pre- and post-merger for some of the former GTE MSAs are provided in Confidential Appendix C, Tables 4A and 4B.

²¹⁸ Given the difficulty in obtaining accurate data about the various customer groups, it is likely that there is an overlap of data between consumer groups. For example, Verizon explains that small business customers that obtain [REDACTED] or fewer telephone lines are generally given the same designation as a residential customer. Verizon Info. Req. at 7. In light of this consideration, however, Verizon's data about small enterprise customers are likely to contain data from small business customers which are discussed in our section on mass market customers. Additionally, we note that, although small enterprise customers also purchase data services, the sample sizes for these services were statistically insufficient to rely on.

and the District of Columbia. On average, Verizon's share of long distance services increases from [REDACTED] percent to [REDACTED] percent in Massachusetts, New York and Pennsylvania; from [REDACTED] percent to [REDACTED] percent in Rhode Island, Vermont, Maine, New Jersey, New Hampshire, and Delaware; and increases from [REDACTED] percent to [REDACTED] percent in Virginia, Maryland, West Virginia, and the District of Columbia. The pre-merger HHI for these services is [REDACTED], and increases to [REDACTED] post-merger in Massachusetts, New York and Pennsylvania; increases from [REDACTED] to [REDACTED] in Rhode Island, Vermont, Maine, New Jersey, New Hampshire, and Delaware; and increases from [REDACTED] to [REDACTED] in Virginia, Maryland, West Virginia, and the District of Columbia.

73. The data indicate that the merger will result in a smaller increase in market concentration for enterprise customers having multiple operations located both inside and outside of Verizon's region.²¹⁹ Although we do not have data for specific products, data submitted in the record indicate that Verizon is not one of the top five large enterprise market share carriers.²²⁰ The smallest of the top five carriers presented in that study has 1.1 percent of the large enterprise market.²²¹ Thus, we reasonably deduce that Verizon's share of this market is one percent or less, and we conclude that there would be little impact on market shares or HHIs post merger.

74. For enterprise customers with locations predominantly in Verizon's region, we find that myriad providers are prepared to make competitive offers. We further find that available market share data does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage.²²² Foreign-based companies, competitive LECs, cable companies, systems integrators, and equipment vendors and value-added resellers are also providing services in this market.²²³ Similarly, we find that market shares may misstate the competitive significance of existing firms and new entrants.²²⁴ Large interexchange carriers and the BOCs currently have the biggest share of the market, but they are

²¹⁹ Our analysis of Verizon's market position for large enterprise customers with operations both in and out of its region is based upon analysis of data reported by Verizon. See Verizon/MCI Bruno/Murphy Decl., Exh. 1. Specifically, this exhibit is a November 11, 2003 equity research report produced by Lehman Brothers for the enterprise telecom service market. We rely upon the data in Figure 13 of this report because it provides market share based upon revenue for those carriers serving "Fortune 1000" companies. See Verizon/MCI Bruno/Murphy Decl., Exh. 1 at 15.

²²⁰ *Id.*

²²¹ *Id.*

²²² Cf. Verizon/MCI Bamberger/Carlton/Shampine Decl. at paras. 24-26; Verizon/MCI Bruno/Murphy Decl. at paras. 24-25 (arguing that VoIP and IP-VPN providers are emerging threats to traditional communications carriers).

²²³ Verizon contends, and we agree, that competitors are rapidly deploying new IP-based networks and services along with other technologies to satisfy customer demand. Verizon Info. Req. at 15; see also Verizon/MCI Public Interest Statement at 27-28; Verizon/MCI Bruno/Murphy Decl. at paras. 16-26; Verizon/MCI McMurtrie Decl. at paras. 24-27; Verizon/MCI Bruno *et al.* Reply Decl. at paras. 33-45, Exh. 4. As discussed in prior Commission orders, there are numerous types of business models supporting competition for enterprise customers. Some competitive LECs market integrated voice and data services to enterprise customers, primarily through leasing high-capacity loops from the BOCs as UNEs or special access and then using the loops to provide a bundled offering including voice, data and Internet access. See *Triennial Review Order*, 18 FCC Rcd at 17014, para. 48 note 159 (observing that companies such as ITC^Deltacom, NewSouth and Cbeyond have focused on providing integrated services to the business market).

²²⁴ See Verizon Info. Req. at 16.

not the only providers competing for these customers. We find, as shown in confidential Appendix C, that a large number of carriers compete in this market (even though the market shares of some may be small), and that these multiple competitors ensure that there is sufficient competition.²²⁵ For example, in the state of New York, although the combined market share of the merged entity with respect to the large enterprise market will be [REDACTED] percent of Frame Relay services, three competitors each individually capture from [REDACTED] to [REDACTED] percent of the market, with the rest of the other competitors capturing the remaining [REDACTED] percent.²²⁶

75. Although we find that medium-sized and large enterprise customers with national, multi-location operations do not have as many competitive options,²²⁷ we nevertheless conclude that this merger is unlikely to cause competitive harm to this market. First, Verizon's pre-merger presence in this market is nascent, and thus, the post-merger market will have virtually as many competitors as before.²²⁸ Second, as further discussed below, given their size and geographically-dispersed operations, these customers are highly sophisticated and negotiate for significant discounts.²²⁹ We find that systems integrators and the use of emerging technologies are likely to make this market more competitive, and that this trend is likely to continue in the future.²³⁰ Further, we note that the merger could bring even more competition for these

²²⁵ See *infra* Confidential Appendix C.

²²⁶ Verizon Sept. 20 *Ex Parte* Letter, Exh. D at 40. [REDACTED] *Id.*; see generally Confidential Appendix C. Another illustration can be seen in the long distance service market in Pennsylvania for large enterprise customers. The combined entity will provide service to [REDACTED] percent of this market; however, four competitors will each individually capture from [REDACTED] to [REDACTED] percent of the market, and at least 9 other competitors will provide service to the remaining [REDACTED] percent of the market.

²²⁷ A Verizon report states that the large enterprise market is dominated by a few competitors. It states that [REDACTED] Verizon Info. Req., VZFCC0410011180.

²²⁸ See *supra* note 219. We also dismiss the issues raised in the ACTel Sept. 13 *Ex Parte* Letter. Specifically, we agree with the Applicants, that the survey is significantly flawed because the only customers surveyed were those that had already chosen MCI or AT&T as their provider, and the fact that the questions were phrased in such a way as to elicit a biased response. See Verizon/MCI Sept. 22 *Ex Parte* Letter.

²²⁹ See Verizon Info. Req. at 12. Verizon explains that larger customers typically procure services through an RFP process, which covers a wide range of products and services. They buy all-distance packages of voice from integrated providers in place of separate local and long distance voice services. These customers also use data services to replace traditional voice services. Additionally, large businesses are turning to IP-VPNs and other converged services. *Id.* Verizon states that these customers are moving away from carriers who offer standard configurations of local, interexchange, international, and data services. Instead, a growing number of enterprise customers are approaching systems integrators and managed network providers. *Id.* at 13; see also Verizon/MCI Bruno/Murphy Decl. at paras. 18-19; Verizon/MCI Public Interest Statement at 27. These new competitors are putting significant competitive pressure on traditional service providers. Verizon Info. Req. at 13; see also Verizon/MCI Bruno/Murphy Decl. at para. 15; Verizon/MCI Application, Declaration of Quintin Lew and Ronald H. Lataille (Verizon/MCI Lew/Lataille Decl.), Tab 5, at paras. 8-10.

²³⁰ Verizon explains that large enterprise customers are increasingly purchasing CPE that provides the same functions that network providers historically provided, including intra- and inter-office voice and data communications. As a result, Lucent, Nortel, Siemens, and Cisco are competing in this market. See Verizon Info. Req. at 14. One Verizon report states that [REDACTED] Verizon Info. Req., VZFCC416814-48 at VZFCC416826.

customers because the merged company will offer a true end-to-end solution to businesses, which in turn, will likely improve quality and could create cost savings.²³¹

76. As noted above, we find, consistent with the Commission's prior conclusions, that mid-sized and large enterprise customers tend to be sophisticated purchasers of communications services, whether they are located solely within Verizon's region, or have locations both inside and outside Verizon's territory.²³² These users tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.²³³ This is significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice about service offerings and prices.²³⁴ Thus, so long as competitive choices remain in this market, these classes of customers should seek out best-priced alternatives, and the merged entity should not be able to raise and maintain prices above competitive levels.

77. Finally, although small enterprise customers may not possess the same level of sophistication as their larger counterparts, we nonetheless find that the merger is not likely to result in anticompetitive effects for this group of customers. We base our conclusion largely on the fact that MCI has significantly reduced its marketing to these customers, and therefore was not exerting significant competitive pressure with respect to those customers.²³⁵ Moreover, we find that intermodal competition from cable telephony, mobile wireless service providers, and providers of certain VoIP services will likely continue to provide these customers with viable alternatives.²³⁶

78. In conclusion, although we find overlap between the Applicants' enterprise operations, we do not find that the increase in concentration resulting from the merger is likely to result in anticompetitive

²³¹ See Verizon/MCI Reply at 13. Verizon explains that the merger will benefit the enterprise market "by creating a strong new competitor with the network reach and financial resources to compete in this market segment nationwide." *Id.*

²³² *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd 5880, 5887, para. 39 (1991) (*Interexchange Competition Order*); see also *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14096, para. 120; *SBC/SNET Order*, 13 FCC Rcd at 21301, para. 20; *AT&T/TCG Order*, 13 FCC Rcd at 15250, para. 27; *WorldCom/MCI Order*, 13 FCC Rcd at 18073-74, paras. 84-87. ACN *et al.* argue that no degree of sophistication can alleviate the problems caused by market concentration when there are no competitive alternatives. ACN *et al.* Comments at 11-12. We reject this argument in this context because, as discussed *supra* at para. 64, we find that there are adequate numbers of competitors in the enterprise market.

²³³ *Interexchange Competition Order*, 6 FCC Rcd at 5887, para. 39; see also *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3306, para. 65 (1995) (*AT&T Non-Dominance Order*) (finding that business customers have highly elastic demands, and that business customers routinely request proposals from carriers other than AT&T and accord full consideration to these proposals); *WorldCom/MCI Order*, 13 FCC Rcd at 18064, para. 65 (finding that larger business customers are knowledgeable consumers that will have competitive alternatives to the largest three incumbents).

²³⁴ *Interexchange Competition Order*, 6 FCC Rcd at 5887, para. 39. Moreover, the Commission found that name recognition and goodwill are less significant in markets where customers tend to be sophisticated and aware of the choices available to them. *Id.* at 5888, para. 41; see also Verizon Info. Req. at 12 (discussing use of RFP process).

²³⁵ See *infra* Part V.D (Mass Market Competition).

²³⁶ See Letter from Dee May, Verizon, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 at 6-7 (filed Sept. 14, 2005) (Verizon Sept. 14 *Ex Parte* Letter).

effects in this market. As discussed above, the record shows that, for all groups of business customers, there are multiple services and multiple providers that can meet their demand.

79. *Coordinated Effects.* We find that the merger will not increase the likelihood of tacit collusion or other coordinated behavior in relevant markets. On the contrary, we find that, even if competitors reached tacit agreements in the enterprise market, there are strong incentives to cheat and scant ability to detect and punish such cheating. Specifically, the high value of enterprise contracts will likely entice many competitors, particularly those with smaller market shares, to cheat on tacit agreements. Moreover, detection and punishment would be significantly frustrated by the facts that enterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants), that contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), that contracts are generally for customized service packages, and that the contracts usually remain in effect for a number of years. Accordingly, we find no basis to conclude that the merger increases the likelihood of tacit collusion or other coordinated effect in the relevant markets in Verizon's region.²³⁷

80. *Mutual Forbearance.* We reject commenters' assertions that this merger would reinforce the BOCs' historical reluctance to compete with each other.²³⁸ First, we find it highly unlikely that the companies would engage in mutual forbearance with respect to large national enterprise customers, given the significant revenue opportunities associated with serving those customers. The record indicates that Verizon has improved its out-of-region network to serve out-of-region customers. Evidence in the record shows that Verizon has deployed [REDACTED] miles of fiber optic facilities in Los Angeles and additional fiber in Dallas, in the incumbent LEC territory of SBC.²³⁹ In addition, Verizon competes in 28 other out-of-region cities, 17 of which are in SBC's franchise region.²⁴⁰ Second, even if commenters are correct with respect to medium and large in-region enterprise customers, we find, as discussed above, that there will be sufficient competition based on the competitors that remain in the market. Finally, with respect to small enterprise customers, we have already discussed that MCI had significantly reduced its marketing to small enterprise customers, and we conclude, based on the record, that it was not exerting significant competitive pressure with respect to those customers prior to the announcement of the merger. In those markets, as discussed above, we find that intermodal competition from cable telephony service

²³⁷ While some commenters express concern that the merged company will use its role as a wholesale provider to obtain information to aid tacit collusion, we find such coordination to be unlikely given the characteristics of enterprise customers discussed above. Moreover, we find that, even without the merger with MCI, Verizon is a major supplier of special access services, and thus it already has the ability to engage in such anticompetitive conduct. See CompTel/ALTS Petition at 24-25; Cbeyond *et al.* Petition at 45-49.

²³⁸ ACN *et al.* Comments at 27, 33-35; Broadwing and SAVVIS Petition at 18-20; Cbeyond *et al.* Petition at 4, 45-48; CompTel/ALTS Petition at 5, 45-65. For example, Cbeyond *et al.* argue that if Verizon were to compete in another BOC's market, the other BOC would likely react by reducing its retail prices and increasing its wholesale rates. Consequently, Verizon would react in-kind in its region. "The result is a net loss to both firms, as prices are forced down while average costs increase." Cbeyond *et al.* Petition at 49-51, 53-59; see also NJ Ratepayer Advocate Comments at 16-18; ACN *et al.* Comments at 33-35; Broadwing and SAVVIS Petition at 18-20; Qwest Petition at 30-33.

²³⁹ Verizon/MCI Bruno *et al.* Reply Decl. at paras. 14-15.

²⁴⁰ *Id.* at 15. See also Verizon Info. Req., VZFCC40369-382 at VZFCC40370-71 ([REDACTED]); Verizon Info. Req., VZFCC418317-22 at VZFCC418321-22 ([REDACTED]).

providers, mobile wireless service providers, and VoIP service providers will likely continue to provide these customers with viable alternatives.²⁴¹

b. Vertical Effects

81. We reject commenters' concerns about their continued ability to serve enterprise customers in Verizon's franchise region because the merger will make them more reliant on Verizon's facilities.²⁴² We address these arguments in our analysis of the wholesale special access market, and in other sections of this Order.²⁴³ In addition, we reject commenters' assertions that Verizon's acquisition of MCI's interexchange network will lead the merged entity to discriminate against its rivals who rely upon this network for essential inputs used to serve their own enterprise customers. We find, as discussed below, that the merged entity would be unable to increase rivals' costs due to the presence of extensive competitive national wholesale interexchange networks with excess capacity.²⁴⁴ Thus, we find that the merger is not likely to result in anticompetitive effects for wholesale inputs used to serve enterprise customers.

D. Mass Market Competition

82. In this section, we consider the effects of the proposed merger on local service; long distance service; and bundled local and long distance service provided to mass market customers. As discussed below, we find that Verizon's acquisition of MCI is not likely to result in anticompetitive effects for mass market services.

1. Relevant Markets

a. Relevant Product Markets

83. Based on the record in this proceeding, we identify three relevant product markets for our mass market analysis: (1) local service; (2) long distance service; and (3) bundled local and long distance service.²⁴⁵ In previous wireline mergers, the Commission focused on local and long distance services.²⁴⁶

²⁴¹ See Verizon Sept. 14 *Ex Parte* Letter at 6-7.

²⁴² See, e.g., Cox Comments at 13-14; United States Cellular Comments at 2-4; T-Mobile Reply at 7-14; ACN *et al.* Comments at 39-40; Cbeyond *et al.* Petition at 24-30; Broadwing and SAVVIS Petition at 22-29; CompTel/ALTS Petition at 21-31; Global Crossing Comments at 15.

²⁴³ See *supra* Part V.B (Wholesale Special Access Competition).

²⁴⁴ See *infra* Part V.F (Wholesale Interexchange Competition); cf. *Qwest Communications International Inc., and US West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, Memorandum Opinion and Order, 15 FCC Rcd 5376, 5398, para. 42 (2000) (*Qwest/US West Order*) (finding, in the context of the *Qwest/US West* merger, that an incumbent LEC has no more incentive to degrade the "access it provides to competing interexchange carriers whether the incumbent LEC is providing . . . [interexchange] service over facilities it constructed or [whether] it purchased [them] from another carrier").

²⁴⁵ The Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services. See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18040, para. 24; *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 68. The Commission addresses international mass market voice services, along with other international services in Part V.G of this Order.

Based on recent market and technological developments, including increased subscription to mobile wireless service and VoIP services that provide a bundle of local and long distance services, we find it appropriate to refine our market analysis, including defining a separate relevant product market for bundled local and long distance service.

84. The Commission defines product markets from the perspective of customer demand.²⁴⁷ We thus begin our analysis by recognizing two types of consumer demand for communications services: (1) demand for “access” and (2) demand for “usage.” The consumer demands “access” from a provider so as to be able to connect to a communications network.²⁴⁸ Depending upon the type of access chosen by the consumer, the consumer will be able to connect to a wireline telephone network, a mobile wireless network, or the Internet.²⁴⁹

85. Because a consumer can choose multiple access providers, his demand for usage, *i.e.*, how much of a service he consumes, will be determined by his particular set of access provider(s) as well as the terms of service associated with the consumer’s chosen access provider(s). For example, consider a consumer’s options for long distance service.²⁵⁰ For expositional purposes, we assume that a consumer subscribes to a wireline long distance service and a mobile wireless service. This consumer could choose to place a long distance call using a presubscribed long distance carrier, a dial-around alternative such as a prepaid calling card, or his mobile wireless service, but, how he views the alternatives would be affected by the terms of the particular service plans he has chosen. If he subscribes to a wireline long distance plan that charges a flat monthly fee for unlimited calling, he may be less likely to use an alternative service (such as a prepaid calling card or mobile wireless) because the marginal cost of each long distance minute for his wireline service is zero. In contrast, if he subscribes to a wireline long distance plan that charges a low monthly fee and a relatively high per-minute charge, the marginal cost of each long distance minute is the per-minute charge, and he might be more willing to consider alternative usage options (such as prepaid calling cards or mobile wireless) when placing long distance calls. For example, he could allocate calls among different service providers based on the terms of service plans by using the wireline phone for long distance calls made during peak hours (*e.g.*, week days) and the mobile wireless phone for long distance calls made during off-peak hours (*e.g.*, evenings and weekend days) when the price per minute may be zero. Accordingly, we consider both access demand and usage demand in defining our relevant product markets of local service, long distance service, and bundled local and long

(Continued from previous page)

²⁴⁶ See, *e.g.*, *WorldCom/MCI Order*, 13 FCC Rcd at 18040, para. 25; *SBC/Ameritech Order*, 14 FCC Rcd at 14745, para. 66.

²⁴⁷ See, *e.g.*, *EchoStar/DirectTV Order*, 17 FCC Rcd at 20605-06, para. 106.

²⁴⁸ The access provider usually charges a recurring monthly fee, and it frequently offers various communications services in combination with this access service.

²⁴⁹ Mass market customers can purchase access to communications services from a single provider, such as a local telephone company, a mobile wireless provider, or cable provider; or from multiple providers. For example, approximately 52% of U.S. households subscribe to both a wireline provider and a mobile wireless provider, and an increasing percentage of consumers are choosing to subscribe to a broadband Internet access service. See Clyde Tucker, J. Michael Brick, Brian Meekins, and David Morganstein, *Household Telephone Service and Usage Patterns in the United States in 2004*, page 4, available at <http://www.bls.gov/ore/pdf/st040130.pdf> (Household Telephone Survey). About 20% of households subscribed to a broadband service in 2003. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at 11-12 (Apr. 2005) (*Trends in Telephone Service*) (citing *A Nation Online: Entering the Broadband Age*, U.S. Department of Commerce (Sept. 2004)).

²⁵⁰ A consumer desiring to place an international call would have similar options.

distance service because these decisions play a role in whether consumers view products as reasonable substitutes (meaning that those services are in the same product market for purposes of our analysis).²⁵¹

(i) **Local Service**

86. Based on record evidence, we define the market for local service to include not only wireline local service, but also certain types of VoIP service to the extent that consumers view them as close substitutes for wireline local service. In addition, the record evidence suggests that for certain categories of customers, mobile wireless service is viewed as a close substitute to wireline local service.²⁵²

87. *VoIP*. VoIP services are being provided to consumers in a variety of ways today. The degree to which particular VoIP services are viewed as close substitutes to other local services varies depending upon the characteristics of the VoIP offering. For purposes of our analysis we find it useful to divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) “over-the-top” VoIP providers. For purposes of this proceeding, we define facilities-based VoIP providers, such as certain cable VoIP providers, as providers that own and control the last mile facility. These providers may own or lease the switching and transmission networks that are used to carry VoIP calls.²⁵³ Other kinds of VoIP providers not meeting this definition are referred to as “over-the-top” VoIP providers. This type includes those providers that require the end user to obtain broadband transmission from a third-party provider, and such VoIP providers can vary in terms of the extent to which they rely on their own facilities. As discussed below, the record indicates that mass market consumers view facilities-based VoIP services as sufficiently close substitutes for local service to include them in the relevant product market. The record is insufficient to determine which over-the-top VoIP services should be included in the relevant product

²⁵¹ See, e.g., *EchoStar/DirectTV Order*, 17 FCC Rcd at 20606, para. 106 (“In other words, when one product is a reasonable substitute for the other in the eyes of consumers, it is to be included in the relevant product market even though the products themselves are not identical.”) We note that the evidence in the record is insufficient for us to perform a quantitative demand analysis to estimate the likely consumer response to a small but significant change in the price of a particular service. Instead, we consider indicia of demand substitution between possible services, including: (1) the attributes and relative prices of possible competing services; (2) evidence that consumers view the possible competing services similarly, and have shifted or have considered shifting purchases between these services in response to relative changes in price or other competitive variables; (3) evidence that service providers consider the prospect of buyer substitution between services in response to relative changes in price or other competitive variables; and (4) the costs a consumer could incur to substitute between traditional services and services provided on an alternative platform. See *DOJ/FTC Guidelines* at § 1.11.

²⁵² Circuit-switched cable telephony service traditionally has been included within the Commission’s assessment of local services competition, and the record here gives us no reason to change that approach.

²⁵³ These VoIP providers typically have dedicated facilities, transport calls over their own or a private network, and may have a backup power source in the event of a service disruption. See, e.g., John K. Billock, Vice Chairman and Chief Operating Officer, Time Warner Cable, Testimony before the Federal Communications Commission at 3 (Dec. 1, 2003) available at <http://www.fcc.gov/voip/presentations/billock.doc>; *Long Distance Calling Plan: Local, Regional and Long Distance Calling Plans from Optimum Voice* available at http://www.optimumvoice.com/index.html?pageType=what_is_it; *Phone Services – Optimum Voice* available at http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std_adp.php?p_faqid=261; National Cable and Telecommunications Association, *Cable Telephony: Offering Consumers Competitive Choice* at 5-7 (July 2001) available at http://www.ncta.com/pdf_files/Telephony_ReportComplete.pdf; Cox Communications, *Whitepaper: Preparing for the Promise of Voice-over Internet Protocol (VoIP)* at 5-8 (Feb. 2003) available at <http://www.cox.com/PressRoom/supportdocuments/VOIDwhitepaper.pdf> (Cox White Paper).

market, however. We thus reject the Applicants' assertion that all VoIP offerings should be included in the relevant product market.²⁵⁴

88. Based upon the information in this record, we find that facilities-based VoIP services clearly fall within the relevant service market for local services. Facilities-based VoIP services have many similar characteristics to traditional wireline local service.²⁵⁵ There is also significant evidence in the record indicating that mass market subscription to cable-based VoIP continues to increase nationwide²⁵⁶ as cable operators continue to roll out these services throughout their footprints.²⁵⁷ In addition, there is documentary evidence that Verizon views cable-based VoIP as its primary competitive threat in the mass market, and considers the prospect of consumer substitution to cable-based VoIP when devising its strategies and service offers.²⁵⁸ While we recognize that facilities-based VoIP services may not be available ubiquitously in Verizon's territory, our product market analysis does not require that all mass market consumers would be willing or able to substitute VoIP service for wireline local service, or even that it be widely available for it to be included in the relevant product market.²⁵⁹ Rather, our product market definition analysis only requires evidence of sufficient demand substitutability in those geographic markets where facilities-based VoIP service is available.

89. The record is inconclusive regarding the extent to which various over-the-top VoIP services should be included in the relevant product market for local services. The record indicates that there are a wide variety of methods by which over-the-top VoIP providers offer service. The varieties of over-the-

²⁵⁴ See, e.g., Verizon/MCI Public Interest Statement at 37-45; Verizon/MCI Application, Declaration of Michael K. Hassett *et al.* (Verizon/MCI Hassett *et al.* Decl.), Tab 6, at paras. 57-71; Verizon/MCI Reply at 56-59.

²⁵⁵ These similar characteristics include: installation by the provider; the lack of a requirement for a broadband subscription; and connection to the consumer's home inside wiring, which permits use of all of the household's traditional wireline and cordless handsets. See, e.g., Consumer information provided by Cablevision available at http://www.optimumvoice.com/index.jhtml?pageType=what_is_it; <http://www.optimumvoice.com/index.jhtml?pageType=wiring>; http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std_adp.php?p_faaid=258; http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std_adp.php?p_faaid=262.

²⁵⁶ For example, between June 2004 and June 2005, Cablevision's subscriber base grew from 115,048 to 475,357 and its penetration rate increased from 3% to 11%. Similarly, between March 2005 and June 2005, Time Warner's subscriber base grew to 614,000 customers (a 60% increase). Cablevision Systems Corporation Reports Second Quarter 2005 Results, Aug. 9, 2005; Time Warner Second Quarter 2005 Results, Aug. 3, 2005.

²⁵⁷ For example, in December 2004, Time Warner completed its launch of residential IP telephony service in all of its divisions across the country, while by the end of 2005 Cox will have completed its rollout of digital telephone service to 70% of its footprint. "Highlights: A Quarterly Overview of Key Developments at Time Warner and its Businesses," Time Warner Release, Feb. 3, 2005; "Cox Names New 2005 Telephony Markets," Cox Press Release, Aug. 1, 2005; Verizon/MCI Hassett *et al.* Decl. at paras. 30-56.

²⁵⁸ See, e.g., Verizon/MCI Public Interest Statement at 39-41; Verizon/MCI Reply at 50-52; Verizon/MCI Reply, Declaration of Michael K. Hassett *et al.* (Verizon/MCI Hassett *et al.* Reply Decl.), Tab 6, at paras. 35-44; Verizon Info. Req., VZFCC81-964-80; VZFCC7-1486-1571 at 1515-33; VZFCC61-230-46; VZFCC74-3518-3531; VZFCC45-1809-1883; VZFCC12-305-331 at 314-318.

²⁵⁹ See, e.g., NASUCA Comments at 9-10; Cbeyond *et al.* Wilkie Decl. at para. 42; Texas OPC Comments at 7; ACN *et al.* Comments at 17; Qwest Petition, Declaration of P. Douglas Bernheim (Qwest Bernheim Decl.) at para. 84-85.

top VoIP differ significantly in their service characteristics,²⁶⁰ including quality of service²⁶¹ and price.²⁶² The extent to which consumers view these services as substitutes for traditional wireline local service may vary based on these differences.²⁶³ In addition, the requirement that a customer have broadband access to be able to use certain over-the-top VoIP services affects the substitutability of those services with wireline local service. Specifically, for customers that do not already have broadband access service, the subscription fee to obtain broadband access must be added to the subscription price for the over-the-top VoIP service when weighing it against the price of traditional wireline local service, and the extra fee could make substitution uneconomical.²⁶⁴ Even for consumers that have broadband service, however, their willingness to subscribe to over-the-top VoIP service in lieu of wireline local service will vary with the attributes of the service and the consumer's willingness to trade off service characteristics for lower prices. Thus, while it is likely that some proportion of mass market consumers may view certain over-the-top VoIP services as substitutes for wireline local service, there is insufficient information in the record to determine which types of over-the-top VoIP service should be included in the product market.

²⁶⁰ Some over-the-top VoIP services require a consumer to have a computer and to install the software on his computer; others may require the purchase of specialized telephone handsets; and some require specialized equipment such as terminal adapters. See, e.g., *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22407-08, paras. 8-9 (2004) (*Vonage Order*); *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion, 19 FCC Rcd 3307, 3309-10, paras. 5-6 (2004) (*Pulver Order*).

²⁶¹ For example, an over-the-top VoIP provider's ability to assure a particular quality of service could vary depending upon whether it has its own IP switches and long-haul fiber (or a virtual private network (VPN)), or whether it relies on the public Internet to carry subscribers' communications.

²⁶² The pricing for over-the-top VoIP services varies with the service's attributes, such as whether the service permits the consumer to connect to the PSTN. In addition, VoIP providers offer different rate structures: some charge on a per-minute basis for long distance calls, some charge a fixed monthly fee for unlimited local and long distance calling, some offer multipart plans with baskets of minutes, and others offer their service for free. For example, for calling anywhere in the U.S., Canada, or Puerto Rico, Vonage offers a basic 500 minute plan for \$14.99 and an unlimited calling plan for \$24.99. See <http://www.vonage.com>. Skype offers unlimited free PC to PC calling and a pay-per-call PC to phone service on a per-minute basis. See <http://www.skype.com>; see also <http://www.ordervoip.com>.

²⁶³ See, e.g., Texas OPC Comments at 8; NASUCA Comments at 9-10; Cbeyond *et al.* Petition at 36-38; Cbeyond *et al.* Wilkie Decl. at para. 42; Consumer Federation *et al.* Petition at 16-17; ACN *et al.* Comments at 17-19; Qwest Bernheim Decl. at para. 88.

²⁶⁴ About 20% of households subscribed to a broadband service in 2003. *Trends in Telephone Service* at 2-11 (Apr. 2005) (citing *A Nation Online: Entering the Broadband Age*, U.S. Department of Commerce (Sept. 2004)). These consumers or others that have decided to subscribe to a broadband service for other reasons may be more willing to consider over-the-top VoIP services than consumers without broadband service. Where a consumer has already subscribed to broadband, the cost of the broadband subscription would not be viewed as part of the incremental cost of subsequently subscribing to the VoIP service. See *Forrester Research: The State of Consumer Technology Adoption: Survey of More Than 68,000 Households Reveal How Consumers Adopt and Use Technology*, BUSINESS WIRE, Aug. 2, 2005; Stephanie Kirchgaessner and Paul Taylor, *The Americas: FCC's Easing of Internet Service Rules Welcomed*, FINANCIAL TIMES USA, Aug. 6, 2005. Time Warner reports a 22% penetration rate for their own residential high-speed data service. The corresponding figures for Cox and Comcast are respectively, 27% and 19%. *Time Warner Reports Second Quarter 2005 Results*, Time Warner Press Release, Aug. 3, 2005, at 1; Comcast Second Quarter 2005 Results, Financial Tables, Aug. 2, 2005; Cox Second Quarter 2005 Results, Suppl. Tables, Aug. 9, 2005; see also Texas OPC Comments at 7.

Consequently, in order to be conservative in our structural analysis, we exclude these services from the relevant product market in our structural analysis.²⁶⁵

90. *Mobile Wireless Service.* We find that mobile wireless service should be included in the local services product market when it is used as a complete substitute for all of a consumer's voice communications needs.²⁶⁶ On the one hand, increasing numbers of mass market customers are subscribing to mobile wireless services, thus providing an additional access option for making local telephone calls.²⁶⁷ On the other hand, we recognize that the average cost for mobile wireless service appears to be higher than for wireline local service.²⁶⁸ In addition, while most customers making wireline local calls face a per-minute cost of zero (because they can make unlimited local calls for a flat monthly fee), many wireless customers must pay per-minute fees when making local calls with their wireless phones.²⁶⁹

91. Considering consumer behavior more closely, the record reveals that growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service in lieu of wireline local services. Evidence indicates that, overall, approximately 6 percent of households have

²⁶⁵ MCI initiated a limited trial over-the-top VoIP offering to target [REDACTED] customers. This does not indicate a significant change in strategy or show that MCI would become a significant participant for this service because the targeted customer base is de minimis. See, e.g., Cox Comments at 12; Consumer Federation *et al.* Petition at 12. Verizon/MCI Application, Declaration of Wayne Huyard (Verizon/MCI Huyard Decl.), Tab 11, at para. 20; Verizon/MCI Reply, Declaration of Wayne Huyard (Verizon/MCI Huyard Reply Decl.), Tab 8, at para. 5. Given the limited significance of MCI's provision of mass market VoIP services, we reject the concerns of commenters that the merger increases Verizon's incentive or ability to discriminate against competitive VoIP offerings using its wireline and wireless facilities and operations. See, e.g., Vonage Comments at 4-8 (expressing concern about VoIP providers' access to tandem switches, E911 facilities, and wireless Internet platforms); Global Crossing Comments at 20-22 (expressing concern about VoIP providers' interconnection, intercarrier compensation, and switched access rights and obligations).

²⁶⁶ The Commission previously found that, although wireline services do not have a price constraining effect on mobile wireless services, some consumers may find that mobile wireless services are a good substitute for wireline services. *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21558, paras. 73-74. As we discuss below, we include mobile wireless services in the long distance service market to some extent as well.

²⁶⁷ Household Telephone Survey at Figure 1 and Table B.

²⁶⁸ The Commission reports that the average monthly household expenditure for billed wireline local telephone service is \$37. Leap Wireless is the largest provider of wireline replacement plans. It offers unlimited local calling for \$35-\$40 per month, but it only offers service in portions of 20 states. The price of a mobile wireless plan with sufficient anytime minutes to accommodate the typical calling needs of a wireline consumer generally costs between \$50-\$60, which may make it not price competitive for consumers. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, Ninth Report, 19 FCC Rcd 20597, 20685, para. 215 (2004) (*Ninth CMRS Competition Report*); *Tenth CMRS Competition Report*, WT Docket No. 05-71, Tenth Report, FCC 05-173 at paras. 198-200 (rel. Sept. 30, 2005) (*Tenth CMRS Competition Report*); *Trends in Telephone Service* at 3-4; Texas OPC Comments at 8; NASUCA Comments at 10.

²⁶⁹ Many consumers have mobile wireless plans in which they are assessed a per-minute charge for each incoming and outgoing call (e.g., prepaid calling plans). Other consumers subscribe to mobile wireless plans with a limited number of anytime minutes with the result that they may incur overage charges for minutes in excess of their allotted anytime minutes. See, e.g., *Tenth CMRS Competition Report* at paras. 99-100; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21613-14, para. 240.

chosen to rely upon mobile wireless services for all of their communications needs.²⁷⁰ Recent research sponsored by the Bureau of Labor Statistics reveals that for certain segments of the U.S. population, a significantly higher percentage of households rely solely on mobile wireless services (e.g., single person households (8.1 percent), adults between the ages of twenty-five and thirty-four (10.3 percent), and single individuals (11.1 percent)).²⁷¹ We also find that Verizon considers this growing substitution in developing its marketing, research and development, and corporate strategies for its local service offerings.²⁷² Finally, we base our finding on the Commission's determination in the *Sprint/Nextel Order* that Sprint/Nextel, after the merger, would likely take actions that would increase intermodal competition between wireline and mobile wireless services,²⁷³ as well as Sprint's plans to focus its efforts on encouraging consumers to "cut the cord."²⁷⁴ Accordingly, our expectation is that intermodal competition between mobile wireless and wireline service will likely increase in the near term. Even if most segments of the mass market are unlikely to rely upon mobile wireless services in lieu of wireline local services today,²⁷⁵ as discussed above, our product market analysis only requires that there be evidence of sufficient substitution for significant segments of the mass market to consider it in our analysis. Based on the factors discussed in this section, we conclude that mobile wireless services should be included within the product market for local services to the extent that customers rely on mobile wireless service as a complete substitute for, rather than complement to, wireline service.²⁷⁶

(ii) Long Distance Services

92. There is significant evidence in the record that long distance service purchased on a stand-alone basis is becoming a fringe market including: the decision by MCI to reduce its marketing of long distance services,²⁷⁷ the declining proportion of consumers choosing a long distance provider different from their local service provider,²⁷⁸ Verizon's assertion that "it is not obvious that a standalone provider

²⁷⁰ Household Telephone Survey at Table A.

²⁷¹ *Id.* at Tables A, B.

²⁷² Verizon Info. Req., VZFCC12-305-331 at 314-16; VZFCC7-1486-1571 at 1511-16, 1530.

²⁷³ *Sprint/Nextel Order*, FCC 05-148 at paras. 141-143.

²⁷⁴ *Sprint Prepares to Cut the Cord*, WASHINGTON POST, June 6, 2005; Verizon Info. Req., VZFCCQ23-8458-8527 at 8467-68.

²⁷⁵ See, e.g., Texas OPC Comments at 8 (wireless is expensive compared to wireline and does not provide reliable 911 access); New Jersey Ratepayer Advocate Reply at 14; New Jersey Ratepayer Advocate Comments, Declaration of Susan M. Baldwin and Sarah M. Bosley (New Jersey Ratepayer Advocate Baldwin/Bosley Decl.) at paras. 77-79; NASUCA Comments at 9-10; Cbeyond *et al.* Petition at 35-36; Consumer Federation *et al.* Petition at 18; ACN *et al.* Comments at 19-20; Household Telephone Survey at Tables A, B; Verizon Info. Req., VZFCC7-1486-1571 at 1515-16; Verizon Info. Req., VZFCCQ23-8458-8527 at 8476, 8482.

²⁷⁶ In addition, we agree with commenters who note that the record does not present credible evidence that mobile wireless services have a price constraining effect on all consumers' demand for primary line wireline services. Cbeyond *et al.* Wilkie Decl. at paras. 41, 44.

²⁷⁷ Verizon/MCI Huyard Decl. at para. 17.

²⁷⁸ Between December 2003 and March 2005, the percentage of Verizon's residential lines with a presubscribed interexchange carrier decreased from [REDACTED]% to [REDACTED]%, while the percentage of its residential lines with an interexchange carrier other than Verizon declined from [REDACTED]% to [REDACTED]%. Calculated from data contained in Verizon Info. Req., Suppl. Exh. 18.B.5. See also MCI Info. Req., MCIFCC24-350561-596 at 350572, 350589-94.

of long distance service could operate at a profit,²⁷⁹ and other documentary evidence.²⁸⁰ Nonetheless, because equal access requirements permit a consumer to choose to subscribe to an alternative carrier's long distance service,²⁸¹ we follow Commission precedent and consider long distance services as a separate relevant product market.²⁸² As discussed below, we find that this market includes not only presubscribed wireline long distance providers, but also mobile wireless service and transaction services, such as prepaid calling cards and dial-around services.²⁸³

93. *Mobile Wireless.* Although the precise extent to which a mobile wireless service is in the long distance market is unclear from the record, we find it appropriate to include mobile wireless services in the relevant market at least to some extent based upon usage substitution between wireless and wireline long distance service. The Commission previously has noted mobile wireless providers' increased offering of wide-area pricing plans,²⁸⁴ and the migration of minutes from wireline to mobile wireless services.²⁸⁵ However, the long distance usage data in the record are for mass market and all business customers combined,²⁸⁶ and thus cannot be used to infer the calling patterns for mass market consumers alone.

94. In evaluating the substitutability of wireless service for stand-alone long distance service, our analysis focuses on the behavior of those consumers that currently subscribe to both a wireline long distance service and a mobile wireless service.²⁸⁷ There is evidence suggesting that consumers are

²⁷⁹ Verizon/MCI Reply at 63-64; Verizon/MCI Application, Declaration of Ronald H. Lataille (Verizon/MCI Lataille Decl.), Tab 7, at para. 10; Verizon/MCI Reply, Declaration of Robert W. Crandall and Hal J. Singer (Verizon/MCI Crandall/Singer Reply Decl.), Tab 2, at para. 21.

²⁸⁰ MCI Info. Req., MCIFCC24-350561-596 at 350572, 350589-94; MCIFCC24-232566-32585 at 32578; Verizon Info. Req., VZFCC-8969-373-414 at 381-382.

²⁸¹ The likelihood that consumers subscribing to bundled service plans consider the price and characteristics of the bundle as a whole, rather than individual components of the bundle, decreases the likelihood that an increase in the price of stand-alone long distance services (or the long distance component of the bundle) would lead a consumer to switch to an alternative service provider for its bundle of services. Thus, the relevant group of consumers for this analysis may only be those consumers that currently purchase a wireline long distance service (whether as a stand alone offering or bundled) and have a significant demand for long distance services.

²⁸² We reject the Applicants' assertions that we should include e-mail and instant messaging in the relevant service markets for services provided to mass market consumers. Verizon/MCI Reply at 60. In light of the qualitative differences between these options and voice communications, the Applicants have not demonstrated that they belong in the same relevant product market.

²⁸³ There is insufficient information in this record to assess the extent to which mass market consumers use over-the-top VoIP services specifically for domestic long distance calls.

²⁸⁴ See, e.g., *Tenth CMRS Competition Report* at para. 97.

²⁸⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24966, para. 22 (2002) (*Contribution Methodology Order and FNPRM*).

²⁸⁶ Verizon/MCI Bamberger/Carlton/Shampine Decl. at para. 20.

²⁸⁷ Our market definition exercise does not consider the purchasing behavior of consumers who do not have a presubscribed interexchange carrier or who rely upon mobile wireless service for all of their communications needs, because they would be unaffected by a theoretical price increase for wireline long distance services as a result of the merger. In addition, our market definition exercise does not consider the purchasing behavior of consumers who do (continued....)

increasingly using their mobile wireless service for long distance calls,²⁸⁸ and there is evidence that Verizon and MCI consider minute substitution in their business strategies.²⁸⁹ As a general matter, we expect that a consumer who subscribes to both a mobile wireless service and a wireline long distance service will allocate minutes between these services in an optimal manner, *i.e.*, the consumer will seek the lowest possible charge, consider service quality, and consider the time the call is placed. While we have insufficient information in this record to determine the precise extent of wireless long distance minute substitution, we acknowledge that mobile wireless services are in the relevant product market at least to some extent.

95. *Transaction Services.* As with mobile wireless service, we find that certain segments of mass market consumers use these services (prepaid calling cards and dial-around services) as a substitute for long distance services. We have insufficient information to determine the precise extent of consumer substitution between transaction services and presubscribed wireline long distance services, however. In the absence of more precise information, we include these services in the relevant market definition to the extent that consumers view these services as substitutes for presubscribed wireline long distance service. In any event, to the extent that these services are part of the relevant market, they appear to be of declining significance. Publicly available information²⁹⁰ as well as the evidence in this record indicates consumer demand for these services has declined significantly in the last two years,²⁹¹ possibly due to reductions in long distance pricing as well as substitution to mobile wireless services.²⁹²

(iii) Bundled Local and Long Distance Services

96. We agree with the commenters that bundled local and long distance services should be treated as a separate relevant product market.²⁹³ The economics literature generally discusses two types of bundles: (Continued from previous page) _____
not currently subscribe to a mobile wireless service because it would most likely be more costly for these consumers to subscribe to a mobile wireless service in order to migrate wireline long distance minutes to a mobile wireless service than it would be to pay a higher price for wireline long distance service.

²⁸⁸ From 2000 to 2003, the Commission reports that the percentage of all wireless calls that are interstate calls increased from 10% to 15%, and the percentage of all minutes that are interstate grew from 16% to 26%. *Trends in Telephone Service* at 11-12 (Apr. 2005); see also Verizon/MCI Bamberger/Carlton/Shampine Decl. at para. 23 (reporting the results of a Yankee Group survey finding that, in U.S. households, more than 60% of long distance calls have been replaced by wireless).

²⁸⁹ Verizon Info. Req., VZFCC7-1486-1571 at 1513, VZFCC12-305-331 at 307, 316; MCI Info. Req., MCIFCC17-13162-13182 at 13180.

²⁹⁰ AT&T 2004 Annual Report at 45; AT&T 2003 Annual Report at 21-22; MCI 2004 Annual Report at 49-50.

²⁹¹ See, e.g., Verizon Info. Req., VZFCCQ23-8251-8291 at 8272-78; MCI Info. Req., MCIFCC19-6035-6058 at 6037-38; MCI Info. Req., MCIFCC24-350561-596 at 350586; MCI Info. Req., MCIFCC19-124-148 at 137-38.

²⁹² See, e.g., MCI Info. Req., MCIFCC19-6035-6058 at 6037-38.

²⁹³ See, e.g., New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at para. 71 (wireless serves as a substitute to bundled telecommunications offerings and not as a substitute for basic local exchange service); Cbeyond *et al.* Wilkie Decl. at para. 40-43; Cbeyond *et al.* Petition at 34-35. The Commission has previously noted the increased subscription to bundled telecommunications service offerings. See, e.g., *Section 272 Sunset FNPRM*, 18 FCC Rcd at 10919, para. 9. We note that the Applicants appear to dispute the existence of a bundled local and long distance service market because they assert that the Commission should not treat all-distance offerings as a distinct product market. However, other statements appear to support the market definition because they also assert that "it no longer makes sense for the Commission to subdivide the mass market into discrete product markets for local and long distance voice services," and that "long distance services probably do not represent a distinct antitrust product (continued....)

a pure bundle, where the bundled services are only sold together and are not sold individually; and a mixed bundle, where the bundled services are sold individually, as well as in a package.²⁹⁴ There is significant variation across providers as to whether they offer a pure bundle or a mixed bundle. Because of the varied marketing strategies and limitations in the data, we define a local and long distance service bundle, for purposes of this proceeding only, as a customer's purchase of local and long distance services from the same carrier, regardless of whether these services are purchased together as part of an advertised bundle from a single carrier or whether the consumer creates the bundle by selecting separately-offered local and long distance service plans from the same provider. The evidence indicates that: consumers predominantly purchase local and long distance services from a single provider today; this trend is likely to continue; and the stand-alone wireline long distance market is steadily declining in size relative to the bundled services market.²⁹⁵

97. Several other factors also convince us that it is appropriate to define bundled local and long distance services as a separate relevant product market. First, we find that Verizon's marketing and pricing strategies are designed to encourage subscription to a bundled service package.²⁹⁶ Second, the evidence in the record indicates increasing intermodal competition is likely between wireline services and services provided on alternative service platforms such as facilities-based VoIP and mobile wireless services. These intermodal services tend to be offered as a bundle of local and long distance services,

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market." See Verizon/MCI Public Interest Statement at 35; Verizon/MCI Reply, Declaration of Robert Crandall and Hal J. Singer (Verizon/MCI Crandall/Singer Reply Decl.), Tab 2, at para. 21.

²⁹⁴ In a mixed bundle, the package is generally sold at a discount relative to the sum of the individual service component prices. See, e.g., Barry Nalebuff, *Bundling, Tying and Portfolio Effects*, DTI ECONOMICS PAPER NO. 1 (2001) at 13-14.

²⁹⁵ As of June 2005, 60% of Verizon's residential customers have purchased local services in combination with either Verizon long distance or a Verizon broadband connection, or both. Verizon Investor Quarterly, July 26, 2005, at 4. Between December 2003 and March 2005, the proportion of Verizon's residential consumer lines that have a presubscribed long distance carrier decreased from [REDACTED]% to [REDACTED]%, while the percentage of these residential customer lines with Verizon as the long distance carrier increased from [REDACTED]% to [REDACTED]%. See Verizon Info. Req., Suppl. Exh. 18.B.5. Within Verizon's region, TNS reports that the proportion of households purchasing local and long distance from a single provider increased from [REDACTED]% to [REDACTED]% between December 2002 and December 2004. Nationally, the proportion increased from [REDACTED]% to [REDACTED]%. MCI Info. Req., MCIFCC24-232566-2586 at 232578-79. We note that the Commission anticipated that a bundled product market might become a relevant product market sometime after the BOCs completed the section 271 process. See, e.g., *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20010-11, paras. 39-42; *WorldCom/MCI Order*, 13 FCC Rcd at 18038-39, n.60. Verizon completed the section 271 process in March 2003.

²⁹⁶ Verizon's documents reveal that its research and development, marketing, and corporate strategies focus upon service offerings designed to encourage consumers to subscribe to a local and long distance service bundle. Verizon's incentive is to drive consumers to purchase all telephone services from Verizon to reduce its marketing costs and churn, as well as to increase its average revenue per user. See, e.g., Verizon Info. Req., VZFCC69-373-414 at 376-77, 381-82, 387-389, 396, 413-14; VZFCC45-1809-1883; VZFCC50-2834-2884; VZFCC45-612-670; VZFCC81-964-980; VZFCC7-1486-1571. Moreover, these strategies are revealed in their marketing. See, e.g., Verizon Second Quarter 2005 Earnings Conference Call at 6 ("In consumer, our approach to the marketplace is to focus on consumer retention and loyalty, while increasing the average monthly revenue per customer through these new services and higher penetration of bundles and packages"); http://www22.verizon.com/ForYourHome/sas/sas_con_LongDescriptionTabs.aspx.

which further supports the use of a bundled local and long distance services market.²⁹⁷ These findings suggest that competition tends to occur between bundled offerings rather than between a bundle and stand-alone local and long distance services offered by separate providers.

b. Relevant Geographic Market

98. As with special access and enterprise services, we conclude that the relevant geographic market for mass market local, long distance, and bundled local and long distance services is the customer's location.²⁹⁸ We then aggregate customers facing similar competitive choices. As explained below, because of limitations in the data in the record, we analyze local, long distance, and bundled local and long distance service for Verizon's franchise area within each state.

99. This approach is consistent with the way we have defined the relevant geographic market in previous mergers of incumbent LECs.²⁹⁹ We acknowledge that, in the *LEC Classification Order*, the Commission adopted a national geographic market based on the section 254(g) requirement that interexchange carriers adopt geographically averaged prices across the United States.³⁰⁰ Importantly, however, the Commission also found that, while a long distance calling plan may be "ubiquitous" in that it offers nationwide coverage, the market to purchase the plan is a localized market, not a national one.³⁰¹ The Commission went on to state that it would consider a smaller relevant geographic market if it found evidence that there is, or could be, a lack of competition in a particular market.³⁰² Because we are examining here whether the proposed merger involving Verizon and MCI is likely to lead to a lessening of competition for long distance services, and because Verizon's and MCI's market shares in the long distance and bundled local and long distance markets vary significantly from state to state,³⁰³ we find it appropriate to consider a narrower relevant geographic market.

100. We recognize that the competitive choices customers face may vary within a state (e.g., in some areas of a state, cable companies may provide cable VoIP, while in other areas they may not). This suggests that we should define the relevant geographic market to be an area smaller than the state. The data in the record is not sufficiently detailed, however, for us to perform a structural analysis at a more disaggregated level than that of the state. Accordingly, in performing our structural analysis, we calculate market shares and changes in market share at the state level. While we recognize that, in theory, using a

²⁹⁷ NASUCA Comments at 9-10. In addition, Verizon's concerns about the loss of customers to bundled local and long distance service offered by alternative platforms is an important influence on its strategies. See, e.g., Verizon Info. Req., VZFCC45-1809-1883, VZFCC12-305-331 at 307, 314-321, VZFCC7-1486-1571 at 1509-1531

²⁹⁸ See *supra* Parts V.B (Wholesale Special Access Competition), V.C (Retail Enterprise Competition)

²⁹⁹ See, e.g., *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20016, para. 54; *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 69.

³⁰⁰ *LEC Classification Order*, 12 FCC Rcd at 15794, para. 66; *WorldCom/MCI Order*, 13 FCC Rcd at 18119-20, para. 166.

³⁰¹ *LEC Classification Order*, 12 FCC Rcd at 15793, para. 65.

³⁰² *Id.* at 15794, para. 66.

³⁰³ The variation in market share from state to state for long distance and bundled local and long distance services is due in large part to the fact that Verizon obtained section 271 authority in a particular state to provide such services at different times and therefore has been competing in those markets for varying periods of time. NASUCA Selwyn/Golding/Thompson Statement at 21-22.

state-level analysis may mask some variations in smaller geographic areas, we find it a reasonable approach to our analysis, particularly given that Verizon's pricing for local, long distance, and bundled local and long distance services is generally advertised on a statewide basis.³⁰⁴ Accordingly, we analyze mass market local, long distance, and bundled local and long distance services in Verizon's franchise area within each state.

c. Market Participants

101. As the foregoing indicates, Verizon faces competition from a variety of providers of retail mass market services. These competitors include not only wireline competitive LECs and long distance service providers but also, to at least some extent, facilities-based and over-the-top VoIP providers and wireless carriers.

2. Competitive Analysis

a. Horizontal Effects

102. *Unilateral Effects.* As discussed below, we find that Verizon's acquisition of MCI is not likely to result in anticompetitive effects for mass market services because MCI significantly reduced marketing for local service, long distance service and bundled local and long distance service provided to the mass market. We also conclude that competition from intermodal competitors is growing quickly, and we expect it to become increasingly significant in the years to come.³⁰⁵

103. Following Commission precedent, we begin our analysis by examining Verizon's and MCI's market share, and supply and demand factors. In general, the market share calculations indicate a high level of concentration in most franchise areas in Verizon's states for all relevant services.³⁰⁶ Within

³⁰⁴ See, e.g., Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. at 5 (filed Sept. 1, 2005) (Verizon Mass Market White Paper); see also http://www22.verizon.com/ForYourHome/sas/sas_LocalPlans.aspx. We reject the Applicants' assertion that we should define a national geographic market for mass market services based upon similar competitive choices across geographic regions. We base this decision on the reasons stated above, as well as the Applicants' admission that the identity of providers differs across geographic regions. Verizon/MCI Public Interest Statement at 36.

³⁰⁵ Regulatory safeguards would not necessarily constrain a post-acquisition price increase because there are minimal regulatory safeguards in place for many service offerings. For example, local services are subject to only limited price regulation in some states (e.g., California). Currently there is limited regulatory oversight for Verizon's retail service offerings provided through its section 272 separate affiliate. In many states, Verizon's bundled offerings either have no price regulation (e.g., Wisconsin, Connecticut, Washington D.C., and Florida) or they cannot be priced lower than a price floor (e.g., California, Indiana, Massachusetts, and Virginia). Verizon Info. Req., at 139-51.

³⁰⁶ We discuss the Applicants' market shares before and after the merger instead of HHIs for each geographic market because we do not have sufficient market share information for all of the significant competitors in these markets. Market share calculations for each of Verizon's franchise areas are provided in Confidential Appendix D. Our analysis of concentration in the mass market relies upon data for residential customers because of the administrative difficulty of distinguishing small business data from data for other classes of businesses. The Commission has previously found that residential and very small businesses have similar patterns of demand, are served primarily through mass marketing techniques, purchase similar volumes and communications services, and would likely face the same competitive alternatives within a geographic market. Thus, we conclude that an analysis of market share of residential consumers is likely to accurately represent Verizon's position in the mass market. Cf. *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20016, para. 53 (discussing similarities between residential and small business customers); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, (continued....)

Verizon's franchise areas, its median market share for local services increases from [REDACTED] percent to [REDACTED] percent,³⁰⁷ with a post-merger market share range of [REDACTED] percent to [REDACTED] percent. Similarly, within Verizon's franchise areas, its median market share for long distance services will increase from [REDACTED] percent to [REDACTED] percent, with a post-acquisition market share range of [REDACTED] percent to [REDACTED] percent.³⁰⁸ Finally, within Verizon's franchise areas, its median market share for bundled local and long distance services will increase from [REDACTED] percent to [REDACTED] percent, with a post-acquisition market share range of [REDACTED] percent to [REDACTED] percent.³⁰⁹ Because these market shares suggest potentially problematic levels of concentration, we must next evaluate other aspects of the market.

104. Although we agree with commenters that the Applicants' post-merger market shares for the relevant products are high,³¹⁰ we nonetheless find, for the reasons given below, that these numbers significantly overstate the likely competitive impact of the merger. Regardless of what role MCI played in the past,³¹¹ we conclude it no longer is, and is unlikely to become, a significant provider (or potential provider) of local service, long distance service, or bundled local and long distance service to mass market consumers given the significant reduction in its marketing and consumer operations, and its

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Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3829, para. 293 (1999) (discussing similarities between residential and small business customers in the context of unbundling rules); *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 68 (including residential and small business customers in the same market).

³⁰⁷ We estimate total residential local access lines in each relevant geographic market by summing the number of wireline local access lines (*i.e.*, residential resold lines, residential UNE-P lines, non-Verizon residential E-911 listings, Verizon's residential access lines) and an estimate of the number of residential wireless-only lines. We estimate residential wireless-only lines in two steps. First, we assume that the total number of all local access lines is the number of landline residential lines in Verizon's franchise areas divided by 94% (100% minus that 6% of residential customers that rely solely on wireless). Second, we estimate the number of wireless-only lines by taking the difference between the estimate of the total number of local access lines and the total number of wireline local access lines. We estimate Verizon's share of the residential wireless-only lines by multiplying the estimate of residential wireless-only lines by an estimate of Verizon Wireless's share of mobile wireless based upon mobile wireless lines in the NRUF database. Facilities-based VoIP lines will be captured in the E-911 listings. We note that, although we do not intend to include over-the-top VoIP subscribers in our market share calculations (because we are unable to determine which services fall within our relevant product market), subscribers to some of these services may be included in the E-911 listings, and thus included in our market share calculations.

³⁰⁸ Our calculations for the long distance market include only those consumers with a wireline long distance presubscribed carrier. We have no information to estimate the extent to which consumers may be able to migrate long distance minutes to their mobile wireless service or prepaid calling cards. Thus, we recognize that these market shares are likely to overstate Verizon's share of the long distance market.

³⁰⁹ With respect to bundled local and long distance market shares, we follow a methodology similar to that employed in calculating Verizon's share of local services. *See supra* note 307. In this case, however, we exclude consumers who do not have a PIC or who subscribe to an interexchange carrier other than their local service provider. Post-merger, we assume Verizon's local customers who have MCI as their presubscribed interexchange carrier will migrate to Verizon. Thus, our estimate overstates Verizon's relative position post-acquisition to the extent that Verizon local/MCI long distance consumers switch to an alternative interexchange carrier or MCI's local customers switch to a competitive provider.

³¹⁰ *See, e.g., Cbeyond et al. Petition at 34-39; Consumer Federation et al. Petition at 20-22; Texas OPC Comments at 4.*

³¹¹ *See Cox Reply at 2; Qwest Petition at 27-30; DC OPC Reply at 5-6.*

declining mass market customer base.³¹² The record indicates that MCI determined that it would be uneconomical to continue its original mass market strategy.³¹³ We reject as speculative and unrealistic commenters' suggestion that MCI could easily reverse its current market position.³¹⁴ The record demonstrates that MCI has implemented steps to de-emphasize its mass market operations, and there is no indication that, absent the merger, MCI would reverse this decision. Because MCI has shifted its focus away from the mass market, it is no longer a significant participant in this market or uniquely positioned to offer mass market services.³¹⁵ We note that the record evidence further indicates Verizon's current and future pricing incentives are based more on competition from intermodal competitors and the remaining competitive LECs.³¹⁶

105. Finally, we reject commenters' arguments that consumers will be worse off after the merger. Qwest argues that MCI's customers would be better off if Verizon had to compete for their business.³¹⁷ First, as stated above, MCI ceased to act as a significant competitive presence in the market when it began to implement its strategy to de-emphasize its mass market business. Second, MCI's customers will not necessarily be worse off after the merger because Verizon (or other incumbent LECs outside of Verizon's region) and the remaining competitive providers will continue to compete for customers (MCI's former customers as well as each other's customers).³¹⁸ Third, MCI's customers are free to seek service from whichever providers are present in the market.³¹⁹ As noted, we find that intermodal competitors,

³¹² See Verizon/MCI Huyard Decl. at paras. 13-19 (reporting that MCI closed [REDACTED] call centers and [REDACTED] customer service centers, and that its monthly expenses for selling, general and administrative expenditures (e.g., salaries, advertising, promotions) for mass market services have fallen from \$[REDACTED] million in 2002 to less than \$[REDACTED] million in 2005. Verizon Info. Req., VZFCC45-612-670 at 620-22 [REDACTED]. For example, between March 2004 and March 2005, MCI's customer base of local exchange customers fell from [REDACTED] million to [REDACTED] million and its long distance customers fell from [REDACTED] million to [REDACTED] million. MCI Info. Req., Exh. 18(a)(b)(d).

³¹³ See Verizon/MCI Huyard Decl. at paras. 15-19. We find that prepaid calling cards are of diminishing importance for domestic long distance services; and thus, even if MCI continues to have a role in this market, it is of limited significance given continued competition between the existing providers and the excess capacity for wholesale interexchange services. See *infra* Part V.F (Wholesale Interexchange Competition). In addition, we note that the record indicates that IDT is a leading provider of prepaid calling card services, and that other carriers and resellers operate in this market. Verizon Info. Req., VZFCCQ23-8251-8291 at 8269; MCI Info. Req., MCI-19-7708-7732 [REDACTED].

³¹⁴ See, e.g., ACN *et al.* Comments at 11, 24; Cbeyond *et al.* Petition at 35; Qwest Bernheim Decl. at para. 84.

³¹⁵ MCI has negotiated commercial agreements with the RBOCs to permit it to continue to serve its existing customer base. Verizon Mass Market White Paper at 11-14; Verizon/MCI Huyard Decl. at paras. 14-24; Verizon/MCI Huyard Reply Decl. at paras. 3-6. Cbeyond *et al.* Petition at 34; Cbeyond *et al.* Wilkie Decl. at paras. 43-45.

³¹⁶ See, e.g., discussion in paras. 88, 90-91, 94, 97.

³¹⁷ See, e.g., Qwest Bernheim Decl. at para. 84.

³¹⁸ Verizon/MCI Reply at 60-65. We note that Cbeyond *et al.*'s claims of likely price increases for residential long distance and bundled services are flawed because their analysis does not consider competition from intermodal competitors. Cbeyond *et al.* Wilkie Decl. at para. 43. Moreover, this analysis incorrectly assumes MCI is a competitive force in the market because of its legacy market share and thus overstates MCI's significance in the market by failing to account for MCI's reduced marketing to mass market customers.

³¹⁹ Verizon/MCI Reply at 60-63.

including facilities-based VoIP and mobile wireless providers, are likely to capture an increasing share of mass market local and long distance services. In addition, we take further comfort from the Applicants' voluntary commitment to offer stand-alone DSL.³²⁰

106. *Coordinated Effects.* We also find that Verizon's acquisition of MCI is unlikely to result in anticompetitive effects through coordinated interaction among remaining competitors. Given our finding that MCI is not a significant participant in the mass market, we find no indication that the proposed acquisition increases the likelihood of coordinated interaction for the relevant products. Moreover, the increasing trend toward bundled service offerings likely decreases the possibility of coordinated interaction. Because of the complexity and variety of the bundled local and long distance service offers, competitors will find it difficult to coordinate on prices.³²¹

107. *Mutual Forbearance.* For the same reasons as discussed above with respect to claims of possible coordinated effects, we do not believe that the merger is likely to result in anticompetitive effects for mass market services in SBC's region. While some commenters claim that the merged company will have the incentive to forbear from mass market competition in SBC's territories,³²² we note that MCI had significantly reduced marketing to mass market customers in those territories.³²³

b. Vertical Effects

108. We are also not persuaded by commenters' claims that the merger will increase the merged entity's incentive and ability to raise the costs of mass market rivals.³²⁴ We reject Advance's argument that Verizon's acquisition of MCI will likely impair the ability of Advance and other facilities-based competitors to compete in the geographic markets in which MCI currently provides managed VoIP services.³²⁵ First, MCI provides these services to Time Warner, Advance and other cable operators, and

³²⁰ Because we find this commitment will serve the public interest, we accept it and adopt it as a condition of our approval of the merger, as discussed below. *See infra* Part VII (Process and Enforcement).

³²¹ The difficulties in coordinating actions may be exacerbated not only by the bundling of local and long distance services but also by the offering of discounts to consumers that purchase additional services from the providers. *See, e.g., DOJ/FTC Guidelines* § 2.1.1 ("Reaching terms of coordination may be limited or impeded by product heterogeneity or by firms having substantially incomplete information about the conditions and prospects of their rivals' businesses, perhaps because of important differences among their current business operations. In addition, reaching terms of coordination may be limited or impeded by firm heterogeneity, for example, differences in vertical integration or the production of another product that tends to be used together with the relevant product.").

³²² Cbeyond *et al.* Petition at 45.

³²³ *See discussion supra* para. 104.

³²⁴ *See, e.g., Cox Comments* at 13-14 (expressing concern that the merged company would have increased incentive and/or ability to raise rivals' costs with respect to Internet backbone and transport wholesale inputs); *United States Cellular Comments* at 3-5 (expressing concerns about discrimination against competing wireless carriers in the pricing and/or provisioning of wholesale inputs); *T-Mobile Reply* at 9-18 (expressing concern about the merger's effects with respect to special access and wholesale interexchange services). We address these issues elsewhere. *See supra* Part V.B (Wholesale Special Access Competition); *infra* Parts V.E (Internet Backbone Competition); V.F (Wholesale Interexchange Competition).

³²⁵ *Advance Reply* at 13-14; Letter from Robert G. Kidwell, Counsel to Advance/Newhouse Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. at 4 (filed Sept. 30, 2005) (*Advance Sept. 30 Ex Parte Letter*). MCI, through its Managed Cable Solutions service, supports the VoIP offerings of certain cable operators including Time Warner, Bright House Networks (Advance), Susquehanna Communications and (continued....)

Verizon has committed to honoring MCI's existing contracts.³²⁶ Specific contract disputes, such as those posed by Advance, are better dealt with through the courts.³²⁷ Second, contrary to Advance's argument, we find that there are other firms that are realistic long-term alternatives to MCI.³²⁸ Third, we find evidence that other facilities-based providers self-provide these services.³²⁹ Thus, we find that Verizon's acquisition of this line of business is not likely to impair the ability of facilities-based providers to compete for mass market customers.

E. Internet Backbone Competition

109. We next turn to the potential competitive effects of the proposed merger on Internet backbone services. We find that the proposed merger of Verizon and MCI is not likely to result in anticompetitive

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Armstrong Group. MCI's managed VoIP service offering includes: operations support systems (order management, provisioning); telephone number administration (local number portability, E-911); carrier support (network infrastructure, long-haul transport, switching); network administration (quality of service and network monitoring); and operator and directory assistance services. Verizon/MCI Application, Declaration of Vinton G. Cerf (Verizon/MCI Cerf Decl.), Tab 14, at para. 11; Advance Reply, Affidavit of Arthur C. Orduna (Advance Orduna Reply Aff.) at paras. 6-7.

³²⁶ Verizon Info. Req. at 130. We reject Advance's argument that post-acquisition MCI is less likely to take actions to remedy service issues in the future because then, as well as now, MCI is motivated to rectify these problems because of contractual performance commitments. Advance Reply at 18; Advance Orduna Decl. at paras. 8-14; Advance Sept. 30 *Ex Parte* Letter, Attach. at 5-7. See, e.g., Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 at 1-4 (filed Oct. 18, 2005) (Verizon/MCI Oct. 18 Cable Solutions *Ex Parte* Letter); MCI Info. Req., MCI-17-12749-12751; MCI-17-1351-1352; MCI-17-1370-1378; MCI-17-13030-34; MCI-17-13549-13610.

³²⁷ The Commission has a long-standing policy of refusing to adjudicate contract law questions for which a forum exists in the state courts. See, e.g., *S.A. Dawson D/B/A Dawson Associate, Assignment of Licenses for 900 MHz Specialized Mobile Radio Station WNVE296 at Bithlo City, Florida*, File No. 9512R106102, Memorandum Opinion and Order, 17 FCC Rcd 472, 474, para. 7 (2002) (finding that contractual matters between parties are ordinarily addressed by courts rather than the Commission); see also *Agreements Between Broadcast Licensees and the Public*, Docket No. 20495, Report & Order, 57 FCC 2nd 42, 53, para. 26 (1975) (expressing the Commission's unwillingness to resolve differences in the interpretation of an agreement); *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (finding that the Commission should not condition a license transfer upon transferee's adherence to transferor's contractual obligations, as doing so would necessarily prejudice the terms and conditions of the contract).

³²⁸ Advance Reply at 10-11; Advance Orduna Aff. at paras. 12-14. See Time Warner Cable Creates Unit To Handle Residential Telephone Business (Jan. 22, 2004) available at <http://www.timewarner.com/corp/newsroom/pr/0,20812,670217,00.html>; Charter Taps Three Telephony Partners: Level 3, Sprint and Accenture to Enhance, Expedite Charter Telephone (Aug. 30, 2004) available at http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle_print&ID=608177&highlight; Mediacom Communications and Sprint Announce Agreement for Mediacom to Provide Telephony Services (Aug. 25, 2004) available at http://www2.sprint.com/mr/news_dtl.do?id=2122; Sprint Rings Up More than 250,000 Voice Customers Through Cable Partnerships (Apr. 4, 2005) available at http://www2.sprint.com/mr/news_dtl.do?page&id=6180; Sprint Announces Arrangement with Comcast to Provide Connectivity Services for Comcast Digital Voice (July 28, 2005) available at http://www2.sprint.com/mr/news_dtl.do?page=print&id=7620.

³²⁹ We note that some cable operators, such as Cox and Cablevision, have chosen to self-provision these services. See Verizon Mass Market White Paper at 68-69; Cox White Paper at 5-8. We note that no other commenter has raised issues regarding MCI's Managed Cable Solutions service in our record.

effects in the Internet backbone market. We also conclude that, while the merger may result in the loss of a potential Tier 1 backbone competitor and in significant vertical integration, the record does not support commenters' conclusions that the merger will "tip" the backbone market to duopoly, increase transit prices to supra-competitive levels, or lower service quality. In addition, we find insufficient evidence in the record to conclude that the merged firm will engage in packet discrimination or degradation against rivals' VoIP, video over IP, and other IP-enabled services. Although we find no likely anticompetitive effects for Internet backbone and related services as a result of the merger, we note that the Applicants have put forward on the record of this proceeding several commitments, which we find to be in the public interest. As described further in this section, the commitments relate to maintaining settlement-free peering arrangements after the merger, publicly posting peering policies, and complying with the principles of the Commission's September 23, 2005 Policy Statement³³⁰ designed to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers. Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.

1. Background

110. The Internet is an interconnected network of packet-switched networks. End users (individuals, enterprise customers, and content providers) typically, though not always, obtain access to the Internet through Internet service providers (ISPs) using a "dial-up" modem, cable modem, DSL, wireless network, or a dedicated high-speed facility (which the companies often call "Dedicated Internet Access" (DIA)).³³¹ ISPs provide access to the Internet on a local, regional, or national basis, and most have limited network facilities. In order to provide Internet service to end users, ISPs and owners of other smaller networks interconnect with Internet backbone providers (IBPs)—larger Internet backbone networks.³³² The backbone networks operate high-capacity long-haul transmission facilities and are interconnected with each other. Typically, a representative Internet communication consists of an ISP sending data from one of its customers to the IBP that the ISP uses for backbone services. The IBP, in turn, routes the data to another backbone network, which delivers the data to the ISP serving the end user to whom the data is addressed.³³³

111. IBPs may exchange traffic either through "peering" or "transit" arrangements.³³⁴ Under a peering arrangement, each IBP peer will accept and deliver, without charge, traffic destined either for its

³³⁰ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, FCC No. 05-151 (rel. Sept. 23, 2005).

³³¹ See, e.g., *Verizon/MCI Cerf Decl.* at para. 4. IBPs often offer DIA services that include both transit service and a high-capacity connection to their backbone. See, e.g., MCI Info. Req. at 34 and Exh. 10(f).

³³² An ISP's traffic connects to a backbone provider's network at a POP. Backbone providers have POPs in many locations, usually concentrated in more densely-populated areas where Internet end users' demands for access are highest. An ISP or end user relies on telecommunications lines to reach distant POPs. We note that large businesses often purchase dedicated lines that connect directly to Internet backbone networks. See GAO Report, *Characteristics and Competitiveness of the Internet Backbone Market*, at 4 (Oct. 2001) available at <http://www.gao.gov/new.items/d0216.pdf> (GAO Internet Backbone Report).

³³³ Once on an Internet backbone network, digital data signals that were split into separate pieces or "packets" at the transmission point are separately routed over the most efficient available pathway and reassembled at their destination point. The Internet Protocol (IP) Suite is the standard that governs the routing and transfer of data packets on the Internet. *Id.*

³³⁴ Verizon/MCI Public Interest Statement at 62.

own network or for one of its own backbone customers.³³⁵ Transit arrangements, by contrast, permit an ISP, small or regional IBP, or other corporate business, to reach the entire Internet using dedicated access lines linking it directly to the transit provider's Internet backbone network.³³⁶ An IBP providing transit service enables the customer to send and receive traffic through the purchaser's IBP to any other network or destination on the Internet.³³⁷ Frequently, IBP customers obtain transit packaged with a dedicated high-speed facility as part of a DIA service, with the transit customers paying fees for both the connection and the transit service.³³⁸

112. IBPs generally can be categorized into tiers based on their size, geographic scope, and interconnections. "Tier 1" IBPs are a small group of the largest IBPs that sell transit and/or dedicated Internet access to substantial numbers of ISPs and corporate customers or other enterprise customers. These Tier 1 IBPs peer with all other Tier 1 IBPs on a settlement-free basis. Lower tier IBPs may peer with each other, but generally must purchase transit from a higher tier IBP to reach end users that are not customers of the networks of their peers.³³⁹

2. Relevant Markets

a. Relevant Product Markets

113. We find that Tier 1 backbone services—the transporting and routing of packets between ISPs and large enterprise customers and Internet backbone networks—constitutes a separate relevant product market. In this regard, we note key differences in quality and price between the transit and DIA services offered by Tier 1 and lower tier IBPs. For example, lower tier IBPs, ISPs, and multi-location enterprise customers typically seek service from a provider that can serve all their locations, and not all IBPs with POPs in a particular location will have such reach to all other locations. Only Tier 1 providers can offer

³³⁵ For example, if IBP A only has a peering arrangement with IBP B, and IBP B also has a peering arrangement with IBP C, then IBP B will not allow customers of IBP A to send traffic to or receive traffic from customers of IBP C. In order to provide access to customers of IBP C, IBP A must either peer with IBP C or enter a transit agreement, *i.e.*, pay for a connection, with IBP B or IBP C. Decisions about peering are not regulated, but are the product of negotiations in the marketplace.

³³⁶ That is, in a transit arrangement, an IBP agrees to deliver all Internet traffic that originates or terminates on the paying IBP's backbone regardless of the destination or source of that traffic. If IBP A becomes a transit customer of IBP B, then as a paying customer of IBP B, IBP A is able to send traffic to and receive traffic from IBP C via IBP B's network.

³³⁷ *WorldCom/MCI Order*, 13 FCC Rcd at 18106, para. 146.

³³⁸ See MCI Info. Req. at 34. Some IBPs also offer "paid peering," where the "paid peer" pays on a volume basis to exchange traffic, but the quality of interconnection is similar to settlement-free peering. By contrast, traffic exchanges involving a transit provider may experience additional inter-network connections or "hops" over the originating, transiting, and terminating networks, reducing efficiency and reliability and increasing latency and potential packet loss. Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter, Wilkie Decl. at paras. 11-12.

³³⁹ IBPs establish a variety of peering criteria that are used when deciding whether to begin peering with, or to continue peering with, other IBPs. These criteria generally specify factors such as ratios of traffic exchanged between the backbones, the geographic scope and capacity of the peering network's backbone facilities, and the number of interconnection points, among other things. See, *e.g.*, Letter from A. Sheba Chacko, Chief Regulatory Counsel, BT Americas, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 14 (filed June 13, 2005) (BT Americas/SAVVIS June 13 *Ex Parte* Letter).

such a high level of ubiquitous service. We find that there are no substitutes for these Tier 1 connectivity services sufficiently close to defeat or discipline a small but significant nontransitory increase in price.³⁴⁰

114. We decline to adopt EarthLink's suggestion that we define an additional product market of "end-to-end connectivity" to reflect the fact that the merged company, after the merger, will be the first IBP to own and operate a network that is fully vertically integrated from the end user's premises to the termination facility that connects the user with his or her destination on the Internet.³⁴¹ First, it is not clear how such a market differs from the retail ISP market. From the perspective of end users, the purchase of Internet access, whether broadband, narrowband, or DIA, is the purchase of access to the world, *i.e.*, the purchase of end-to-end service. To the extent that EarthLink's real concern is the vertical integration created by the merger, we need not define an "end-to-end connectivity" market to analyze these effects.

b. Relevant Geographic Markets

115. Consistent with Commission precedent and the DOJ's previous findings, we analyze the market for Tier 1 IBPs using a national geographic market.³⁴² As with special access, enterprise, and mass market services, we conclude that the relevant geographic market for Tier 1 IBP services is the customer's location.³⁴³ We then aggregate locations where customers face similar competitive choices. Since all Tier 1 IBPs have extensive nationwide networks, we can aggregate Tier 1 customers throughout the United States since they effectively face the same choice of Tier 1 IBPs anywhere in the United States. Moreover, purchasers of Tier 1 Internet backbone service generally need the ability to connect at multiple locations throughout the United States. Consequently, we find it appropriate to aggregate customer locations and evaluate Tier 1 backbone services at the national level.

c. Market Participants

116. Based on the record evidence, we find that there likely are between six and eight Tier 1 Internet backbone providers based on the definition of Tier 1 backbones that has been used in the past:³⁴⁴ AT&T,

³⁴⁰ See *DOJ WorldCom/Sprint Complaint* at para. 31; see also *WorldCom/MCI Order*, 13 FCC Rcd at 18106, para. 148 (agreeing with commenters that Internet backbone service constitutes a separate relevant product market). The Applicants and commenters agree that, for current analytical purposes and consistent with prior Commission decisions, Tier 1 Internet backbone services constitute a separate relevant product market. See, e.g., Verizon/MCI Public Interest Statement at 62; Broadwing and SAVVIS Petition at 38.

³⁴¹ See EarthLink Petition at 9-10. But see Letter from Curtis Groves, MCI, and Dee May, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, at 2-3 (filed Aug. 8, 2005) (Verizon/MCI Aug. 8 *Ex Parte* Letter) (claiming, among other things, that: (1) the combination of broadband Internet access and connection to an Internet backbone is not a product market, *per se*, as end users purchase global connectivity, and (2) that neither the combined company, nor any other provider can offer such connectivity on an end-to-end basis over its own facilities).

³⁴² *WorldCom/MCI Order*, 13 FCC Rcd at 18106, para. 148; *DOJ WorldCom/Sprint Complaint* at para. 31.

³⁴³ See *supra* Parts V.B (Wholesale Special Access Competition), V.C (Retail Enterprise Competition), V.D (Mass Market Competition).

³⁴⁴ The DOJ defines a Tier 1 provider as a provider that (i) has high-capacity networks nationwide or internationally and (ii) settlement-free interconnection arrangements with all other Tier 1 providers. *DOJ WorldCom/Sprint Complaint* at para. 27.

MCI, Sprint, Level 3, Qwest, Global Crossing, and likely SAVVIS and Cogent.³⁴⁵ These eight providers offer dedicated Internet access and transit services primarily to ISPs and enterprise customers, and they generated [REDACTED] in revenues in 2003, the most recent year for which data is available.³⁴⁶ In choosing an IBP, ISP and enterprise customers seek the lowest price, highest quality, and broadest geographic reach consistent with their needs, and these Tier 1 backbone providers compete vigorously on these bases.

3. Competitive Analysis

117. For the reasons given below, we find that the merger is not likely to result in anticompetitive effects through either unilateral action by the merged entity or possible tipping of the Tier 1 Internet backbone market to a monopoly or duopoly. We also find it unlikely that the remaining Tier 1 IBPs would engage in coordinated interaction as a result of the merger. Finally, we are not persuaded that the vertical aspects of the proposed merger would increase the merged firm's incentive and ability to raise rivals' costs by discriminating against the IP traffic of its broadband competitors or by raising the price of special access services to its backbone competitors.

118. The Internet backbone market is characterized by "direct network effects," where the value of the network increases with each additional user who joins it.³⁴⁷ So long as there is "rough equality" among backbone providers, each has an incentive to peer with the others to provide universal connectivity to the Internet.³⁴⁸ In the proposed *WorldCom/Sprint* merger, the DOJ concluded, however, that the incentives of the peering backbones would change, if one backbone provider were to become significantly larger than the others, or if it were to develop greater negotiating power.³⁴⁹ This dominant provider might be able to "tip" the Internet backbone market into monopoly and then raise prices for all transit services.³⁵⁰ Once the market begins to "tip," connecting to the dominant network becomes even more important to competitors, enabling the dominant network to further raise its rivals' costs.³⁵¹ By contrast,

³⁴⁵ See Verizon/MCI Application, Declaration of Michael Kende (Verizon/MCI Kende Decl.), Tab 16, at para. 2; see also Verizon Info. Req. at VZFCC-57-0001565. [REDACTED] When identifying Tier 1 IBPs, we focus on Internet backbone providers with domestic operations because Tier 1 backbone customers are unlikely to turn to any foreign providers that lack these domestic operations in response to a small but significant and nontransitory increase in price by domestic Tier 1 IBPs. DOJ *WorldCom/Sprint Complaint* at para 31. Thus, although the Applicants identify AOL Transit Data Network and Teleglobe as other possible Tier 1 IBPs, we do not include them for purposes of our analysis. See Verizon/MCI Kende Decl. at para. 2.

³⁴⁶ See MCI Info. Req. at Exh. 8(a)(3) (listing MCI's peers); SBC/AT&T Oct. 14 *Ex Parte* Letter, Attachments. (AT&T Info. Req. Exh. 8(b)(3)-I,II,III (listing AT&T's peers), SBC 2004 transit payments).

³⁴⁷ See DOJ *WorldCom/Sprint Complaint* at para. 36; Jacques Cr  mer *et al.*, *Connectivity in the Commercial Internet*, 48 J. IND. ECON. 433, 458-60 (2000).

³⁴⁸ See DOJ *WorldCom/Sprint Complaint* at para. 41.

³⁴⁹ See *id.* at paras. 40-41.

³⁵⁰ See *id.*; see also *WorldCom/MCI Order*, 13 FCC Rcd at 18108-09, para. 150.

³⁵¹ DOJ *WorldCom/Sprint Complaint* at para. 41 ("As a result of an increase in their costs, rivals may not be able to compete on a long-term basis and may exit the market. If rivals decide to pass on these costs, users of connectivity will respond by selecting the dominant network as their provider. Ultimately, once rivals have been eliminated or reduced to customer status, the dominant network can raise prices to users of its own network beyond competitive levels. Once this occurs, restoring the market to a competitive state often requires extraordinary means, including some form of government regulation.").

in a market where each backbone provider derives roughly equal benefit from settlement-free access to the other backbone providers' customers, the incentive to cooperate will predominate and the market participants will peer with each other. If terminating a peering relationship would hurt one backbone provider significantly less than the others, however, then the first backbone provider could credibly demand payment.³⁵² Thus, because of these strong network effects, the Commission and the DOJ have focused on whether a merger between two Tier 1 IBPs is likely to lead the Internet backbone market to tip into a situation in which one or two backbones dominate.

119. We begin our horizontal analysis by examining the relative market shares of the Tier 1 IBPs and conclude that the proposed merger would not create a backbone provider of sufficient size to cause tipping. We next consider and reject various arguments raised by commenters suggesting that, as a result of the merger, Verizon/MCI would have a unique incentive and ability to engage in a strategy of targeted de-peering, leading eventually to its dominating the backbone market.

a. Horizontal Effects of the Merger

120. *Unilateral Effects – Traditional Analysis of Tipping.* In the proposed *WorldCom/MCI* merger, the Commission and the DOJ concluded that the merged entities, absent divestiture, would have been so large relative to other Tier 1 IBPs as to raise a significant danger of tipping.³⁵³ In contrast, as discussed below, we find here that the Tier 1 market has since become less concentrated such that the proposed merger will not create a dominant backbone provider. Accordingly, we agree with the Applicants that, based on current market shares, the proposed merger is not likely to cause tipping into monopoly or other competitive effects.³⁵⁴

121. Various commenters contend that the proposed merger would create a dominant Tier 1 backbone monopoly or duopoly, threatening the currently competitive market for Internet backbone services.³⁵⁵ Commenters claim that the merger will result in an increase in the merged firm's market share, with a corresponding reduction of the Internet backbone market shares of competing Tier 1 providers.³⁵⁶

122. The Applicants respond that the proposed merger will not reduce competition in the Internet backbone market, because MCI's backbone is comparable in size to at least five other providers, and Verizon has no comparable backbone.³⁵⁷ The Applicants further contend that the Tier 1 Internet backbone

³⁵² See *id.* at paras. 33-41.

³⁵³ The DOJ also reached this conclusion with respect to the *WorldCom/Sprint* merger. *DOJ WorldCom/Sprint Complaint* at para. 35.

³⁵⁴ Verizon/MCI Reply at 71.

³⁵⁵ See, e.g., EarthLink Petition at 6-8 (contending that Verizon/MCI's backbone revenue market share would be significantly larger than that of its backbone competitors, except AT&T and Sprint, and that this could enable Verizon/MCI to raise rivals' costs); CompTel/ALTS Petition at 25-31 (same).

³⁵⁶ EarthLink Petition at 5-8.

³⁵⁷ Verizon/MCI Public Interest Statement at 61, 65 (claiming that Verizon's backbone is small by any measure, is concentrated primarily in the Northeast and Mid-Atlantic, and is not among the top 50 backbone providers measured by autonomous system (AS) connections); Verizon/MCI Kende Decl. at paras. 1, 3. The number of connections that an Internet backbone operator has to different autonomous systems provides a rough proxy for the number of its business and enterprise customers. Verizon/MCI Reply, Declaration of Michael Kende (Verizon/MCI Kende Reply Decl.), Tab 3, at para. 14.

market has become significantly less concentrated and more competitive since the year 2000 and that MCI's relative position has declined significantly.³⁵⁸ The Applicants maintain that this characterization of the market holds true, regardless of whether market shares are calculated using traffic,³⁵⁹ revenues,³⁶⁰ or autonomous systems (AS) connections.³⁶¹ They also emphasize that the backbone market is characterized by considerable volatility which is demonstrated by the fact that MCI's relative position has declined over the past several years.³⁶²

123. As a preliminary matter, we note that no complete and reliable data sources are available to measure relative shares of Internet backbone providers.³⁶³ Nor does it appear that any single measure uniquely captures the relative size and importance of competing Internet backbone providers. As noted, the Applicants present data on relative shares in three ways: revenues, AS connections, and traffic flows. We do not agree, however, with the way that the Applicants calculated key revenue and traffic share percentages.³⁶⁴ Among other things, the Applicants appear to define the market to include non-Tier 1 and non-U.S. firms, which has the effect of diluting their estimated market shares.³⁶⁵ In addition, the Applicants' methodology for calculating market share double counts the traffic and revenue of lower tier providers. The traffic data submitted by the Applicants do not permit us to correct for the market definition and double counting errors and to recalculate market shares based on traffic, and, as the Applicants acknowledge, there are problems with using AS connections.³⁶⁶ Therefore, using available revenue data, and using revenue shares as a proxy for firm size, we recalculated the market shares of the top eight Tier 1 backbone providers.³⁶⁷ In calculating these shares, we adjusted the revenues for Sprint, Level 3, and Qwest to reflect that SBC and Verizon will not continue to pay transit to such providers; we also estimated SBC's and Verizon's 2003 transit payments based on 2004 actual payments.

³⁵⁸ Verizon/MCI Public Interest Statement at 63-64 (noting sharp declines in prices for bandwidth); Verizon/MCI Kende Decl. at para. 7. The Applicants also emphasize the new commercial arrangements, market changes and technological advances—including falling longhaul fiber prices and increased capacity, secondary peering, mirroring and caching, decreasing costs of switching providers, and multi-homing—have changed the dynamics of the backbone market and allowed other backbone operators to catch up with and overtake MCI. Verizon/MCI Reply Kende Decl. at paras. 18-29.

³⁵⁹ Verizon/MCI Public Interest Statement at 64; Verizon/MCI Kende Decl. at para. 5, A1; Verizon/MCI Reply Kende Decl. at paras. 5-6.

³⁶⁰ Verizon/MCI Kende Decl. at para. 4, Annex A (A1).

³⁶¹ See *supra* note 357.

³⁶² Verizon/MCI Kende Reply Decl. at para. 17.

³⁶³ Verizon/MCI Kende Decl. at para. 2.

³⁶⁴ *Id.* at paras. 4-6, Annex 1 (A1), Annex B (A2-A3), Annex C (A3). For similar reasons, we reject the market share calculations proposed by BT Americas. See Letter from A. Sheba Chacko, Chief Regulatory Counsel, BT Americas, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 9-11 (filed Oct. 7, 2005) (BT Americas White Paper) (utilizing "extrapolation technique" employed by the Applicants to calculate market shares).

³⁶⁵ *Id.* at paras. 4-5.

³⁶⁶ *Id.* at para. 7.

³⁶⁷ Although we use revenues, because it is the best evidence in the record, we are not suggesting that this is the only way or most appropriate or accurate way to measure market share.

124. We are satisfied that the proposed merger will not increase horizontal concentration to such an extent that it is likely to result in anticompetitive effects in the Internet backbone market. As noted above, there are at least six, but potentially as many as eight, Tier 1 backbone providers — AT&T, MCI, Sprint, Qwest, Level 3, Global Crossing, and by some measures, SAVVIS and Cogent.³⁶⁸ Based on the 2003 revenue data submitted by the Applicants, the merged entity's revenue share would increase by a modest [REDACTED] percent to approximately [REDACTED] percent, or to [REDACTED] percent after accounting for the market share changes associated with the proposed SBC/AT&T merger. The post-merger HHI is [REDACTED] and the change in HHI would be [REDACTED].³⁶⁹

125. We further find that the merger does not change the market ranking of the Tier 1 backbones, and several Tier 1 competitors with significant market shares would remain in the market post-merger.³⁷⁰ The merger also does not remove an existing Tier 1 provider, as Verizon is not a Tier 1 IBP. In addition, we note that 2004 data confirms that Level 3's share of Internet traffic had surpassed both AT&T's and MCI's shares.³⁷¹ Finally, we observe that the market shares for Tier 1 backbones have fluctuated over time, suggesting that the market is both competitive and dynamic. Therefore, we agree with the Applicants that the proposed merger is unlikely to create a single dominant Tier 1 Internet backbone provider with a market share that is overwhelmingly disproportionate to its rivals, which was the key concern in prior backbone mergers.

126. *Unilateral Effects – Other Factors that Might Lead to Tipping.* We next consider whether there are other factors that could lead the merged company to engage in targeted de-peering or to degrade the quality of backbone interconnection.³⁷² We examine commenters' claims first by assessing the merged firm's incentives to pursue de-peering strategies, and then by exploring whether adverse competitive effects are likely to arise from traffic imbalances or relative market shares. As explained below, we conclude that the merged firm is unlikely to have the incentive and ability to de-peer a sufficient number of its backbone rivals to tip the market to monopoly or duopoly. Moreover, we conclude that, while certain smaller Tier 1 backbone providers might be de-peered (with or without the proposed merger), it is unlikely that the merger will result in anticompetitive effects. In addition, as discussed below, we take further comfort from certain commitments the Applicants have made relating to their peering practices.

127. *"Eyeballs" vs. Content.* We are not persuaded by commenters' argument that MCI's acquisition of Verizon's residential broadband, voice, and wireless customers will alter the merged company's incentives to maintain MCI's peering relationships.³⁷³ These commenters argue that MCI's acquisition of

³⁶⁸ See *supra* note 345.

³⁶⁹ Commenters express concern about relying on 2003 revenue data, asserting that these data are incomplete, outdated and do not reflect growth trends related to VoIP and video over IP. Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter at 4 n.10; CompTel/ALTS Petition at 29. We conclude that the 2003 data provide a reasonable basis for our decision, especially as data submitted by Verizon on its 2004/2005 quarterly revenues for DIA and transit services appear to validate the IDC data. See Verizon July 8 *Ex Parte* Letter at 6-8.

³⁷⁰ As noted, the merger does not remove an existing Tier 1 provider. See Verizon/MCI Public Interest Statement at 17; Verizon/MCI Application, Declaration of John J. Lack and Robert F. Pilgrim Decl. (Verizon/MCI Lack/Pilgrim Decl.), Tab 10, at paras. 17-18.

³⁷¹ See SBC/AT&T Oct. 14 *Ex Parte* Letter at Attach. (Level 3 Traffic Leadership: Why and What Can Be Done).

³⁷² See, e.g., Broadwing and SAVVIS Petition at 50; Broadwing and SAVVIS Petition, Declaration of Matthew P. Dovens (Broadwing and SAVVIS Dovens Decl.) at para. 24; EarthLink Petition at 6.

³⁷³ See, e.g., Broadwing and SAVVIS Dovens Decl. at paras. 19-24.

these Verizon “eyeball” customers will give the merged entity significant negotiating leverage over other Tier 1 backbones that have more “content” customers than “eyeball” customers.³⁷⁴ Ultimately, commenters claim that the proposed merger will give the merged company new incentives and/or an increased ability to serially de-peer its rivals, degrade the quality of interconnection among backbones, and increase transit prices to disadvantage its backbone rivals and/or retail competitors served by competing Internet backbones (even at the expense of its wholesale backbone business).³⁷⁵

128. We are not persuaded by opponents’ argument that peering incentives may change because MCI’s backbone will acquire more “eyeballs” as a result of the merger. First, as to possible global de-peering of all other Tier 1 IBPs or all others except SBC/AT&T, the percentage of “eyeballs” currently associated with Verizon DSL customers is relatively small compared with the total number of broadband “eyeballs” nationwide, and as the Applicants point out, cable modem service accounts for 61 to 83 percent of residential and small business broadband customers.³⁷⁶ In addition, there are other Tier 1 backbones with access to significant numbers of their own “eyeball” customers that plan to expand that customer base (e.g., by offering broadband and 3G wireless services).³⁷⁷ Thus, even if “eyeballs” confer additional leverage in peering negotiations as commenters claim, other Tier 1 backbones besides Verizon/MCI and SBC/AT&T either currently have, or have the potential to acquire, significant numbers of broadband “eyeballs” to rival Verizon and SBC.³⁷⁸ Second, if Verizon/MCI were to de-peer a

³⁷⁴ Commenters assert that when certain customers (“eyeball” customers), such as residential DSL customers, access the Internet, they typically receive much more traffic than they transmit because, for example, a residential customer’s query for a Web page generates little outgoing traffic, but could generate significant incoming traffic when the Web page downloads. Conversely, commenters claim that certain Internet backbone customers, such as Internet content providers, transmit much more content than they receive (“content” customers). See, e.g., Broadwing and SAVVIS Dovens Decl. at paras. 19, 21-24.

³⁷⁵ See, e.g., Broadwing and SAVVIS Petition at 50-58; Cox Comments at 13-14; EarthLink Petition at 6-9; EarthLink July 15 *Ex Parte* Letter at 3-19; ACN *et al.* Comments at 37-39; Consumer Federation *et al.* Petition at 23-24.

³⁷⁶ Verizon/MCI Reply at 79; Verizon/MCI Hassett *et al.* Reply Decl. at para. 38. While some commenters note that “eyeballs” come from Verizon’s dial-up Internet access customers, as well, see EarthLink July 15 *Ex Parte* Letter at 12-13, there likewise are many more customers that subscribe to competing dial-up ISPs nationwide than subscribe to Verizon’s service. Moreover, cable companies collectively control more broadband “eyeballs” than do all the incumbent LECs combined. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2004* (July 7, 2005) at 6; Verizon/MCI Aug. 8 *Ex Parte* Letter at 6-7.

³⁷⁷ For example, the recent merger of Sprint and Nextel creates a backbone and wireless competitor with a business plan built around providing wireless data, including sports and entertainment video, as well as traditional wireless telephony. Arshad Mohammed, *Training to Become Wireless Heavyweight*, WASHINGTON POST, Aug. 22, 2005, at D01; *Sprint/Nextel Order*, FCC 05-148 at para. 134 (noting merger-specific benefits related to the deployment of 3G technology, including high performance push-to-talk capabilities and high speed data rates). As another example, Comcast, the largest cable modem ISP, has announced that it will build its own Internet backbone. *Comcast Extends National Fiber Infrastructure* (Dec. 7, 2004) available at <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=650960&highlight=backbone>.

³⁷⁸ Verizon/MCI Reply at 79 (claiming that competing backbone providers would have every incentive to attract traffic from “eyeball” heavy networks, if there is a benefit to serving such customers). We also note that Google has announced plans to build a national, advanced optical fiber network to push voice, video and data content closer to end users. *Google Reviewing Bids for National Optical Switching Network*, IP Media Monitor, available at http://www.ipmediamonitor.com/subscribers/index.htm?iid=6&article_id=21 (stating that the move to construct a national network comes on the heels of Google’s widely-reported purchase of dark fiber). Further, instant (continued....)

backbone that served a major cable company or ISP with broadband “eyeballs,” it seems unlikely that the cable company or ISP would switch to a vertically integrated backbone provider that competes against it for broadband and VoIP customers, such as Verizon or SBC.³⁷⁹

129. Nor are we convinced by opponents’ claims that the “stickiness” of “eyeball” customers would largely insulate the merged firm from the “mutual pain” associated with a strategy of degradation and de-peering.³⁸⁰ Given the widespread availability of competing broadband and narrowband ISP alternatives, it is not clear that Verizon/MCI’s “eyeball” customers would prove “sticky” in practice and, in any case, the merged entity would have to weigh carefully the potential for customer churn as a result of degradation strategies.³⁸¹ Accordingly, we do not find it likely that the merged entity’s share of “eyeballs” will create

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messaging providers, including Microsoft, Yahoo, and Google, as well as other web companies such as eBay, are adding VoIP features to their offerings, and may add additional IM services, as well. In so doing, these IM service providers might attract significant numbers of “eyeball” customers. *See, e.g., eBay’s Skype Risk Is a Calculated One*, WASHINGTON POST, Sept. 22, 2005; *MSN Buys into Net-calling Future*, CNET News.com, Aug. 30, 2005, available at http://news.com.com/MSN+buys+into+Net-calling+future/2100=1032_3-5844873.

³⁷⁹ We also reject claims that the Verizon/MCI Internet backbone ultimately will gain the vast majority of content customers. Broadwing and SAVVIS Petition at 50-54. As preconditions to that occurring, commenters rely on the assertion that the merger will lead to monopoly or duopoly, or that it will result in the Verizon/MCI backbone having a disproportionate share of “eyeballs” and thus engaging in targeted de-peering. As discussed above, we find those preconditions unlikely to occur as a result of the merger.

In addition, commenters allege that, because of “inbuilt traffic imbalances,” the merged Verizon/MCI would have the ability ultimately to monopolize Internet content because of a possible “hold-up” problem. *See, e.g., Broadwing and SAVVIS Aug. 12 Ex Parte Letter*, Wilkie Decl. at para. 17. The commenters reason that the merged firm would be particularly likely to end settlement-free peering with relatively content-heavy networks. In the context of such targeted de-peering, commenters assert that other backbone providers would factor the risk of de-peering into their bids for the content customers. Commenters claim that, as a result, competition for such customers will diminish, creating disincentives for content customers to generate high bandwidth content and applications because the merged companies would increase prices to appropriate the rent from the development of such content. *Id.* We disagree. Given our conclusions above that the merged entity lacks incentives to engage in a strategy of targeted de-peering, we find this result unlikely.

Further, we are not persuaded by BT Americas’ claim that the financial condition of other Tier 1 IBPs will lead SBC/AT&T and/or Verizon/MCI to increase their share of the Internet backbone market. *See BT Americas White Paper* at 23-25, 29-30. In any event, even if certain other Tier 1 IBPs are not as financially strong as others, when such situations have arisen in the past, the IBPs have been acquired by other firms and continued to be operated as Tier 1 backbones, or, in the case of MCI, have gone through bankruptcy and still maintained its status as a significant Tier 1 backbone. *See, e.g., BT Americas White Paper* at 29 (noting SAVVIS’ purchase of Cable & Wireless’ backbone); *Level 3 to Acquire Genuity Assets and Operations*, (Nov. 27, 2002) (discussing Level 3’s acquisition of Genuity) available at <http://www.level3.com/press/3053.html>; *Bankruptcy Judge Approves MCI’s Plan of Reorganization*, (Oct. 31, 2003) (discussing MCI’s exit from bankruptcy) available at <http://global.mci.com/about/news/releases/2003/>.

³⁸⁰ *See, e.g., Broadwing and SAVVIS Aug. 12 Ex Parte Letter* at 3, 8-9; *see also EarthLink July 15 Ex Parte Letter* at 9-14 (claiming that the harm from transmission degradation will be relatively much smaller for the merged companies than for those using competing networks). *But see Verizon/MCI Aug. 8 Ex Parte Letter* at 4-7 (contending that the merged company would not have an incentive to disconnect other backbone providers because such action would harm its customers).

³⁸¹ While commenters note that certain contracts with DSL or 3G wireless customers might include early termination fees, *see Broadwing and SAVVIS Aug. 12 Ex Parte Letter* at 8, we note that there nonetheless appears to be significant competition for broadband and wireless customers. *See, e.g., Appropriate Framework for* (continued....)

a significant incentive for it to engage in either targeted de-peering or degradation of backbone interconnection.

130. More generally, we are not convinced that the merged firm would gain enough by disadvantaging its Internet access and retail competitors to alter the pre-merger calculus that led to the current peering equilibrium. If the merged Verizon/MCI were to de-peer one or more of its Tier 1 peers, it could not be certain that the targeted backbone would become a transit customer of MCI or that the customers of the former peer would switch to the Verizon/MCI backbone. The backbone might instead choose to purchase transit from a competing Tier 1 backbone, which would tend to increase the rival's market significance relative to MCI, and thus, a decision to de-peer could end up primarily benefiting one of MCI's rivals. We also find that disaffected Internet access providers or retail competitors that were customers of the former peer could choose from a wide range of competing IBPs.³⁸² Peering and de-
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Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 at paras. 47-64 (rel. Sept. 23, 2005) (Wireline Broadband Order) (discussing current and emerging broadband competition); Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition For Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket Nos. 01-338, 03-235, 03-260, 04-48, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508, para. 26 (2004) (Section 271 Broadband Forbearance Order) (discussing competition for broadband services); Tenth CMRS Competition Report, FCC 05-173 at paras. 2-5 (discussing wireless competition); see also High-Speed Services for Internet Access: Status as of December 31, 2004, Industry Analysis and Technology Division, FCC, at 6 (rel. July 7, 2005) (specifying relative market shares of cable and DSL).

³⁸² See Verizon/MCI Aug. 8 *Ex Parte* Letter at 6 (arguing that end users will not remain on a network that does not provide access to desired content, applications, or other users); Verizon/MCI Bamberger/Carlton Reply Decl. at para. 87 (asserting that degradation of quality affects both the degrading and targeted backbones relative to all their other rivals). While opponents claim that switching backbone providers is costly and time-consuming, the Applicants assert that major purchasers of backbone services, including cable companies and other large ISPs, could easily switch to competing backbones. Compare Cox Comments at 14 (asserting that Cox and other MCI transit customers could not readily switch backbone providers without loss of significant time, money, and resources) with Verizon/MCI Aug. 8 *Ex Parte* Letter at 13 (contending that cable operators could shift IBPs in response to degradation of service or higher prices). As an example, EarthLink states that it has engineered its network to be in close proximity to its current transit provider, Level 3, and that switching to an alternative backbone provider would require it to purchase special access service to link the EarthLink network to the new backbone provider at multiple locations. See Letter from John W. Butler, Counsel for EarthLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at para. 14 (EarthLink Aug. 26 *Ex Parte* Letter, Collins Decl.) (filed Aug. 26, 2005) (EarthLink Aug. 26 *Ex Parte* Letter) at para. 22. EarthLink estimates that the cost to do so initially would involve \$2 million for fiber build-out and additional recurring charges of \$1 million per year. *Id.* We are persuaded that Internet backbone customers have sufficient ability to switch backbones to provide a check on any potential strategy of targeted de-peering. Particularly given the sophistication of many Internet backbone customers, we find it unlikely that they would allow themselves to be "locked in" to a particular provider. See, e.g., Verizon/MCI Kende Reply Decl. at paras. 19-28 (describing actions by backbone customers to increase their flexibility and reduce their dependence on particular IBPs). EarthLink's hypothetical example does not convince us otherwise with respect to IBP customers as a whole, regardless of its accuracy for EarthLink. Other commenters' concerns regarding the Internet backbone market are predicated on the ease with which customers can switch IBPs. See, e.g., (continued....)

peering decisions are driven by a backbone's incentives to maximize network efficiency and lower interconnection costs, and we do not see how the proposed merger would materially alter this calculus.

131. *Traffic Imbalances.* Commenters also claim that significant traffic imbalances would flow directly from the proposed merger because "eyeball-heavy" networks generate asymmetric traffic flows with content networks, and because the Applicants have plans to increase the deployment of broadband, video over IP, and 3G wireless products and services.³⁸³ Thus, commenters express concern³⁸⁴ that current Tier 1 peers (other than similar "eyeball-heavy" networks like the merged SBC/AT&T) would suddenly fail to qualify for peering under current criteria (which generally require a 1.8:1 traffic ratio).³⁸⁵ Based on the pre-merger traffic flows, it is possible that MCI, even absent the merger, would have had the ability to de-peer some of the smaller Tier 1 backbone providers pursuant to the traffic ratio requirements in its existing peering policy.³⁸⁶ We note, as a general matter, however, that peering decisions are based on a range of factors.³⁸⁷ While MCI's traffic ratios with its peers appear to fluctuate considerably, several backbones are close to violating the required 1.8:1 ratio currently, such that small increases in traffic flows from the addition of Verizon's IP traffic could put them further out of balance or cause them to fail the traffic ratio criterion.

132. Nevertheless, we disagree with commenters that the proposed merger presents a real danger that *most* settlement-free peering arrangements will dissolve, even under the commenters' traffic imbalance theory.³⁸⁸ Several competing backbones, [REDACTED] have traffic ratios that are well within the

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BT Americas White Paper at 26-31 (claiming that customers will not be able to prevent anticompetitive behavior by the jointly dominant AT&T and MCI Internet backbones). We are persuaded by the record that most backbone customers can readily switch IBPs, even if there are particular customers for which the cost of switching IBPs might be significant.

³⁸³ See Broadwing and SAVVIS Petition at 50-54; Broadwing and SAVVIS Dovens Decl. at paras. 19, 21-24; Consumer Federation *et al.* Petition at 24; CompTel/ALTS Petition at 29, 31 (arguing that Verizon's backbone revenue increased 15% before 2002-2003 compared to revenue losses by other providers); EarthLink Petition at 7; BT Americas White Paper at 15-23.

³⁸⁴ EarthLink Petition at 6-8; *see, e.g.*, Broadwing and SAVVIS Petition at 48-51; CompTel/ALTS Petition at 33; Consumer Federation *et al.* Petition at 24; Broadwing and SAVVIS Dovens Decl. at paras. 19, 21-24; Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter, Wilkie Decl. at para. 16. Commenters also contend that, given aggressive service rollout plans, the merged entity will experience significant growth in traffic from DSL, FTTH and video 3G products and services, and that this could unbalance traffic ratios.

³⁸⁵ See MCI Policy for Settlement-free Interconnection with Internet Networks *available at* <http://global.mci.com/uunet/peering>.

³⁸⁶ See Confidential Appendix E at Table 2.

³⁸⁷ *See, e.g.*, Michael Kende, Office of Plans and Policy, FCC, *The Digital Handshake: Connecting Internet Backbones* (Sept. 2000) at 8 ("There is no accepted convention that governs when two backbones will or should decide to peer with one another, nor is it an easy matter to devise one. . . . However, there are many measures of backbone size, such as geographic spread, capacity, traffic volume, or number of customers. It is unlikely that two backbones will be similar along many or all dimensions. . . . The question then becomes, how the backbones weigh one variable against another. . . . In sum, peering agreements are the result of commercial negotiations; each backbone bases its decisions on whether, how, and where to peer by weighing the benefits and costs of entering into a particular interconnection agreement with another backbone.") *available at* http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp32.pdf.

³⁸⁸ See Broadwing and SAVVIS Petition at 50-55; Broadwing and SAVVIS Petition, Declaration of Michael Bortz (Broadwing and SAVVIS Bortz Decl.) at para. 19. Because we conclude that a sufficient number of settlement-free (continued....)

required 1.8:1 threshold and are unlikely to be de-peered based on a failure to meet the balanced traffic ratio requirement.³⁸⁹ Therefore, even if certain backbones were de-peered, sufficient competition would remain in the Tier 1 backbone market such that transit prices would not be affected.³⁹⁰

133. Because we conclude that the Internet backbone market is sufficiently competitive and will remain so post-merger, it follows that the prices and terms of interconnection in the market will also be competitive.³⁹¹ We note that MCI has published its peering policy, which provides useful transparency in the essentially private business negotiations over interconnection.³⁹² In addition, interconnection between Internet backbone providers has never been subject to direct government regulation, and settlement-free

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peers will remain post-merger, we therefore need not address factual disputes related to the costs associated with carrying traffic, including whether traffic imbalances impose costs sufficient to justify de-peering. *Compare* Broadwing and SAVVIS Petition at 52-53 (asserting that the costs associated with carrying traffic are not sufficient to warrant de-peering based on traffic imbalances); Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter at 11 (contending that the traffic ratio requirement has no basis in economic cost) and Wilkie Decl. at para. 9 (asserting that the marginal cost of transporting IP packets is nearly zero) *with* Verizon/MCI Reply at 77 (asserting that providers incur significant costs to peer, and peering with networks that have traffic imbalances would be inefficient and lead to “free riding”).

³⁸⁹ Verizon/MCI Kende Reply Decl. at para. 9 (stating that because MCI currently carries far more traffic than Verizon, the combined firm would terminate only slightly more traffic than it would originate, with an inbound/outbound ratio of approximately [REDACTED]).

³⁹⁰ Similarly, we reject concerns that non-Tier 1 companies, including Verizon’s facilities-based and ISP competitors, will be placed at a significant competitive disadvantage or that the proposed merger will diminish competition in the retail Internet access market. Cox Comments at 13-14; EarthLink Petition at 8-10; Cox Reply at 3-4. In this regard, we find that commenters’ concerns related to inefficiencies in the current system of “hot potato” routing and recommendations for reallocating interconnection costs between “eyeball” and “content” backbones based on relative benefits to each backbone’s customers are not merger-specific and moreover, that their proposed remedies are beyond the scope of this proceeding as they would reconfigure the routing pattern of the public Internet. *See* Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter Wilkie Decl. at paras. 5-10.

³⁹¹ In this regard, we note the general downward trend of transit prices in recent years. Verizon/MCI Public Interest Statement at 64-65; *see also* Verizon/MCI Reply at 75 (claiming that customers facing increased transit prices can easily switch providers or use technological advancements like mirroring and caching to reduce their dependence on transit); Verizon/MCI Kende Reply Decl. at para. 16 and Exh. 8 (showing a sharp decline in transit prices in New York City from 2Q2001 to 2Q2004).

³⁹² Verizon/MCI Cerf Decl. at para. 16; MCI Policy for Settlement-free Interconnection with Internet Networks, available at <http://global.mci.com/uunet/peering>. Many other Tier 1 backbone providers also publish their peering policies. *See* Verizon/MCI Kende Decl. at para. 8. *See, e.g.,* SAVVIS Settlement-free Peering Policy USA (May 13, 2005) available at http://www.savvis.net/NR/rdonlyres/16A6C413-5D9F-405D-B157-BC6DC9A01B52/8264/peering_usa2.doc; Qwest: International IP Network Peering Policy (Sept. 14, 2005) available at www.qwest.com/legal/peering_int.html; MCI Policy for Settlement-Free Interconnection with Internet Networks available at <http://global.mci.com/uunet/peering/>; Level 3 Settlement-Free Interconnection Principles available at <http://www.level3.com/1511.html>.

peering and degradation-free transit arrangements have thrived.³⁹³ We see no evidence that the merger will alter this dynamic.³⁹⁴

134. While we conclude that the merger is unlikely to result in anticompetitive effects with respect to Tier 1 peering arrangements, we nonetheless find that certain commitments made by the Applicants are in the public interest. First, they commit that they will maintain at least as many settlement-free U.S. peering arrangements for Internet backbone services with domestic operating entities as they did in combination on the Merger Closing Date. Second, they will post their peering policy on a publicly accessible website, and will post any revisions on a timely basis.³⁹⁵ Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.

135. We recognize the unique concerns of rural carriers expressed by Great Plains, the Rural Alliance and others concerning a potential lack of options for access to Internet backbones at reasonable rates, terms, and conditions.³⁹⁶ We believe that the Applicants' voluntary commitments will reduce this concern.³⁹⁷ Nonetheless, we commit to monitor vigilantly the competitive conditions unique to rural areas and will take action, as necessary, to ensure that the benefits of the Internet are extended throughout the United States. We also commit to addressing these concerns in other on-going rulemakings, including the *IP-Enabled Services* proceeding.³⁹⁸

136. *Relative Market Share.* Finally, we disagree with commenters who allege that, separate and apart from whether the merger creates a single dominant Tier 1 IBP, the merged entity will have sufficient market share to engage in targeted de-peering of rival Tier 1 IBPs. We are persuaded that the Applicants' moderate combined market share [REDACTED] based on backbone revenues) sufficiently rebuts commenters' claims that they will have the ability to engage in targeted de-peering of rival Internet backbones, particularly when viewed in light of the significant market shares of other Tier 1 backbones.³⁹⁹ While the merged entity may have some increased negotiating leverage over smaller backbone

³⁹³ See Verizon/MCI Reply at 76 (claiming that backbone providers who peer do not have inherent competitive advantages over those who pay transit).

³⁹⁴ We thus reject the concerns that small, rural companies might not have options for access to Internet backbones at reasonable rates, terms and conditions. See, e.g., *Independent Alliance Comments* at 6-7.

³⁹⁵ See Verizon Oct. 31 *Ex Parte* Letter, Attach. at 4-5; see also Appendix G.

³⁹⁶ See, e.g., Letter from Ken Pfister, Vice President-Strategic Policy, Great Plains Communications, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65 & 05-75 (filed Oct. 20, 2005) (raising concerns on behalf of the Rural Alliance about Internet backbone connections and discrimination against smaller ISPs).

³⁹⁷ See generally Verizon Oct. 31 *Ex Parte* Letter; see also Appendix G. Further, as discussed above, we find that sufficient competition should remain in the Tier 1 backbone market such that transit prices would not be affected. Indeed, as previously noted, there has been a general downward trend of transit prices in recent years. See Verizon/MCI Kende Reply Decl. at para. 16 (discussing historical declines in transit prices over the last five years); cf. Letter from Curtis L. Groves, MCI, and Dee May, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. at 4 ([REDACTED]).

³⁹⁸ See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

³⁹⁹ See discussion *supra* para. 123 (acknowledging that the Commission is relying on relative revenue shares, rather than traffic shares); see also BT Americas White Paper at 31 n.58 (stating that in the absence of "joint dominance" by SBC/AT&T and Verizon/MCI, "the parties are unlikely to be able to successfully engage in widespread anticompetitive degradation or pricing strategies in the downstream Internet backbone market.").

providers,⁴⁰⁰ we conclude that the merged Verizon/MCI likely would lack the ability to target its larger rivals, including [REDACTED]—all of which command significant revenue shares of the backbone market.⁴⁰¹ These providers each have unique advantages in the backbone services marketplace and likely would provide significant counterweight to the merged entity. In addition, we note that some backbone providers appear to have higher shares of traffic than of revenue. In this regard, we note that Level 3 and AT&T have comparable backbone traffic volumes, [REDACTED]⁴⁰² Similarly, the recent merger of Sprint and Nextel creates a backbone and wireless competitor with a business plan focused on providing wireless data, including sports and entertainment video, as well as traditional wireless telephony.⁴⁰³ The increasingly IP-based traffic of Sprint's 44 million plus mobile phone subscribers would presumably ride on its backbone network. Qwest, as another vertically-integrated incumbent LEC and Tier 1 backbone provider, should continue to bring competitive heft to the backbone market as well.⁴⁰⁴ Based on the foregoing, we see no need for the conditions that commenters suggest.⁴⁰⁵ As discussed above, we take further comfort from the commitments the Applicants have made regarding their peering practices.

137. *Coordinated Effects.* Other commenters suggest that Verizon/MCI and SBC/AT&T together might come to dominate the Tier 1 IBP market and then engage in coordinated interaction.⁴⁰⁶ As an initial matter, we conclude that the proposed merger will likely not result in competitive harms due to coordinated interaction among Tier 1 backbone providers. Because sufficient vigorous Tier 1 backbone competitors would remain (even if some current backbone providers were de-peered), the feasibility of such coordinated strategies is questionable.⁴⁰⁷ In short, the commenters' arguments would seem to require

⁴⁰⁰ [REDACTED] See Confidential Appendix E, Table 1 (Market Shares and HHIs of Tier 1 Backbone Providers).

⁴⁰¹ *Id.*

⁴⁰² SBC/AT&T Oct. 14 *Ex Parte* Letter at Attach. (Level 3 Traffic Leadership: Why and What Can Be Done) [REDACTED].

⁴⁰³ Arshad Mohammed, *Training to Become Wireless Heavyweight*, WASHINGTON POST, Aug. 22, 2005, at D01; *Nextel/Sprint Order*, FCC 05-148 at para. 134 (noting merger-specific benefits related to the deployment of 3G technology, including high performance push-to-talk capabilities and high speed data rates).

⁴⁰⁴ In addition, Comcast, the largest cable modem ISP, has announced that it will build its own Internet backbone. See *Comcast Extends National Fiber Infrastructure* (Dec. 7, 2004) available at <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=650960&highlight=backbone>. Google has also announced that it is reviewing bids for the deployment of a national fiber network. See *Google Reviewing Bids for National Optical Switching Network* (Sept. 19, 2005) available at http://www.ipmediamonitor.com/subscribers/index.htm?iid=6&article_id=21.

⁴⁰⁵ Commenters proffer a number of remedies, which we do not discuss in detail, because as noted, we find that the commenters have not established either merger-related harms requiring remedy, or substantial and material questions of fact concerning whether such harms exist. See, e.g., Cox Comments at 14; Independent Alliance Comments at 9-10; New York Attorney General Comments at 23; Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter at 11; Broadwing and SAVVIS Oct. 21 *Ex Parte* Letter, Attach. at 8-10; Earthlink Aug. 26 *Ex Parte* Letter at 11-15; Letter from John W. Butler, Counsel for EarthLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 3-12 (filed Oct. 3, 2005).

⁴⁰⁶ See, e.g., EarthLink Petition at 10 (asserting that any analysis of the backbone market post-merger must address parallel action between SBC/AT&T and Verizon/MCI); Letter from Kristen Verderame, BT Americas, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 (filed May 6, 2005) (claiming that the merged firms can effectively signal each other through bilateral contractual dealings and leaks to achieve common objectives).

⁴⁰⁷ As noted above, while some commenters contend that de-peering places the de-peered backbone at a competitive disadvantage, it is possible that the act of de-peering one competitor may very well make another competitor (continued....)

that Verizon/MCI or other firms be able to de-peer a sufficient number of Tier 1 backbones so as to make coordinated effects more likely. We find this result to be speculative at the very least, and not supported by the record. Accordingly, we conclude that Verizon's control of MCI is unlikely to result in anticompetitive coordinated effects in the Tier 1 Internet backbone market.⁴⁰⁸

138. For the reasons discussed above, we also are unpersuaded that Verizon/MCI and SBC/AT&T, in particular, will have the ability to coordinate to de-peer a sufficient number of their backbone rivals—either through targeted and serial de-peering or global de-peering—to effectively “tip” the market to duopoly.⁴⁰⁹ We conclude that it would be difficult for the merged Verizon/MCI and SBC/AT&T to agree tacitly on the specifics of these de-peering strategies, such as which peers to target, and in which sequence, without reaching an express agreement in clear violation of antitrust laws.⁴¹⁰ It is also not clear that, even together, the merged Verizon/MCI and SBC/AT&T would be able successfully to engage in global de-peering. To the extent that other Tier 1 backbones have a significant number of content customers, which commenters claim to be the case, Verizon/MCI's and SBC/AT&T's “eyeball” customers likely will value access to that content so highly that the strategy would not be profitable. In addition, even after combining their respective retail broadband customer bases, the merged SBC/AT&T and Verizon/MCI would have less than 30 percent of all broadband “eyeballs.”⁴¹¹

b. Vertical Effects (Raising Rivals' Costs)

139. We reject commenters' assertions that the vertical integration of Verizon and MCI could allow the merged entity to raise the costs of its VoIP and retail broadband rivals by: (a) discriminating against
(Continued from previous page)

stronger, as the de-peered provider (or its customers) will need to purchase transit and will be disinclined to do so from the very provider (such as Verizon/MCI) that just de-peered it. *See, e.g.,* Cox Comments at 13-14 (claiming that the merged company would have increased capability and incentive to maintain transit rates at supra-competitive levels in order to raise the costs of IP service providers who compete against Verizon's core retail services). Broadwing and SAVVIS Dovens Decl. at para. 14.

⁴⁰⁸ We must also consider whether the proposed merger would result in a loss of actual or potential competition. While it is possible that Verizon would eventually have achieved Tier 1 status absent the merger, we find that this fact alone does not raise a potential competition concern. *See* Verizon Info. Req. at VZFCC 57-1548-1575 (noting that Verizon would not be a Tier 1 IBP prior to 4Q2006 or 1Q2007); *see also* Verizon/MCI Reply, Declaration of Robert F. Pilgrim (Verizon/MCI Pilgrim Reply Decl.), Tab 7, at para. 6 (claiming that SAVVIS and Global Crossing have refused to peer with Verizon, in part because Verizon does not generate sufficient traffic). In order for a loss of potential competition to raise a concern, four criteria must be met: the market must be concentrated; the potential entry must produce a substantial likelihood of producing a deconcentrated market; there must be few other equivalent potential competitors; and the company being acquired must be able to enter the market without the merger. ABA Section of Antitrust Law, *Antitrust Law Developments* 354-62 (5th ed. 2000). Here, only the last criterion is satisfied. As discussed above, we are satisfied that there are enough competitors in the Internet backbone market to provide sufficient competition. Given this, the acquisition of a potential competitor—which by definition does not diminish the current state of competition—cannot cause substantial competitive harm.

⁴⁰⁹ BT Americas White Paper at 6-31.

⁴¹⁰ DOJ/FTC *Guidelines* at §2.1 (noting that successful coordinated interaction entails reaching terms of coordination that are profitable to the firms involved and an ability to detect and punish deviations that would undermine the coordinated interaction).

⁴¹¹ *See* Verizon/MCI Reply at 83; Verizon/MCI Hassett *et al.* Reply Decl. at para. 38 (stating that “[C]able modem service is the market leader for broadband services, accounting for more than 61 percent of residential and small business customers receiving download speeds of 200 Kbps and 83 percent of customers that receive more than 200 Kbps in both directions.”).

IP packets transmitted by its broadband and VoIP competitors; and/or (b) leveraging bottleneck control over special access to gain a competitive advantage in the backbone and broadband markets. For the reasons given below, we conclude that the proposed merger is not likely to have such adverse effects on competition.

140. *Packet Discrimination and Traffic Degradation.* We are not persuaded by commenters' assertions that the merger gives rise to an increased incentive and/or ability for the merged company to degrade or otherwise discriminate against competitors' IP traffic. Commenters claim that the merger increases the potential for three forms of "broadband discrimination" with respect to competing VoIP, IP video, and other IP-enabled services with limited tolerance for latency and packet loss: (i) giving the merged entity's IP packets priority over the packets generated by third party providers; (ii) affirmatively injecting latency or otherwise degrading the packets sent by third-party Internet application providers; and (iii) blocking certain transmissions.⁴¹² Such actions by the merged entity would allegedly place competing providers at a significant competitive disadvantage as to quality of service.⁴¹³

141. We are generally unpersuaded that commenters' concerns are sufficiently merger specific and that the merged entity is likely to pursue the alleged strategies. First, we note that no commenter has alleged that Verizon (or MCI) currently engages in packet discrimination or degradation.⁴¹⁴ Second, to the extent that commenters allege that packet degradation or discrimination could occur using MCI's backbone, we find it unlikely that the merged Verizon/MCI would have the incentive to engage in such conduct. We acknowledge that, in theory, the merger could give the merged company an incentive to

⁴¹² See, e.g., Vonage Comments at 9-10 (describing possible broadband discrimination); EarthLink Aug. 26 *Ex Parte* Letter, Collins Decl. at paras. 5-6 (describing possible methods of programming routers to discriminate against competing service providers, such as by disconnecting networks that carry particular types of traffic or creating "queues" that give a lower priority to competing service providers' traffic). See also New York Attorney General Comments at 21-22 (expressing concerns about broadband discrimination based in part on a March 2005 Consent Decree between Madison River Communications and the Commission's Enforcement Bureau concerning the company's practice of port blocking, such that all of the communications generated by Vonage customers were blocked, and citing *Madison River Communications, LLC and Affiliated Companies*, File No. EB-05-1H-0110, DA 05-543 (EB rel. March 3, 2005)).

⁴¹³ Vonage Comments at 9-10. Vonage claims that, while cable providers have committed not to block customer access to new innovative IP applications, Verizon has not made any commitments in this area. *Id.* Global Crossing similarly alleges that combining Verizon and MCI, which are current competitors in the enterprise VoIP market, could have a negative impact on VoIP services. Global Crossing Comments at 20-21.

⁴¹⁴ See Verizon/MCI Reply at 81 (asserting that neither MCI nor Verizon gives priority to certain traffic in an unreasonably discriminatory or anticompetitive way). While the merger does not materially alter Verizon's existing incentives to prefer affiliated VoIP and other IP traffic and to protect traditional voice revenues by discriminating against or degrading the traffic of competing VoIP providers, some commenters contend that Verizon could currently leverage its control over last mile facilities, on which VoIP traffic terminates, to block or degrade access. See, e.g., Vonage Comments at 9-10 (discussing possible discrimination through port blocking). That is not a merger-specific concern. Further, this general issue is the subject of a pending Commission proceeding. See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4915, para. 77 (2004) (seeking comment, for example, with respect to "the incentives of facilities-based IP service providers to provide network access to non-facilities-based IP service providers"). We also note that MCI has few mass market broadband customers, and has suspended marketing for mass market broadband services. See Verizon Public Interest Statement at 48-49; Verizon/MCI Reply at 60-61. Thus, we find that the acquisition of MCI's limited additional broadband customer base is not likely to result in anticompetitive effects for mass market broadband services through either unilateral or coordinated effects. See, e.g., Consumer Federation *et al.* Petition at 3-9 (expressing concern about competitive effects with respect to broadband services).

degrade or discriminate against the IP traffic of its retail competitors. On the other hand, we agree with the Applicants that the merged entity will likely have strong incentives to provide VoIP (and to make others' VoIP services available to its broadband customers), in order to retain customers that seek a VoIP alternative to circuit-switched voice service.⁴¹⁵ Consequently, we believe that these countervailing incentives make it unlikely that the merged company would choose to engage in packet discrimination or degradation of IP traffic.

142. Third, it is not clear that the merged company would be able effectively to discriminate or degrade competitors' IP traffic using its Internet backbone. Given the routing of VoIP calls today, for example, it does not appear that the backbone creates a new bottleneck for VoIP providers that use their own backbone or a virtual private network to deliver service to their customers by delivering the traffic directly to the public switched telephone network (PSTN), rather than routing it through the Verizon/MCI backbone.⁴¹⁶ Further, while the merged entity may have an incentive to prioritize its own traffic using queuing or other such differentiated service mechanisms, by recent measures significant excess capacity remains on backbone networks.⁴¹⁷ Thus, in the absence of affirmative efforts to degrade a competitor's traffic, queuing and packet prioritization is likely to yield only very small increases in latency and packet loss in many cases.⁴¹⁸

143. Finally, we take further comfort in the Applicants' commitment to conduct business in a manner that comports with the principles set forth in the Commission's September 23, 2005 Policy Statement designed to ensure that broadband networks are widely deployed, open, affordable, and accessible to all

⁴¹⁵ Verizon/MCI Reply at 84. Even if the merger were to increase the ability of the merged entity to engage in packet discrimination and degradation, the record indicates that such strategies are unlikely to be profitable in the long term. The relevant calculus is whether the potential benefits of packet discrimination or degradation against the merged entity's VoIP competitors (*i.e.*, potentially higher customer take rates or win-back and resulting increases in VoIP revenues) would outweigh the potential costs (*i.e.*, network administration costs and possible customer churn). Compare Verizon/MCI Aug. 8 *Ex Parte* Letter at 10-11 (discussing possible network administration costs and technical obstacles associated with a selective degradation strategy, although suggesting that some of the technical obstacles might not be that great) with Earthlink Aug. 26 *Ex Parte* Letter at 7-8 (selective degradation possible on current network architecture and would not be easily identified or defeated). In the race to roll out competitive, nationwide VoIP offerings, we are not convinced that the merged entity has much to gain from blocking or affirmatively degrading rival VoIP services.

⁴¹⁶ See, e.g., EarthLink Aug. 26 *Ex Parte* Letter at 4 (explaining that, while VoIP calls are routed in a variety of ways today, EarthLink currently routes VoIP calls solely over Level 3's backbone until they are handed off to the PSTN). EarthLink speculates that within two years VoIP providers might choose to route 50% of VoIP traffic between Internet backbones. See, e.g., *id.*, Attach. at para. 11. While we find it fundamentally speculative that VoIP providers necessarily will choose to pursue the approach EarthLink proposes, we note in any event that we find it unlikely that the merged entity would have the incentive to engage in such conduct.

⁴¹⁷ See, e.g., Broadwing and SAVVIS Aug. 12 *Ex Parte* Letter Wilkie Decl. at para. 6 (noting the excess capacity held by Internet backbone providers).

⁴¹⁸ EarthLink, for example, asserts that a backbone provider might assign competing VoIP traffic to a "queue" that results in those packets being delivered only after all the other queues are empty. EarthLink Aug. 26 *Ex Parte* Letter, Collins Decl. at para. 7. To the extent that there is excess capacity, however, the other queues will quickly empty, and there will be little or no delay for the competing VoIP traffic, absent some affirmative efforts to delay that traffic. Cf. *id.* (noting that the backbone provider might choose to implement this queuing process only in certain circumstances, such as high-traffic periods).

consumers.⁴¹⁹ Because we find that this commitment will serve the public interest, we accept it and adopt it as a condition of our merger approval.

144. *Special Access and the Internet Backbone Market.* Several commenters maintain that the merged firm will have an incentive to leverage its alleged market power in the special access market to gain a competitive advantage in the backbone and broadband markets.⁴²⁰ As noted above, the issue of competition in the special access market is currently being addressed in two ongoing rulemaking proceedings, which will allow the Commission to address any competitive issues on a full record on an industry-wide basis.⁴²¹

F. Wholesale Interexchange Competition

145. We find that the merger is not likely to result in anticompetitive effects in the wholesale interexchange services market. We conclude that the market will remain competitive post merger, due primarily to the presence of extensive competitive national networks with excess capacity.

1. Relevant Markets

a. Relevant Product Markets

146. The Commission previously has identified wholesale domestic, interstate, interexchange (*i.e.*, long distance) services as a separate product market,⁴²² although it has not always found it necessary to conduct a separate analysis of that product market.⁴²³ In light of concerns raised by some commenters, we address here the impact of the proposed merger on the market for wholesale long distance services.

b. Relevant Geographic Markets

147. Consistent with our definition of the relevant geographic markets for retail enterprise and retail mass market services,⁴²⁴ we conclude that the relevant geographic market for wholesale long distance services is the customer's location.⁴²⁵ We then aggregate locations where customers face similar competitive choices. Since all the major providers of wholesale long distance services have nationwide networks, we can aggregate customers of wholesale long distance service who are located throughout the United States. Moreover, wholesale long distance customers generally need to connect to the wholesale long distance provider at multiple locations throughout the United States. Consequently, we find it

⁴¹⁹ See Verizon Oct. 31 *Ex Parte* Letter, Attach. at 5.

⁴²⁰ See, e.g., Broadwing and SAVVIS Petition at 55-58; CompTel/ALTS Petition at 22-25; Consumer Federation *et al.* Petition at 24; Global Crossing Comments at 6, 9; BT Americas White Paper at 13-14.

⁴²¹ See discussion *supra* at Part V.B (Wholesale Special Access Competition).

⁴²² See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18041-42, para. 28.

⁴²³ *Id.*

⁴²⁴ See *supra* Parts V.C (Retail Enterprise Competition), V.D (Mass Market Competition).

⁴²⁵ We note that individual customers of wholesale long distance services are, like larger, multi-location enterprise customers, likely to require access to service at multiple geographic locations, often throughout the United States or a region thereof. See *supra* Part V.C (Retail Enterprise Competition).

appropriate to aggregate customer locations and evaluate wholesale long distance services at the national level.⁴²⁶

2. Competitive Analysis

148. The record does not support the contention of some commenters that the Applicants, unilaterally or in conjunction with the proposed SBC/AT&T entity, will be able to exercise market power to discriminate against retail competitors by withdrawing, in whole or in part, from the wholesale long distance market or by providing wholesale long distance service on discriminatory terms or conditions.⁴²⁷ The record shows that MCI's wholesale long distance revenues have been declining due to significant competition from multiple other facilities-based long distance service providers.⁴²⁸ The evidence of wholesale long distance competition is consistent with prior Commission findings that Sprint, Qwest, and others have a significant presence in this market.⁴²⁹ As a result, the Applicants' ability to discriminate against their retail competitors will be highly constrained, contrary to the concerns of some commenters.⁴³⁰ Further, as the Commission has found previously, it would not be economically rational for the Applicants to attempt to discriminate against rival providers of retail long distance service if the wholesale market is highly competitive and there are numerous competing wholesale providers ready and able to supply those rivals.⁴³¹

⁴²⁶ We note that this approach is consistent with our definition of the relevant geographic markets for larger multi-location enterprise customers with a nationwide presence and for Tier 1 Internet backbone providers. *See supra* Parts V.C (Retail Enterprise Competition), V.E (Internet Backbone Competition). We reject the suggestion that the Commission examine specific routes in the Verizon region on which MCI and Verizon have overlapping facilities. *See* Qwest Bernheim Decl. at para. 59. First, the record contains no evidence to indicate the magnitude or scope of any such overlaps. Second, Verizon frequently purchases and resells long distance transport from independent providers, indicating that it is unlikely such overlaps occur frequently. *See, e.g.*, Letter from Dee May, Vice President, Federal Regulatory, Verizon to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, Suppl. Exh. 15.A.1 ([REDACTED]). Finally, the merger will not lead to horizontal concentration on those routes where MCI or Verizon is currently the sole provider of interexchange transport.

⁴²⁷ *See, e.g.*, United States Cellular Comments at 3-4, Independent Alliance Comments at 2-5; T-Mobile Reply at 14-18.

⁴²⁸ *See, e.g.*, MCI Info. Req., MCIFCC3-0015743 at MCIFCC3-15769 ([REDACTED]). We note, however, that MCI has experienced an upswing in minutes of use since [REDACTED]. *See* MCI Info. Req., MCIFCC24-499200 at MCIFCC24-499201. SBC/AT&T Oct. 14 *Ex Parte* Letter at Attach. (AT&T 4Q04 Business LD Voice Market Share Results) ([REDACTED]).

⁴²⁹ *See* SBC/AT&T Oct. 14 *Ex Parte* Letter at Attach. (AT&T 4Q04 Business LD Voice Market Share Results) (showing market shares based on revenues and volume for wholesale voice); MCI Info. Req., MCIFCC24-128007 at MCIFCC24-128011 [REDACTED]; *see also* AT&T Non-Dominance Order, 11 FCC Rcd at 3308, paras. 70, 72; *WorldCom/MCI Order*, 13 FCC Rcd at 18052-56, 18066-7, paras. 43-50, 70. Because we find there exists sufficient excess capacity in this market, we decline to impose non-structural conditions such as those suggested by United States Cellular and T-Mobile. *See* United States Cellular Comments at 2-5; T-Mobile Reply at 14-18.

⁴³⁰ *See supra* note 427. We reject as fundamentally speculative commenters' concerns that other BOCs will acquire the remaining independent facilities-based interexchange carriers. *See* ACN *et al.* Aug. 10 *Ex Parte* Letter, Attach. at 6. No such mergers are pending before the Commission and, in any event, the Commission could address any concerns arising from such mergers when, and if, they are presented to the Commission for approval.

⁴³¹ *See WorldCom/MCI Order*, 13 FCC Rcd at 18066-67, para. 70 ("[E]ven a long distance carrier with a large retail customer base will have an incentive to provide wholesale services to resellers if the reseller can obtain these services on favorable terms from other providers.") (footnote omitted). For the same reasons, we find the concerns (continued....)

149. The evidence in the record further demonstrates that there is significant spare capacity in this market.⁴³² In addition, the evidence shows that this industry segment faces increasing pressure from the migration of minutes to packet-switched voice services, Internet-based applications, and other technological substitutes,⁴³³ suggesting further reductions in MCI's presence in this market and increasing excess capacity by its competitors. Therefore, there should be more than sufficient capacity among the remaining independent providers of facilities-based wholesale long distance services to accommodate any carrier that cannot obtain satisfactory service from the Applicants.⁴³⁴ This evidence of continued competition from a variety of wholesale interexchange service providers convinces us that the merger is unlikely to result in anticompetitive effects through either unilateral effects or coordinated interaction.

150. Finally, the record does not support the contention of some commenters that the Applicants, unilaterally or in conjunction with the proposed SBC/AT&T entity, will adversely affect the viability of the wholesale interexchange market by eliminating Verizon as a purchaser of wholesale long distance services.⁴³⁵ While the merger likely will gradually eliminate Verizon as a purchaser of wholesale long distance services, this process likely will take some time,⁴³⁶ allowing affected carriers an opportunity to seek other customers. As the Commission has noted previously, "[o]ur statutory duty is to protect efficient competition, not competitors."⁴³⁷

151. Based on the foregoing, we find that the merger is not likely to result in anticompetitive effects in the wholesale segment of the domestic, interstate, interexchange market.

(Continued from previous page)

of United States Cellular regarding the sharing of "call detail" or other "competitively sensitive information" between Verizon, MCI and their wireless affiliate unconvincing. See United States Cellular Comments at 4. To the extent United States Cellular or other parties have concerns, they should be able to negotiate an appropriate arrangement with a competitive provider of wholesale long distance services. Further, although United States Cellular has not identified the nature of the information it seeks to protect with great specificity, we note that § 222(b) of the Act provides all carriers with certain protections. See 47 U.S.C. § 222(b).

⁴³² See, e.g., Level 3 Communications, Inc., SEC Form 10-K at 18 (filed March 16, 2005) ("The result of [high competitive entry] was an oversupply of capacity and an intensely competitive environment."), available at <http://www.sec.gov/Archives/edgar/data/794323/000104746905006668/a2153221z10-k.htm>; Leucadia National Corp., SEC Form 10-K at 44 (filed March 14, 2005) (stating that "telecommunications capacity far exceeds actual demand and the marketplace is characterized by fierce price competition. . .") (Leucadia 2005 10-K), available at http://www.sec.gov/Archives/edgar/data/96223/000090951805000159/jd3-14_new10k.txt.

⁴³³ See, e.g., MCI Info. Req., MCIFCC24-0499664 at MCIFCC24-0499672.

⁴³⁴ Qwest Bernheim Decl. at para. 62 ("Even with [the SBC/AT&T and Verizon/MCI] mergers, significant independent long distance transport capacity would remain.").

⁴³⁵ See, e.g., ACN et al. Comments at 27-29.

⁴³⁶ See, e.g., Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, Suppl. Exh. 15.A.1 ([REDACTED]).

⁴³⁷ Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company, File Nos. 00762-CL-AL-1-95 through 00803-CL-AL-1-95; 00804-CL-TC-1-95 through 00816-CL-TC-1-95; 00817-CL-AL-1-95 through 00824-CL-AL-1-95; and 00825-CL-TC-1-95 through 00843-CL-TC-1-95, Memorandum Opinion and Order, 12 FCC Rcd 22280, 22288, para. 16 (1997) (citing *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1491-92 (D.C. Cir. 1995)).

G. U.S. International Services Competition

152. In this section we consider the competitive effects of the proposed merger in the markets for U.S. international services.⁴³⁸ We conclude that the merger is not likely to result in anticompetitive effects for international services provided to mass market, enterprise or global telecommunications customers.⁴³⁹ Additionally, we find that the merger will not result in anticompetitive effects in the international transport, facilities-based IMTS, or international private line markets.

153. While there exist specific differences between domestic and international long distance telecommunications services, both types of services reflect fundamental similarities. As with access to domestic long distance telecommunications, mass market customers may presubscribe to a stand alone domestic long distance telecommunications carrier that includes access to international telecommunications services; select a provider of bundled local and long-distance service that includes access to international long distance telecommunications; or use prepaid calling cards, dial-around carriers, VoIP carriers, or wireless telecommunications carriers. In contrast to domestic long distance service, however, mass market customers of international long distance telecommunications generally appear more willing to access carriers other than their presubscribed carrier through the use of prepaid calling cards and dial-around services.

154. The expressed preferences of international mass market telecommunications users reflect several distinct attributes of international telecommunications that differ from domestic long distance telecommunications. Specifically, because international routes differ in terms of traffic capacity, competition, and government regulation, the wholesale cost and consequently retail price of calls to different international destinations vary. For example, the cost to terminate international services – the settlement rate – varies for each market and is usually higher than that for domestic services. Because of this, consumer preferences for access to international long distance telecommunications will differ from consumer preferences for domestic long distance telecommunications, notwithstanding that the *same* modes of access are available for either domestic or international long distance telecommunications.

⁴³⁸ U.S. international services consist of all U.S.-billed telecommunications services, including calls that originate in the United States and terminate at a foreign point and calls that originate at a foreign point but are billed by a U.S. carrier, such as international calling card or prepaid card calls. This proceeding includes thirteen applications to transfer control of licenses and authorizations covering the provision of U.S. international services and the underlying facilities used to provide them: seven international 214 authorizations, four submarine cable landing licenses, and two earth station authorizations. See File Nos. ITC-T/C-20050314-00095, ITC-T/C-20050314-00096, ITC-T/C-20050314-00097, ITC-T/C-20050314-00098, ITC-T/C-20050314-00099, ITC-T/C-20050314-00100, ITC-T/C-20050314-00101 (International section 214 Applications); File Nos. SCL-T/C-20050317-00006, SCL-T/C-20050317-00007, SCL-T/C-20050317-00008, SCL-T/C-20050317-00009 (Submarine Cable Applications); SES-T/C-20050314-00321 and SES-T/C-20050314-00338 (Earth Station Applications). See also Verizon June 23 *Ex Parte* Letter at Attach.

⁴³⁹ Because the proposed transfer of control would result in MCI acquiring affiliations with Verizon's market-power affiliates in the Dominican Republic, Gibraltar and Venezuela, our rules require that we condition grant of the international section 214 transfer applications on MCI's compliance with the dominant carrier safeguards set out in section 63.10 of our rules for the provision of service on each of these routes. See 47 C.F.R. § 63.10. Similarly, for the U.S.-Dominican Republic and U.S.-Venezuela routes, our rules require that we condition grant of the submarine cable transfer applications on MCI's compliance with the competitive safeguards contained in section 1.767(l) of our rules. See 47 C.F.R. § 1.767(l). We find that, as conditioned, grant of the international section 214 and submarine cable transfer applications is unlikely to cause vertical harms due to Verizon's market-power affiliates in the Dominican Republic, Gibraltar and Venezuela.

155. There generally appear to be few barriers to entry into the international long distance telecommunications industry for either facilities-based or resale entrants. Resale entrants, in particular, face relatively modest costs of market entry, as evidenced by the presence of approximately 770 international telecommunications resellers. These low entry barriers make it unlikely that Verizon will be able to raise price or restrict output after the merger.

156. We examine below three separate end-user product markets: the mass market, enterprise market, and global telecommunications market. We also separately examine the international transport capacity market, which provides the physical transmission path that carriers use to deliver services in the end-user markets, and two wholesale, or intermediate, markets, namely, facilities-based international message telecommunications service (IMTS) and private line service. Input markets, particularly international transport capacity, are a significant component of the international services market. Wholesale markets for international service also are essential components to the delivery of end-user retail services. We also examine the Applicants' affiliations with foreign carriers and the application of the Commission's rules providing for foreign carrier safeguards on three international routes.

1. Input Markets

a. International Transport Market

157. We find that international transport, particularly submarine cable capacity, is a relevant market for purposes of this merger analysis. International transport refers to the international physical transmission paths carriers use to offer services between the United States and other countries. International traffic can be transmitted via submarine cable, satellite or terrestrial links. Most U.S. international traffic, however, is transmitted over submarine cables.⁴⁴⁰ Because of this, and because neither of the Applicants owns international satellite capacity, we focus on how the merger will affect concentration of ownership of submarine cables.

158. In evaluating mergers of carriers providing international service, the Commission historically has recognized that it must separately consider the effect of a merger on routes to particular countries. In the last decade, however, as international transport capacity has increased dramatically, we have seen that U.S. licensed international submarine cables have tended to serve entire regions.⁴⁴¹ We have also observed that carriers increasingly have been willing to deliver traffic indirectly, via a third country, if that permits them to reduce their transport or termination costs. For these reasons, the Commission has employed a regional approach in analyzing the international transport market, although, at times, it also has examined international transport capacity on particular routes.⁴⁴² Here, we evaluate submarine cable

⁴⁴⁰ In 2003, submarine cables accounted for 80% of the overall active transmission capacity. Terrestrial links accounted for 18% and satellites for 1%. See International Bureau, FCC, 2003 Section 43.82 Circuit Status Data, at 13, Table 2, 19, Table 3, and 25, Table 4 (Dec. 2004) (2003 Circuit Status Report) available at www.fcc.gov/ib/pd/pf/csmanual.html; International Bureau Releases 2003 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Capacity Use Shows Healthy Growth, News Release (IB Dec. 23, 2004), at 1.

⁴⁴¹ See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18073, para. 84 (stating that, although the input market is more accurately described as a series of point-to-point markets and although it may be necessary to examine specific country routes when considering the effects of a proposed merger on relevant input markets, it is appropriate in this instance to adopt a regional approach to analyzing the international transport market).

⁴⁴² See, e.g., *AT&T/British Telecom Order*, 14 FCC Rcd at 19161-64, para. 48 (1999); *The Merger of MCI Communications Corporation and British Telecommunications*, Memorandum Opinion and Order, GN Docket No. 96-245, 12 FCC Rcd 15351, 15389-97, paras. 94-122 (1997) (*BT/MCI Order*).

capacity in the Atlantic, Pacific, and Americas regions.⁴⁴³ We examine ownership of U.S. half-circuits (including the U.S. half of whole-circuits), because MCI and Verizon predominantly own capacity on the U.S. end of cable systems. Our concern is whether the proposed merger could increase ownership concentration of U.S. half-circuits to such an extent that the combined entity would have the ability to exercise market power through unilateral or coordinated action.⁴⁴⁴ We examine existing submarine cable capacity and take into account future capacity that may be achieved through the use of wavelength division multiplexing (WDM) technology within the next two years.⁴⁴⁵

159. We find that the merger will not increase concentration significantly in any of the three international transport market regions, and is not likely to result in anticompetitive effects given the relatively low market shares of the Applicants, the low barriers to entry, and the substantial amount of transport capacity available now and upgradeable with WDM technology from carriers other than the Applicants. In each of the three regions, the Atlantic Region, the Americas Region, and the Pacific Region, MCI and Verizon and its affiliates, in the aggregate, hold less than [REDACTED] percent of the total capacity for 2005.⁴⁴⁶ With respect to low barriers to entry, we note that the planning and

⁴⁴³ We note that several countries ("thin route" countries) are not linked to the United States by cable and are served only by satellites. See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18073-74, para. 85. MCI and Verizon do not hold any ownership interest in satellite systems or satellite transponder capacity that would serve thin route countries. Thus, the merger will not increase concentration in the provision of transport capacity on these routes. Additionally, we note that traffic on the U.S.-Mexico and U.S.-Canada routes primarily uses terrestrial facilities. We are not aware of any shortage of capacity on these routes. See, e.g., 2003 Circuit Status Report, at Table 4, p. 22 (on U.S.-Canada route, there were 432,819 active and 447,804 idle circuits; on U.S.-Mexico route, there were 265,495 active and 366,558 idle circuits). Verizon has less than [REDACTED] percent of U.S.-billed minutes on these routes. Therefore, we do not review either the thin route markets or the U.S.-Mexico and U.S.-Canada routes as part of our transport capacity analysis in this proceeding.

⁴⁴⁴ MCI and its wholly-owned subsidiaries MCI Communications Corporation, MCI International, Inc. and MFS Globenet, Inc. hold ownership interests in the following cables: in the Atlantic Region, Columbus II, Columbus III, TAT-12/13, TAT-14; in the Pacific Region, China-U.S., Guam-Philippines, Japan-U.S., Southern Cross, TPC-5; in the Americas Region, Americas-1, Americas-2, Antillas-1, Arcos-1, Bahamas-2, Maya-1, Pan American, Taino-Carib. See Submarine Cable Applications. Following consummation of the transaction, MCI will continue to own the stock of its subsidiaries, and MCI and its subsidiaries will continue to hold all of the Commission authorizations that they held prior to the transaction, but MCI will transfer control of the cable landing licenses from MCI to Verizon. See each of the four Submarine Cable Applications, at 2. In addition, Verizon's affiliates Verizon Dominicana and CANTV, and a number of wholly-owned subsidiaries in Asia and Europe that are part of a group of companies referred to as Verizon Global Solutions (VGS), currently hold ownership interests in the following submarine cables: in the Atlantic Region, Columbus II, Columbus III, TAT-12/13; in the Pacific Region, Japan-U.S., PacRimEast, TPC-5; in the Americas Region, Americas-1, Americas-2, Antillas-1, Arcos-1, Bahamas-2, Maya-1, Pan American, Taino-Carib. The VGS companies are Verizon Hawaii International Inc., GTE Far East (Services) Limited, Verizon Global Solutions Holdings V Limited d/b/a/ Verizon Global Solutions Japan, Verizon Global Solutions U.K. Ltd., Verizon Global Solutions France S.A.S., Verizon Global Solutions Germany GmbH, Verizon Global Solutions Netherlands B.V., Verizon Global Solutions Belgium B.V.B.A., Verizon Global Solutions Italy S.r.l., Verizon Global Solutions Spain S.r.l., and Verizon Global Solutions Holdings II Ltd. See Verizon/MCI Application, Verizon/MCI Lack/Pilgrim Decl. at 3, 3 n.2, and Exh. 1.

⁴⁴⁵ See, e.g., *DOJ/FTC Guidelines*, § 3.2 Timeliness of Entry. WDM technology dramatically increases the carrying capacity of fiber infrastructure. For example, adding one wavelength to a 40 Gbps cable (4 fiber pairs of 10 Gbps each) will double the capacity of the cable to 80 Gbps, and upgrading to eight wavelengths will increase capacity to 320 Gbps.

⁴⁴⁶ For the Atlantic Region, see Verizon/MCI Lack/Pilgrim Decl. at 4 (stating Verizon owns less than 1% in the Atlantic Region). For the Americas Region, see Verizon/MCI Lack/Pilgrim Decl. at 4 (Verizon less than 2%). For the Pacific Region, see Verizon/MCI Lack/Pilgrim Decl. at 4 (Verizon less than 1%). For MCI shares in all three (continued....)

construction of a new cable system can be implemented within two years while WDM upgrades can be implemented in less than a year.⁴⁴⁷

160. We also consider separately the Applicants' ownership shares on each of the U.S.-Dominican Republic and U.S.-Venezuela routes, where Verizon is affiliated with a market-power carrier at the foreign end (Verizon Dominicana in the Dominican Republic and CANTV in Venezuela).⁴⁴⁸ We find that there likely is no adverse competitive effect because the combined entity will have small post-merger market shares. On the U.S.-Venezuela route, we find the combined ownership share of international transport capacity to be less than [REDACTED] percent. On the U.S.-Dominican Republic route, Verizon Dominicana holds between [REDACTED] percent (depending on whether IRU interests are included). Because MCI's interests are small, the combined entity's interest would be [REDACTED] percent, including the IRU interest. Thus, we find that the merger would not result in any significant increase in ownership concentration.⁴⁴⁹

b. Foreign Cable Landing Station Access

161. We find that access to foreign cable landing stations, an essential input for the provision of U.S. international services, is also a relevant product market in this merger.⁴⁵⁰ Verizon's affiliates, Verizon (Continued from previous page) _____ regions, as well as the combined MCI and Verizon shares, see Confidential Appendix F at Table 1 and accompanying notes.

⁴⁴⁷ See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18084, para. 105 (stating that a firm can decide to construct and begin operating a new cable system in response to an exercise of market power within two years); *id.* at 18081, para. 101 (stating that WDM upgrades can be implemented in less than a year). With WDM technology, capacity can now be added to submarine cables at a fraction of the cost necessitated by older technologies, in large part because with WDM there is no need to lay additional cable to increase capacity.

⁴⁴⁸ Verizon indirectly owns 100% of Verizon Dominicana C. por A. (formerly CODETEL and now Verizon Dominicana) in the Dominican Republic and 28.5% of Compañía Anónima Nacional Teléfonos de Venezuela (CANTV) in Venezuela. The Commission lists these foreign providers as having market power. See, e.g., *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, DA 04-1584, 19 FCC Rcd 20385 (IB 2004) (listing CODETEL, the predecessor to Verizon Dominicana, and CANTV as market-power operators in, respectively, the Dominican Republic and Venezuela). Verizon Dominicana provides local, wireless, national and international long distance and Internet access services throughout the Dominican Republic. CANTV offers local services, national and international long distance, Internet access, and wireless services in Venezuela as well as public telephone, private network, data transmission, directory, and other value-added services. See, e.g., MCI, Inc., Application for Authority to Transfer Control of Cable Landing License, File No. SCL-T/C-20050317-00006, at 7; Verizon Communications Inc., Form 10-K for Fiscal Year Ended December 31, 2004, at 14, available at www.sec.gov/Archives/edgar/data/732712/000119312505049044/0001193125-05-049044-index.htm.

⁴⁴⁹ Two cables – Antillas-1 and Arcos-1 – serve the U.S.-Dominican Republic route. Six cables – Americas-1, Americas-2, Arcos-1, GlobeNet, PAC, and Pan American – serve the U.S.-Venezuelan route. See, e.g., *2003 Circuit Status Report*, at 35, Table 7. See also Confidential Appendix F at Table 2.

⁴⁵⁰ See, e.g., *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23953, para. 145 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000) (identifying cable landing station access as relevant input for provision of U.S. international services); *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, IB Docket No. 00-106, 16 FCC Rcd 22167, 22180, para. 23 (2001) (*Submarine Cable Report and Order*) (same); *BT/MCI Order*, 12 FCC Rcd at 15373, para. 43 (same).

Dominicana and CANTV, own all or the majority of cable landing stations for cable landing, respectively, in the Dominican Republic and Venezuela.⁴⁵¹ MCI and its foreign affiliates, however, do not own cable landing stations in either the Dominican Republic or Venezuela. The proposed merger, therefore, would not result in an increase in concentration in this input.

162. Moreover, although we identify Verizon Dominicana and CANTV as among the significant participants in the cable landing station input market for the U.S.-Dominican Republic and U.S.-Venezuela routes, respectively, we find, as discussed below, that our standard foreign affiliation safeguards will serve to protect against any anti-competitive conduct by these affiliated carriers possessing market power at the foreign end of a U.S.-licensed cable.⁴⁵² Therefore, we do not find that the proposed merger will increase Verizon's ability to use the market position of its two foreign affiliates in foreign cable landing station access so as to result in anticompetitive effects in any end-user market for U.S. international services on these two routes.

2. Intermediate Facilities-Based Markets

a. Facilities-Based IMTS

163. IMTS consists of telecommunications services provided over the public switched networks of U.S. international carriers. In recent years, IMTS has evolved into a two-sector industry – a wholesale sector in which carriers can buy and sell bulk IMTS minutes and a retail sector in which carriers sell minutes to “end users.” Wholesale IMTS minutes are ultimately provided by facilities-based U.S. international carriers that terminate those minutes over their own networks through interconnection agreements with their foreign correspondents.⁴⁵³ As the basis for all IMTS provisioning, facilities-based IMTS is the fundamental international service provided over the public switched network.⁴⁵⁴

164. According to data filed pursuant to section 43.61 of the Commission's rules, as of 2003 – the most recent year for which data are available – there were 40 carriers that competed in the markets for facilities-based IMTS. These carriers generated revenues of \$8.9 billion with sales of 48.0 billion U.S.

⁴⁵¹ Verizon Dominicana owns and operates the two cable landing stations jointly serving the two submarine cables on the U.S.-Dominican Republic route, the Antillas-1 and Arcos-1 cables. CANTV owns and operates the four cable landing stations serving four of the six submarine cables on the U.S.-Venezuela route (two stations jointly serving Americas-1 and Americas-2 and two stations jointly serving Arcos-1 and Pan American); combined, these four cables provided, in 2003-2005, 929,880 of the route's 1,413,720 64-Kbps equivalent circuits, or approximately 66% of capacity on this route. Two additional cables, GlobeNet and PAC-1, each with 241,920 64-Kbps equivalent circuits, provided the remaining capacity on the U.S.-Venezuela route.

⁴⁵² See 47 C.F.R. §§ 1.767(l), 1.768(f) (submarine cable foreign affiliation rules); *see also, infra*, at paras. 178-181. (discussion of our application of the foreign affiliation rules to cable landing licensees affiliated with a market-power provider on a cable's destination route).

⁴⁵³ Approximately 80% of all facilities-based IMTS minutes are sold to other carriers which then resell them to end users or to other resellers. *See* Strategic Analysis and Negotiations Division, International Bureau, FCC, 2003 *International Telecommunications Data* at 1 (January 2005) (2003 Section 43.61 Report) available at <http://www.fcc.gov/ib/sand/mniab/traffic/>. U.S. facilities-based carriers also sell IMTS services to foreign carriers, many of which find it profitable to terminate their international calls to third countries via the United States.

⁴⁵⁴ Facilities-based IMTS is the first point in a supply chain of international inputs at which full end-to-end connectivity between the United States and any foreign point is available within the United States.

billed minutes for all international routes combined.⁴⁵⁵ Overall, AT&T and MCI were the largest providers, with 29.5 percent and 29.2 percent, respectively, of U.S. billed minutes.⁴⁵⁶ Other carriers with large shares of U.S.-billed minutes were Sprint, at 13.9 percent, and IDT, at 7.3 percent.⁴⁵⁷ None of the remaining carriers, including Verizon, had more than [REDACTED] percent of U.S.-billed minutes for 2003.⁴⁵⁸

165. Evaluation of market shares on a route-specific basis shows that Verizon has a small share of U.S. billed minutes except on a few routes.⁴⁵⁹ Verizon's market share is less than [REDACTED] on all but three of 247 international routes (Dominican Republic, Libya, and Malawi). Verizon's largest market share is on the U.S.-Dominican Republic route [REDACTED]. Post merger, the combined entity would have a market share of [REDACTED] on the U.S.-Dominican Republic route. With this exception, the increases in market concentration are minor and reflect the fact that Verizon has a small portion of total traffic on such routes. With respect to the U.S.-Dominican Republic route, as noted below, we find that the absence of significant barriers to entry will serve to constrain any attempt by the merging parties to exercise market power on this route.

166. We find that there are no significant barriers to entry in the provision of facilities-based IMTS on most U.S. international routes. For facilities-based carriers, substantial international transport capacity exists in all regions. Foreign termination services are available on almost every route, as shown by the number of facilities-based carriers serving each route. The 2003 Section 43.61 Report shows that there are ten or more reporting facilities-based IMTS carriers on 218 of 247 international routes.⁴⁶⁰ We also note that there is a growing "spot market" for international termination services whereby carriers with excess capacity to various foreign destinations can auction foreign termination services to any U.S. carrier

⁴⁵⁵ These numbers include confidential as well as non-confidential data filed pursuant to section 43.61 of the Commission's rules. For non-confidential data only, see 2003 Section 43.61 Report at Table A1. Although facilities-based IMTS may be provisioned through switches serving local areas or regions, this product can be resold easily and at very little cost over national transmission facilities. Thus, the price of wholesale IMTS does not differ significantly, or at all, between locales in the United States. Data aggregated to the nationwide level for facilities-based IMTS are available in the Commission's section 43.61 annual data reports for each U.S. international route and for the aggregation of all U.S. international routes, termed "world total" data.

⁴⁵⁶ These numbers were calculated using approximately 46.3 billion U.S.-billed minutes in 2003. The 46.3 billion minutes include confidential as well as non-confidential data filed pursuant to section 43.61 of the Commission's rules. For non-confidential data only, see 2003 Section 43.61 Report at Table A1.

⁴⁵⁷ See *id.*

⁴⁵⁸ See *id.* See also Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 2, 2005) (Verizon Sept. 2 *Ex Parte* Letter). Verizon offers international long distance services to end users in the United States through various subsidiaries and affiliates. These are: Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance (VLD); NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions (VES); Verizon Global Solutions Inc. (VGSI); Verizon Select Services Inc. (VSSI) (VGSI and VSSI merged on March 1, 2005); Verizon Airfone Inc. (formerly GTE Airfone Incorporated); Cellco Partnership d/b/a Verizon Wireless; CODETEL International Communications Inc. (CIC); PRT Larga Distancia, Inc.; Verizon Hawaii International Inc. (VHI); and GTE Pacifica Incorporated d/b/a Verizon Pacifica (Verizon Pacifica). See Verizon/MCI Lack/Pilgrim Decl. at 2.

⁴⁵⁹ See 2003 Section 43.61 Report at Table A (nonconfidential filings only).

⁴⁶⁰ For instance, the number of U.S. facilities-based carriers serving the Dominican Republic, Libya, and Malawi is 23, 20, and 17, respectively.

seeking such services.⁴⁶¹ Given the absence of significant barriers to entry, any attempt by the merging parties to exercise market power on any international route would be frustrated by the entry of competitors attracted by the prospects of earning supra-competitive profits.

167. Another factor that should constrain the exercise of market power over facilities-based IMTS is the emergence of international VoIP services as a substitute for facilities-based IMTS. VoIP from the United States to foreign destinations is provisioned over the public Internet or private Internet Protocol networks, which use either private lines provided by common carriers or non-common carrier private networks. VoIP enables carriers to avoid significant termination costs associated with the provision of facilities-based IMTS over the public switched networks, making VoIP a low-cost alternative to facilities-based IMTS. Currently, demand for international VoIP is limited due to various problems with quality of service and customer access, but these problems should be mitigated in the future.

b. International Private Line Services

168. We also identify the provision of facilities-based private line service, a fundamental service for dedicated connectivity between points in the United States and foreign destinations, as a relevant product market. Private lines are facilities that provide dedicated connectivity between two geographically distant customer points and are sold to customers as common carriage offerings. Private line facilities are offered to the public in sizes ranging from 64-Kbps circuits (DS0) up to very high speed trunks equivalent to 1,890 64-Kbps circuits (STM-1), or higher. International private lines provided by U.S. carriers connect customer locations in the United States to locations abroad.

169. The annual section 43.61 report shows that in 2003 there were 42 carriers that competed in the U.S. markets for international private line services. These carriers generated revenues of \$707 million, with sales of 2.4 million equivalent 64-Kbps circuits.⁴⁶² Nationally, the largest participants are AT&T, KDDI America, Level 3 Communications, NTT America, Qwest Services, Singapore Telecom USA, Sprint, and T-Systems North America, each with between five and sixteen percent of total equivalent 64-Kbps circuits. Verizon was the twelfth-largest participant nationally with a share of less than [REDACTED] percent. MCI was the sixteenth-largest participant nationally with a share of less than one percent. Based on Verizon's and MCI's very low share of international private line circuits, we find that the merger poses no competitive concerns with regard to the provision of international private line service.

3. End-User Markets

a. Mass Market

170. The mass market for international telecommunications services consists of international telecommunications services sold directly to residential and small business customers. The primary suppliers of such services are facilities-based IMTS carriers and IMTS resellers.⁴⁶³ We find that the

⁴⁶¹ Arbinet Exchange is an example of a company bringing buyers and sellers of international termination services together.

⁴⁶² These data were calculated using both confidential as well as non-confidential data filed pursuant to section 43.61 of the Commission's rules. For non-confidential data only, see *2003 Section 43.61 Report* at Table B1.

⁴⁶³ Although we cannot identify precisely which VoIP providers should be included in the same market as mass market IMTS, we nevertheless find that certain VoIP providers should be included as participants in this market. Cf. *supra* Part V.D (Mass Market Competition). We further find that wireless providers of IMTS should be included in this market.

market is not highly concentrated and that the merger is not likely to have anticompetitive effects. We also find that structural characteristics of the IMTS mass market facilitate entry and will ensure that the market remains competitive.

171. As discussed above,⁴⁶⁴ a mass market customer's presubscribed interexchange carrier and/or wireless carrier will be the presubscribed carrier for both the domestic and international long distance calls placed by that customer. Presubscription, however, is not as important a factor in a consumer's choice of an IMTS provider as it is for determining his choice of a domestic long distance provider. Because international calls are relatively more expensive than domestic long distance calls, consumers who use a large amount of international telecommunications services often choose IMTS providers other than their presubscribed carrier by using "dial-around" service or prepaid calling cards, which often are significantly less expensive.⁴⁶⁵ The facts that IMTS resale comprises such a large portion of IMTS minutes, and dial-around carriers and prepaid cards make up a high proportion of IMTS resale, suggest that many consumers approach IMTS as an "a la carte" service often purchased from providers other than their presubscribed carrier, including independent resellers.⁴⁶⁶

172. In addition, the IMTS mass market is not highly concentrated. There are approximately 40 facilities-based carriers and approximately 770 resellers providing IMTS service. Many of these carriers offer service on all or most international routes and sell directly to residential and small business customers. Major market participants include MCI, AT&T, IDT Corporation, and Sprint, as well as a number of other highly active facilities-based carriers and resellers.⁴⁶⁷ Within the last several years, AT&T, MCI, and Sprint have begun focusing on the provision of wholesale IMTS to resale carriers. Many smaller, highly competitive resellers also have entered in recent years to compete against the traditional carriers in the provision of mass market IMTS. As a result, the traditional international carriers no longer hold the substantial market shares in the IMTS mass market that they once held. Although Verizon has the most presubscribed lines of any carrier within its footprint, the fact that Verizon sold only [REDACTED] IMTS minutes to end users in 2004 is evidence that it possesses only a limited share of mass market IMTS within its footprint.⁴⁶⁸ Given such a competitively dynamic environment, we find that the merger is not likely to result in anticompetitive effects in the IMTS mass market.

⁴⁶⁴ See *supra* at paras. 84-85 (Mass Market Competition).

⁴⁶⁵ Based on a study in the record of this proceeding, international prepaid minutes constituted approximately [REDACTED]% of total end-user international minutes for 2003. See, e.g., Verizon Info. Req. at VZFCC-Q23-8251.pdf; FCC 2003 International Telecommunications Data (sum of world total minutes in Tables 41 and 42).

⁴⁶⁶ In 2003, U.S. end user customers purchased approximately 37 billion IMTS minutes. See 2003 Section 43.61 Report, Tables 41 and 42. Resellers reported approximately 35 billion IMTS minutes in 2003, although this figure includes substantial double-counting. *Id.* at Table D. Resold IMTS is mostly, but not entirely, provided as a non-presubscribed service, such as prepaid calling cards or "dial-around."

⁴⁶⁷ See 2003 Section 43.61 Report, Tables A-D.

⁴⁶⁸ An extremely rough upper bound on Verizon's market share can be derived as follows: Nationwide, end-user IMTS minutes totaled approximately 37 billion minutes in 2003. See 2003 Section 43.61 Report, Tables 41, 42. Reflecting growth in traffic, it is likely that volume grew to approximately 40 billion end-user IMTS minutes in 2004. The proportion of residential and small business minutes to total end-user minutes is approximately 60%, so that the residential market in 2004 consists of approximately 24 billion minutes nationwide. Because Verizon has approximately 32% of total U.S. local loops in its footprint, we estimate that approximately 7.7 billion residential minutes were sold by all carriers in the Verizon footprint in 2004. Verizon reported [REDACTED] end-user minutes in 2004. If all of Verizon's minutes are residential and small business minutes (*i.e.*, if Verizon sells *no* (continued....))

173. We also find that various structural characteristics of the IMTS mass market will ensure that the market remains competitive. As explained above, mass market IMTS customers have multiple access channels through which to obtain international service, including calling plans offered by their presubscribed long-distance carrier, “dial-around” services, prepaid calling cards, as well as important emerging access channels such as discounted international calling plans offered by wireless carriers and VoIP providers. In addition, as discussed above, there are no significant barriers to entry in the provision of mass market IMTS. For facilities-based providers, substantial international transport capacity exists in all regions and foreign termination services are available on virtually every route. Because facilities-based IMTS minutes are a crucial input for resellers, their wide availability will continue to sustain a highly active resale sector. Indeed, the presence of approximately 770 resellers nationwide demonstrates that successful entry into the IMTS mass market is feasible even for smaller, non-facilities-based carriers.

b. Enterprise Market

174. The enterprise market for international telecommunications services consists of international telecommunications services sold directly to medium and large business customers. As discussed above in the context of domestic enterprise services, we find that medium and large enterprise customers are sophisticated purchasers of telecommunications services likely to make informed choices based on expert advice about service offerings and prices. As we concluded above, so long as no structural barriers prevent carriers from offering services to such customers, they will seek out best-priced alternatives.⁴⁶⁹ The provision of international services to larger business customers depends in large part on the ability to obtain critical inputs, such as international transport capacity and operating agreements with carriers on the foreign end, as well as the technical ability to provide the specific services demanded by larger business customers. Except with respect to the three routes where the combined entity will be affiliated with a market-power carrier at the foreign end of the route, the combined entity would not have the ability to exercise market power over these critical inputs. Given the standard foreign carrier safeguards we apply to the transfer of the international section 214 and submarine cable authorizations to serve the three routes, as discussed below, the merger also will not have anticompetitive effects on the ability of other carriers to obtain critical inputs on these three routes. Moreover, we find that many carriers have the technical capability to provide business services. In light of these facts, we conclude that the merger is unlikely to reduce competition in this market.

c. Global Telecommunications Services

175. The global telecommunications services (GTS) market, also known as the global seamless services market, is a segment of the enterprise market that is focused on large multi-national customers that require connectivity to multiple locations throughout the world, not just within the United States. These customers are generally large multi-national corporations that have significant expertise in telecommunications issues.⁴⁷⁰ The Commission has defined the global seamless services market as “a combination of voice, data, video, and other telecommunications services that are offered by a single source or multiple sources over an integrated global or regional international network of owned or leased

(Continued from previous page)

IMTS to large businesses) then it has approximately [REDACTED]% of the mass market in its footprint. This is an upper limit on Verizon’s mass IMTS market share.

⁴⁶⁹ See *supra* Part V.C (Retail Enterprise Competition).

⁴⁷⁰ *AT&T/British Telecom Order*, 14 FCC Rcd at 19151-57, paras. 22-39.

facilities, and that have equivalent (though not identical) quality, characteristics, features and capabilities wherever they are provided.”⁴⁷¹

176. We are not persuaded by BT Americas’ claims that the proposed transaction will result in anticompetitive effects in the provision of global telecommunications services.⁴⁷² BT Americas’ primary argument is that the merger would increase Verizon’s control over special access services for enterprise networks, a critical input for GTS.⁴⁷³ We have already addressed the wholesale special access issue in this Order.⁴⁷⁴ We do not find any unique characteristics with respect to the application of special access to GTS that warrant a different conclusion as to that market.

177. We also reject the contention of BT Americas and CompTel/ALTS that the merger will remove a potential competitor in the GTS market.⁴⁷⁵ The Applicants claim that the merger raises no horizontal concerns with respect to GTS, because Verizon provides only a *de minimis* amount of services to multinational corporations on a multi-country or multi-continent basis.⁴⁷⁶ Even if we were to conclude that Verizon has entered the GTS market, we find that, because competitors can freely obtain the necessary inputs and have the technical assets and capabilities to provide GTS, Verizon does not have a unique competitive advantage as a potential entrant in the GTS market.⁴⁷⁷ To the extent that Verizon could serve

⁴⁷¹ *AT&T/British Telecom Order*, 14 FCC Rcd at 19153, para. 28; *see also, e.g., Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, File No. I-S-P-95-002, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1864, para. 84 (1996) (*Sprint Declaratory Ruling*); *United States v. Sprint Corp.*, Civil Action No. 95-1304, Complaint at paras. 18, 29, 39 (D.D.C. filed July 13, 1995) (defining market of “seamless international telecommunications services” that is distinct for purposes of antitrust law).

⁴⁷² *See generally* BT Americas May 6 *Ex Parte* Letter; *see also, e.g.,* CompTel/ALTS Petition at 20-22 (stating that the merger would harm consumers by eliminating Verizon as a significant new competitor of MCI in the provision of global enterprise services, at least within Verizon’s footprint).

⁴⁷³ *See, e.g.,* BT Americas May 6 *Ex Parte* Letter at 3; CompTel/ALTS Petition at 11-20.

⁴⁷⁴ *See supra* Part V.B (Wholesale Special Access Competition).

⁴⁷⁵ *See generally* BT Americas May 6 *Ex Parte* Letter; *see also, e.g.,* CompTel/ALTS Petition at 20-22 (stating that the merger would harm consumers by eliminating Verizon as a significant new competitor of MCI in the provision of global enterprise services, at least within Verizon’s footprint).

⁴⁷⁶ In particular, the Applicants state that Verizon “does not serve any customers that it considers ‘GTS customers.’ Although Verizon’s customers include many multinational corporations, it provides only a *de minimis* amount of services to these customers on a multi-country or multi-continent basis.” Response of Verizon to the Commission’s May 26, 2005, International Document and Information Request, WC Docket No. 05-75 (filed June 10, 2005) (Verizon June 10 Response) at 14. The Applicants also note that the Ovum Study, although it does not purport to identify all entities that provide global services, does not include Verizon. *See id.* at 15.

⁴⁷⁷ As discussed above, we have concluded that the merged entity does not have the ability to act anticompetitively in the provision of international transport in any of the three geographic regions nor, with the addition of the standard foreign carrier safeguards, on the U.S.-Dominican Republic or U.S.-Venezuela routes, where Verizon has a market-power foreign affiliate on the destination end of each route. Moreover, recent European Commission analyses suggest that the GTS market is a bidding market, where market share is less relevant than the ability of customers to choose alternative suppliers. *See, e.g., BT/Infonet*, Case No. COMP/M.3641 (European Commission 2005), available at http://europa.eu.int/comm/competition/mergers/cases/decisions/m3641_20050125_en.pdf (stating, in addition, that GTS customers do not find switching to alternative suppliers to be financially prohibitive). *See also AT&T/BT Order*, 14 FCC Rcd at 19165, para. 51 (for sophisticated customers like global multinational corporations, retail assets and capabilities are far less important than price and service factors).

to constrain the exercise of market power as an entrant, other firms, some with more international assets and operations, and thus more suited to entry into the GTS market than Verizon, would continue to exert a restraining influence, or, if entry would become profitable, would recognize the opportunity to enter. For these reasons, we also are not persuaded that the MCI-Verizon merger, taken in combination with the merger of SBC-AT&T, would likely result in anticompetitive effects in the GTS market.⁴⁷⁸

4. Foreign Carrier Affiliations and Related Safeguards

178. As a part of our public interest analysis under section 214(a) of the Act, we also consider whether, upon consummation of the proposed transfers of control, the international section 214 authorization holders will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. route that the international section 214 authorization holders have the authority to serve pursuant to the authorizations that will be transferred.⁴⁷⁹ Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as “dominant” on a particular international route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.⁴⁸⁰ Similarly, under section 1.767(a)(8) and (a)(11) and section 1.768 of the Commission’s rules, a submarine cable licensee that proposes to transfer control of an interest in a submarine cable landing license granted pursuant to the Cable Landing License Act is required to disclose if it will become affiliated with a foreign carrier as a result of the transfer of control.⁴⁸¹ The Commission applies competitive safeguards to a cable landing license held by a licensee that is, or is affiliated with, a carrier with market power in relevant input markets on the foreign end of the cable that could result in harm to competition in the U.S. market.⁴⁸²

⁴⁷⁸ BT Americas May 6 *Ex Parte* Letter, Attach. at 11-14.

⁴⁷⁹ 47 U.S.C. § 214(a). For international section 214 applicants, the terms “affiliated” and “foreign carrier” are defined in section 63.09 of the Commission’s rules, 47 C.F.R. § 63.09.

⁴⁸⁰ *Foreign Participation Order*, 12 FCC Rcd at 23969-70, 23987, 23991-99, paras. 177-78, 215, 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. *See* 47 C.F.R. § 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates. In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from World Trade Organization (WTO) Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market – where the standard safeguards and additional conditions would be ineffective – the Commission reserves the right to deny the applications. *Foreign Participation Order*, 12 FCC Rcd at 23913-14, para. 51.

⁴⁸¹ 47 C.F.R. §§ 1.767(a)(8), (a)(11), 1.768; *see also* 47 U.S.C. §§ 34-39; Exec. Ord. No. 10530 § 5(a), *reprinted as amended* in 3 U.S.C. § 301. For submarine cable applicants, the terms “affiliated” and “foreign carrier” are defined as in § 63.09 of the Commission’s rules, 47 C.F.R. § 63.09, except that the term “foreign carrier” also shall include any entity that owns or controls a cable landing station in a foreign market. *See* Note to § 1.767, 47 C.F.R. § 1.767.

⁴⁸² 47 C.F.R. §§ 1.767(l), 1.768(f); *see also Submarine Cable Report and Order*, 16 FCC Rcd at 22180, para. 25. Relevant foreign carrier input markets include those facilities or services for the landing, connection, or operation of submarine cables. *Submarine Cable Report and Order*, 16 FCC Rcd at 22180, para. 23. The Commission found that these competitive safeguards should be sufficient in all but the most exceptional of circumstances to detect and deter any anti-competitive behavior associated with market power in WTO Member markets where U.S.-licensed cable systems land and operate. *Id.*

179. MCI certifies that it is not affiliated with any market-power carrier at the foreign end of a U.S. route.⁴⁸³ Verizon certifies that its affiliation with market-power carriers is limited to the U.S.-Gibraltar, U.S.-Dominican Republic, and U.S.-Venezuela routes.⁴⁸⁴ Verizon's authorized subsidiaries are classified as dominant international carriers on these three routes.⁴⁸⁵ Based on MCI's and Verizon's certifications, we find that Verizon will not acquire any new foreign carrier affiliations upon consummation of its proposed acquisition of MCI. We therefore need not classify Verizon's authorized subsidiaries as dominant international carriers on any new U.S. routes. MCI, however, will acquire affiliations with market-power carriers on the U.S.-Gibraltar, U.S.-Dominican Republic, and U.S.-Venezuela routes once Verizon acquires control of MCI. MCI subsidiaries hold international section 214 authorizations to serve all three routes.⁴⁸⁶ The Dominican Republic, Gibraltar and Venezuela are WTO Member countries. Thus, the Applicants are entitled to a presumption that grant of the international section 214 transfer applications, conditioned on MCI's classification as a dominant international carrier on these three U.S. routes, will protect against vertical harms (*i.e.*, discrimination by Verizon's affiliates against MCI's U.S. rivals) in virtually all circumstances.⁴⁸⁷ No commenter has sought to rebut this presumption and we find no evidence in the record to suggest that grant of the applications, as conditioned, would pose a risk to competition in the U.S. market.

180. We find similarly with respect to MCI's interests in submarine cable landing licenses. MCI holds submarine cable landing licenses for cables landing in the Dominican Republic and Venezuela, where market-power affiliates of Verizon are the foreign cable landing parties for, respectively, all or the majority of international transport capacity landing in those destination markets.⁴⁸⁸ Because the proposed

⁴⁸³ See Verizon/MCI Public Interest Statement, at 67; *see also* each of the International 214 Applications, at 5, Answer to Question 14 – Section 63.18(i); each of the Submarine Cable Applications, at 9, Section 63.18(i) – Affiliations with Foreign Carriers.

⁴⁸⁴ Verizon states that all of its foreign affiliates except for Verizon Dominicana, CANTV, and Gibtelecom lack market power in their home markets. Verizon indirectly owns 50% of Gibtelecom Limited, a market-power provider of domestic wireline communications in Gibraltar and international telecommunications services between Gibraltar and Spain. *See* each of the International section 214 Applications, at 11, Answer to Question 16 – Section 63.10; each of the Submarine Cable Applications at 9, Section 63.18(i) – Affiliations With Foreign Carriers.

⁴⁸⁵ *See, e.g.*, each of the International section 214 Applications, at Exhibit 2 – Verizon's Foreign Carrier Affiliations (stating that the Verizon international section 214 authorization holders are classified as dominant in their provision of services on each of the U.S.-Dominican Republic, U.S.-Gibraltar, and U.S.-Venezuela routes).

⁴⁸⁶ *See, e.g.*, each of the International section 214 Applications at 12 (stating that each of the MCI international section 214 authorization holders will comply with the dominant carrier requirements of 47 C.F.R. § 63.10 on the three routes); *see id.* at Attachment 2 (listing the international section 214 authorizations of the applicable MCI authorization holder). In addition, Verizon and MCI have overlapping foreign carrier affiliations in Belgium, France, Germany, Hong Kong, Ireland, Italy, Japan, the Netherlands, Singapore, Spain, Switzerland, the United Kingdom, and Venezuela. The Applicants certify that in each of these destination markets, except for Venezuela, the foreign carrier affiliates of Verizon and MCI collectively lack 50% market share in the international transport and local access markets, and thus state that these overlapping affiliates, except in Venezuela, continue to be entitled to a presumption of non-dominance on each of these international routes. *See, e.g.*, each of the International Section 214 Applications, at 11, Answer to Question 16 – Section 63.10.

⁴⁸⁷ *See Foreign Participation Order*, 12 FCC Rcd at 23913-4, para. 50, 23969-70, paras. 177-78; 47 C.F.R. § 63.10(c), (e). *See also supra* note 480.

⁴⁸⁸ *See supra* our discussion of input markets, at para. 161 & note 451 (Verizon Dominicana owns and operates the two Dominican Republic cable landing stations for the two cables – Antillas-I and Arcos-I – landing in the Dominican Republic and providing 100% of cable capacity on the U.S.-Dominican Republic route – and CANTV (continued....))

transfer of control would result in MCI acquiring an affiliation with Verizon's market-power affiliates in the Dominican Republic and Venezuela, our rules require that we condition grant of the submarine cable transfer applications on MCI's compliance with the competitive safeguards contained in section 1.767(l) of our rules.⁴⁸⁹ We find that, as conditioned, grant of the submarine cable transfer applications will protect against vertical harms in the U.S. international transport market by Verizon's market-power affiliates in the Dominican Republic and Venezuela.

181. Accordingly, we conclude that the proposed transfers of control of the submarine cable landing licenses, and the international section 214 authorizations, from MCI to Verizon, as conditioned, are consistent with our foreign carrier affiliation rules and policies.⁴⁹⁰

5. Submarine Cable Landing Licensee Notification

182. Section 1.767 requires, at a minimum, that each entity owning or controlling a cable landing station in the United States, or owning or controlling a five percent or greater interest in a submarine cable system licensed by the Commission and using the U.S. points of the cable system, be a licensee of the submarine cable system.⁴⁹¹ Verizon's subsidiaries and affiliates own capacity in excess of five percent on a number of cables, although it is not clear from the Applications whether the subsidiaries and affiliates use the U.S. points of the cable system.⁴⁹² Within forty-five days after the release of this Order, we require Verizon to notify the International Bureau whether any of its subsidiaries or foreign affiliates

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owns and operates the four Venezuela cable landing stations serving four of the six submarine cables – Americas-1, Americas-2, Arcos-1, and Pan American – that provide 66% of the cable capacity on the U.S.-Venezuela route).

⁴⁸⁹ See *supra* para. 178.

⁴⁹⁰ As a condition to the grant of the transfer of control of the international section 214 authorizations, we classify each MCI authorization holder and any 100% direct or indirect subsidiary of a named MCI holder that uses that authorization pursuant to 47 C.F.R. § 63.21 as dominant in the provision of service on each of the U.S.-Dominican Republic, U.S.-Gibraltar, and U.S.-Venezuela routes. See *infra* para. 225 (Ordering Clauses). Additionally, Verizon and its subsidiaries will continue to be classified as dominant on the U.S.-Dominican Republic, U.S.-Gibraltar, and U.S.-Venezuela routes in accordance with their existing international section 214 authorizations. As a condition to the grant of the transfer of control of the interests that MCI and its subsidiaries hold in submarine cable licenses for the Americas-1, Americas-2, Antillas-1, Arcos-1, and Pan American cables, we require MCI and its U.S. subsidiaries to comply with the quarterly reporting requirements contained in section 1.767(l) of our rules for the U.S.-Dominican Republic and U.S.-Venezuela routes. See *infra* para. 226 (Ordering Clauses).

⁴⁹¹ 47 C.F.R. § 1.767(h). The Commission's adoption of this rule allows other investors, unless otherwise required in a particular instance, to opt out of becoming a submarine cable licensee. In adopting this rule, the Commission defined "using the U.S. points of the cable system" to include "use of U.S.-end half-circuits for transport or for sale of capacity, but not to include, for example, use of half-circuits strictly at the foreign end or of full circuits strictly between various non-U.S.-end destination markets in a ring configuration cable system. See *Submarine Cable Report and Order*, 16 FCC Rcd at 22194, para. 54 n.119. The Commission stated that it would not require foreign-authorized carriers to become U.S. licensees of cables licensed by the Commission prior to the effective date of the *Submarine Cable Report and Order* in circumstances where the foreign-authorized carrier had purchased, or had entered into an agreement to purchase, whole circuits in the cable prior to the effective date of the *Submarine Cable Report and Order*, where the circuits were "hard patched" through the United States to telecommunications facilities in a third country, with no breakout of traffic to the U.S. public switched network. *Submarine Cable Report and Order*, 16 FCC Rcd at 22194 n.119.

⁴⁹² It appears that Verizon and its subsidiaries and affiliates together own more than 5% capacity on each of the Americas-1, Americas-2, Antillas-1, Columbus II, and Japan-U.S. cables. See Verizon/MCI Lack/Pilgrim Decl. at Exhibit 1.

owns or controls a five-percent-or-greater interest in any submarine cable licensed by the Commission and uses any of the U.S. points of the cable system.⁴⁹³ We retain the right to require any such subsidiary or affiliate to become a licensee on the applicable cable system.

H. Verizon's Qualifications to Acquire Control of MCI's Licenses

183. As previously noted, section 310(d) of the Communications Act provides that no station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the "public interest, convenience and necessity will be served thereby."⁴⁹⁴ Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite "citizenship, character, financial, technical, and other qualifications."⁴⁹⁵ Therefore, as a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.⁴⁹⁶ In making this determination, the Commission does not, as a general rule, reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing. In this proceeding, no issues have been raised with respect to the basic qualifications of MCI, and we thus find that MCI has the requisite qualifications. Conversely, section 310(d) requires the Commission to consider whether Verizon, the proposed transferee, is qualified to hold a Commission license.⁴⁹⁷

184. The Commission has previously determined that, in deciding character issues, it will consider certain forms of adjudicated, non-FCC related misconduct that includes: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.⁴⁹⁸ With respect to Commission-related conduct, the Commission has stated that it would treat any violation of any provision of the Act, or of the Commission's rules, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character

⁴⁹³ See *infra* para. 227 (Ordering Clauses).

⁴⁹⁴ 47 U.S.C. § 310(d).

⁴⁹⁵ See *SBC/SNET Order*, 13 FCC Rcd at 21305, para. 26.

⁴⁹⁶ See 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948, 25.119.

⁴⁹⁷ See *SBC/BellSouth Order*, 15 FCC Rcd at 25465, para. 14.

⁴⁹⁸ *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236.

qualifications.⁴⁹⁹ In prior merger orders, the Commission has used the Commission's character policy in the broadcast area as guidance in resolving similar questions in transfer of licenses proceedings.⁵⁰⁰

185. We disagree with commenters who question Verizon's character qualifications by pointing to the fact that Verizon has entered into consent decrees with the Commission as a result of its past record of non-compliance with merger conditions and other rules intended to prevent anticompetitive behavior.⁵⁰¹ The Commission has previously stated that consent decrees that are voluntarily entered into do not call into question a carrier's authority to hold Commission licenses and authorizations.⁵⁰²

186. We also reject commenters' allegations against Verizon's character qualifications based on prior section 208 and other proceedings before the Commission.⁵⁰³ We have held that merger proceedings should not be used as an occasion to revisit prior decisions in which the Commission has determined that license revocation was not an appropriate penalty.⁵⁰⁴ While Verizon's violation of a merger condition

⁴⁹⁹ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10 at para. 57 (1986) (*Character Qualifications*), modified, 5 FCC Rcd 3252 (1990) (*Character Qualifications Modification*), recon. granted in part, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564 (1992) (*Further Character Qualifications Modification*); *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context). The Commission has also determined that allegations that an applicant has engaged in unreasonable or anticompetitive conduct is relevant to the Commission's public interest analysis. *SBC/SNET Order*, 13 FCC Rcd at 21306-07, paras. 28-30.

⁵⁰⁰ See, e.g., *SBC/SNET Order*, 13 FCC Rcd at 21305, para. 26; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21548-51, paras. 47-56; *Sprint/Nextel Order*, FCC 05-148 at paras. 24-25.

⁵⁰¹ See *Cbeyond et al. Petition* at 13-14 (citing Consent Decrees between Verizon and the Commission); *CompTel/ALTS Petition* at 53-58 (same).

⁵⁰² See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, paras. 53-54. Furthermore, we disagree with *CompTel/ALTS* that we should consider the conduct leading up to a consent decree in determining an applicant's fitness to hold a Commission license. *CompTel/ALTS Petition* at 58-59. As we have stated before, "the Commission does not consider matters resolved in consent decrees adjudicated misconduct for the purposes of assessing an applicant's character qualifications." See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, para. 53 (citing *1986 Character Qualifications Policy Statement*, 102 FCC 2d at 1205).

⁵⁰³ See, e.g., *Cbeyond et al. Petition* at 14 (citing *Starpower Communications, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 23265, para. 14 (2003) (finding that Verizon violated an interconnection agreement with Starpower); *id.* at 17 n.46 (citing news reports regarding fines assessed on Verizon by state commissions); *CompTel/ALTS Petition* at 57 (citing *Core Communications, Inc. v. Verizon Maryland, Inc.*, File No. EB-01-MD-007, Memorandum Opinion and Order, FCC 03-96 (released Apr. 23, 2003) (finding that Verizon violated section 251 and Commission rules by failing to interconnect with a competitive LEC on just and reasonable terms). In addition, *Cbeyond et al.* cite a Commission finding that Verizon Wireless violated tower structure requirements. *Cbeyond et al. Petition* at 14 (citing *Verizon Wireless (VAW) LLC*, Notice of Apparent Liability for Forfeiture in File No. EB-02-DV-119, NAL/Acct. No. 200332800002 (Oct. 29, 2002); *Verizon Wireless (VAW) LLC*, Forfeiture Order, 18 FCC Rcd 854 (2003); *Verizon Wireless (VAW) LLC*, Order, 18 FCC Rcd 3246 (2003) (setting aside the January 2003 Forfeiture Order)). These orders, which concerned Verizon Wireless, did not result in the revocation of licenses, and, as the Commission held in the *Cingular/AT&T Wireless Order*, a carrier "which is one step removed, should not be treated more harshly than the carrier that was investigated." *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21551, para. 54.

⁵⁰⁴ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, para. 53.

from a prior merger, cited by commenters, does raise a concern, we do not find that such a violation, standing alone, renders Verizon unqualified to acquire MCI's licenses.⁵⁰⁵

187. We likewise reject the claims of commenters expressing concerns about Verizon's character qualifications based on its exercise of its legal rights, such as petitioning courts and regulatory bodies.⁵⁰⁶ As the Commission previously has concluded, an applicant's lawful exercise of its rights does not raise character concerns, even if the activity arguably has "the effect of delaying and minimizing the emergence of competition."⁵⁰⁷

188. We also do not agree with commenters' alleged character concerns based upon specific, unresolved disputes with the Applicants.⁵⁰⁸ Some of the alleged violations of the Act or Commission rules involve legal interpretations that would apply to numerous companies in the industry. The Commission has previously declined to address in merger proceedings matters for which "the public interest would be better served by addressing the matter in the broader proceeding of general applicability."⁵⁰⁹ Moreover, we also note that many allegations concerning the Applicants' conduct have been specifically rebutted by evidence proffered by the Applicants.⁵¹⁰ We conclude that none of the foregoing allegations provides a basis for finding that Verizon lacks the fitness to acquire licenses and authorizations currently held by MCI.

I. Other Issues

189. We disagree with commenters that the loss of MCI as an advocate for competitive LEC viewpoints in state and federal regulatory proceedings justifies our designating this merger for hearing.⁵¹¹

⁵⁰⁵ Cbeyond *et al.* Petition at 17 (citing *Global NAPs v. Verizon*, Memorandum Opinion and Order, 17 FCC Rcd 4031 (2002) (finding a violation of a merger condition regarding the right of carriers to opt-in to certain interconnection agreements)); *see also* CompTel/ALTS Petition at 56 (same).

⁵⁰⁶ *See, e.g.*, Cox Comments at 8 (discussing Verizon's positions in state interconnection arbitrations).

⁵⁰⁷ *SBC/Ameritech Order*, 14 FCC Rcd at 14950, para. 571.

⁵⁰⁸ *See, e.g.*, Broadwing and SAVVIS Petition at 31 (citing section 272 audit reports identifying minor differences in treatment); Cbeyond *et al.* Petition at 52 (alleging that Verizon failed to compete sufficiently with SBC despite Verizon's commitment to enter more than 20 major markets as a condition of its merger with GTE); CloseCall Comments at 2-5 (claiming that Verizon requires a customer to disconnect DSL service before executing that customer's number portability request, ties its DSL service to its local exchange service, enters into resale agreements with certain competitive LECs but not others, and does not ensure dialing parity for competitive LEC customers); *see also* Lightpath Reply at 10-11 (arguing that provisioning parameters for number porting and timely billing practices are needed). To the extent that Lightpath is hindered in its ability to offer competitive services due to number portability and billing problems with Verizon, Lightpath fails to explain how this is a merger-specific concern to be addressed in this proceeding.

⁵⁰⁹ *See SBC/Ameritech Order*, 14 FCC Rcd 14950, para. 571; *see also SBC/SNET Order*, 13 FCC Rcd at 21306, para. 29.

⁵¹⁰ *See, e.g.*, Verizon/MCI Reply at 89 (noting that any differences in treatment identified in section 272 audit reports were limited and were remedied without a determination that license revocations were justified); *id.* at 89 n.131 (noting that the Maryland Commission rejected CloseCall's claim that Verizon enters resale agreements with some competitive LECs that are unavailable to others); *id.* (explaining that CloseCall's dialing parity concerns resulted from a software problem that was resolved more than a year ago).

⁵¹¹ *See, e.g.*, Cox Comments at 11; NASUCA Comments at 14; New Jersey Ratepayer Advocate Comments at 11-12; Global Crossing Comments at 22-23, 25; United States Cellular Comments at 2-3; Lightpath Reply at 4-8. In (continued....)

As the Applicants point out, there will continue to be numerous competing carriers, trade associations, and other interested parties that remain free to express their positions in regulatory proceedings.⁵¹² Indeed, we note that dozens of commenters participated in the present proceeding, representing a variety of viewpoints.⁵¹³ Thus, we do not find that the loss of MCI as an advocate of competitive LEC interests will unduly weaken the ability of competitors to participate and express their views in Commission and state proceedings.

190. We reject NASUCA's concerns about the Applicants' compliance with section 272 of the Act.⁵¹⁴ As the Applicants point out, Verizon intends to operate MCI in accordance with any applicable section 272 obligations.⁵¹⁵ Thus, the merger does not appear to raise concerns about compliance with Verizon's applicable section 272 obligations.

191. We conclude as a general matter that many of the concerns expressed by WorldNet regarding Puerto Rico Telephone Company (PRTC) are not merger-specific,⁵¹⁶ and thus need not be addressed in this proceeding.⁵¹⁷ Furthermore, because we do not find any likely anticompetitive effects requiring remedy, as described above, we reject WorldNet's request for conditions.⁵¹⁸

192. Finally, we reject the claims of APCC that the merger will harm competitively-owned payphone service providers (PSPs) through either discrimination against competitive PSPs or actions that will negatively affect payments to all payphone owners.⁵¹⁹ We find these concerns speculative, and in any event we agree with the Applicants that concerns expressed by APCC are adequately addressed by

(Continued from previous page)

particular, Global Crossing suggests that the Commission consider adopting a "baseball-style," alternative dispute resolution process in this proceeding because the proposed merger will diminish the diversity of voices in the telecommunications public policy arena and dramatically widen the resource gap between SBC and its competitors. Global Crossing Comments at 25. To the extent that the resources required for Global Crossing to pursue a section 208 complaint against SBC outweigh the possible benefits in particular instances, this is not a merger-specific concern to be addressed in this proceeding. Moreover, as the Applicants note, it is not clear that Global Crossing's proposed alternative to the section 208 complaint process necessarily would be superior. Verizon/MCI Reply at 91.

⁵¹² See Verizon/MCI Reply at 90.

⁵¹³ See Appendix A.

⁵¹⁴ NASUCA Comments, Attach. at 51.

⁵¹⁵ Verizon Info. Req. at 155.

⁵¹⁶ See WorldNet Comments at 5-9.

⁵¹⁷ In addition, we note that a number of issues raised by WorldNet are the subject of pending proceedings. See Verizon/MCI Reply at 94 (noting that the Puerto Rico Board currently is considering a WorldNet complaint regarding PRTC's ability to enter contract tariffs for intrastate services with large enterprise customers in *WorldNet Telecommunications Inc.'s Request for Suspension and Investigation of Tariff Pursuant to Art. III-7(c) of Act 213*, JRT-2003-Q-0143 (filed Aug. 15, 2003)); *id.* (noting that issues regarding whether PRTC must allow resale of non-telecommunication services are the subject of an adjudicatory proceeding pending before a federal district court in *WorldNet Telecommunications, Inc. v. Telecommunications Regulatory Board of Puerto Rico et al.*, Nos. 04-2051 & 04-2073 (D.P.R.)).

⁵¹⁸ See WorldNet Comments at 2.

⁵¹⁹ See generally APCC Petition, Attach. A competitively-owned payphone is one that is not owned by a LEC.

existing law.⁵²⁰ Competitive payphone owners that believe the merged company has violated these rules or statutory requirements can avail themselves of the Commission's complaint process. Regarding APCC's concern that the combined company may fail to pay dial-around compensation on calls that are routed at least partially in IP networks, we note that this issue is the subject of an ongoing proceeding, and is properly dealt with there.⁵²¹

VI. POTENTIAL PUBLIC INTEREST BENEFITS

A. Introduction

193. In addition to assessing the potential competitive harms of the proposed transaction, we also consider whether the combination of these companies' operations is likely to generate verifiable, merger-specific public interest benefits.⁵²² In doing so, we ask whether the combined entity will be able, and is likely, to pursue business strategies resulting in demonstrable and verifiable benefits that could not be pursued but for the combination. As discussed below, we find that the proposed transaction is likely to generate several significant merger-specific public interest benefits, although it is difficult to quantify precisely the magnitude of some of these benefits.

B. Analytical Framework

194. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."⁵²³ Under

⁵²⁰ See, e.g., 47 C.F.R. § 64.1300 *et seq.*; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, 19 FCC Rcd 21457 (2004); see also 47 U.S.C. § 276(2) (stating that a BOC, such as Verizon, "(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service"). We also are not persuaded by APCC that the merged entity could use completed dial-around call volume information to "provide an unwarranted competitive advantage" to Verizon's payphone affiliates. We note that to the extent that the information of concern to APCC constitutes "carrier proprietary information" within the meaning of section 222(b), or to the extent that Verizon's conduct would have the effect of "prefer[ring]" its payphone service within the meaning of section 276(a)(2), the Act already prohibits the behavior about which APCC is concerned. See 47 U.S.C. §§ 222(b), 276(a)(2). Moreover, we conclude that the likelihood of harm expressed by APCC is remote. For example, APCC has not demonstrated a factual basis for its concern that the merged company would have the specific location information necessary to take action with respect to the call volume information.

⁵²¹ See *Pleading Cycle Established for Comments on American Public Communications Council's Petition For Declaratory Ruling and Rulemaking Regarding IP-Enabled Dial-Around Calls From Payphones*, Docket No. 05-176, Public Notice, DA 05-1106 (rel. Apr. 21, 2005).

⁵²² *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14130, para. 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; *WorldCom/MCI Order*, 13 FCC Rcd at 18134-35, para. 194.

⁵²³ See *EchoStar/DirectTV Order*, 17 FCC Rcd at 20630, para. 188; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 158; see also *DOJ/FTC Guidelines* § 4.

Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.⁵²⁴

195. There are several criteria the Commission applies in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”⁵²⁵ Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the Commission can verify the likelihood and magnitude of the claimed benefit.⁵²⁶ In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”⁵²⁷ Furthermore, speculative benefits that cannot be verified will be discounted or dismissed. Thus, as the Commission explained in the *EchoStar/DirecTV Order*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”⁵²⁸ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”⁵²⁹ The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.⁵³⁰

196. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims. Under this sliding scale approach, where potential harms appear “both substantial and likely, the Applicants’ demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we

⁵²⁴ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 188; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 256; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

⁵²⁵ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 189; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063-64, para. 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”) (footnote omitted); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger. . . .”); *AT&T/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (Commission considers whether benefits are “merger-specific”); cf. *DOJ/FTC Guidelines* § 4.

⁵²⁶ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157 (“These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies . . . are sufficiently likely and verifiable”); *AT&T/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (Commission considers whether benefits are “verifiable”); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; *DOJ/FTC Guidelines* § 4 (“[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm’s ability to compete. . . .”).

⁵²⁷ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190.

⁵²⁸ *Id.*

⁵²⁹ *Id.* at 20631, para. 191; see also *DOJ/FTC Guidelines* § 4.

⁵³⁰ See *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 191; see also *DOJ/FTC Guidelines* § 4.

would otherwise demand.”⁵³¹ On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the merger.

C. Enhancements to National Security and Government Services

197. We take considerations of national security extremely seriously, and we find that the merger has the potential to generate benefits arising from more efficient routing and greater redundancy. Additionally, we believe that the combined, nonoverlapping IP networks can provide the government with additional security and routing efficiency for vital and sensitive government communications.

198. We agree with the Applicants that the merger will enhance service to U.S. government customers and strengthen U.S. national security. Both Verizon and MCI provide substantial telecommunications and technology services to federal and state government agencies involved in national security. We find that the merger will create a stable, reliable, U.S.-owned company that will provide improved service to government customers.⁵³² The Applicants contend, and we agree, that the merger will strengthen Verizon by transforming it into a strong, full-service, facilities-based provider that is capable of delivering integrated end-to-end services to the government on a national or international basis.⁵³³ Moreover, we find that the merger will help Verizon improve communications security and network efficiency, which in turn should benefit national defense and homeland security.⁵³⁴

199. We reject commenters’ arguments that the merger will not benefit national security or government customers. ACN *et al.* argue that we should discount the benefits of a unified network because the merger will bring end-to-end service to only a portion of the United States.⁵³⁵ Cbeyond *et al.* assert that MCI is capable of conducting its government services business without the help of Verizon, and that the merger will not result in any change in the quality of service provided to the government.⁵³⁶ Cbeyond *et al.* further argue that the merger will result in Verizon’s taking over MCI’s government contracts, which would undermine national security by overriding the government selection process.⁵³⁷ While we acknowledge that Verizon’s claimed benefits relating to end-to-end services are largely limited to Verizon service territories, we nevertheless expect that benefits will result. Moreover, as discussed

⁵³¹ *EchoStar/DirectTV Order*, 17 FCC Rcd at 20631, para. 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825); cf. *DOJ/FTC Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

⁵³² Verizon/MCI Public Interest Statement at 11.

⁵³³ *Id.*; Verizon Info. Req. at 168-169.

⁵³⁴ Verizon Info. Req. at 168-169.

⁵³⁵ For example, ACN *et al.* contend that the merged company will be able to provide end-to-end service in only 35% of the nation. ACN *et al.* Comments at 49.

⁵³⁶ Cbeyond *et al.* Petition at 82-84.

⁵³⁷ *Id.* at 83.

below, we find significant efficiencies arising from vertical integration, which are likely to improve the quality of services that Verizon provides to government customers.⁵³⁸

200. We likewise reject CompTel/ALTS' arguments that a billing dispute between Verizon and the government of the District of Columbia is indicative of Verizon's market power and that the merger will vitiate an agreement that the District's government entered into with MCI.⁵³⁹ We find that Verizon's billing dispute with the District of Columbia government was no more than that – a contractual dispute – and that it is not indicative of any market power on the part of Verizon. With respect to MCI's contract with the District, we have no reason to believe that the District of Columbia government will not be satisfied with the agreement, solely because of the merger. In addition, as previously discussed, we conclude that, after the merger, there will remain numerous carriers that are willing and able to offer services to large government customers like the District of Columbia government.⁵⁴⁰

201. We also note the Applicants' commitments⁵⁴¹ in the *IP-Enabled Services* proceeding to meet the Commission's recently-adopted E911 obligations for interconnected VoIP services.⁵⁴² Those requirements "extend our longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans" by serving to "promote cooperative efforts by state and local governments, public safety answering point (PSAP) administrators, 911 systems service providers, and interconnected VoIP providers that will lead to improved emergency services."⁵⁴³ The Applicants' actions thus help ensure the timely deployment of E911 services for interconnected VoIP in order to advance the safety and welfare of the public.

D. Efficiencies Related to Vertical Integration

202. As the Commission has previously recognized, vertical transactions may generate significant efficiencies.⁵⁴⁴ For example, vertical integration may produce a more efficient organizational form, which can reduce transaction costs, limit free-riding by internalizing incentives, and take advantage of technological economies.⁵⁴⁵ Vertical integration also may reduce prices in the downstream market because the integrated firm, in determining the costs of producing the downstream product and consequently the final price charged to consumers, may consider the real economic cost of the input

⁵³⁸ See *infra* para. 202.

⁵³⁹ CompTel/ALTS Petition at 49-50.

⁵⁴⁰ See *supra* Part V.C (Retail Enterprise Services).

⁵⁴¹ See Letter from Curtis L. Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-196 (filed Sept. 27, 2005); Letter from Susanne A. Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36, 05-196 (filed Oct. 21, 2005).

⁵⁴² See generally *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (*VoIP 911 Order*).

⁵⁴³ *Id.* at para. 5.

⁵⁴⁴ *News Corp./Hughes Order*, 19 FCC Rcd at 507-08, para. 70.

⁵⁴⁵ *Id.*

rather than the higher price (including the upstream profit margin) previously charged by the unintegrated upstream firm. This is referred to as the elimination of “double marginalization.”⁵⁴⁶

203. We find that significant benefits are likely to result from the vertical integration of the largely complementary networks and facilities of Verizon and MCI. The Applicants assert that their networks are complementary, with Verizon providing an extensive network with substantial local fiber, Verizon Wireless having an advanced and extensive wireless network, and MCI providing global fiber optic long-distance network and global data capabilities. They claim that the combined company will be able to offer services over a centrally managed network and provide customers with end-to-end communications and comprehensive network management as well.⁵⁴⁷ The Applicants maintain that the combination of their services will benefit large enterprise and wholesale customers by enhancing the merged entity’s ability to make available the broad range of communications services and global reach that those customers demand.⁵⁴⁸ We find that the merger will permit the integration of the complementary networks and assets of Verizon and MCI, giving each carrier facilities it previously lacked. We further find that this network integration will permit the merged entity to offer a wider range of services to its broad range of customers. Moreover, customers will benefit not only from new services, but also from the improvements in performance and reliability resulting from the network integration.

204. We reject Cbeyond *et al.*’s assertion that Verizon would not add to MCI’s global competitiveness, and that a unified network would offer no new public interest benefit.⁵⁴⁹ We find that the combined company will be able to provide network management services more efficiently to large enterprise and wholesale customers, and customers will value the merged entity’s ability to provide one-stop shopping.

E. Economies of Scope and Scale

205. We find that the merger of Verizon and MCI is likely to give rise to significant economies of scope and scale, as well, although these are difficult to quantify. While Verizon and MCI compete in many of the same markets, the focus and success of their efforts has often come in different segments of these markets.⁵⁵⁰ The merger thus not only gives the combined company a larger total customer base, but also significant shares of customers across a wider range of communications markets than either carrier

⁵⁴⁶ *Id.* Double marginalization occurs when an upstream firm sells an input to a downstream firm at a price that exceeds marginal cost, and the downstream firm then sells its product in the downstream market at a price that exceeds its marginal cost. The margin charged by the upstream firm increases the marginal cost of the downstream firm, which results in a higher end-user price than would occur if the input had been priced at marginal cost. *Vertical integration in theory reduces the problem of double marginalization because the integrated firm, in determining the uniform price at which it will sell the downstream product, will consider the real economic cost of producing the input. Because vertical integration effectively reduces the marginal cost of the input, it is likely to result in the integrated firm’s setting a lower price for the downstream products, which will benefit consumers. The extent of this benefit, however, will depend crucially on the elasticity of demand for the downstream product. The less elastic is the demand, the greater is the benefit.* JEAN TIROLE, *THE THEORY OF INDUSTRIAL ORGANIZATION* 239 (1988) at 174-75; Michael H. Riordan and Steven Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach* 63 ANTITRUST L.J., 513, 523-36 (1995).

⁵⁴⁷ Verizon/MCI Public Interest Statement at 11-13.

⁵⁴⁸ *Id.* at 13-14.

⁵⁴⁹ Cbeyond *et al.* Petition at 71-76.

⁵⁵⁰ See *supra* note 236.

had before the merger. The Commission has recognized in the past that, when a “transaction enables the parties to combine their R&D efforts and to spread the cost of those R&D efforts over” a more extensive customer base, this “could result in new products and services that would not have been introduced absent the proposed transaction.”⁵⁵¹ Likewise, the Commission has found that, “if the merged entity can secure larger volume discounts from suppliers, and then pass those lower costs through to consumers in the form of lower end-user prices, this likewise would constitute a public interest benefit that should be considered in balancing the potential harms and benefits of the proposed transaction.”⁵⁵²

206. In this regard, the Applicants stress that Verizon has a larger base of mass market customers, while MCI has a larger base of large enterprise customers. Similarly, Verizon has been most successful in offering consumer voice and broadband services, wireless services, and local connectivity, equipment, and professional services to local or regional business customers, while MCI has had success offering large enterprise services, especially those with a global reach.⁵⁵³ The Applicants further contend that Verizon will bring its investment-oriented focus to the merged firm and that Verizon’s deep financial resources will ensure that its networks, including critical national defense networks, remain robust and technologically advanced. Finally, they claim that the transaction will accelerate service innovations, such as Verizon’s “seamless mobility” service.⁵⁵⁴

207. We agree with the Applicants that, by broadening its customer base, the merged entity will have an increased incentive to engage in basic research and development. We further find that continued intense competition from other carriers will provide sufficient incentives for the merged company to continue to invest in more applied research and product development. As Verizon points out, it will have little choice but to continue investment and innovation, and it expects the combined company to spend at least as much on innovation and investment in network infrastructure as the standalone companies did prior to the transaction.⁵⁵⁵ Thus, we reject commenters’ claims that the merged firm will be less innovative.⁵⁵⁶

F. Cost Synergies

208. As discussed below, we credit certain cost reductions as benefits resulting from the merger. The Applicants assert that the merger will result in a net present value of \$7 billion in incremental revenues and operational cost savings. They contend that the cost savings would come from the elimination of duplicative network facilities, staff, and information and operation systems; reduction of procurement costs; rationalization of the companies’ real estate assets; and more efficient use of existing networks.⁵⁵⁷ The Applicants filed a synergies model in the record, which estimated both cost and revenue synergies.⁵⁵⁸

⁵⁵¹ *News Corp./Hughes Order*, 19 FCC Red at 619, para. 342.

⁵⁵² *Id.* at 620, para. 343.

⁵⁵³ *See, e.g.*, Verizon/MCI Public Interest Statement at 4-5.

⁵⁵⁴ Verizon/MCI Public Interest Statement at 15-16.

⁵⁵⁵ Verizon Info. Req. at 162-163; *see also* Ad Hoc Telecom Manufacturers Comments at 1-3 (asserting that the merged entity is likely to invest more than the two companies would if the acquisition did not occur).

⁵⁵⁶ ACN *et al.* Comments at 43-45; Cbeyond *et al.* Petition at 84-90; Qwest Petition at 27-30.

⁵⁵⁷ Verizon/MCI Public Interest Statement at 15.

⁵⁵⁸ Verizon Info. Req., VZFCC-007-0001110.xls (hereinafter “synergy model”).

209. No commenter discusses the synergy model itself. Cbeyond *et al.* argue generally, however, that to the extent much of the cost savings are reportedly due to increased elimination of personnel, it is not clear that they should be counted as a benefit under the Commission's public interest standard.⁵⁵⁹

210. After careful examination of the Applicants' synergy model, we find that we cannot credit the \$7 billion savings in its entirety. First, the model's calculations assume that all of the model's synergies continue in perpetuity.⁵⁶⁰ As mentioned above, benefits that are to occur in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present. We thus evaluate the evidence of synergy benefits over shorter and more reasonable timeframes included in the model. Therefore, we will examine the claimed [REDACTED] in cost synergies that the Applicants expect to accrue through [REDACTED].⁵⁶¹

211. We reject commenters' assertions⁵⁶² that the costs savings of headcount reductions will produce no cognizable benefits. According to the synergy model, much of the cost savings are from headcount reductions, and those calculations seem reasonable.⁵⁶³ We have no reason to doubt that many overhead positions can be eliminated after the merger. But because most of these positions are overhead and thus represent savings in fixed costs, we will not give them the same weight as savings in marginal cost (which are more likely to flow through in the form of retail price reductions). We recognize, however, that some of the headcount savings are likely to come from positions where compensation is based primarily on commission; savings in those positions should reduce variable costs.⁵⁶⁴

212. We also find that some of the Applicants' other claimed cost reductions may result in price reductions. Specifically, we credit Verizon with [REDACTED] in variable cost savings on transport costs.⁵⁶⁵ This figure is reduced from the amount claimed by Verizon in its synergy model since the synergy model appears to calculate transport savings by [REDACTED].⁵⁶⁶ We find that cost reductions in Verizon's transport and long distance charges are likely, but those cost reductions are unlikely to be

⁵⁵⁹ Cbeyond *et al.* Wilkie Decl. at para. 51 (arguing that marginal cost reductions are more likely to be cognizable than fixed cost reductions, but that the bulk of the headcount savings will be fixed cost reductions); *see also* NASUCA Comments at 18 (asserting that the purported benefit of cost savings is insignificant and that such benefits did not accrue after the Bell Atlantic/GTE merger was approved).

⁵⁶⁰ The synergy model calculates the synergies as the present value of the infinitely-lasting stream of extra income and reduced costs. The Commission does not dispute the use of the net present value concept (to quantify future incomes and cost reductions) itself.

⁵⁶¹ The synergy model presented in the SBC/AT&T Order presented present discounted values at specified dates. In that order, we choose the shortest period over which the synergy model allowed us to easily calculate benefits. *See SBC/AT&T Order*, FCC 05-183, at paras. 198-199.

⁵⁶² Cbeyond *et al.* state generally that, of the 7,000 jobs that Verizon has stated would be eliminated as a result of the merger, reductions in personnel and overhead would reduce the merged company's fixed costs, not its marginal costs, and, thus, would not be passed on as a benefit to consumers. Cbeyond *et al.* Petition at 79-80.

⁵⁶³ Verizon Info. Req., VZFCC-007-0001110.xls, "Synergy_G&ASavings" tab.

⁵⁶⁴ *Id.*

⁵⁶⁵ Verizon Info. Req., Exh. 20.B.

⁵⁶⁶ *Id.*; *see also* Verizon Info. Req., VZFCC-007-0001110.xls, "Synergy_G&ASavings" tab.

more than 50 percent of what Verizon is paying now. Verizon also claims “operations savings” of [REDACTED].⁵⁶⁷ Because we could not reproduce this figure, and because the estimate assumes these benefits last in perpetuity, we afford it no weight.

213. Certain other claimed cost synergies are unexplained. Although we find some merit to Verizon’s financial stability claim and believe that a more financially sound MCI will have a better chance of retaining its customers, we cannot credit all the revenue synergies that the Applicants claim, because there is insufficient justification. The Applicants did not provide sufficient details of their methodology used in generating their financial-stability and go-to-market revenue figures.⁵⁶⁸ Additionally, Verizon’s synergy model failed to provide adequate justification of the EBITDA figures that were used to calculate the profits from the projected increased revenues.⁵⁶⁹

214. In summary, we find that the proposed transaction is likely to generate several significant public interest benefits, although it is difficult to quantify precisely the magnitude of some of these benefits.

VII. PROCESS AND ENFORCEMENT

215. As discussed in various sections above, the Applicants have offered a number of voluntary commitments. Because we find these commitments serve the public interest, we accept them and adopt them as express conditions of our merger approval order. In order to ensure that the full benefits of these commitments are realized, we also establish certain procedural and enforcement rules. First, where commitments involve the filing of tariff revisions, we require the Applicants to file such revisions within 30 days of the effective date of the Order. Second, we require the Applicants to file annually a declaration by an officer of the corporation attesting that Verizon/MCI has substantially complied with the terms of the conditions in all material respects. Third, the term of each condition will be as specified in Appendix G.

216. In addition, we will continue to monitor the markets within which the Applicants compete. If the Commission determines that out-of-region competition is failing to develop, then it will revisit the merger conditions on its own motion or pursuant to a petition of a party. Similarly, if the Commission determines that the Applicants are acting to exclude competitors, it will revisit the merger conditions on its own motion or pursuant to a petition of a party.⁵⁷⁰

217. In addition, as noted above, the Applicants have made a voluntary commitment to offer stand-alone DSL.⁵⁷¹ In order to ensure that this commitment benefits consumers, we will monitor all consumer-related problems concerning this service, including reviewing consumer complaints and other

⁵⁶⁷ *Id.*

⁵⁶⁸ In response to our information request, Verizon stated that the revenue enhancements were the [REDACTED] but we did not have sufficient detail to examine how those quantities were created. See Verizon Info. Req., Exh. 20.A.2 at 3. We note that the same revenue enhancement dollar figures were included in a file supplied in Verizon’s response to our information request. In this case, it was in a file that appeared to be created by Bear Stearns, but again, those amounts were unexplained. See Verizon Response to Information Request, VZFCC-Q20-0001943.

⁵⁶⁹ [REDACTED]

⁵⁷⁰ In addition, the public may pursue a claim in accordance with either section 207 or section 208 of the Act. See 47 U.S.C. §§ 207, 208.

⁵⁷¹ See Verizon Oct. 31 *Ex Parte* Letter at 5; see also Appendix G.

information. We expect that the terms and conditions for these services will reflect the underlying competitiveness of the market. The Commission retains its historical discretion to monitor the market and take corrective action if necessary in the public interest.

218. More generally, due to the Commission's interest in widespread broadband availability, the Commission commits to seek comment and issue an annual report assessing the competitiveness of the broadband market and whether there is evidence of anticompetitive conduct in this market.

VIII. CONCLUSION

219. We find that public interest benefits are likely to result from the proposed transaction and that, in light of the DOJ Consent Decree, the merger is not likely to have anticompetitive effects in any relevant markets. As we discuss above, we recognize that there will be an increase in market concentration with respect to certain services, including special access services, retail enterprise services, mass market services, and Internet backbone services. Nonetheless, in each case we find that the possible harms identified by commenters do not justify designating this application for hearing.

220. We also find potential public interest benefits from the proposed merger that, taken as a whole, outweigh the relatively limited possible public interest harms. These public interest benefits relate to enhancements to national security and government services, efficiencies related to vertical integration, economies of scope and scale, and cost savings.

221. We therefore conclude that on balance, the positive public interest benefits likely to arise from this transaction are sufficient to support the Commission's approval of Verizon's and MCI's application under the public interest test of sections 214 and 310(d) of the Communications Act. Finally, we note that the Applicants offered certain commitments related to special access, stand-alone DSL, the Commission's Internet Policy Statement, and Internet backbone services. We find that these commitments serve the public interest, and, accordingly, we accept them and adopt them as express conditions of our merger approval.⁵⁷²

IX. ORDERING CLAUSES

222. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), section 2 of the Cable Landing License Act, 47 U.S.C § 35 and Executive Order No. 10530, the applications for the transfer of control of licenses and authorizations from MCI to Verizon as discussed herein and set forth in Appendix B ARE GRANTED subject to the conditions stated below.

223. IT IS FURTHER ORDERED that as a condition of this grant Verizon and MCI shall comply with the conditions set forth in Appendix G of this Order.

224. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from MCI to Verizon filed by American Public Communications Council; Broadwing Communications, LLC, and SAVVIS Communications Corporation; Cbeyond Communications, *et al.*; CompTel/ALTS; Consumer Federation of America, *et al.*;

⁵⁷² See generally Verizon Oct. 31 *Ex Parte* Letter.

EarthLink, Inc.; and Qwest Communications International Inc. ARE DENIED for the reasons stated herein.

225. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, each of MCI, Inc. and its international section 214 subsidiaries MCI Communications Services, Inc., MFS Globenet, Inc., MCI International Services, Inc., MCI Network Services, Inc., MCI International, Inc., and MCI Communications Corporation, any successor company thereto, and any direct or indirect subsidiary of a named MCI international section 214 holder that uses that authorization pursuant to section 63.21 of the Commission's rules, 47 C.F.R. § 63.21, SHALL BE CLASSIFIED as a dominant international carrier in its provision of services on the U.S.-Dominican Republic, U.S.-Gibraltar, and U.S.-Venezuela routes, and SHALL FILE the reports as required by section 43.61(c) of the Commission's rules, 47 C.F.R. § 43.61(c).

226. IT IS FURTHER ORDERED that, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), each of MCI, Inc., MCI Communications Corporation, and MCI International, Inc., and any successor company thereto, SHALL FILE the reports required by section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), for each of the Americas-1, Americas-2, Antillas-1, Arcos-1, and Pan American cables for, as applicable, the U.S.-Dominican Republic and the U.S.-Venezuela routes.

227. IT IS FURTHER ORDERED that, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and section 1.767(h) of the Commission's rules, 47 C.F.R. § 1.767(h), within forty-five (45) days after the release of this Order, Verizon SHALL NOTIFY the International Bureau whether any of its subsidiaries or foreign affiliates owns or controls a five-percent-or-greater interest in any submarine cable licensed by the Commission and uses any of the U.S. points of the cable system.

228. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Commenters	Abbreviation
ACN Communications Services, Inc. ATX Communications Inc. Biddeford Internet Corporation d/b/a Great Works Internet Bridgecom International, Inc. Broadview Networks, Inc. Bullseye Telecom, Inc. Cavalier Telephone Mid-Atlantic, LLC CIMCO Communications, Inc. CTC Communications Corp. Gillette Global Network, Inc., d/b/a Eureka Networks Granite Telecommunications, LLC Lightship Communications, LLC Lightwave Communications, LLC Lightyear Network Solutions, LLC Mpower Communications Corp. PAC-WEST Telecom, Inc. RCN Telecom Services Inc. USLEC Corporation U.S. TelePacific Corp. d/b/a TelePacific Communications	ACN <i>et al.</i>
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturers
Alliance for Public Technology	APT
American Antitrust Institute	AAI
CloseCall America, Inc.	CloseCall
Cox Communications, Inc.	Cox
Global Crossing North America, Inc.	Global Crossing
Independent Alliance	Independent Alliance
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
National Association of State Utility Consumer Advocates	NASUCA
PAETEC Communications, Inc.	Paetec
Progress and Freedom Foundation	PFF
State of New York Office of the Attorney General	New York Attorney General
Telecommunications Consultants Coalition	Telecom Consultants
Texas Office of Public Utility Counsel	Texas OPC
United States Cellular Corporation	United States Cellular
Vonage Holdings Corp.	Vonage
WorldNet Telecommunications, Inc.	WorldNet

<u>Petitioners</u>	<u>Abbreviation</u>
American Public Communications Council	APCC
Broadwing Communications LLC and SAVVIS Communications, Inc.	Broadwing and SAVVIS
Cbeyond Communications Conversent Communications Eschelon Communications NuVox Communications TDS Metrocom XO Communications	Cbeyond <i>et al.</i>
CompTel/ALTS	CompTel/ALTS
Consumer Federation of America Consumers Union Public Research Group	Consumer Federation <i>et al.</i>
EarthLink, Inc.	EarthLink
Qwest Communications International Inc.	Qwest

<u>Reply Commenters</u>	<u>Abbreviation</u>
Ad Hoc Telecommunications Users Committee	Ad Hoc Telecom Users
Advance/Newhouse Communications	Advance
American Public Communications Council	APCC
CableVision Lightpath, Inc.	Lightpath
Competitive Enterprise Institute	CEI
Cox Communications, Inc.	Cox
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Board of Public Utilities	New Jersey Board
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
Office of the People's Counsel for the District of Columbia	DC OPC
Pacific LightNet, Inc.	Pacific LightNet
Qwest Communications International Inc.	Qwest
T-Mobile USA, Inc.	T-Mobile
Verizon Communications Inc. and MCI, Inc	Verizon/MCI

APPENDIX B

Licenses and Authorizations To Be Transferred

SECTION 214 AUTHORIZATIONS

A. *Part 63 – Domestic Section 214 Authority***MCI Affiliates and Subsidiaries Holding Domestic 214 Authority**

Intermedia Communications LLC
 Intermedia Communications of Virginia, Inc.
 MCI Broadband Solutions, Inc.
 MCI Communications Corporation
 MCI Communications Services, Inc.
 MCI International Mobile Services, Inc.
 MCI International Services, Inc.
 MCI International, Inc.
 MCI Network Services, Inc.
 MCI WORLDCOM Communications of Virginia, Inc.
 MCI Network Services of Virginia, Inc.
 MCI, Inc.
 MCImetro Access Transmission Services LLC
 MCImetro Access Transmission Services of Virginia, Inc.
 Metropolitan Fiber Systems of New York. Inc.
 MFS CableCo U.S., Inc.
 MFS Globenet, Inc.
 Mtel Latin America, Inc
 SkyTel Corp.
 Southemet, Inc.
 Telecom*USA, Inc.
 Teleconnect Company
 Teleconnect Long Distance Services & Systems Co.
 TTI National, Inc.

B. *Part 63 – International Section 214 Authorizations*

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20050314-00095	MCI Communications, Inc.	ITC-93-065, <i>et al.</i>
ITC-T/C-20050314-00096	MFS Globenet, Inc.	ITC-98-622, <i>et al.</i>
ITC-T/C-20050314-00097	MCI, Inc.	ITC-214-19961212-00626, <i>et al.</i>
ITC-T/C-20050314-00098	MCI International Services, Inc.	ITC-214-19961003-00486, <i>et al.</i>
ITC-T/C-20050314-00099	MCI Network Services, Inc.	ITC-87-184, <i>et al.</i>
ITC-T/C-20050314-00100	MCI International, Inc.	ITC-89-155, <i>et al.</i>
ITC-T/C-20050311-00110	MCI Communications Corporation	ITC-90-128, <i>et al.</i>

CABLE LANDING LICENSE APPLICATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20050317-00006	MCI, Inc.	SCL-LIC-19970421-00002, <i>et al.</i>
SCL-T/C-20050317-00007	MCI Communications Corporation	SCL-92-002, <i>et al.</i>
SCL-T/C-20050317-00008	MCI International, Inc.	SCL-92-002, <i>et al.</i>
SCL-T/C-20050317-00009	MFS Globenet, Inc.	SCL-LIC-19971014-00009

SECTION 310(d) APPLICATIONS**A. Part 25 – Satellite Earth Station Authorization Applications**

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
SES-T/C-20050314-00321	MCI International Services, Inc.	E881473, <i>et al.</i>
SES-T/C-20050311-00338	MCI Network Services, Inc.	E000204, <i>et al.</i>

B. Parts 22, 24, 90 and 101 – Wireless Radio Services Applications

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0002071888	SkyTel Corp.	KNKG783, <i>et al.</i>
0002071884	MCI Communications Services, Inc.	WPNU610, <i>et al.</i>
0002071881	MCI Network Services, Inc.	WAX65, <i>et al.</i>
0002071879	Intermedia Communications LLC	KCL96, <i>et al.</i>

APPENDIX C

TABLE 1A - 2004 LOCAL VOICE CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS														
	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RI	VA	VT	WV
Verizon In-Region States														
Pre-merger Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 1B - 2004 LOCAL VOICE CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS							
Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles-LngBc, CA	Portland-Vnevr, OR-WA	Raleigh-Durham, NC	Seattle-Tcoma-Oly, WA	Tampa-St Petersburg, FL
Pre-merger Verizon market share	REDACTED						
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

TABLE 1C - 2004 LONG DISTANCE CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS

Verizon In-Region States	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RJ	VA	VT	WV
Pre-merger Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 1D - 2004 LONG DISTANCE CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS

Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles-LngBe, CA	Portland-Vncvr, OR-WA	Raleigh-Durham, NC	Seattle-Tcoma-Oly, WA	Tampa-St Petersburg, FL
Pre-merger Verizon market share	REDACTED						
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

TABLE 1E - 2004 FRAME RELAY CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS														
Verizon In-Region States	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RJ	VA	VT	WV
Pre-merger Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 1F - 2004 FRAME RELAY CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS							
Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles-LngBe, CA	Portland-Vncvr, OR-WA	Raleigh-Durham, NC	Seattle-Tcoma-Oly, WA	Tampa-St Petersburg, FL
Pre-merger Verizon market share	REDACTED						
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

TABLE 1G - 2004 T1 CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS

	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RI	VA	VT	WV
Verizon In-Region States														
Pre-merger Verizon market share														
Median Pre-merger Verizon market share (Across all Verizon states)														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

REDACTED

TABLE 1H - 2004 T1 CUSTOMER SHARES - LARGE ENTERPRISE CUSTOMERS

	ALL	Dallas-FT Worth, TX	Los Angeles- LongBe, CA	Portland- Vncvr, OR- WA	Raleigh- Durham, NC	Seattle- Tcoma-Oly, WA	Tampa-St Petersbrg, FL
Verizon Out-of-Region (GTE) MSAs							
Pre-merger Verizon market share							
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

REDACTED

TABLE 2A - 2004 LOCAL VOICE CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS														
Verizon In-Region States	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RI	VA	VT	WV
Pre-merger Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 2B - 2004 LOCAL VOICE CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS								
Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles- LngBc, CA	Portland- Vncvr, OR- WA	Raleigh- Durham, NC	Seattle- Tcoma-Oly, WA	Tampa-St Petersbrg, FL	
Pre-merger Verizon market share	REDACTED							
Median Pre-merger Verizon market share								
Post-merger (Verizon + MCI) market share								
Median Post-merger (Verizon + MCI) market share								
Serving Carriers as identified in the survey								
Pre-merger HHI								
Median Pre-merger HHI								
Post-merger HHI								
Median Post-merger HHI								
Delta								

TABLE 2C - 2004 LONG DISTANCE CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS

Verizon In-Region States	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RI	VA	VT	WV
Pre-merger Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 2D - 2004 LONG DISTANCE CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS

Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles-LngBc, CA	Portland-Vncvr, OR-WA	Raleigh-Durham, NC	Seattle-Tcoma-Oly, WA	Tampa-St Petersburg, FL
Pre-merger Verizon market share	REDACTED						
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

TABLE 2E – 2004 FRAME RELAY CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS														
Verizon In-Region States	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RI	VA	VT	WV
Pre-merger Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 2F - 2004 FRAME RELAY CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS							
Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles-LngBe, CA	Portland-Vncvr, OR-WA	Raleigh-Durham, NC	Seattle-Tcoma-Oly, WA	Tampa-St Petersburg, FL
Pre-merger Verizon market share	REDACTED						
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

TABLE 2G - 2004 T1 CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS

Verizon In-Region States	ALL	DC	DE	MA	MD	ME	NH	NJ	NY	PA	RJ	VA	VT	WV
Verizon market share	REDACTED													
Median Pre-merger Verizon market share														
Post-merger (Verizon + MCI) market share														
Median Post-merger (Verizon + MCI) market share														
Serving Carriers as identified in the survey														
Pre-merger HHI														
Median Pre-merger HHI														
Post-merger HHI														
Median Post-merger HHI														
Delta														

TABLE 2H - 2004 T1 CUSTOMER SHARES - MEDIUM ENTERPRISE CUSTOMERS

Verizon Out-of-Region (GTE) MSAs	ALL	Dallas-FT Worth, TX	Los Angeles-LngBc, CA	Portland-Vncvr, OR-WA	Raleigh-Durham, NC	Seattle-Tcoma-Oly, WA	Tampa-St Petersburg, FL
Verizon market share	REDACTED						
Median Pre-merger Verizon market share							
Post-merger (Verizon + MCI) market share							
Median Post-merger (Verizon + MCI) market share							
Serving Carriers as identified in the survey							
Pre-merger HHI							
Median Pre-merger HHI							
Post-merger HHI							
Median Post-merger HHI							
Delta							

TABLE 3A - 2004 LOCAL VOICE CUSTOMER SHARES - SMALL ENTERPRISE CUSTOMERS				
	ALL	NY, MA, and PA	RI, VT, ME, NJ, NH, DE	MD, WV, VA, DC
Pre-merger Verizon market share	REDACTED			
Median Pre-merger Verizon market share				
Post-merger (Verizon + MCI) market share				
Median Post-merger (Verizon + MCI) market share				
Serving Carriers as identified in the survey				
Pre-merger HHI				
Median Pre-merger HHI				
Post-merger HHI				
Median Post-merger HHI				
Delta				

TABLE 3B - 2004 LONG DISTANCE CUSTOMER SHARES - SMALL ENTERPRISE CUSTOMERS				
	ALL	NY, MA, and PA	RI, VT, ME, NJ, NH, DE	MD, WV, VA, DC
Pre-merger Verizon market share	REDACTED			
Median Pre-merger Verizon market share				
Post-merger (Verizon + MCI) market share				
Median Post-merger (Verizon + MCI) market share				
Serving Carriers as identified in the survey				
Pre-merger HHI				
Median Pre-merger HHI				
Post-merger HHI				
Median Post-merger HHI				
Delta				

TABLE 4A	
2004 LOCAL VOICE CUSTOMER SHARES - SMALL ENTERPRISE CUSTOMERS	
	Dallas, Portland, Raleigh, Seattle, Tampa
Pre-merger Verizon market share	REDACTED
Post-merger (Verizon + MCI) market share	
Carriers identified in the survey as serving customers in the MSAs	
Pre-merger HHI	
Post-merger HHI	
Delta	

TABLE 4B	
2004 LONG DISTANCE CUSTOMER SHARES - SMALL ENTERPRISE CUSTOMERS	
	Dallas, Portland, Raleigh, Seattle, Tampa
Pre-merger Verizon market share	REDACTED
Post-merger (Verizon + MCI) market share	
Carriers identified in the survey as serving customers in the MSAs	
Pre-merger HHI	
Post-merger HHI	
Delta	

APPENDIX D

Mass Market Data (% Share)

State	Local Service		Long Distance Service		Local and Long Distance Bundle	
	Verizon Pre-Merger %	Verizon Post-Merger %	Verizon Pre-Merger %	Verizon Post-Merger %	Verizon Pre-Merger %	Verizon Post-Merger %
CA	REDACTED					
DC						
DE						
FL						
ID						
IL						
IN						
MA						
MD						
ME						
MI						
NC						
NH						
NJ						
NV						
NY/CT						
OH						
OR						
PA						
RI						
SC						
TX						
VA						
VT						
WA						
WI						
WV						
Minimum						
Maximum						
Median						

Note: See para. 103 & nn.307-309 for the underlying assumptions. Data are as of March, 2005. Data for New York and Connecticut are combined because Verizon does not report data separately for these states. We do not report data for Hawaii because control of Verizon Hawaii was transferred to Hawaiian TelCom Communications on May 2, 2005. See Letter from Jeffrey A. Marks and Nia C. Mathis, Latham & Watkins LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-234 (filed May 5, 2005). Sources: Verizon Info. Req., Exh. 18.A.1, 18.A.2, 18.A.4 and Suppl. Exh. 18.B.6; MCI Info. Req., Exh. 18(a)(b)(d), Tab 8; Numbering Resource Utilization / Forecast ("NRUF") database.

Appendix E

Internet Backbone Data

Table 1: Market Shares and HHIs of Tier 1 Backbone Providers*

Tier 1 Provider	Pre-merger Revenue (\$M)	% Share (pre-merger)	Post-merger Revenue (\$M)	% Share (post-merger)
REDACTED				
Pre-merger HHI	REDACTED			
Post-merger HHI	REDACTED			
Change in HHI	REDACTED			

*MCI Info. Req. at Exh. 8(a)(3); SBC/AT&T Oct. 14 *Ex Parte* Letter at Attachments (IDC 2003 Revenue Data; AT&T Corp. Response, WC Docket No. 05-65, Exhs. 8(b)(3)-I, II, and III (lists of MCI peers); and SBC Exh. 9.b (SBC 2004 transit payments)). Market shares are calculated from reported revenues for dedicated Internet access and upstream wholesale transit. We note that the post-merger market share for MCI is calculated based on the assumption that the parallel pending merger of SBC and AT&T is consummated. In addition, the post-merger revenue shares of [REDACTED] were adjusted based on available data regarding transit revenues previously paid to those IBPs by SBC and Verizon. See SBC/AT&T Oct. 14 *Ex Parte* Letter at Attach. (SBC 2004 transit payments); Verizon Info. Req., Exh. 10.c (Verizon 2004 transit payments).

Table 2: MCI pre-merger traffic ratios**

MCI Peer	3/2004 Ratio	6/2004 Ratio	9/2004 Ratio	12/2004 Ratio	3/2005 Ratio
REDACTED					
**MCI submitted average inbound and outbound traffic flows with its peers for the final month in each quarter in 2004 and the first quarter of 2005. See Letter from Mark D. Schneider, Counsel to MCI, to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, Attach. at Exh. 8(a)(4) (filed July 5, 2005) (MCI Supp. Info. Req.).					

APPENDIX F
International Data Table 1: Cable Capacity

Cable	2003	2003 % of Regional Share	2005 Estimate	2005 % of Regional Share	Verizon Total *	2005 % Share	2005 64 Ckts	2005 % Share	MCI	2005 64 Ckts	MCI + Verizon 2005 % Share	2005 64 Ckts
TRANS - ATLANTIC (T-A) ^{yy}												
CANUS-1												
Columbus II												
TAT 12/TAT-13												
Atlantic Crossing (AC-1)												
Columbus III												
Level 3												
AC-2												
TAT-14												
FLAG Atlantic-1												
Hibernia Atlantic												
TGN-Atlantic												
Apollo Cable												
Total T-A Region												
AMERICAS ^{yy}												
Americas-1												
Taino-Carib												
Antillas-1												
Bahamas-2												
Pan American Cable												
System												
Americas-2												
MAC												
PAC												
Maya-1												
GlobeNet												
SAC												
Arcos-1												
Emergia Cable System												
Bahamas Internet Cable												
Nkt												
SMPR-1												

REDACTED

REDACTED

Total Americas Region

APPENDIX F (CONTINUED)
Table 1: Cable Capacity (Continued)

Cable	2003	2003 % of Regional Share	2005 Estimate	2005 % of Regional Share	Verizon Total *	MCI		MCI + Verizon	
						2005 % Share	64 Ckts	2005 % Share)	64 Ckts
TRANS - PACIFIC (T-P) yyy									
NPC									
PacRimEast									
TPC 5									
PC-1									
Guam-Philippines									
China-U.S. Cable									
Network									
Southern Cross *									
Japan-U.S. Cable									
Network									
Australia-Japan Cable									
(Guam)									
TGN-Pacific									
Total T-P Region									
* Verizon total includes the capacity of CANTV, Verizon Dominicana, and VGS. Source: Verizon Intl. Info. Req.; MCI Intl. Info. Req.									

REDACTED

Ψ *Atlantic Region – 2005 Cable Capacity.* The cables are AC-2, Apollo Cable, Atlantic Crossing (AC-1), CANUS-1, Columbus II, Columbus III, Flag Atlantic-1, Hibernia Atlantic (formerly 360atlantic), Level 3, TAT-12/13, TAT-14, and TGN-Atlantic (formerly Tyco Atlantic). For 2005, no new cable additions or upgrades change the Atlantic Region capacity totals reported in the 2003 *Circuit Status Report*. For the 2005 calculations, we have subtracted from the 2003 *Circuit Status Report* data the capacity of the Gemini and PTAT-1 cables, reported in 2003 as, respectively, 362,880 and 17,010 circuits, because those cables now are deactivated. See Lack/Pilgrim Decl. at 4 n.5 (Gemini deactivated); Letter from David A. Nall, General Attorney, Sprint, to George Li, Deputy Chief, Operations, Policy Division, International Bureau, FCC, File No. SCL-T/C-19890320-00001 (dated Feb. 9, 2004) (PTAT-1 powered down on U.S.-U.K. and Ireland link on Feb. 8, 2004). Each of the currently activated cables, with the exception of CANUS-1 and Columbus II, uses WDM technology and can expand capacity on short notice at relatively low cost.

ΨΨ *Americas Region – 2005 Cable Capacity.* The cables are Americas-1, Americas-2, Antillas-1, Arcos-1, Bahamas Internet Cable Network (BICN), Emergia Cable System (formerly SAM-1), GlobeNet (formerly 360americas), MAC, Maya-1, PAC, Pan American Cable System, SAC, SMPR-1, and Taino-Carb. In 2004, Emergia Cable System doubled its capacity, from 484 million to 968 million 64-Kbps equivalent circuits, and SMPR-1, a smaller capacity common carrier cable with only 30,240 circuits, entered into service. No cables were deactivated between 2003 and 2005.

ΨΨΨ *Pacific Region.* The cables are Australia-Guam-Japan Cable, China-U.S. Cable Network, Guam-Philippines, Japan-U.S. Cable Network, NPC, PacRimEast, PC-1, Southern Cross, TGN-Pacific (formerly Tyco Pacific), and TPC-5. For 2005, our analysis reflects the 2004 upgrade of the Japan-U.S. cable from 80 Gbps to 400 Gbps; the new capacity is an increase of 3,860,720 circuits over the capacity reported in the 2003 *Circuit Status Report*. See, e.g., MCI June 10 Response, at 6 n.8 (stating that the capacity of the Japan-U.S. cable now is 4,838,400 64-Kbps equivalent circuits). For the 2005 calculations, we have subtracted from the 2003 *Circuit Status Report* data the capacity of TPC-4 (15,120 circuits), HAW-5 (15,120 circuits), and PacRimWest (7,560 circuits), because those cables now are deactivated. See *id.* at 6 n.9 (noting that the three cables now are retired).

APPENDIX F

International Data
Table 2: Cable Route Analysis
U.S.-Dominican Republic and U.S.-Venezuela

Cable	2005 Est.	% of Regional Share	Verizon						MCI		MCI + Verizon	
			U.S.-DR	U.S.-DR	U.S.-DR	U.S.-Ven.	U.S.-Ven.	U.S.-Ven.	U.S.-DR	U.S.-Ven.	U.S.-DR	U.S.-Ven.
			Own	IRU	Total	Own	IRU	Total				
			U.S. - Dominican Republic *									
Antillas 1												
Arcos-1												
Total Cables to DR												
% of Total Cable to DR												
Without IRU Total Cables to DR												
Without IRU % of Total Cables to Dominican Republic												
REDACTED												
U.S. - Venezuela **												
Americas-1												
Pan American Cable System												
Americas-2												
Arcos-1												
PAC -1												
GlobeNet												
Total Cables to Ven.												
% of Total Cable to Venezuela												
REDACTED												
Sources: Verizon June 10 Response; MCI June 10 Response.												

* Verizon Dominicana owns all four cable stations in the Dominican Republic (at Punta Cana and Santo Domingo for the Antillas-1 cable and at Puerto Plata and Punta Cana for the Arcos-1 cable).

** CANTV owns four cable stations in Venezuela (at Camuri and Estaco Vargas for the Americas 1 and Americas II cables and at Punto Fijo and Estado Falcon for the Pan American Cable System and Arcos-1 cable).

APPENDIX G

Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them and adopt them as Conditions of our approval of the merger. Unless otherwise specified herein, the Conditions described herein shall become effective 10 business days after the Merger Closing Date. The Conditions described herein shall be null and void if Verizon and MCI do not merge and there is no Merger Closing Date.

It is not the intent of these Conditions to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these Conditions, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these Conditions.

For the purposes of these Conditions, the term "Verizon/MCI" refers to Verizon Communications Inc. and its wholly-owned domestic U.S. wireline operating companies which include Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Contel of the South, Inc. d/b/a Verizon Mid-States, GTE Southwest Incorporated d/b/a Verizon Southwest, NYNEX Long Distance, Inc. d/b/a Verizon Enterprise Solutions, Verizon Global Networks Inc., Verizon California Inc., Verizon Delaware Inc., Verizon Florida Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon North Inc., Verizon Northwest Inc., Verizon Pennsylvania Inc., Verizon Select Services Inc., Verizon South Inc., Verizon Virginia Inc., Verizon Washington, DC Inc., Verizon West Coast Inc., Verizon West Virginia Inc., as well as MCI, Inc. and all of its domestic wireline operating companies.

For the purposes of these Conditions, the term "Merger Closing Date" means the day on which, pursuant to their Merger Agreement, Verizon and MCI cause a Certificate of Merger to be executed, acknowledged, and filed with the Secretary of the state of Delaware as provided in Delaware Corporation Law.

Unbundled Network Elements

1. For a period of two years, beginning on the Merger Closing Date, Verizon's incumbent local telephone companies⁵⁷³ will not seek any increase in state-approved rates for unbundled network elements (UNEs) that are currently in effect, provided that this restriction shall not apply to the extent any UNE rate currently in effect is subsequently deemed invalid or is remanded to a state commission by a court of competent jurisdiction in connection with an appeal that is currently pending (i.e., for appeals of state commission decisions in California, Maine, New Hampshire and Pennsylvania). In the event of a UNE rate increase in California, Maine, New Hampshire or Pennsylvania during the two year period following a court decision invalidating or remanding a UNE rate, Verizon/MCI may implement that UNE rate increase but shall not seek any further increase in the UNE rates in that state during the two year period. This condition shall not limit the ability of Verizon/MCI and any telecommunications carrier to agree voluntarily to any UNE rate nor does it supersede any current agreement on UNE rate.

⁵⁷³ As used in these conditions, the term "incumbent local telephone company," "incumbent local exchange carrier" or "ILEC" shall mean an "incumbent local exchange carrier" as set forth in 47 U.S.C. § 251 (h)(1)(A) and (B)(i).

2. Within 30 days after the Merger Closing Date, Verizon/MCI shall exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers in which Verizon claims there is no impairment pursuant to section 51.319(a)-(e) of the Commission's rules. Verizon/MCI shall file with the Commission, within 30 days of the Merger Closing Date, revised data or lists that reflect the exclusion of MCI collocation arrangements, as required by this condition.

Special Access

1. Verizon/MCI affiliates that meet the definition of an incumbent local exchange carrier contained in Section 251 (h)(1)(A) and (B)(i) of the Act ("Verizon's ILECs") shall, for the Verizon Service Area,⁵⁷⁴ provide to the Commission performance metric results contained in the Service Quality Measurement Plan for Interstate Special Access Services ("The Plan"), as described herein and in Attachment A. The Verizon ILECs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of the data collected according to the performance measurements listed in Attachment A. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the Verizon's ILECs' monthly performance in delivering interstate special access services within each of the states in the Verizon Service Area. These data shall be reported on an aggregated basis for interstate special access delivered to (i) Verizon/MCI's Section 272 affiliates, (ii) Verizon's other affiliates, and (iii) non-affiliates.⁵⁷⁵ The Verizon ILECs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The Verizon ILECs shall implement the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) 30 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when Verizon/MCI file their 10th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.
2. For a period of thirty months following the Merger Closing Date, Verizon/MCI shall not increase the rates paid by MCI's existing customers (as of the Merger Closing Date) of the DS1 and DS3 wholesale metro private line services that MCI provides in Verizon's incumbent local telephone company service areas above their level as of the Merger Closing Date.⁵⁷⁶
3. For a period of thirty months following the Merger Closing Date, Verizon's incumbent local telephone companies will not provide special access offerings to their wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.
4. For a period of 30 months following the Merger Closing Date, before Verizon's incumbent local telephone companies provide a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to their own section 272(a) affiliate(s), they will certify to the

⁵⁷⁴ For purposes of this condition, "Verizon service area" means the areas within Verizon's service territory where Verizon's incumbent LEC subsidiaries, as defined in 47 U.S.C. § 251 (h)(1)(A) and (B)(i), are incumbent local exchange carriers.

⁵⁷⁵ Data in categories (i) and (ii) shall not include Verizon/MCI retail data.

⁵⁷⁶ For purposes of these conditions, Verizon's incumbent local telephone company service areas means the areas within Verizon's service territory in which a Verizon operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251 (h)(1)(A) and (B)(i).

Commission that they provide service pursuant to that contract tariff to an unaffiliated customer other than SBC/ATT or its wireline affiliates. Verizon's incumbent local telephone companies also will not unreasonably discriminate in favor of their affiliates in establishing the terms and conditions for grooming special access facilities.

5. Verizon's incumbent local telephone companies will not increase the rates in their interstate tariffs, including contract tariffs, for DS1, DS3 and OCn special access services that Verizon's incumbent local telephone companies provide in their local service areas, as set forth in Verizon's tariffs on file with the Commission on the merger closing date.⁵⁷⁷ This condition shall terminate 30 months from the Merger Closing Date.

Internet Backbone

1. For a period of three years after the Merger Closing Date, Verizon/MCI will maintain at least as many settlement free U.S. peering arrangements for Internet backbone services with domestic operating entities as they did in combination on the Merger Closing Date. Verizon/MCI may waive the terms of its published peering policies to the extent necessary to maintain the number of peering arrangements required by this condition.
2. Within 30 days of the Merger Closing Date, and continuing for two years thereafter, Verizon/MCI will post its Internet backbone peering policy or policies on a publicly accessible website. During the term of this condition, Verizon/MCI will post any revisions to its peering policy or policies on a timely basis as they occur.

ADSL Service

1. Within twelve months of the Merger Closing Date, Verizon will deploy and offer stand-alone ADSL within the local service areas of Verizon's incumbent local telephone companies. Stand-alone ADSL means ADSL service on ADSL-equipped lines without requiring customers to also purchase circuit switched voice grade telephone service. This service will be available both for existing Verizon voice and ADSL customers who wish to port their voice service to a VoIP provider or to another facilities-based provider such as cable or wireless, and for new customers who wish to subscribe only to Verizon's ADSL and not to its voice service. This service will remain available in a given state for two years after the "implementation date" in that state. For purposes of this condition, the "implementation date" for a state shall be the date that Verizon can offer this service on eighty percent of Verizon's ADSL-equipped lines in Verizon's local service area in that state. Within twenty days after meeting the implementation date in a state, Verizon/MCI will file a letter with the Commission certifying to that effect. In any event, this commitment will terminate no later than three years from the Merger Closing Date.

Net Neutrality

1. Effective on the Merger Closing Date, and continuing for two years thereafter, Verizon/MCI will conduct business in a manner that comports with the principles set forth in the FCC's Policy Statement, issued September 23, 2005 (FCC 05-151).

⁵⁷⁷ This condition does not apply to Advanced Services that would have been provided by a separate Advanced Services affiliate under the terms of the *Bell Atlantic/GTE Order*, 15 FCC Rcd 14032, App. D.

Annual Certification

1. For three years following the Merger Closing Date, Verizon/MCI shall file annually a declaration by an officer of the corporation attesting that Verizon/MCI has substantially complied with the terms of these conditions in all material respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second and third declaration shall be filed one and two years thereafter respectfully.

Sunset

1. For the avoidance of doubt, unless expressly stated to the contrary above, all conditions and commitments contained in this letter shall end on the second anniversary of the Merger Closing Date.

**Conditions
Attachment A**

**Service Quality Measurement Plan
For Interstate Special Access**

Contents

Section 1: Ordering

FOCT: Firm Order Confirmation (FOC) Timeliness

Section 2: Provisioning

PIAM: Percent Installation Appointments Met

NITR: New Installation Trouble Report Rate

Section 3: Maintenance and Repair

CTRR: Failure Rate/Trouble Report Rate

MAD: Average Repair Interval/Mean Time to Restore

Section 4: Glossary

Section 1: Ordering

FOCT: Firm Order Confirmation (FOC) Timeliness

Definition

Firm Order Confirmation (FOC) Timeliness measures the percentage of FOCs returned within the Company-specified standard interval.

Exclusions

- Service requests identified as “Projects” or “ICBs”
- Service requests cancelled by the originator
- Weekends and designated holidays of the service center
- Unsolicited FOCs
- Administrative or test service requests
- Service requests that indicate that no confirmation/response should be sent
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Counts are based on the first instance of a FOC being sent in response to an ASR. Activity starting on a weekend or holiday will reflect a start date of the next business day. Activity ending on a weekend or holiday will be calculated with an end date of the last previous business day. Requests received after the company’s stated cutoff time will be counted as a “zero” day interval if the FOC is sent by close of business on the next business day. The standard interval will be that which is specified in the company-specific ordering guide.

Calculation

Firm Order Confirmation (FOC) Interval = (a - b)

- a = Date and time FOC is returned
- b = Date and time valid access service request is received

Percent within Standard Interval = (c / d) X 100

- c = Number of service requests confirmed within the designated interval
- d = Total number of service requests confirmed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation (Percent FOCs returned within Standard Interval)

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 2: Provisioning**PIAM: Percent Installation Appointments Met****Definition**

Percent Installation Appointments Met measures the percentage of installations completed on or before the confirmed due date.

Exclusions

- Orders issued and subsequently cancelled
- Orders associated with internal or administrative (including test) activities
- Disconnect Orders
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

This measurement is calculated by dividing the number of service orders completed during the reporting period, on or before the confirmed due date, by the total number of orders completed during the same reporting period. Installation appointments missed because of customer caused reasons shall be counted as met and included in both the numerator and denominator. Where there are multiple missed appointment codes, each RBOC will determine whether an order is considered missed.

Calculation

Percent Installation Appointments Met = $(a / b) \times 100$

a = Number of orders completed on or before the RBOC confirmed due date during the reporting period

b = Total number of orders where completion has been confirmed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

NITR: New Installation Trouble Report Rate**Definition**

New Installation Trouble Report Rate measures the percentage of circuits or orders where a trouble was found in RBOC facilities or equipment within thirty days of order completion.

Exclusions

- Trouble tickets issued and subsequently cancelled
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- RBOC troubles associated with administrative service
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions defined by each RBOC to reflect system and operational differences
- Subsequent trouble reports

Business Rules

Only the first customer direct trouble report received within thirty calendar days of a completed service order is counted in this measure. Only customer direct trouble reports that required the RBOC to repair a portion of the RBOC network will be counted in this measure. The RBOC completion date is when the RBOC completes installation of the circuit or order.

Calculation

Trouble Report Rate within 30 Calendar Days of Installation = $(a / b) \times 100$

- a = Count of circuits/orders with trouble reports within 30 calendar days of installation
- b = Total number of circuits/orders installed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 3: Maintenance & Repair**CTRR: Failure Rate/Trouble Report Rate****Definition**

The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

Calculation

Percent Trouble Report Rate = $(a / b) \times 100$

a = Number of completed circuit-specific trouble reports received during the reporting period

b = Total number of in-service circuits during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

MAD: Average Repair Interval/Mean Time to Restore**Definition**

The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

Calculation

Repair Interval = (a – b)

- a = Date and time trouble report was restored
- b = Date and time trouble report was received

Average Repair Interval = (c / d)

- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

GLOSSARY

Access Service Request (ASR)	A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs.
RBOC 272 Affiliates Aggregate	RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process.
RBOC Affiliates Aggregate	RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category.
Business Days	Monday thru Friday (8AM to 5PM) excluding holidays
CPE	Customer Provided or Premises Equipment
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready.
Firm Order Confirmation (FOC)	The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date.
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC.
Project or ICB	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling.
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Service Orders	Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-75

Today, we vote to approve the mergers of SBC and AT&T as well as Verizon and MCI. These mergers will create national facilities-based providers of telecommunications services that will provide new and advanced services to both mass market and enterprise customers. As end-to-end providers of communications services, these companies will make significant investments in fiber-optic networks and use these networks to provide customers a broad array of voice, data, and video services.

I believe that the transactions we approve today are consistent with and will further many of the Commission's competition, broadband, and public safety priorities. For example, these mergers create strong global carriers that will vigorously compete both internationally and domestically. Further, the complement of the local and long distance network facilities will permit the merged entities to offer a more diverse array of services to a broader range of customers. It is my expectation that these mergers will only increase the incentive and ability of the merged entities to invest in broadband infrastructure and spread the deployment of advanced services to all Americans. Of particular importance to me, the mergers will further the goal of public safety by virtue of the commitments that have been made with regard to compliance with the Commission's November 28th deadline to deploy a 911 solution for VoIP customers.

I know that many have expressed questions about these mergers. For example, some are concerned that these transactions will adversely affect competing providers that rely on the merger applicants for wholesale inputs. Others have been concerned about the effect of these mergers on end users – particularly business end users that purchase special access services. I believe that the remedy imposed by the Department of Justice should adequately address any concerns in this regard. Moreover, I note that under the commitments made by the Applicants, UNE rates are effectively capped for two years and special access prices are essentially frozen for 30 months from the merger closing date.

Concerns have also been raised about the impact of this merger on the Internet backbone market. We have found this market, which has never been regulated, to be sufficiently competitive. It is the Commission's prediction that these mergers will in no way alter this dynamic. In any event, the Applicants have committed to publicly post their peering criteria and to continue settlements-free peering arrangements with the same number of providers post-merger as they did, in combination, pre-merger.

Let me say that I do not believe that all of the conditions imposed today are necessary. I believe that the affected markets would remain vibrantly competitive absent these conditions. Nevertheless, the parties involved have chosen to make these commitments now in order to obtain the certainty of immediate Commission approval for their mergers. I understand their desire to move forward, and agree that the public interest will be well served by providing certainty sooner rather than later.

The fiber optic networks of today that are capable of delivering over 100 mbps worth of capacity have come a long way from the microwave transmission technology that was first used to compete several decades ago. We are seeing both intermodal and intramodal providers aggressively competing for customers using a multitude of new technologies and platforms. The telecommunications industry is a constantly evolving one, and the consummation of these mergers represents the opening of a new chapter in communications history. I look forward to the promise of continued technological innovation.

Finally, I would like to thank my colleagues for their rigorous review of these transactions. I know that these mergers presented difficult issues for them to consider and I appreciate, as always, their professionalism and willingness to always do what it is in the public interest.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-75

It has often been said that nothing is constant except for change. And we as telecommunications regulators need to be particularly mindful of this because change is the engine that drives progress. Unfortunately, today we focus too much on micromanaging the growth and pace of change, rather than how to harness it to benefit consumers.

During my time as a Commissioner, I have spoken at length about the enormous disruptions in the telecommunications marketplace being wrought by convergence and the great progress it has brought. We now have competition more vibrant than has ever been seen in the telecommunications industry, and this has dictated a significant shift in the business strategies of the companies in that industry. Technological advances that spurred competition now allow us to consider mergers that might have been unthinkable in the "natural monopoly" pre-convergence era. Dramatic changes in the technology, the economics, and the structure of the market have mooted prior concerns.

The principal question before us today is this: whether the particular convergence of SBC and AT&T, on the one hand, and Verizon and MCI, on the other, is compatible with the public interest and, more specifically, whether the two mergers further innovation and the growth of competition. While I am pleased that we are allowing the mergers to go forward, some of the conditions in the Orders reflect a failure to appreciate the degree to which the market has changed and how that constrains market behavior by the applicants.

As the applicants know only too well, today's market for telecommunications is vibrant and challenging and offers no guaranteed rate of return on investment. Perhaps most importantly, the economic foundations of the interexchange market have shifted dramatically as the Bell Operating Companies have won approval to offer in-region long-distance services. The local exchange market has also been transformed as the growing demands of business customers have emphasized the need for high-capacity networks with global reach. The market for data services and Internet access - - something barely on our radar screens 5 years ago - - has exploded as individuals and businesses alike consume more and more high-bandwidth content and require faster and faster broadband connections. And amidst all of this, the rise of high-capacity next-generation networks and fierce competition from wireless, cable-based, and VoIP providers has drastically undermined the rationale for extensive regulation.

These mergers must be viewed in the context of these changes, precisely because they are the natural outgrowth of these changes. As proposed, each of these transactions would marry a Bell Operating Company's extensive local residential facilities and broadband Internet access offerings with an established interexchange carrier's business service offerings, long-distance facilities, and Internet backbone assets. The combination of these capabilities expands the merged companies' scope and scale outside their own regions, improves operational efficiencies, enlarges the companies' range of offerings, and reduces prices for business and residential consumers alike. In short, these mergers are intended to give birth to strong, nimble competitors, able to meet the demands placed on twenty-first century providers by customers with widely disparate needs.

As approved, however, I fear that many of these potential gains will be delayed or compromised. In my judgment, the conditions included in the Orders before us require the merged companies to provide offerings that the market might not demand, to sacrifice synergies by needlessly treating their affiliates at arms' length, and to maintain business relationships based on current assumptions even if those assumptions cease to reflect economic reality. Moreover, the companies will have to abide by these

conditions while their most aggressive competitors – whether they use wireline, wireless, cable, or other, next-generation facilities – remain exempt.

I have consistently opposed this kind of micromanaged regulatory oversight in situations where competitive forces discipline market behavior. In addition, it is difficult for me to understand how this approach is consistent with this Commission's support for regulatory parity and competitive neutrality. It is no answer to say that the applicants have agreed to accept these conditions, and therefore they must certainly be good, or at least not all that bad. That position fails to take into account that such conditions are the *quid pro quo* that merger applicants must accept in order to get timely approval.

I would perhaps be less concerned about this aspect of today's decisions if either (a) the Department of Justice had outlined problems arising from the larger competitive impacts of these mergers; or (b) these remedies were clearly needed to cure palpable existing problems. But neither is the case here. While I recognize that the Commission's merger review mandate implicates a broader standard of review than that of DOJ, it remains nevertheless true that DOJ's review was focused on the same issues we are asked to examine: competition in the various markets involved. And all the expert economists, lawyers, and other professionals reviewing these issues for DOJ found no significant cause for concern in most of the areas subject to the conditions.

I am not suggesting that DOJ's evaluation is, or should be, co-extensive with ours. But what I would suggest is that it effectively places on the Commission the burden of showing the existence of other problems so grave and immediate that conditioning the merger agreement is the only effective remedy. It should not be standard operating procedure to craft company-specific merger conditions to address unknown and hypothetical competitive threats. After all, the customary administrative weaponry in the Commission's arsenal – rulemaking, enforcement, and so on – does not suddenly evaporate once a merger is approved. We always have these tools and we can always use them when and if necessary.

The competition unleashed by the convergence of formerly separate lines of business places an additional premium on taking a more circumspect approach to conditioning mergers. Competition is a *process*, not a *product*. This new competitive market is still developing, and it needs to be given reasonable regulatory elbow-room to do so. Imposing *ad hoc* conditions that do not reflect the realities of today's market *hamstrings this development rather than helps it and creates market distortions*. Therefore, it is my view that we should resort to imposing such conditions only *first*, where the perceived harm is an obvious consequence of the merger, not merely a prediction about what *might go wrong*; and *second*, where other administrative remedies are inadequate to address this harm. That simply isn't the case in these mergers, with these conditions.

The applicants have looked at their business plans and determined that change is not only inevitable, but necessary, if they are to continue to respond to consumer demand for lower prices and better technology. I agree. They argue that the explosion of competition has rendered extensive conditions unnecessary. Again, I agree. These companies, their customers, and their competitors all understand that we no longer live in the monopoly world of years past and that our job as regulators is to keep pace with change, embrace competition and focus on consumer protection, not the protection of the status quo.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
CONCURRING**

Re: Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-75 (Concurring)

The mergers before us are about more than the union of this country's largest telecommunications carriers. They are about consumers' phone bills, the availability of competitive broadband options and the future of the Internet. But in a sense, these mergers can also be seen as an epitaph for the competition that many of us thought we would enjoy as a result of the Telecommunications Act of 1996. That legislation, I am convinced, envisioned a vastly different communications landscape than the one we find ourselves living in today.

If you seek the reason why we haven't arrived at that happy valley of competition rife with consumer benefits, you can start with the misdirected policies of the FCC over the last several years. On too many fronts, the Commission put the spear to the pro-competitive policies of the Telecommunications Act of 1996. It put intra-modal competition for the residential market pretty much beyond reach for new entrant carriers and then proceeded to inhibit enterprise competition, too. We turned our eyes away when enforcement was needed to keep bottleneck facilities open. And all the while we kept singing confidently "Don't Worry, Be Happy"—*inter-modal* competition is going to save us with all its new options. Maybe, but then again maybe not—we're still waiting. I think we ought to be concerned. Thanks in part to our actions, the wireline market became increasingly the province of the few. More than half of the wireless market came under the control of incumbent wireline providers. New services like VoIP have been held back by the high cost of broadband in this country. And now the Internet backbone seems headed in the same direction of control by a favored few.

This state of affairs is not of my making or choosing. The record shows that I objected vociferously to many of these changes. I would have chosen a very different path than the one we travel today. But in the end, we are charged with considering these mergers in the context of the world that is, not the one that might have been.

In this environment, I believe my responsibility is to identify and fight for what we can preserve, so that American consumers can still enjoy some competition in telecom services; that business customers, too, can benefit from competitive rates and innovative service choices and lower prices; and that, when it comes to the Internet, we can all go where we want to go and do what we want to do with this dynamic tool that is so critical to our nation's future. These things are all clearly in the public interest.

The Order the Commission adopts today falls far short of ideal. Maybe a better way to put it on this Halloween Day is to say: It's not a trick or much of a treat, but it's all you get if you come knocking at the Commission's door today. Yet, clearly, this is better than approving these mergers without any conditions. There have been difficult discussions here in recent days, but they have been substantive, productive and fair. And while I wish I could have been more persuasive on a number of issues, we should keep in mind that this outcome is far from a rubber stamp approval of the item we received. I would not—could not—support an unconditioned approach. Would I have preferred to do more? Yes. Am I entirely satisfied? No. But this Order is now conditioned on provisions designed to address numerous possible harms to competition and to consumers, as well as to protect the openness and innovation that must always characterize the Internet.

- *Stand-Alone DSL:* We require the Applicants to make available stand-alone, or "naked" DSL. This means consumers can buy DSL without being forced to also purchase voice service. This is good

news. If savvy consumers have cut the cord and use only a wireless phone, why should they have to pay for wireline voice service they don't even want? Looking forward, this condition is important for the development of VoIP. I also am pleased that the Commission has committed to enforce this condition and issue an annual report addressing anti-competitive conduct in this market. And I hope we will have the good sense to find it anti-competitive if the price for stand-alone DSL is not significantly less than the price for bundled voice and DSL.

- *Net Neutrality:* Two years ago I urged the Commission to ensure that its policies protect the openness that makes the Internet such a vibrant place. Two months ago, I pushed for this Commission to approve an Internet Policy Statement outlining the freedoms consumers have a right to expect in the digital age. Today, we make these principles enforceable. As a result, consumers will have an enforceable right to use their bandwidth as they see fit, going where they choose and running the applications they want on the Internet.
- *Internet Backbone:* The Internet's network of networks relies on providers handing traffic off to one another. This free exchange of traffic—known as peering—has been a hallmark of the Internet backbone. We require the Applicants to continue peering with as many providers as they do today. This will help prevent the network outages that come from de-peering. It will also help ensure that the free flow of traffic continues—and that new costs are not passed on to end-users.
- *Special Access:* We provide a measure of stability for businesses and carriers that use special access services—the high capacity facilities that so much of our communications rely on. We freeze rates and provide some protection against discriminatory practices. Let me note, however, that the Commission still has a long-standing and more comprehensive proceeding on special access to complete. It is vitally important that we do so without further delay.
- *UNEs:* To keep competition growing from competitive carriers, we require the Applicants to update the wire center test from the *Triennial Review Remand*. We also provide stability by capping UNE input rates for two years.

These conditions provide only a bare minimum. I can't say we made lemonade out of lemons, but we did the best we could. More would clearly have been better. Surely our statutory obligation to ensure that these mergers are in the public interest provides ample authority for the Commission to go further than it did. In addition to the areas I just discussed, a merger of this magnitude would seem to call for more significant divestiture of overlapping facilities and routes, going beyond the minimalist consent decrees that were announced last week by the Department of Justice. But in the good faith back and forth between my colleagues and me, these are the results we were able to achieve. Similarly, some will argue that several of the commitments outlined above are not in perpetuity and are not long enough. I agree. Commissioner Adelstein and I fought long and hard for lengthier commitments. But at least for the time periods enumerated, this becomes official policy. Once instituted, consumer expectations may compel their extension, and perhaps the Commission itself will come to see the wisdom of extending them. More to the point, Congress will have the opportunity to work its will as it revisits the telecommunications statute.

Going forward, our priority must be on vigilance, expert monitoring, and enforcement as needed. This new era of telecommunication is rife with all sorts of exciting opportunities for both consumers and entrepreneurs. But there are also new perils. No less a source than the *Wall Street Journal* pointed out less than two weeks ago that large carriers "are starting to make it harder for consumers to use the Internet for phone calls or swapping video files." The more powerful and concentrated our facilities providers grow, the more they have the ability, and perhaps even the incentive, to close off Internet lanes and block IP byways. I'm not saying this is part of their business plans today; I am saying we create the power to inflict such harms only at great risk to consumers, innovation and our nation's competitive posture.

Because, in practice, such stratagems can mean filtering technologies that restrict use of Internet-calling services or that make it difficult to watch videos or listen to music over the web. The conditions we adopt today speak directly to this issue—*before* increased concentration of last mile facilities and the Internet backbone make it intractable. This is why stand-alone DSL, enforceable net neutrality principles, and peering in the Internet backbone are so vital.

I also am pleased that these conditions now express a measure of concern for the effects of these mergers on competitive wireline providers. Competitive carriers will benefit from the reforms we put in place for special access and UNEs. This will provide at least some latitude for competitive players trying to crack open an increasingly concentrated marketplace. We need active and engaged competitive carriers to keep rates low. This is especially important for small business customers.

In addition, this Order takes a cautious view of the impact of these mergers on rural America. We share a concern that the mergers not be allowed to jeopardize interconnection for small and rural providers. To this end, the Commission commits to monitoring the situation on an ongoing basis. This is important because the wrong policies here could actually put rural America at further disadvantage compared to the rest of the country. I, for one, will be vigilant in making sure this never happens.

Looking beyond the transaction before us, it is obvious that the whole telecommunications landscape continues to change dramatically. But despite all of the advances in technology and efficiency over the last decade, local phone rates have failed to decline. Household phone penetration is at the lowest rate in 17 years. Surely being 16th in the world in broadband penetration is nothing to crow to about. And, yes, we still have enormous digital gaps from the inner city to the rural village, and there is a real threat that current policies may widen rather than close those gaps. So there are already ample warning signs something is not right. And it is long past time for the Commission to pay heed.

It may be that we can address all these concerns in a big carrier environment. Conversely, it may be that we are tacking back in time toward an era when concentrated power dictated what limited services we could and could not have and we had no recourse but to accept what was offered. In any case, I am mindful that there are large and portentous questions here—and that their ultimate resolutions often range beyond the boundaries of FCC jurisdiction. The Commission—important as its work is—does not design the legal landscape for telecommunications. Congress is looking at these issues and will hopefully be updating our telecommunications statute in the months or year ahead—and there is no substitute for that kind of guidance. I also believe we need some real national dialogue on these issues regarding consumer rights, Internet openness, broadband deployment and many more. I think we will find the American people more than happy to engage such a discussion. They understand that how these issues are decided is important to them. The bottom line here is that these issues are vitally important to the future of our country. Telecommunications are going to be a major driver of our economy in this new century. We just have to get the legal and regulatory landscape right. If we get it wrong, American consumers will pay and so will American technology, innovation and entrepreneurship. No less than our global competitiveness in the new information age is at stake.

Above all, we must have some humility about what we do. There are honest disagreements over these issues and I don't believe that any one of us has it all figured out. So we have to be always open to new facts and always follow up on the real-world consequences of our actions. If rates go up for residential and business users as a result of our decision today, if our broadband penetration rates fall further in comparison with what other countries with different policies are experiencing, and if consumers find that their Internet freedom is being shackled by monopoly or duopoly control, then we have a clear and pressing duty to revisit what we have done. So we need to put as much or more effort and resources into monitoring the consequences of our actions as we do in bringing them forward for a vote. I have worked in this proceeding to protect against injurious consequences, as best I can under the

circumstances, and while I would have liked more, I will concur in these Orders and pledge my close attention to their unfolding consequences.

We at this table are all indebted to the work of the Bureau and to the tireless dedication of our personal staffs as these items matured and particularly their often heroic efforts over the past week. For my part I want to extend my appreciation and admiration to Jessica Rosenworcel. Her tenacity and creativity through all of this have been an inspiration.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
CONCURRING**

Re: Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-75 (Concurring)

While I am deeply concerned about the concentration and loss of wireline competition that may occur as a result of these mergers, I concur in these Orders because they each include a minimum set of conditions that tip the balance, albeit narrowly, in favor of approval.

In these proceedings, we consider the mergers of the two largest incumbent telephone companies in the United States with the two largest long distance telephone companies. My job is to determine whether these proposed combinations will advance the public interest.

The Applicants have argued that these mergers will create two companies that are stronger competitors in the global marketplace and that will be better positioned to bring broadband and video services to American consumers. I support the Applicants' efforts to promote ubiquitous broadband and competitive video services and look forward to seeing their continued commitment to these goals.

At the same time, I am concerned about the potential harms of these mergers. AT&T and MCI are, without question, two of the leading providers of competitive choice across the country, and these combinations will, by any measure, create more concentration in markets that are already highly concentrated. We must be particularly careful where a proposed merger would lead to less competition rather than more, so I give these concerns great weight.

Based on my weighing of these potential benefits and harms, I could not support these mergers in the absence of reasonable conditions. Without conditions, there is a real possibility that these combinations would increase rates for both residential and business consumers and put at risk the continued existence of the open and robust Internet. So, my support here is based on the Applicants' offers to comply with a minimum set of conditions that will help promote consumer choice and the development competitive alternatives. Indeed, I would have preferred additional and more rigorous safeguards beyond those set forth in these Orders.

I am particularly pleased that the Applicants have agreed to offer a stand-alone DSL broadband product. Consumer advocates strongly supported this condition, which will substantially expand the options available to residential and small business consumers. By conditioning this merger on the offering of a stand-alone DSL broadband offering, we create an opportunity for the development of competitive Voice Over Internet Protocol (VoIP) and help spur innovative communications technologies. According to consumer advocates, many consumers will want bundled services, but when companies unilaterally mandate that broadband and phone services be purchased together, they diminish the incentive of consumers to purchase VoIP phone service from competing providers or to rely on wireless service as their primary option. In addition, by committing to do annual reports that assess the competitiveness of the consumer broadband market, we also will have the ability to monitor whether these services are being made available to consumers at reasonable prices and under fair terms. Consumers deserve the option of choosing the combination of services that fits their needs, and encouraging greater purchasing flexibility through stand-alone DSL furthers this goal.

A stand-alone DSL offering is an important contribution to the marketplace, but I do not pretend that it is a panacea. It will not provide greater choice for those who cannot afford DSL or who do not have DSL available in their area. Especially vexing is that the stand-alone DSL offering outlined in this

Order could also have been more robust. For example, we could have done more to enable consumers to purchase DSL services free from any voice service, rather than just traditional circuit-switched voice services.

Some have argued that AT&T and MCI had already made irreversible decisions to exit the entire consumer market, but it is worth noting that this exit was certainly hastened, if not precipitated, by the actions of this Commission and the courts. In a very tangible way, we reap what was sown in prior Commission decisions that consistently undercut competitors' ability to offer choice to American consumers. As many of you know, I was a frequent dissenter to those FCC decisions, which form the prologue for today's action. I predicted then that those decisions would lead to less choice for consumers. In some ways, these transactions fulfill that prophecy. So while I am pleased that we are able to take some meaningful steps in these Orders to promote the interests of consumers, this Commission must closely monitor the affordability and availability of the broadband services and the intermodal competition that we count on to fill the gaps.

I also find compelling that the Applicants have agreed to comply with the Commission's Internet Policy Statement as an enforceable condition of these mergers. Commenters have voiced concern that the horizontal and vertical integration of the Applicants' Internet backbone networks, particularly considering the two mergers together, may create an incentive and ability to discriminate against other providers in what has heretofore been a competitive market. Maintaining an open and robust Internet is absolutely critical. Just two months ago, the Commission set out in this Policy Statement a basic set of consumer expectations for broadband providers and the Internet. With this Statement, we sought to ensure that consumers are entitled to access the lawful Internet content of their choice, to run applications and use services of their choice, subject to the needs of law enforcement, and to connect their choice of legal devices that do not harm the network. While I applaud the Applicants for agreeing to comply with this statement of principles as an enforceable condition of their mergers, I must admit a deep foreboding that this commitment is only for two years. Given that it is Halloween, I hope that there are no tricks up anyone's sleeve. If any attempt to disrupt consumers' ability to unfettered access to the content of their choice occurs before or after the conditions expire, I expect the Commission will treat such a violation of the public trust and our policy with the seriousness it deserves.

The Applicants have also made notable commitments to protect against concentration in the Internet backbone market. In the face of concern over their Internet backbone practices, the Applicants argued that there are sufficient incentives to facilitate a competitive market and that concerns about anticompetitive practices in the Internet backbone peering arrangements are ill-founded. By agreeing to publicly release their peering policies and by committing to maintain settlement-free peering with at least as many backbone providers as they peered with pre-merger, we give competitors important tools to assess and monitor the accuracy of these claims.

For American business customers, these mega-combinations may present the greatest risks. Although business users tend to have more options than residential users, the Commission concludes that there is still a high level of concentration in the enterprise market in most areas of the country today, and the record makes clear that AT&T and MCI are two of the largest sources of choice for business users and largest suppliers of wholesale special access services to competitive carriers. Indeed, the record suggests that even the mere presence of AT&T or MCI in the competitive bidding process results in lower wholesale prices. Based on these competitors' national positions and ability to apply competitive pressure to wholesale prices, I believe that a more substantial divestiture of overlapping facilities would have been appropriate with this merger. I am not convinced that the relatively minor number of facilities where the Applicants are required to lease high-capacity lines – representing far less than one percent of their commercial buildings – is sufficient by itself to remedy this significant loss of actual and potential

competition. The Department of Justice's action leaves 99.9% of commercial buildings in SBC and Verizon territory wholly unprotected from the loss of competition that AT&T and MCI brought to bear.

In the absence of more thorough protections, I believe it is imperative that this Commission adopt safeguards to protect against the loss of competition. So, I am pleased that these Orders include price freezes for all four companies' current special access offerings. The Orders also include anti-discrimination provisions, which will help ensure that the combined companies do not discriminate in favor of their own affiliates or in favor of each other. I also commend the Applicants for including provisions to ensure against unreasonable grooming restrictions, which might otherwise prevent competitors from choosing the least cost option for providing service. While I would have gone further to ensure fair pricing of services to retail and wholesale customers, and done so for a longer period than thirty months, we do afford some modest protection from price hikes that could otherwise occur after the loss of such formidable competitors.

I also am pleased that the Applicants have agreed to freeze rates for the wholesale network elements used by competitors and to recalculate the impairment triggers for determining the availability of these elements. This later point was particularly critical for my support.

In approving these mergers, I rely specifically on the companies' assurances that they will fully implement the commitments they have made both in their applications and in their more recent filings. In these Orders, we state our expectation for increased competition among a broad array of intermodal and intramodal competitors. We also state our expectation for vigorous out-of-region competition by the Applicants. Unfortunately, the record on meeting past commitments on out-of-region competition is not what it could be. So, it is imperative that this Commission commit to monitor and vigorously enforce the terms of these merger orders.

The market changes approved in these Orders are historic in scope, but they are also part of a larger industry restructuring that is quickly changing the landscape for consumers of telephone, Internet and video services. The opportunities from these technologies are greater than ever, but so is the penalty for those left without options. We consider these mergers in light of these larger industry trends, but I must note that there is much analysis in these Orders that I find lacking or downright troubling. The Orders' sweeping conclusions about the lack of impact of these combinations requires us to take a lot on faith: more than consumers should expect. But given the willingness of my colleagues and the parties to compromise, we strike a reasonable balance. So, while I can agree to support the package of conditions agreed to by the Applicants and my colleagues, I can only concur to the Orders given my concern with the overall analysis in these items.

I would like to commend my colleagues for their cooperation and willingness to accommodate many of my concerns here. I also commend the staff of the Wireline Competition Bureau for their hard work on this item right down to the wire. These fine public servants have been willing to stay many late nights and weekends to move the business of the Commission forward and I thank them for their efforts.