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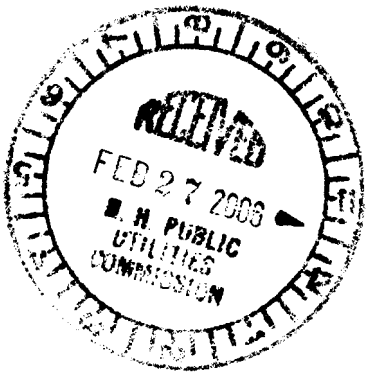

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

Re: DT 06-012-Verizon NH's Proposed Revisions to NH PUC Tariff No. 84 and DT 05-083- Verizon NH's Wire Center Investigations

Dear Ms. Howland:

By letter to you dated February 22, 2006, Verizon seeks to file in the above-captioned consolidated dockets a copy of an Industry Notice dated February 21, 2006. This Notice purports to clarify an earlier notice filed by Verizon with the FCC on February 3, 2006 which updates the classification of wire centers in accordance with the FCC's order approving the Verizon/MCI merger. Verizon's letter states that the Notice was sent to CLECs and posted on Verizon's Wholesale Website, but neither the letter nor the Notice indicate that it was filed with the FCC. A search of the FCC's website reveals that the last filing made in the Verizon/MCI merger docket was the February 3, 2006 Revised List of Wire Centers. Therefore it does not appear that the February 21st Notice supplants the February 3rd FCC filing.

A copy of the February 3, 2006 Revised List was submitted (as Appendix A) with the brief filed on behalf of BayRing and segTEL, Inc. in the above-referenced matter. That document clearly and unambiguously states at the top of each page of wire center listings that it is "Effective March 11, 2005". Verizon's letter to you claims that the February 21st Notice was "prompted because some CLECs were confused about the effect of the changes Verizon had announced in its February 3, 2006 notice, in particular whether those changes were 'retroactive' to the March 11, 2005 effective date of Verizon's initial wire center list." Notwithstanding Verizon's claims to the contrary, there is nothing confusing about the effective date of the February 3, 2006 FCC filing. That document speaks for itself. Accordingly, BayRing and segTEL's conclusions about the effective date are not "wrong" as Verizon asserts in footnote 1 of its letter.

The FCC's order regarding Verizon's obligation to update the wire center list to reflect the effect of the Verizon/MCI merger on the fiber based collocator count did not specify the date on which the new list would become effective. (A copy of the relevant portions of that order is enclosed for the Commission's reference.) However, in its February 3, 2006 FCC filing, Verizon specified that the effective date of the wire list update would be March 11, 2005 (which coincides with the effective date of the TRRO). This representation is clearly at odds with Verizon's brief in the instant matter filed on February 17, 2006 which asserts, without citing any supporting authority, that the wire center update to remove MCI from the FBC count was effective *"on a prospective basis"*. *Comments of Verizon New Hampshire,* DT 06-012 and DT 05-083 (February 17, 2006) at 9. Verizon is now arguing to this Commission that the March 11, 2005 effective date contained in the February 3rd FCC filing has been changed via an Industry Notice which Verizon claims is needed because of CLECs' confusion. However, in the absence of the FCC's approval of the Industry Notice, the March 11, 2005 effective date cannot be unilaterally changed by Verizon.

The February 21, 2006 Industry Notice demonstrates Verizon's willingness to back away from the voluntary and enforceable representations and commitments upon which regulators and CLECs have relied in good faith. Another example is Verizon's argument concerning its commitment to the FCC not to raise UNE rates. In exchange for the FCC's merger approval, Verizon agreed not to raise UNE rates. Verizon asserts in footnote 1 of its February 22, 2006 letter that BayRing and segTEL have mischaracterized this commitment (presumably because they have argued that Verizon's attempt to convert delisted UNEs to special access rates is equivalent to seeking a rate increase which is contrary to the FCC merger commitment). Verizon now portrays this commitment as relating "only to UNES" and not to "arrangements that the FCC has now determined need not be made available as UNEs..." This argument lacks merit because it elevates form over substance. Delisted section 251 UNEs are still considered UNEs even if they are provided pursuant to section 271 obligations. *See Verizon New England, Inc. d/b/a Verizon Maine v. Maine Public Utilities Commission,* 403 F. Supp. 2d 96, 98 (2005) (FCC determined that section 271 of Telecommunications Act of 1996 created **unbundling** obligations in addition to and independent of section 251; elements required to be unbundled pursuant to section 271 referred to throughout the order as "§271 UNEs"). Accordingly, Verizon should not be allowed to evade its commitments simply by unilaterally and improperly redefining the term UNE to mean solely an element required under section 251.

In closing, BayRing and segTEL note that the procedural schedule in this matter did not allow for post brief submissions. However, in light of Verizon's post brief filings which include substantive rebuttal arguments, BayRing and segTEL respectfully request that this letter be considered by the Commission to the same extent as the Verizon filings which prompted it. Thank you.

Very truly yours,

Susan S. Geiger

cc: Service Lists
enclosure

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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.

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 companies[573] 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).