STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-C-0237 – Joint Petition of Verizon Communications Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction Over or in the Alternative for Approval of Agreement and Plan of Merger.

ORDER ASSERTING JURISDICTION AND APPROVING MERGER SUBJECT TO CONDITIONS

Issued and Effective: November 22, 2005

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 22, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin
Patricia L. Acampora

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BY THE COMMISSION:

INTRODUCTION

By Joint Petition filed February 25, 2005 Verizon Communications Inc. (Verizon) and MCI, Inc. (MCI) (collectively, Petitioners) requested either a declaratory ruling that the New York State Public Service Commission (PSC or Commission) lacks jurisdiction under the New York State Public Service Law ("PSL") to review and approve a proposed acquisition of MCI by Verizon in accordance with the Agreement and Plan of Merger (Merger Agreement) jointly executed on February 14, 2005, or, alternatively, approval of the transaction pursuant to PSL §§99 and 100. We find that the Commission does have jurisdiction to investigate and decide whether to approve the proposed merger. In this order, we approve the transaction, subject to certain conditions. Following the merger, MCI will become a wholly-owned subsidiary of Verizon Communications Inc.

The Petitioners

Verizon Communications Inc. ("Verizon") is a Delaware corporation with headquarters at 1095 Avenue of the Americas, New York City, New York.[1] Verizon's subsidiaries provide residential customers, business customers, and other telephone carriers with a wide range of telephone and related services, including local exchange, intraLATA and interLATA toll service, Digital Subscriber Line (DSL), and Voice over Internet Protocol (VoIP), wireless, managed information technology, Yellow Pages advertising, directory publishing, Ethernet, optical ring, private line, data networking, Internet access, directory assistance and other operator services, databases, billing, resale, interconnection, and unbundled network elements (UNEs).[2] Verizon states that as of September 30, 2005 it served 49,689,000 access lines, 18,150,000 long distance lines, and 49,291,000 wireless customers and employed about 214,000 people nationwide.[3] Verizon's annual operating revenues for 2004 were approximately $71 billion.[4]

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[1] Verizon's new corporate headquarters will be located at 140 West Street. The transfer of 80% of Verizon's interest in 1095 Avenue of the Americas was approved in Case 05-C-0510, Order Approving Transfer (issued June 15, 2005).

[2] Case 05-C-0237, Joint Petition of Verizon Communications Inc. and MCI, Inc. for Merger Approval, (Petition), pp. 3-4; also see Verizon Communications website (www.verizon.com). According to the Petition, the parent company, Verizon Communications Inc., provides no services. Petition, p. 3.

[3] Verizon's website. Petition, p.4 indicates 210,000 employees, as of February 2005.

[4] Petition, p. 4; also see Form 10-K, Verizon Communications Inc. for the year ending December 31, 2004.

In New York, Verizon's local telephone services, both retail and wholesale, are provided by Verizon New York Inc, ("Verizon-NY") a subsidiary of Verizon Communications Inc. According to Verizon-NY's third quarter 2005 service quality report, it serves 8.8 million access lines in New York, of which approximately 75% are retail and the remaining 25% wholesale.[5] These lines represent about 80% of the access lines in New York State.[6] Verizon New York employs approximately 26,000 people in New York State,[7] and an additional 9,000 people are employed in New York State by Verizon NY's parent or its subsidiaries.[8]

MCI, Inc. is also a Delaware corporation with headquarters at 22001 Loudoun Parkway, Ashburn, Virginia. Through direct and indirect domestic subsidiaries and foreign affiliates, MCI provides a broad range of voice, data and Internet telecommunications and related services. MCI provides Internet protocol and virtual private networking services on private data networks as well as what it characterizes as the industry's farthest-reaching Internet backbone, spanning six continents and 140 countries.[9] MCI states that it is the second largest long-distance company in the United States for residential customers.[10] It also provides local exchange services to business and residential customers. MCI's 2004 annual

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5 Case 02-C-0543, In the Matter of Quality of Service provided by Local Exchange Companies in New York State, Verizon New York Inc. Third Quarter 2005 Service Quality Report (rel. November 22, 2005).

6 Id.

7 2004 Annual Report of Verizon New York, Inc. to New York Public Service Commission, Schedule 65, line 32.

8 Petition, p. 4 (35,000 total Verizon-affiliated employees in New York State).

9 See www.MCI.com.

10 Id.

operating revenues were $21 billion, and the company has approximately 42,500 employees.[11]

MCI, Inc. provides local and other telephone service in New York State through its subsidiaries MCImetro Access Transmission Services LLC, MCI WORLDCOM Communications, Inc., MCI WORLDCOM Network Services, Inc., TTI National, Inc., Teleconnect Long Distance Services and Systems Company d/b/a Telecom USA, and Metropolitan Fiber Systems of New York, Inc. MCI, through its subsidiaries, is a major provider of local exchange service in New York State.

The Proposed Transaction

Under the terms of the Merger Agreement, MCI will merge into ELI Acquisition, LLC, a Delaware limited liability company wholly owned by Verizon Communications and created solely to facilitate the transaction. ELI Acquisition, LLC, renamed MCI, LLC after the merger, will be the surviving company in the merger, and Verizon will be its parent corporation following the merger. In connection with the merger, MCI shareholders will receive 0.4062 shares of Verizon stock for each share of MCI stock owned. Verizon will continue to operate and hold all state certificates currently held, and MCI, LLC will operate and hold the state certificates formerly held by MCI.

Petitioners state that the Merger Agreement does not call for any transfer of assets of any of Verizon's or MCI's subsidiaries, nor does it provide for any changes in rates, terms, or conditions of service provided by those subsidiaries. However, Petitioners note that transfers of assets, reorganizations of corporate structure, and changes in service could occur following the closing of the merger transaction itself.

Petitioners state that the transaction is in the public interest and will have no adverse effect on the rates or the service quality of any regulated New York

[11] Petition, p. 5

telephone company. They assert that the merger will enhance Verizon's ability to provide a "comprehensive suite" of telecommunications services because it will "bring together two companies with complementary strengths."[12] Petitioners assert that the merger "is in keeping with an industry evolution that is trending toward convergence and consolidation."[13]

Verizon characterizes its existing large business and government users market, the Enterprise market, as primarily regionally focused, and, therefore, views the merger as an opportunity to expand this market nationally and internationally, areas in which MCI has a strong presence. Verizon would take advantage of MCI's innovative Enterprise sales expertise, as well as MCI's national, international and Internet backbone networks to become a strong competitor in the global Enterprise market. Absent this merger, Verizon's capacity to compete effectively for such customers would require years to develop. The ability of the merged company to offer wireless services to Enterprise customers, a service MCI is not currently able to offer, is another result of the merger.

Petitioners describe the benefit to residential and smaller business customers as the enhanced deployment of broadband services resulting from the combination of MCI's Internet backbone with Verizon's ongoing deployment of fiber directly to customers (also known as Fiber to the Premises or FTTP). They assert that MCI's mass market business is experiencing revenue declines and state that the merger will allow for higher quality service and a greater investment in the Internet backbone than MCI could achieve as a stand-alone company.

Petitioners assert that the merger would benefit the national economy by creating a "global industry leader," resulting from the strengthening of "America's premier telecommunications network builder and its leading service

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[12] Id., p. 8.

[13] Id., p. 9.

provider."[14] New York's economy would benefit, they state, because Verizon will continue its long history of corporate responsibility and good citizenship, while MCI's capability of providing good jobs related to its cutting-edge network technology will be enhanced. Petitioners estimate the merger would generate significant revenues and cost savings for both entities, thereby benefiting investors in both companies. While the transaction will lead to some job losses due to elimination of duplicative service jobs, Petitioners assert that the combined entity will provide greater job stability and certainty for employees than would exist if each company continued to operate separately.

PROCEDURAL BACKGROUND

Comments

On April 1, 2005, the Commission issued a Notice Soliciting Comments[15] regarding issues raised by the proposed merger, viz., impacts in New York State on 1) competition in the high-end business market, mass market, and other markets; 2) service quality and consumer interests; 3) infrastructure; 4) financial and operational matters; and 5) the relationship, if any, between the Verizon/MCI merger and the SBC/AT&T merger.[16] Interested parties were invited to submit comments by April 29, 2005. Petitioners were given an opportunity to

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[14] Id., p. 13.

[15] Case 05-C-0237, supra, Notice Soliciting Comments (issued April 1, 2005).

[16] The Commission approved the SBC/AT&T merger on September 21, 2005. Case 05-C-0242, Joint Petition of SBC Communications, Inc. and AT&T Corp. Together with its Certified New York Subsidiaries for Approval of Merger, Order Approving Merger (issued September 21, 2005).

respond to those comments by May 13, 2005. Thirteen parties submitted initial comments[17] and Petitioners submitted reply comments.

Staff's White Paper

Staff's investigation of the Verizon/MCI proposed merger involved reviewing and analyzing information obtained from a number of sources, including 1) the Petition, amendments to the Petition, Party comments and Petitioners' reply; 2) Verizon and MCI responses to Staff information requests; 3) comments and other information submitted to the Federal Communications Commission (FCC);[18] and 4) information previously gathered by Department staff in the course of participating in the Triennial Review Order (TRO)[19] and Triennial

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17 New York State Assembly Committee on Corporations, Authorities, and Commissions (Committee on Corporations); Consumer Federation of America, Consumers Union, and New York Public Interest Research Group (Consumer Commentors); Eliot Spitzer, Attorney General of the State of New York (Attorney General); New York State Consumer Protection Board (Consumer Protection Board or CPB); US LEC Communications, Inc. (US LEC); Qwest Communications Corp. (Qwest); New York Coalition of Rural Independent Telephone Companies (Rural Independents); Covad Communications Co. (Covad); Level 3 Communications LLC.(Level 3); Public Utility Law Project (PULP); Communications Workers of America (CWA); Conversent Communications of New York, LLC (Conversent); Broadview Networks, Inc., Broadview NP Acquisitions Corp., BridgeCom International Inc., DEICA Communications Inc. d/b/a Covad Communications Co., CTC Communications Corp., and XO Communications Services, Inc. (Competitive Carrier Group or CCG).

18 Petitioners also sought approval of the merger from the FCC, which considered the matter in Docket 05-75, In the Matter of Verizon/MCI Applications for Approval of Transfer of Control. The FCC approved the Verizon/MCI merger in an order released November 17, 2005.

19 In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Dockets 01-338, 96-98 and 98-147, Report and Order on Remand, FCC 03-36 (rel. August 21, 2003)(TRRO).

Review Remand Order (TRRO)[20] proceedings before the FCC. Staff's tentative conclusions and potential remedies associated with the Verizon/MCI proposed merger were summarized in a Staff White Paper dated July 6, 2005.[21] The White Paper, while focused on competitive analysis, also raised other regulatory issues such as service quality and financial ramifications of the proposed merger, discussed in more detail below.

The Commission issued the White Paper for comment by Notice dated July 6, 2005. The Notice solicited initial comments by August 5, 2005 and reply comments by August 22, 2005.

Public Input

In addition to providing for formal comments, the Commission held three educational forums and public statement hearings to solicit public input concerning the proposed merger.[22] The three public statement hearings resulted in 67 speakers commenting in favor of or in opposition to the proposed merger. Many of the proponents were from non-profit organizations and applauded Verizon's corporate citizenship. Some representatives of small businesses supported the merger, citing Verizon's customer service. Supporters of the merger generally wanted to see a stronger Verizon -- one that would continue to support their local communities, and believed that the merger would also better enable Verizon to provide broadband services. Opponents of the merger felt that the

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[20] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290 (rel. February 4, 2005) (TRRO).

[21] Cases 05-C-0237, et. al., supra, Notice Soliciting Comments on Staff White Paper (issued July 6, 2005). (White Paper) The White Paper was also available on the Department's website: http://www.dps.state.ny.us/05C0237-o242.html.

[22] Cases 05-C-0237, et al., supra, Notice of Educational Forums and Public Statement Hearings (issued July 6, 2005). Hearings were held in Buffalo (July 21, 2005), New York City (July 26, 2005), and Albany (July 28, 2005).

merger should not be approved without conditions. These conditions included service quality commitments, prohibitions on broadband redlining, investment requirements, employment levels, and restrictions on Verizon's ability to sell access lines. The Commission also received written letters, telephone calls to its toll-free opinion line, and e-mails sent via the “Ask PSC” web site. One letter was received from a business opposed to the merger, and 163 letters were received in support of the merger from businesses and non-profit organizations. Ten calls opposing the merger were received on the opinion line and three calls were received supporting the merger. Four comments were received via the Internet: two in support of the merger and two opposed.

Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional state or local permits or approvals are required, and, therefore, a coordinated review under SEQRA is not needed. We will assume lead agency status under SEQRA for review of this action.

SEQRA regulations promulgated pursuant to 16 NYCRR §617.6(a)(3) require applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed action. Joint Petitioners submitted a short-form Part 1 EAF.

The proposed action is approval of the merger of Verizon Communications Inc. and MCI, Inc. The proposed action does not meet the definition of either Type 1 or Type 2 actions as stated in 6 NYCRR §§ 617.4, 617.5 and 16 NYCRR §7.2, and, therefore, is classified as an “unlisted” action requiring SEQRA review. A review of the Part 1 EAF and the Petition demonstrate that, based upon the criteria for determining significance listed in

6 NYCRR § 617.7 (c), the action proposed in this proceeding will not have a significant adverse impact on the environment. Staff has completed the short-form EAF Part 2.

The EAF demonstrates that the proposed action will not have a significant impact on the environment. Therefore, we adopt a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no Public Notice Requesting Comments is required or will be issued. A Notice of Determination of Non-Significance for this unlisted action is attached as Appendix A. The completed EAF will be retained in our files.

Department of Justice Determination

On October 27, 2005, the Antitrust Division of the United States Department of Justice (DOJ) filed a complaint in U.S. District Court for the District of Columbia to block the proposed Verizon/MCI merger and at the same time DOJ filed a proposed settlement which, if approved by the court, would resolve competitive harms identified during the investigation of the proposed merger.[23] DOJ found that Verizon and MCI were the only two firms that controlled a direct wireline connection to some 356 buildings in the Verizon footprint on the East Coast and without new entry, the merger would eliminate competition for facilities-based local private line service to those buildings. Therefore, under the terms of the settlement, Verizon was required to divest fiber connections to those buildings to a single buyer via use of indefeasible rights of use (IRUs). DOJ concluded that the merger of Verizon and MCI would not harm competition regarding residential local and long distance services, Internet backbone services, or telecommunications services provided to business customers.

[23] United States v. Verizon Communications Inc. and MCI, Inc., Civ. No. 1:05CV02103, Stipulation, October 27, 2005.

Federal Communications Commission Determination

On October 31, 2005, the FCC voted to approve the Verizon/MCI merger, subject to certain conditions voluntarily offered by the companies.[24] The FCC concluded that DOJ's required divestiture of portions of certain local fiber-optic network facilities, where MCI was the only competitive carrier in the building, was sufficient to address any special access anticompetitive effects. In addition, the FCC found no likely anticompetitive effects in the retail Enterprise market, mass market, Internet backbone, wholesale long-distance or international markets. The FCC concluded the Verizon/MCI merger was in the public interest because consumers would benefit from increased network efficiencies, economies of scale, cost savings, and financial stability generated by the merger.

The conditions agreed to by Verizon and MCI include:

- a 30-month cap on wholesale DS1 and DS3 local private line rates for customers of MCI;
- a 30-month cap on interstate special access service rates;
- a 30-month prohibition on providing special access services to Verizon, MCI, their interexchange affiliates, each other or their affiliates, unless those services are made available to other providers;
- a three-year period for maintaining the Internet traffic free peering arrangements in existence on the closing date of the merger;
- a two-year period for offering naked or stand-alone DSL;
- a two-year cap on rates for UNEs still available pursuant to the TRRO;
- a 31-month commitment to special access service quality measurements;
- a one-time recalculation pursuant to the TRRO, of the availability of dedicated transport and high-capacity loops as UNEs in Verizon's wire centers.

24 Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, FCC 05-184 (rel. November 17, 2005).

ANALYSIS

Jurisdiction

Petitioners initially requested that the Commission disclaim jurisdiction over their proposed merger, asserting that the Public Service Law did not extend to approval of a stock transfer between holding companies. In its White Paper, Staff concluded that the Commission has jurisdiction pursuant to PSL §§ 99(2) and 100 to investigate and approve or deny the proposed acquisition of MCI by Verizon. In addition, Staff found that the facts presented in this merger parallel those in the NYNEX/Bell Atlantic merger which required Commission consent pursuant to PSL §§ 99(2) and 100 because it affected the manner in which New York Telephone would exercise its rights to operate its system in New York State.[25]

In response to Staff's assertion of and explanation for jurisdiction, Petitioners expanded upon their initial arguments that the Commission lacked jurisdiction to consider the proposed merger, relying upon testimony given to a New York legislative commission, the 1929 Knight Commission, as well as Commission decisions.[26]

We reject Petitioners' arguments and find that we have jurisdiction under the PSL to review the proposed merger. As discussed in the White Paper, control of the MCI subsidiaries' franchises and assets will pass from MCI to Verizon as a result of the merger. Because transfer of control will affect how the MCI subsidiaries operate in New York, PSL §99 (2) approval is required. In

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[25] Case 96-C-0603, et al., Joint Petition of New York Telephone Company, NYNEX Corporation and Bell Atlantic Corporation for a Declaratory Ruling that the Commission Lacks Jurisdiction to Investigate and Approve a Proposed Merger between NYNEX and a Subsidiary of Bell Atlantic, or in the Alternative, for Approval of the Merger, Opinion No. 97-8 (issued May 30, 1997), p. 13.

[26] Petitioners' Initial Comments in response to Staff White Paper, p. 91.

addition, because control of the stock of these subsidiaries will pass to Verizon, PSL §100 approval is required. Therefore, a determination as to whether the acquisition of control by Verizon of the MCI subsidiaries' franchises, assets, and stock is in the public interest is required by PSL §§ 99(2) and 100. The exercise of that jurisdiction by the Commission is consistent with the Commission's mandate under the Public Service Law.

Petitioners contend the legislatively established Knight Commission confirms that the Commission does not have jurisdiction to approve transactions similar to the Verizon/MCI merger. The Knight Commission, which took its name from its Chairman, Senator John Knight, was created by the New York State Legislature as a temporary commission in 1929 to study the Public Service Commission:

> for the purpose of …determining what amendment or revision of the public service commission law is essential to guarantee to the public safe and adequate service at just and reasonable rates ... [and] to recommend … any remedial or other legislation ....[27]

Problems generated by utility holding companies, including substantial losses by investors, undermining of confidence in financial information provided for offerings, and concern that private profit had come at the expense of the public interest, occupied national attention in the late 1920's. However, while holding companies, predominantly gas and electric utilities,[28] were an issue considered by the Knight Commission, the legislative commission was charged with the more comprehensive task of studying the adequacy of the Public Service Law to meet the task of public interest regulation.

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[27] §3, Chapter 673, Laws of New York, 1929.

[28] The Knight Commission estimated that holding company groups distributed 98.5% of all electric power sold in New York in 1928. Commission on Revision of Public Service Commission Law, Volume I, p. 27. (Knight Commission Report).

The Knight Commission concluded that the Public Service Commission possessed the public interest authority needed to regulate holding company transactions affecting utility operating companies[29] but also found that changes in the Public Service Law would "strengthen the control intended to be granted to the [Public Service] Commission by law over the acquisition of interests in the control of public utility corporations,"[30] and proposed the following revisions regarding telephone corporation mergers and acquisitions of stock:

- placing telephone corporations on the same basis as other utilities with respect to the sale of any part of their property [PSL §99 (2)];
- requiring an affirmative finding that acquisition of any utility stock is in the public interest [PSL §100];
- requiring approval of acquisition of 10% or more of the voting capital stock of a utility [PSL §100];
- placing telephone corporations on the same basis as other utilities with respect to acquisition of their stock by other telephone companies [PSL §101].

These recommendations were implemented by the Legislature in amendments to the Public Service Law.[31]

Petitioners contend that the Commission's lack of jurisdiction to approve mergers was established in testimony given before the Knight

[29] Knight Commission Report, Vol. 1 at 27, "The domination by holding companies may in some instances be so complete that the holding company is actually engaged in public utility operation, in which case it should be subject to regulation as a public utility corporation. Where this state of facts actually exists we believe that such regulation may be applied under the present law through disregard of the corporate fiction."

[30] Knight Commission Report, Vol. 1 at 38.

[31] Chapters 784, 785, and 793 of the Laws of 1930. Similarly, Chapter 760 of the Laws of 1930 added PSL sec. 110, extending PSC jurisdiction for some purposes to affiliated interests with transactions with utility companies.

Commission: "two Public Service Commissioners and the Public Service Chief Accountant…explicitly stated that the Commission did not have jurisdiction over such transactions and cited multiple cases in which the Commission had expressly so held."[32]

In addition to the testimony cited by Petitioners, then Chairman of the Public Service Commission, William A. Prendergast, testified. In Chairman Prendergast's opinion, proposed Public Service Law amendments to give the Commission complete authority over holding companies would enhance existing Commission jurisdiction. This statement recognizing existing holding company jurisdiction is consistent with a 1928 Public Service Commission statement

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[32] A review of the three cases cited by the testifying witnesses for the proposition that the Commission lacked authority to approve mergers between holding companies shows that none stand for this proposition. In all three cases, Case 2621, Petition of Buffalo, Niagara and Eastern Power Corporation, Under Section 70, Public Service Commission Law, for Authority to Acquire Common Capital Stock of Buffalo General Electric Company, Niagara Falls Power Company, Niagara Lockport and Ontario Power Company and Tonawanda Power Company, Opinion of the Commission (issued July 16, 1925); Case 3192, Application of the Mohawk Hudson Power Corporation to Obtain the Permission of the Public Service Commission, Under Section 70 of the Public Service Commission Law, to Acquire More than 10 Per Cent of the Capital Stock of the Eastern New York Utilities Corporation, Memorandum by Chief of Accounting Division, issued June 19, 1926; and Case 5018, Petition of The Rochester Empire Power Corporation, under Section 70 of the Public Service Commission Law, For Consent to Acquire all of the Outstanding Common Stock of the New York Central Electric Corporation, Elmira Water, Light and Railroad Company, Marcellus Lighting Company, Inc., Jordan Electric Light and Power Company, and Tracy Development Company, Opinion of the Commission (issued August 9, 1928). The Commission's exercise of jurisdiction over holding companies to the extent of conditioning accounting practices and determining whether holding company acquisitions are in the public interest, demonstrates that even prior to the 1929 Knight Commission, the Public Service Commission possessed the authority necessary to protect the public interest when considering approval of holding company transactions.

acknowledging PSC authority over holding companies but characterizing this authority as limited, compared to regulatory authority over operating companies:

> …While the regulatory powers of the Commission are very broad as to operating companies, its jurisdiction over holding companies is extremely limited. (Annual Report to Legislature 1928.)

The limited nature of Public Service Commission holding company jurisdiction referred to oversight of financial dealings of holding companies, i.e., the price or value of stock issued or acquired by a holding company, which was not examined or approved by the Commission. However, even though the Public Service Commission routinely issued disclaimers regarding the price and value of holding company securities, it consistently exercised its jurisdiction to determine whether holding company acquisition of stock, and therefore, control of a regulated utility, was in the public interest.[33] The exercise of jurisdiction over holding companies acquiring operating subsidiaries is consistent with Commission opinions, before and after 1930, describing the extent of Public Service Law authority as well as with the Knight Commission's recommendations to extend Public Service Commission jurisdiction regarding holding companies.

Consistent with Public Service Law longstanding merger authority, the Commission has examined the facts and circumstances regarding the relationship between holding companies and their utility subsidiaries as necessary to protect the public interest. As previously noted, the Commission found that the Bell Atlantic-NYNEX merger would affect the manner in which New York

[33] For example, in Case No. 2596, Erie Power Corporation (1925) the Commission stated: "under the law [the Commission] has no control over the operations of holding companies except to consent or refuse to permit them to acquire the properties of operating utilities which are within the jurisdiction of the Commission."

Telephone would exercise its rights to operate its system in New York State due to the change in corporate parent.[34]

Despite their assertion that our actions in recent years violate "decades" of precedent regarding lack of jurisdiction over mergers involving a holding company, Petitioners cite no decision of either this Commission or the courts of New York to establish any such precedent. Rather, they rely on *Rochester Telephone*, decided in 1978, and the 1989 *McCaw* decision. In fact, *Rochester Telephone* did not decide the issue of jurisdiction over holding companies merging with each other, it dealt with the formation of a holding company for the sake of diversification.

McCaw involved a hostile takeover by McCaw Cellular Communications, Inc., itself a holding company owning non-monopoly telephone companies, of LIN Broadcasting Corporation, another holding company, which through its subsidiaries owned a publishing business, television stations and non-wireline cellular systems. The Commission concluded that the merger did not come within PSL §100 because LIN was not a telephone corporation. LIN's broadcast and publishing ventures, as well as the insulation of corporate layers between LIN and its cellular companies formed the basis for the non-jurisdiction determination. However, the Commission noted that its lack of §100 jurisdiction

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34 See, e.g., Case 00-E-1585, Sithe Energies, Inc., Exelon (Fossil) Holdings, Inc. and PECO Energy Company – Joint Petition for Approval to Transfer the Outstanding Stock of Sithe Energies to Exelon-Fossil, Order on Review of Stock Transfer and Other Transactions (issued November 16, 2000); Case 97-E-1390, Joint Petition of New York State Electric & Gas Corporation, et al. For a Declaratory Ruling That CalEnergy Company, Inc. and its Subsidiaries May Not Acquire Any of the Company's Stocks or Bonds Without the Commission's Prior Approval and for an Order Enjoining CalEnergy and Its Subsidiaries From Acquiring any Such Securities, Order Asserting Jurisdiction and Consenting to Tender Offer Upon Conditions (issued August 13, 1997); Cases 00-M-0095 et. al., Joint Petition of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Certificate of Merger, With All Assets Being Owned by a Single Holding Company, et al., Opinion No. 00-14 (issued November 30, 2000).

"extend[ed] only to McCaw's attempt to take over LIN itself," and that "[f]uture rearrangements" after the McCaw takeover might "still be subject to our authority."[35] More significantly, the Commission reminded the petitioners of its authority to review each such case on its own facts and to assert jurisdiction where necessary to preserve the public interest:

> Nor does this decision mean that we lack jurisdiction over transactions involving the stock of parents of utility companies. Separate corporations with common stock ownership may be treated as a single entity if reasonable regulation so requires.[36]

The Commission further observed that if LIN's holding company operations were indistinguishable from its cellular affiliate, the Commission could find that LIN was the alter ego of that company, and, therefore, subject to PSL § 100 jurisdiction. Petitioners' characterization of the *McCaw* decision as Commission acknowledgement of its lack of jurisdiction over the merger of two holding companies is contradicted by 1) the basis for declining to assert jurisdiction: LIN was not a telephone corporation; 2) the limited applicability of the determination to a singe proceeding; and 3) notice that future transactions could be within Commission authority.

While Petitioners acknowledge that the Commission overruled *McCaw* in *AT&T/Ridge Merger Corporation*[37] and created a presumption of jurisdiction, they claim that the Commission did so without explanation. In fact, the Commission discussed at length its reasons for concluding that the *McCaw*

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[35] *McCaw* at 5.

[36] *McCaw* at 5, citing Case 29429, Petition for Authority of IDN, Inc. to Acquire the Capital Stock of the Argo Group, Inc. pursuant to Section 100 of the Public Service Law, Order Granting Petition (issued October 22, 1986) for the proposition that "purchase of 100% of the stock of a corporate parent of a fully owned utility subsidiary has been determined to be jurisdictional."

[37] Case 93-C-0777, AT&T/Ridge Merger Corporation, Order Asserting Jurisdiction and Approving Transaction (issued December 31, 1993).

approach was unworkable, "given the current trends in the telecommunications industry toward formation of complex corporate structures through mergers and acquisitions."[38]

In *AT&T/Ridge*, AT&T, a holding company, proposed acquiring McCaw, the same holding company that had been involved in the earlier case before the Commission. Relying on the precedent of the earlier McCaw case, petitioners asserted that the transaction was simply the acquisition by one holding company of the shares of another holding company, no transfer of franchises was involved, and, therefore, Commission approval was not required pursuant to PSL § 99(2) or §100. However, the Commission, noting that *McCaw* "explicitly left open the possibility that transactions involving indirect ownership interests in telephone corporations might be considered transactions involving ownership in the underlying telephone company,"[39] reversed the presumption established in *McCaw* that the corporate veil between parent and subsidiary would not be pierced without proof that one was the alter ego of the other.

In language remarkably apt to present-day circumstances, the Commission took note of "the current realignments includ[ing] mergers and acquisitions of cable companies by the Regional Bell Operating Companies, [and the] potential for cable companies to offer telephone service and consolidation of cellular companies through mergers and acquisitions."[40] Under these circumstances, the Commission found that proof as to the degree of operational control of an operating entity by its corporate parent was in the hands of the holding company, which typically had no interest in showing the true nature of the relationship. Consequently, the Commission concluded that it would assert jurisdiction over a stock transfer by a holding company with an indirect interest in

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[38] *AT&T/Ridge* at 4.

[39] *AT&T/Ridge* at 4-5.

[40] *AT&T/Ridge* at 4.

a regulated New York telephone company, absent proof that such transfer was not tantamount to a transfer of interest in the regulated company. Petitioners' contention that 1) *McCaw/LIN* recognized the Commission's lack of jurisdiction over holding company transfers and 2) *AT&T\Ridge*, which reversed *McCaw/LIN* did so without explanation, and 3) *Rochester Telephone* acknowledged lack of Commission jurisdiction over holding companies, is at odds with the determinations made in these proceedings.

Petitioners point out that Commission exercise of jurisdiction over mergers such as those between Verizon’s corporate predecessors, has gone unchallenged. Lacking any authority for the proposition that these past decisions are improper, Petitioners instead cite two cases that do not relate to our merger jurisdiction and do not present facts in any way similar to those presented here. First, Petitioners rely upon the Appellate Division opinion in *New York Telephone*[41] which, they assert, rejected PSL §99 jurisdiction over New York Telephone’s sale of its interest in Bellcore, a subsidiary jointly owned with the other RBOCs. In that matter, the Commission had asserted jurisdiction over the sale and approved it, conditioning approval on New York Telephone’s crediting of the intrastate portion of the proceeds to ratepayers. While New York Telephone’s challenge of the Commission order succeeded in the Appellate Division, the Court of Appeals found a rational basis for the order in the Commission’s ratemaking authority[42], and upheld the Commission action. Consequently, the case cannot be read as a rejection of our merger jurisdiction.

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[41] *New York Telephone Co. v. Pub. Serv. Comm'n of N.Y, 2*58 A.D.2d 234 (3d Dep’t 1999), rev'd., *New York Telephone Co. v. Pub. Serv. Comm'n of N.Y.*, 95 N.Y.2nd 40 (2000)(*Bellcore*).

[42] Id., pp. 49, 50.

In *Matter of Brooklyn Union Gas Co. v. Pub. Serv. Comm'n of N.Y.*[43], the other case upon which Petitioners rely, the Commission had denied Brooklyn Union Gas Company's petition to issue stock for the purpose of acquiring a New Jersey public utility. The Commission's denial was based on a finding that the transaction would result in a dilution of earnings available for Brooklyn Union's common stock. The Appellate Division cited this reasoning alone as more than sufficient to meet the "rational basis" test for upholding a Commission determination. We find nothing in this decision to support Petitioners' claim that the case "squarely rejected" an exercise of Commission jurisdiction. Rather, both *Brooklyn Union Gas* and *Bellcore* demonstrate that the New York Courts have upheld our exercise of authority necessary to carry out our statutory duties.

As demonstrated above, the Commission has had jurisdiction to determine whether holding company acquisitions of regulated utilities are in the public interest since the inception of the Public Service Law. The Commission has consistently asserted that jurisdiction. Therefore, it is unnecessary to address Verizon's other arguments.

Finally, there is no merit to Petitioners' contention that the commerce clause of the U.S. Constitution prevents our ability to remedy the competitive harms posed by this transaction. Petitioners rely on the so-called "dormant commerce clause" doctrine, which generally prohibits economic protectionism, i.e. burdening out-of-state economic interests by benefiting in-state economic interests.[44] Petitioners' claim fails, however, because the conditions we impose 1) do not have a discriminatory purpose and 2) do not afford differential treatment of in-state and out-of-state providers. The purpose of our conditions is

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[43] 34 A.D.2d 71 (3d Dep't 1970).

[44] See, e.g., Brown & Williamson Tobacco Corporation, et al. v. Pataki, et al., 320 F.3d 200 (2d Cir. 2005).

to ensure an opportunity for competition, not to discriminate by burdening out-of-state economic interests for the benefit of in-state economic interests. Verizon admits that New York State has a "legitimate interest in ensuring that its citizens have access to reasonably priced, competitive, high quality telecommunication services," but contends that under a *Pike v. Bruce*[45] balancing test, that interest could be achieved by the Commission "exert[ing] regulatory efforts to ensure that competition continues to grow in the New York communications market" rather than conditioning the merger to offset likely competitive harms. Our order ensures that competition continues to grow in the New York communications market and is a proper exercise of our statutory regulatory responsibility consistent with the commerce clause.

Public Interest Review

Pursuant to PSL §§ 99(2) and 100, the Commission must determine whether Petitioners have demonstrated that the proposed merger will serve the public interest.[46] In making this determination, the Commission considers compliance with the Public Service Law and other applicable laws and regulations. However, the major consideration in the Commission's public interest analysis is the impact of the merger on competition. In determining the merger's competitive effects, the Commission considers, but is not limited by, antitrust principles. Regulatory policies and market behavior are also part of the assessment of the merger's likely effect on competition.

After identifying competitive effects of the merger, and financial and service quality impacts, the Commission then uses a balancing process to weigh potential public interest harms against public interest benefits. Petitioners bear the

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[45] Pike v. Bruce Church, Inc., 397 U. S. 137 (1970).

[46] On its face, PSL §100 requires that we make a determination that the stock transaction is in the public interest. Although PSL §99(2) does not specify a standard of review, all such utility transfers have been interpreted as requiring an affirmative public interest determination by the Commission.

burden of proving that the proposed merger is in the public interest. Our review of these considerations follows.

1. Competition

Staff's review of the implications of the Verizon/MCI merger on the New York market was detailed. Staff segregated the "telecommunications market" into several distinct submarkets: Mass Market, Enterprise, Transport and Specials and High Capacity Loops.[47] Staff employed the traditional Herfindahl-Hirschman Indices (HHIs) analysis.[48] Staff's White Paper notes that an HHI review is not the sole criterion that should be considered in an analysis of a proposed merger. Rather, other issues such as entry barriers and current trends in the market were also reviewed by staff.[49] The discussion and analysis that follows provides a review of Staff's findings, comments and our conclusions for each of these submarkets.

a. Mass Market

i. White Paper Analysis

Staff tentatively concluded in its White Paper that the merger would result in a significant increase in the concentration of providers in the mass market.[50] While acknowledging that MCI was already de-emphasizing its presence in the mass market, Staff noted that MCI appeared to be currently marketing a VoIP-based service and also that MCI was continuing to file tariff-based retail special promotional offerings. Staff concluded that, although MCI

[47] We note that neither the Petitioners' initial filing, nor their initial or reply comments provide any quantitative review of the concentration implications of the merger.

[48] HHI is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in a market, and then summing the resulting numbers.

[49] White Paper, p. 16.

[50] Id. at p. 25.

had a concerted plan to quickly exit the mass market, it would continue to be a mass market competitor to Verizon but for the merger, and, therefore, that the increase in concentration should be addressed. Staff proposed two remedies in the mass market area: (1) requiring Verizon to offer "naked" or stand-alone DSL[51] and (2) freezing MCI's rates for 12 months. Staff's White Paper sought comment on whether there were any impediments which would impair a customer's ability to switch between wireline and DSL and cable modem based telephone services.[52]

ii. Comments on Staff's Analysis

Petitioners assert that DOJ Merger Guidelines do not, as written or applied by the federal antitrust agencies, support the White Paper's reliance on HHI analyses. Petitioners take the position that this transaction will not reduce competition for mass-market customers. They claimed that MCI's mass-market business is in a continuing and irreversible decline and, therefore, that it no longer meaningfully constrains Verizon's prices.[53] Petitioners provided details purporting to demonstrate that MCI's mass market business is in a state of decline, including evidence of a sharp drop in MCI's marketing and telemarketing in the state, the closing of numerous call centers and customer service centers, and the steady decline of MCI's mass market revenues and customer base.

Petitioners assert that intermodal competitors are aggressively and successfully winning mass-market customers. Further, they claim line losses would only accelerate if Verizon were to attempt to raise prices to anti-competitive

51 Naked or stand-alone DSL refers to broadband service unbundled from voice service. Asymmetric DSL (ADSL) is a form of DSL most commonly deployed in the mass market.

52 White Paper, p. 26.

53 Petitioners' Reply Comments, p.6.

levels following the transaction.[54] They contend that conditions suggested in the Staff White Paper should be rejected.

Petitioners assert that the remedies offered in the White Paper, as well as those offered by other parties, are pre-empted by federal law. Petitioners also claim that the FCC pre-empted the Commission from dictating how or when Verizon should provide stand-alone DSL services.[55] However, the Petitioners observe that "Verizon has already begun deploying stand-alone DSL."[56]

Petitioners assert that the data Staff used in its retail HHI calculations cannot be relied upon because technological and regulatory/legal developments occurring since those data were collected render them stale. They argue that Staff failed to include carriers having fewer than 10,000 lines in its HHI calculation for the mass market, and that Staff's FCC Form 477 and PAP-based[57] analyses were incomplete because that data did not include enough non-wireline customers. Finally, the Petitioners claim that Staff did not consider economic factors other than HHI's.

Although acknowledging that the loss of UNE-P will cause MCI's presence in the mass market to "inexorably wither," the Attorney General warns that Verizon's dominance of the mass market will be increased by the mergers. He notes that Verizon remains the dominant local service provider in New York five years after the competitive local exchange carriers (CLECs) entered the mass market.

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[54] Id. p. 8.

[55] Petitioners' Initial Comments, p. 40.

[56] Petitioners' Reply Comments, p. 9.

[57] PAP refers to the Performance Assurance Plan approved by the Commission on November 3, 1999 in Case 99-C-0949. Amendments to the PAP were subsequently approved by the Commission on December 15, 2000, May 8, 2001, January 24, 2003 and March 17, 2005.

The Competitive Carrier Group (CCG) endorses Staff's White Paper HHI analysis.[58] CCG contends that Verizon's comments on declining MCI business ignored Qwest as an alternate suitor.

Responding to Petitioners' claim that recent events render Staff's data stale, CCG examines each of the ten significant events cited by Petitioners and asserts that six of the ten events would have the effect of increasing market concentration. Two of the ten events relate to wireless service which Staff, the FCC and the AG agree do not fully constrain wireline pricing. The remaining two developments cited by Petitioners relate to VoIP, and CCG asserts that Staff's data took VoIP into account in such a way that its effects may be overstated in the Staff data. CCG notes that the PAP data are recent and reinforce Staff's other analysis. CCG also asserts that, to the extent there is any incompleteness in Staff's data on wireless substitution, any omission is inconsequential to the final conclusion. CCG suggests that Staff's exclusion of VoIP in its HHI analysis was appropriate because the HHI figures are so high that including the VoIP data would not change the findings or high market concentration.

CPB agrees with Staff's proposal to require Verizon to offer naked DSL and recommends that the Commission require Verizon to provide it to all of its customers in New York where DSL is available, no later than the date of merger approval. The AG, Qwest and Level 3 also agree, but Level 3 warns that the price of naked DSL should be less than the price of the incumbent's combined DSL and basic service offering. Level 3 further questions Verizon's challenge of the White Paper's naked DSL mandate if Verizon was going to offer naked DSL notwithstanding Commission action. Level 3 states a concern that Verizon's commitment could evaporate upon approval.

Dr. Bronner does not support Staff's proposed naked DSL remedy, arguing that mandating naked DSL is inappropriate. The Committee on Corporations does not oppose Staff's proposed naked DSL remedy in concept, but

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[58] CCG, Comments p. 2.

argues that it falls short as a result of distance limitations, neglected copper plant, and the need to train the sales force. The Committee on Corporations notes that the White Paper lacks empirical data on impediments to switching service providers.

Regarding Staff's second proposed remedy, freezing MCI's rates for 12 months, Qwest and the Committee on Corporations agree with the concept, but the Committee recommends that the price freeze be 36 months, 24 months longer than the price freeze proposed by Staff. CompTel agrees with Staff's proposal in concept but warns that freezing MCI’s rates, terms and conditions for 12 months will not restore competition or compensate for the loss of MCI as a competitor. Rather, CompTel asserts that freezing MCI rates would only defer for a short time the impact of the merger on existing MCI customers. Moreover, such a remedy would provide no relief to New York consumers who, while not MCI customers, currently benefit from the competition MCI generates.

The AG believes it unlikely that freezing MCI's rates for 12 months would be an effective merger remedy, reasoning that freezing MCI rates would not resolve the increased market dominance resulting from the merger. Dr. Bronner does not support the proposal to freeze MCI's rates, characterizing the action as micromanaging. CPB also disagrees with Staff's proposal to freeze MCI's mass market rate. Petitioners reject Staff's proposal for freezing rates and argue that the Commission cannot freeze MCI's local rates because they are bundled with interstate rates over which the Commission assertedly has no jurisdiction.

Some parties proposed remedies to address perceived harm to mass market competition in addition to those proposed in Staff's White Paper. Conversent states that CLECs must be protected and recommends the following remedies: 1) UNE rates be frozen for five years from the date of any Commission order approving the merger, 2) Verizon/MCI allow continued access to all UNE loops to provide all voice and data/Internet services for a five-year period from the Commission order, 3) current interconnection agreements stay in effect for a period of five years after the Commission order; and 4) Verizon recount its list of wire centers deemed “unimpaired” under the FCC’s TRRO, excluding MCI and AT&T as "fiber-based collocators." The Committee on Corporations recommends that Verizon be mandated to maintain copper drop wires when it installs fiber as a means to preserve customer choice. The Committee on Corporations further recommends that the Commission freeze prices and conduct bi-annual proceedings in which Verizon could demonstrate sufficient competition to phase out the price freeze.

Qwest argues that VoIP providers should be guaranteed: 1) connectivity to the Public Switched Telephone Network (PSTN) to route VoIP calls; 2) access to the E-911 database or selective routers; and 3) the ability to port telephone numbers within the time intervals required for non-complex porting. Otherwise, Qwest argues, Petitioners will be in a position to minimize the effectiveness of VoIP providers as competitors in mass markets.

Regarding Staff's question about impediments associated with switching among inter-modal providers, Dr. Bronner suggests that any such impediments should be addressed in the Commission’s Competition III proceeding.[59] CompTel recommends that the Commission take steps to ensure that the merged entity does not create barriers to inter-modal porting. CPB provides its own list of impediments that it says hinder switching to inter-modal phone service which it contends cannot be addressed by Petitioners in this proceeding. CPB's list includes: weakness of wireless signals, absence of cable telephony in certain areas, absence of reliable E-911 service from VoIP and wireless providers, intermittent quality of VoIP service; and policy decisions by cable telephone service providers to offer voice service in bundles with other services.

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[59] Case 05-C-0616, Proceeding on the Motion of the Commission to Examine Issues Related to the Transition of Intermodal Competition in the Provision of Telecommunication Services (Competition III).

Petitioners reply that the AG's assertions regarding inter-modal competitors' inability to replace MCI (and AT&T) is unsupported by evidence. They note that there are significantly more cable modem customers than DSL customers and contend DSL is not a bottleneck facility. Petitioners urge the Commission to reject the Committee on Corporation's proposal to keep copper drop wires in place when fiber is installed. They assert that no party has identified impediments to switching providers. If such an investigation is needed, Petitioners argue it should be undertaken in the Competition III proceeding.

iii. Discussion

We conclude that the merger will not likely result in anti-competitive effects for mass market customers. We find that MCI, already de-emphasizing its presence in the mass market, would no longer be in a position to exert significant influence over this market in the absence of this merger. We think it is unlikely Verizon's pricing behavior would be significantly affected by a firm that has already announced its intentions to exit the market. Moreover, to the extent that it might have attempted to continue as a VoIP provider, MCI would have been one among a growing number of VoIP providers providing opportunities for customer choice in the market place. Therefore, we do not view MCI's loss from this portion of the market as significant.

Any market concentration that may arise as a result of the merger can be offset by future developments in this fast changing and dynamic mass market segment. Moreover, market pressures from emerging cable voice offerings, together with VoIP and wireless offerings, are placing new pressures on Verizon and should continue to restrain Verizon's behavior post merger. Finally, Verizon's statements in this proceeding and its commitment to provide stand-alone DSL will help to ensure that new and innovative VoIP offerings continue to flourish and expand customer choice. Petitioners’ commitment to provide DSL service to customers without requiring them to also purchase circuit-switched voice telephone service for two years is a concrete pro-competitive commitment which, in our view, offsets any concentration issues that may result from the merger.

We will not require the other proposed remedies. Freezing MCI's rates for 12 months is not necessary. Moreover, such a remedy contravenes our view that prices for telecommunications service should be based on market conditions to the extent feasible. There are competitive options available and Verizon's offering of stand-alone DSL will increase such options. The proposal to keep copper drop wires in place when fiber is installed is not well developed, or sufficiently related to the merger, and may be burdensome. Qwest's suggestions relating to further protections for VoIP providers are already properly and sufficiently raised in pending FCC proceedings and we decline to mandate specific solutions in this proceeding.

b. Enterprise Market-Retail

i. White Paper Analysis

The Enterprise market refers to large business customers, Fortune 1000 corporations, mid-size businesses, and large governmental and institutional customers. These entities purchase sophisticated, high-bandwidth telecommunication services. To measure the effect of the merger on the New York Enterprise market, the White Paper presented analyses based on data gathered from the FCC's Local Competition Report[60] and revenue share information gathered from various sources. Using the HHI analysis, the White Paper tentatively concluded that the proposed merger results in an increase in concentration in the Enterprise market that exceeds the threshold levels in the DOJ/FTC Guidelines.[61] Although the White Paper concluded that countervailing remedies are required, Staff tentatively concluded that it would be preferable to

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[60] Federal Communications Commission, Wireline Competition Bureau, June 2004 Local Competition Report.

[61] United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (revised 1997).

ensure reasonable retail Enterprise market competitiveness by focusing on the terms and conditions associated with wholesale market offerings used by competitive carriers to provide retail services to Enterprise customers. To that end, Staff's White Paper proposed remedies in the transport and high capacity loop wholesale markets, which are discussed below.

ii. Comments on Staff's Analysis

Petitioners challenged the methodology used by Staff in calculating the HHI relating to the Enterprise market including the assumptions on the pre- and post- transaction shares of the companies not involved with this transaction, the exclusion of certain other providers from the calculation, and the use of incomplete or stale data. To support their claim that Staff excluded certain companies from its analysis, Petitioners provided a list of other vendors that assertedly offer service to Enterprise customers.

CCG believes that Staff understates how highly concentrated the market is since Staff defined the market too broadly and should have separated large from mid-sized businesses. CCG debates the accuracy of Petitioners' list of other Enterprise vendors, and argues that Petitioners provide no analytical basis for evaluation of the list. Even if all of Petitioners' assertions are accepted, according to CCG, the market HHI is so concentrated that no amount of data manipulation would mask the significance of MCI's departure. Level 3 agrees with Staff that the merger will increase concentration in this market. It states that Petitioners' claim regarding the large number of other Enterprise market competitors does not address the massive size of MCI and fails to address a critical point: who owns the underlying facility to the Enterprise customer. Level 3 believes half of the buildings with MCI facilities are solely served by MCI and Verizon.

Qwest responds that the merger is likely to reduce competition in retail Enterprise markets even more than suggested by Staff's White Paper or Petitioners' comments. Qwest posits that MCI is not only a leading facilities-based provider of local services to Enterprise customers, but also a wholesale provider of local connectivity and that MCI's wholesale offerings facilitate retail competition by other new entrants. By purchasing its leading competitor, Verizon eliminates this major force, according to Qwest. However, Qwest does not dispute Staff's recommendation that a direct retail based remedy is not required, given the close interrelationship between the retail Enterprise market and the wholesale market for interoffice transport and high capacity loops. Qwest also comments that Verizon could impose discriminatory price squeezes upon its rivals for retail Enterprise services. Conversent argues that there is no intermodal competition in the small and medium business market and that competition only can come from existing facilities-based CLECs. It agrees with Staff that the telecommunications transition to cable-based telephony is of little assistance to the Enterprise market.

Petitioners respond that parties are incorrect in suggesting that a separate analysis is needed for medium and large-sized business customers. Petitioners argue that the other parties focus on voice instead of the full range of voice and data products. Verizon suggests that parties ignore how the Enterprise market works and do not recognize that competitors do not use a single provider, which is why system integrators have become a powerful force.

Eureka and others assert that there is no basis for the Commission to conclude that competition, especially with respect to the small and medium-sized business market, is sufficient to address the potential for anticompetitive harms that would be caused by the merger. CompTel contends there was no showing in the White Paper that the proposed remedies would be able to restrain the combined Verizon/MCI from using its market power in the Enterprise market.

iii. Discussion

We view Staff's regional Enterprise analysis as reasonable[62] based on information demonstrating MCI is a significant player in the retail large Enterprise market.[63] We agree with Staff that a direct, retail-based remedy is not required for the Enterprise market. As a group, Enterprise customers are sophisticated purchasers of telecommunication services. These large customers can obtain services from alternative providers or negotiate a competitive price for service if they are not satisfied with either price or service from their current provider. This will only be true if, post merger, there are alternative providers present.

As the White Paper recognized, an HHI calculation is only one method of analyzing competitive harm. Entry barriers also should be considered to determine whether the possibility of new entry lessens any of the anticompetitive harms from the market concentration that the merger creates. Data presented in this proceeding show that many alternative fiber providers are

[62] Verizon's response to the information request PSC-VZ-17 indicates that, on a revenue weighted basis, over half of the top 50% of Verizon Enterprise Services Group customers are New York specific customers (e.g., local government, public utilities, and local health care institutions). Thus, Staff's concerns regarding the impact of the merger upon competition for New York Enterprise market customers is justified. Staff's reliance upon wholesale market remedies to address the concentration in the retail Enterprise market is warranted.

[63] MCI's role in the medium size market is not as clear. However, we believe that remedies set forth by the Department of Justice and FCC also address this market.

present in the market.[64] Therefore, maintaining and nurturing the viability of alternative providers in a competitive, wholesale market is a reasonable course of action for protecting the large and medium-sized Enterprise market. We find that concentration issues can be addressed with remedies in the market segments for transport and special access/high capacity loops that other carriers would utilize to provide an alternative to the service currently provided by an independent MCI.

c. Transport-Wholesale

i. White Paper Analysis

The White Paper tentatively concluded that the proposed merger substantially reduces the number of competitive transport routes and that the short-run impact of the merger on competition is significant, even for many of the routes considered to be the most competitive under the FCC's TRRO. To address the impact on competition in the transport market, Staff sought comment on a number of potential remedies: 1) requiring MCI to provide smaller carriers with the same rates, terms and conditions that it (MCI) provided pre-merger for 36 months; 2) standardizing competitive rates, terms and conditions; 3) expanding wholesale performance metrics; and, 4) divesting the MCI New York transport network.

ii. Comments on Staff's Analysis

Petitioners argue that Staff's transport HHI analysis was flawed because Staff did not consider all possible routes (so-called A to Z routes) for the CLECs in the same manner that Staff determined the number of mathematically possible intraLATA transport routes between Verizon's wire centers. Petitioners contend

[64] As discussed below, Staff has been able to confirm the presence of multiple fiber providers in or in close proximity to buildings that MCI currently serves. Where MCI and Verizon are the sole providers to a building, DOJ addressed this issue in its Final Judgment by requiring MCI and Verizon to divest fiber to competitors at these specific locations. While acknowledging that building access can be an issue, we note that many buildings already have multiple CLECs present and that other remedies will increase the likelihood that the market can respond accordingly.

that Staff drastically overstated the number of overlapping Verizon and MCI transport facilities. They counter that "the overlap occurs in only seven wire clusters (totaling 48 wire centers) in New York, virtually all of which have fiber deployed by multiple additional carriers, at both the cluster and individual wire center level." In support of their position, Petitioners also presented local facility maps which assertedly indicate the limited extent of the fiber network that MCI has deployed in New York relative to the fiber of other providers.

Competitive carriers generally agree with the conclusion that the merger will significantly increase market concentration in the transport market. Such concentration, they assert, may result in an unequal bargaining position for small carriers which, at some point, could result in the elimination of the favorable rates, terms and conditions currently offered by MCI to smaller carriers. Conversent supports the remedy that would require Verizon to make favorable MCI rates, terms and conditions available to all CLECs along all Verizon routes. The Committee on Corporations also agrees with Staff's transport market conclusions.

Regarding divestiture, Qwest comments that the Commission should not approve the merger unless Petitioners agree to completely divest all MCI facilities and overlapping New York State customers and, further, that a waiting period be established during which the post-merger Verizon-MCI entity may not seek to reacquire divested customers.[65] PaeTec and Qwest support some version of divestiture while Level 3 offers its own type of asset divestiture plan. The Committee on Corporations notes that there is insufficient data available to the parties for it to comment on divestiture, which the Committee views as a drastic remedy.

CCG warns that Staff's proposed remedies do not go far enough. Anyone else buying MCI, CCG reasons, might have expanded MCI’s transport

[65] Qwest reasons that a sale of assets without the customers would not allow the purchaser of those assets to produce a reasonable revenue stream.

offerings aggressively. CCG views as ambiguous and problematic Staff's proposed remedy of extending Interconnection Agreement (ICA) terms and conditions for 36 months. CCG suggests that it would be better to require Verizon to: 1) provide DS1/DS3 loops and transport and other loops in locations they are no longer provided as UNEs at the rates, terms and conditions MCI made available prior to the merger; 2) freeze UNE and other wholesale rates the Commission set pursuant to the Telecommunications Act of 1996 for five years; 3) allow CLECs to reinitiate their ICA for a full term, subject only to a set of uniform amendments approved by the Commission after a brief, global arbitration just for TRO and TRRO law changes; 4) recalculate the locations where the FCC's TRRO formula requires the offering of high capacity loop, transport and dark fiber as UNEs by treating AT&T and MCI as non-qualifying fiber-based collocators; and 5) waive the FCC-imposed caps on the number of high capacity loops and transport that may be ordered by a single CLEC. CCG believes that DOJ, rather than the Commission, should address divestiture.

Conversent agrees with Staff's analysis that the level of overlapping transport facilities, and the concomitant lack of additional transport providers on some of those routes with overlaps, indicates a significant anticompetitive impact of the mergers upon the New York transport market. Conversent asserts that this impact should be remedied by requiring Verizon to make favorable MCI rates, terms and conditions available to all CLECs, along all Verizon routes.

PaeTec agrees with the Staff view of the transport and special access market. PaeTec asserts that the combined Verizon/MCI will have market power. The ability to obtain reasonable and cost effective access to transport and high-capacity loops would be severely undermined by the merger, according to PaeTec.

Petitioners respond that comments regarding the transport market are unsupported and an attempt to re-litigate decisions in the TRRO which, they claim, are beyond state jurisdiction. Petitioners also argue that those advocating divestiture are motivated by their own interests in purchasing assets through regulatory fiat rather than the open market.

iii. Discussion

We find that the merger will result in significant short-run concentration in the transport market. Petitioners' criticisms of the Staff analysis do not persuade us to adopt a contrary view.

First, Petitioners' contention that MCI and Verizon transport routes overlap in only 7 "wire center clusters," which they assert encompass 48 wire centers, does not undermine the Staff analysis. Staff's analysis was based on only 41 wire centers, for which Staff determined there were 487 possible A-to-Z routes. An analysis of 48 wire centers would show an even larger overlap. Staff correctly determined this degree of overlap to be significant.

Second, we find that the data on which Staff relied in conducting its analysis is reliable. Petitioners submitted maps allegedly illustrating the level of overlap but did not perform numerical quantification of the underlying overlapping routes as was done by Staff. Petitioners assert that the maps are based on data from MCI regarding its fiber network, Verizon's inspection of its central offices to identify fiber-based collocation, and data obtained from a third-party (GeoTel) which has an incomplete list of fiber deployed by other carriers. In contrast, the transport information Staff relied upon was attested to by MCI senior management and should be given greater weight.

Third, Petitioners allege that Staff's HHI analysis of the transport market was flawed because Staff did not consider all possible A to Z routes for the CLECs in the same manner that Staff determined the number of mathematically possible intraLATA transport routes between Verizon's wire centers. The record supports Staff's assertion that Staff calculated its transport HHI's in the same fashion for both Verizon and CLECs.[66]

We also conclude, based on a review of record information, including that subpoenaed from several competitive carriers, that MCI was a significant participant in the wholesale market for transport capacity. Staff subpoenaed information from seven CLECs (Qwest, Communications Corporation, Inc.; XO Communications Services, Inc.; Savvis, Inc.; Broadwing Networks; Level3 Communications, LLC; Covad Communications and Broadview Networks/Bridgecom International) relating to their contracts with MCI and bidding behavior in the high capacity facilities market. The data provided show that MCI has a significant presence in the high capacity facilities market, is a frequent bidder, and is a frequent winning bidder.

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[66] Staff made the same assumption with respect to the possible routes between transport nodes when filling in the n!/[(n-2)!2!] possible intraLATA transport routes for CLECs. Verizon's July 20, 2005 Information Request to staff Question 2 asked "[h]ow was it determined which pairs of wire centers were connected as part of a route by a given competing carrier?" Staff answered that "most responding carriers only provided information on the New York State wire centers which they actually provided transport to. Staff's analysis assumed that each CLEC provided transport over each of the possible wire center A to wire center Z combinations between those wire center nodes." Staff also indicated on page 3 of its March 31, 2004 TRO Proceeding White Paper that "the following may affect transport outcomes: … Staff assumed that the two end points of a candidate route are connected all the way through unless the CLECs provided additional information indicating that the fiber exiting a collocation arrangement goes 1) directly to a CLEC switch or 2) transits another carrier's facilities somewhere along the candidate A to Z route." The manner in which Staff "filled in" all of the possible A to Z routes for each CLEC was also explained in the Staff presentation titled "Preliminary Descriptive Summary of TRO Data Requests," presented to the parties at the December 2, 2003 technical conference in Case 03-C-0821 (pages 11 to 13). The manner in which Staff's analysis assumed that each CLEC provided transport over each of the possible wire center A to wire center Z combinations between those wire center nodes is reasonable.

Remedies addressing the harm to the transport market have, to a great extent, been addressed by both DOJ and the FCC. The DOJ stipulation and final judgment tangentially address transport. [67] The FCC conditions recalculate the TRRO impairment methodology as advocated by several parties here, thereby expanding the list of UNE transport routes. The FCC conditions also require 30-month price freezes for Verizon's special access services and MCI-provided DS1 and DS3 wholesale private line services.[68] These actions provide significant price stability for the wholesale market and blunt the competitive harm that the merger might otherwise cause.

Our remaining residual market power concern relates to the remaining competitors' ability to adequately "groom" – that is move or reconfigure interoffice transport traffic from Verizon and MCI circuits to competitive alternatives. We expect that Petitioners will aid in this transition, and Staff will monitor such activity closely. We will not hesitate to implement additional grooming service quality metrics if circuit grooming becomes an anticompetitive issue.

d. <u>Special Access and High Capacity Loops</u>

As explained in Staff's White Paper, the market for special access and high capacity loop connections in New York comprise many services. However, the underlying circuit characteristics are essentially the same for various high capacity loop access products. This section relates only to the portion of a

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[67] The Department of Justice only addressed transport to the extent that it is necessary for the acquiring CLEC to reach those special access circuits divested via the final judgment's list of special services circuits, which includes those in 38 building locations served by MCI in New York State.

[68] Per the declaration of Petitioners' experts Jonathan P. Powell and Stephen M. Owens to the FCC, MCI's "Metro Private Line" Service provide, among other things, dedicated DS1, DS3 and SONET circuits between ILEC central offices as well as to end user locations. <u>In the Matter of Verizon Communications Inc. and MCI Inc.</u>, WC Docket No. 05-75, Application for Approval of Transfer of Control, Attachment 13, Paragraph 14.

high capacity circuit running from a Verizon end office to a customer building location. Interoffice portions of those products were discussed in the transport section of this document.

Whether high-capacity loops are purchased on a wholesale or retail basis, the markets for services relying upon high capacity loops are converging. The following special services and high capacity loop services should be included in the relevant market definition.

- interstate special access
- intrastate special services
- UNE specials
- retail private line

i. White Paper Analysis

The White Paper tentatively concluded that the acquisition of the second largest wholesale provider of high capacity loop access services by the largest provider of such services, Verizon will significantly increase market concentration in the special access market. Staff raised a concern that this may worsen the small carrier bargaining position which, at some point, could result in the elimination of the favorable rates, terms and conditions currently offered by MCI to smaller carriers. Further, Staff tentatively concluded that the merger could affect business customers by potentially increasing high capacity circuit prices, or causing deterioration of retail service quality. Staff proposed special access and high capacity loop remedies geared to provide stability in the market. Staff indicated that unless customers are located in close proximity to the fiber rings of remaining competitive high capacity special access providers in the market, it may be difficult for them to get access to high capacity loops at competitive terms and conditions that differ in terms or price from those that will be offered from the merged entity.

ii. Comments on Staff’s Analysis

Petitioners argue that the Commission has limited jurisdiction over special service circuits. Moreover, Petitioners allege that MCI revenues from wholesale high capacity loops are insignificant and that MCI is a minor player in the wholesale high capacity loop market. Petitioners contend there is little overlap between Verizon and MCI facilities in this market. They maintain that losing MCI as a high capacity loop competitor would not be problematic because many non-MCI CLEC facilities pass within a half-mile of most large customer building locations, and, therefore, it would be relatively easy for those CLECs to serve the former MCI locations. Petitioners state that there is nothing unique about the bulk of the fiber that MCI has deployed to Enterprise customer locations in New York, therefore, they maintain the transaction will not adversely affect the ability of large numbers of other fiber providers in close proximity to MCI’s fiber, to “light up” buildings should MCI’s wholesale prices rise.

Level 3 states that, while no action may be necessary regarding the Internet backbone market itself, the future competitiveness of the Internet backbone market depends upon the availability of special access facilities.

Conversent agrees with Staff's conclusions that the merger will reduce Verizon's incentive to enter into contracts with smaller carriers on favorable terms and could affect business customers by potentially increasing T1 prices or causing deterioration of retail service quality.

Qwest contends that MCI plays an extremely important role as a leading purchaser of special access, and thereby exerts pressure on Verizon and other ILECs that disciplines the level of rates for special access and other forms of local connectivity. Only Verizon, it says, has nearly ubiquitous facilities to the customer locations in its service territory and, absent remedial conditions, the removal of MCI from the market will likely lead to increases in Verizon’s special access rates.

The Petitioners term the claims of the Attorney General, Qwest and Conversent regarding MCI's favorable special access rates from Verizon meritless. Petitioners contend that Verizon will abide by the 1996 Telecommunications Act's requirement for non-discriminatory rates to affiliates and competitors, despite points raised by Qwest and Conversent. Petitioners assert that Qwest's contention regarding a possible price squeeze on special access is unsupported by market dynamics, and that there are more than enough competitors to constrain the market. Petitioners also dismiss the proposal that all interconnection agreements be frozen and claim there is no state authority to do so.

According to Conversent, Petitioners ignore the undeniable fact that for the vast majority of routes, Verizon will control the only available fiber network if this merger proceeds as planned. It believes that Staff's analysis is not outdated. Conversent states that the Staff analysis reflects the lack of sufficient wholesale alternatives that would constrain Verizon's behavior in this important market and that Verizon's maps, created at the last minute in this proceeding, do nothing to support Verizon's attack on Staff's preliminary findings. The same cost and economic barriers to the construction of fiber and obtaining rights-of-way exist today, and merely labeling maps with dots representing "known" fiber based collocators that are not identified, does not indicate that competitive high capacity connections are actually available and deployed in areas where Verizon historically controlled the market for transport capacity.

Qwest replies that the merger is likely to inflict greater harm on special access transport and high capacity markets than indicated by Staff's analyses or Petitioners' assertions. Eureka and others argue that the Commission should require Verizon to divest all of MCI's in-region local exchange and exchange access facilities.

CCG argues that Petitioners' analysis includes Interexchange Carriers (IXCs) not in the business of providing local service or acting as wholesalers. Therefore CCG suggests the fact that MCI is a far larger purchaser of special access than it is an alternate provider of such service is not surprising. CCG notes that volume discounts are available to all, but purchasers must make commitments to volumes only large IXCs can make. Thus, some discounts are theoretically, but not practically, available to smaller competitors.

Level 3 notes that Verizon admits that 80% of special services revenues come from sales to other carriers; a fact which itself demonstrates how dependent competitors are on Verizon for these services. Level 3 urges that the focus should not be on Verizon's size, but rather on the importance of MCI as a supplier to competitors, both as a facilities-based provider and as a reseller of Verizon's facilities. Level 3 argues that the Petitioners' comments provide no basis for a change in Staff's conclusions. If the merger is approved, Level 3 insists that adequate conditions are necessary.

iii. Discussion

Concentration in the special access markets is a significant concern. The special services circuit information gathered in Case 00-C-2051[69] supports Staff's White Paper contention that Verizon and MCI are, by a large margin, the two largest facilities-based providers in the wholesale special access market. This conclusion is also supported by the New York State-specific MCI facility maps provided by MCI to the FCC and to our Staff in response to a document request in the FCC's proceeding considering this merger.[70]

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[69] We instituted Case 00-C-2051 to examine how Verizon can improve and maintain high quality Special Services performance. See Case 00-C-2051 et al., Proceeding of the Commission to Investigate the Methods to Improve and Maintain High Quality Special Services Performed by Verizon New York Inc., Opinion No. 01-1 (issued June 15, 2001).

[70] We take administrative notice of MCI facility maps filed in FCC WC Docket 05-75, specification 6 (a) (1), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517627085.

Further, we find that MCI's wholesale high capacity revenues are significant despite Petitioners' claim to the contrary, and that MCI is not a minor player in the wholesale high capacity market. MCI's response to PSC-VZ-7 indicates that a significant portion of MCI’s revenues from high capacity circuits in New York are wholesale related. We find MCI's wholesale high capacity special circuit revenues are significant. The concentration in this market resulting from the merger of these two significant providers of special access circuits is a concern because there are barriers to entry in this market. The Department of Justice discussed in detail the difficulties associated with constructing facilities to enter the special access market.[71]

We find that absent any conditions, the merger will cause competitive harm in the special access and high capacity loop markets (retail and wholesale). As such, conditions are warranted. We find the DOJ divestiture conditions, along with additional FCC requirements, go a long way toward addressing market power issues associated with the increased concentration in the special services/high capacity loop market.

The Department of Justice recognized the anticompetitive impact of the merger on the special access market in its Complaint. DOJ selected 38 buildings in New York State served exclusively by MCI and Verizon and Petitioners agreed to divest these circuits via IRUs. In addition to the DOJ divestiture requirement, the FCC also included several additional remedies to address the impacts associated with concentration in the special access market. These additional FCC requirements include capping UNE rates, recalculating the TRRO impaired wire center list for which those UNE special rates will be available, capping Verizon interstate special services contracts/tariffs for 30 months, capping MCI Metro Private Line rates for 30 months, and the

[71] See Paragraphs 27 – 29 of the Department of Justice's October 27, 2005 complaint in case 1:05CV02103.

development of a 30 month special services service quality measurement plan for interstate special services.

DOJ's divestiture condition will immediately ease entry for a limited number of downstate markets. Moreover, entry conditions in the market will also be eased by the expansion of the list of impaired wire centers for which UNE rates are available. This expansion results from the exclusion of MCI as a transport provider under a re-application of the TRRO methodology. Freezing existing UNE rates and capping MCI wholesale Metro Private Line rates will provide rate stability for the wholesale market over the near term.

Moreover, while we recognize that CLEC entry into buildings can be difficult, the record before us also indicates that many buildings are served by carriers other than Verizon or MCI and that a number of alternative carriers have fiber networks deployed in New York. Staff's analysis confirmed that there are a number of alternative fiber networks that appear to be capable of serving the Enterprise market. Based on review of CLEC-supplied data, much of the information contained in Petitioner-supplied maps was independently confirmed. We conclude that on average there are approximately six alternative fiber networks within 1/10 of a mile of the MCI-lit buildings in New York, and that 75% of those buildings have two or more alternative carriers.

There may be some residual competitive harm even with the FCC and DOJ conditions, although the extent of the residual harm is difficult to forecast given the rapid changes taking place in the telecommunications industry. The FCC conditions relate solely to specials purchased via Verizon's federal tariffs. We expect that Verizon will not increase prices for intrastate specials. This is in part because the interstate specials cap and the cap on UNE prices help to constrain intrastate special prices. Moreover, we will carefully scrutinize any efforts to increase intrastate specials over the next two years.

2. Financial Issues

The White Paper observed that financial issues, including rates, have often been a major consideration in merger proceedings. Staff noted that we have recently given Verizon's financial situation less weight when making decisions in light of the rapidly changing telecommunications market in New York. However, since the transition to competition is not yet complete, the White Paper concluded that financial issues should be considered by the Commission when deciding the instant merger. As the Petition only tangentially touched on financial issues, Staff performed its own analysis, focusing on three areas: 1) expected synergy savings from the merger, 2) accounting for the transaction, and 3) business risk. We will address each of these topics in turn.

a. Synergies

i. Staff's White Paper Analysis

The Agreement and Plan of Merger does not call for any change in rates, terms or conditions. Petitioners did not provide any financial projections in this proceeding. The White Paper noted that Verizon had publicly stated that it expects to achieve substantial synergies from the merger. Staff found that the projected synergy savings were not expected to have a material impact on earnings until 2009, and concluded that the amount of merger synergies applicable to Verizon's New York operations could not be accurately determined at this time.

Staff further found that the New York intrastate earnings reported by Verizon New York Inc. in recent years have been poor and that falling operating revenues appear to be the primary cause. Staff concluded that even if a detailed analysis were conducted and adjustments were made, Verizon New York Inc.'s intrastate return on common equity was unlikely to be positive. Given this, and Petitioners' indication that the projected merger synergies will not have a materially positive impact on earnings for at least three to four years, the White Paper concluded that there was no need to condition the merger on Verizon sharing expected synergies, or demonstrating that "affirmative concrete benefits" are accruing to customers and the merger is thus serving the "public interest."

ii. Comments on Staff's Analysis

Petitioners agree with Staff's conclusion that a rate case is not necessary to consider synergies. Alternatively, Petitioners contend it is beyond dispute that it is not earning anything close to its authorized rate of return in New York. Petitioners further maintain that rate case concepts such as authorized return and over earnings are anachronistic, and that Verizon needs to use the synergy savings for new investment and to maintain competitive rates. Petitioners argue that ultimately market forces will require the merged Verizon/MCI to share benefits with customers and that Commission interference with market forces would be counterproductive.

CWA, the Committee on Corporations, and Dr. Bronner advocate that a rate or similar proceeding be initiated to determine the amount of synergies applicable to New York, with any savings found to be passed through to customers. CWA and the Committee on Corporations argue there is inadequate data and insufficient information to determine the synergies that will be attributable to New York and there is a need to develop more data for that purpose.

CWA also advocates that Verizon be required to dedicate adequate capital and labor to maintain its New York network infrastructure. Conversent expresses concern that Verizon will be spending capital on high end fiber projects and will neglect copper and hybrid fiber/copper plant.

Petitioners assert in reply that a "full blown" synergy analysis was not conducted in the Bell Atlantic/NYNEX and Bell Atlantic/GTE merger proceedings (as contended by Dr. Bronner) and one is not needed here, pointing to Verizon's "dismal" earnings in New York. Petitioners also contend that nothing in the Public Service Law requires the sharing of synergies and that while the precise amount of synergies that may be attributable to New York is not yet known, it is clear most of the projected savings will inure to MCI, not Verizon. Petitioners also argue that nothing about the merger provides Verizon with an incentive to neglect its copper facilities and increase spending on broadband and wireless projects.

CWA replies that the Commission must obtain reliable and comprehensive data about the merger's savings, and that it is unacceptable for Petitioners to claim the savings will not benefit Verizon's New York State operations. In their discussion of financial issues, CWA and the Committee on Corporations also proposed that: 1) Verizon agree not to sell or spin-off any access lines after the transaction is completed; and 2) Verizon be required to commit to maintain its corporate headquarters in New York.[72]

iii. Discussion

The parties advocating immediate institution of a rate investigation or similar type proceeding ignore Staff's primary rationale for concluding that one is not needed here. Verizon's New York intrastate earnings in recent years appear to be well below what would be allowed in a traditional rate proceeding and the projected synergy savings are not expected to materially improve Verizon's earnings for at least three to four years. Under these circumstances, we see no basis for conducting an investigation into synergies that will be realized in the future. Finally, Staff will continue to monitor Verizon New York's financial condition and can take action if actual results indicate it is needed.

b. Accounting for the Transaction

i. White Paper Analysis

Consistent with Commission precedent, the White Paper recommended a condition that customers be insulated from the costs of consummating the merger. Staff also found the method Verizon will use to account for the merger under Generally Accepted Accounting Principles (GAAP)

[72] While we have not adopted these conditions, we note that nothing in this order or this transaction alters commitments made by Verizon to retain its headquarters and major functions in New York as part of our previous merger orders.

is expected to result in a substantial write-up of assets and the recording of goodwill that will be reflected in the common equity of the consolidated entity. Staff concluded that none of the additional common equity should be considered in any derivation of Verizon's New York intrastate return on equity.

ii. Comments on Staff's Analysis

CWA, Qwest and Dr. Bronner support these suggested financial remedies. Petitioners argue that they are unnecessary or inappropriate. They claim that it would be inappropriate to insulate customers from transaction costs if doing so violates GAAP, with which Verizon must comply, and that the concern regarding the impact of additional equity is obviated because the manner in which the transaction will be structured will result in none of the additional equity being considered in the derivation of Verizon's New York intrastate return on equity.

iii. Discussion

Petitioners provide no specifics as to why they feel insulating customers from transaction costs may violate GAAP, and we are unaware of any GAAP provision that would require Verizon to allocate a portion of the merger costs to Verizon New York, Inc. However, even it is required to do so by GAAP, Verizon can insulate New York customers from the merger costs by simply recording them in Account 7370, Special Charges, which is not considered in the derivation of Verizon's New York intrastate return on equity. Therefore, we will impose the requirement proposed by Staff in the White Paper.[73]

Petitioners' claim that the condition regarding the additional equity resulting from the merger is not necessary also misses the mark and is denied. The Commission has often determined the allowed rate of return of jurisdictional

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[73] If Verizon concludes that it must record any of the costs of the merger on Verizon New York, Inc.'s books, it should notify the Director of the Office of Accounting and Finance in writing of that finding with full support for that decision within 30 days after it records the costs on Verizon New York's books.

companies that are part of affiliated entities on a consolidated basis. Further, while Petitioners indicate that their current plans are to keep MCI as a separate subsidiary, that decision may change. Indeed, Petitioners have noted in this proceeding that no post-merger planning has been done.[74] To the extent that jurisdictional earnings are still relevant, and used in a traditional rate proceeding, we will adjust Verizon's financial results so as to exclude the impact of any acquisition adjustment recorded as a result of this merger at that time.

c. Business/Financial Risk

i. Staff's White Paper Analysis

The White Paper concluded that the impact of the proposed transaction on Verizon's creditworthiness could have repercussions for Verizon's New York telecommunications customers. Given Verizon's substantial market capitalization, Staff determined the acquisition of MCI would not impair the company's ability to attract the capital necessary to upgrade its wireline infrastructure. However, Staff also concluded that there was a very real possibility of a downgrading of Verizon's securities as a result of the proposed transaction, which could lead to higher capital costs for the portion of Verizon's operations regulated by the Commission.

The White Paper stated that, from a financial perspective, the acquisition appears to be a reasonable competitive response and strategy to growing intermodal competition. Staff acknowledged Petitioners' view that the competitive threat posed by cable competitors and VoIP was the greatest threat

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[74] For example, *see* Verizon Comments to Staff White Paper at 76. Moreover, in a news release issued October 24, 2005, Verizon announced the formation of a "Leadership Team Named for New Verizon Business Unit Combining MCI With Verizon's Enterprise Solutions Group." On October 20, 2005, Verizon announced the creation of an organization to provide centralized back-office and support services to Verizon's business units and Verizon Wireless. The press release noted that it was anticipated that MCI employees performing the functions performed by the new organization will be included in the future.

facing Verizon today and noted acquiring MCI's extensive long distance network would likely enable Verizon to reduce its long distance, broadband and wireless long haul transport costs.

Finally, Staff expressed concern with a consultant's finding regarding a material weakness related to MCI's internal control over accounting for income taxes. The consultant attributed this weakness to a lack of personnel with adequate expertise in income tax accounting matters, a lack of documentation, insufficient historical analysis and ineffective reconciliation procedures. Staff attempted to further explore this finding but was only provided unsupported Petitioner statements. As a result, Staff recommended the merger be conditioned on Verizon taking steps to ensure that Verizon's New York intrastate operations are not affected by any MCI accounting and financial improprieties discovered after the transaction is approved by the Commission.

ii. <u>Comments on Staff Analysis</u>

None of the parties commenting on Staff's tentative conclusions dispute Staff's finding that the purchase of MCI would not impair Verizon's ability to attract the capital necessary to upgrade its wireline infrastructure. With respect to Staff's finding that a subsequent downgrading of Verizon's securities would result in higher capital costs for Verizon New York's regulated operations, Petitioners stated that even if one were to occur, Verizon’s own analysis shows that the effect on its cost of capital would be insignificant.

Dr. Bronner argues that that there is little or no evidence in the White Paper that the acquisition appears to be a reasonable competitive response and strategy to growing intermodal competition. Due to the concerns of the financial institutions discussed in the Staff White Paper, Dr. Bronner argues that a full business and financial risk assessment must be made before the Commission makes a decision regarding the merger.

CWA, the Committee on Corporations, Qwest and Dr. Bronner support Staff's proposal regarding MCI accounting and financial improprieties which may be discovered after the merger is approved by the Commission. Petitioners contend that such a condition is unnecessary because MCI will remain a separate subsidiary after the merger is completed.

iii. Discussion

We find that the acquisition of MCI should not impair Verizon's ability to attract the capital necessary to upgrade Verizon's wireline infrastructure in New York and agree that the transaction appears to be a reasonable competitive response in view of mounting intermodal competition. We also share Staff's concern for the potential of higher capital costs as a result of the transaction.

Regarding the proposed condition for potential MCI accounting improprieties, Petitioners' response is not persuasive given that they admit there has yet to be any post-merger planning and that the combined company may decide to consolidate some or all of MCI's operations with Verizon. Further, such improprieties could have an indirect impact on Verizon's New York operations. For example, an MCI accounting impropriety could result in Verizon's stock price falling, and negatively affecting Verizon's debt ratings to the possible detriment of Verizon-New York. Consequently, we will impose the condition proposed by Staff that Petitioners take all steps necessary to ensure that Verizon's New York intrastate operations are not affected by any MCI accounting and financial improprieties that may be discovered hereafter. Staff can monitor this as part of its ongoing review of Verizon New York's financial condition.

Overall, we note that the direct link between regulated costs and rates is becoming more tenuous, as prices are being increasingly driven by market forces, not regulators. The safeguards enacted in this section are designed to protect customers and put Verizon on notice that should it decide to file a traditional rate case, we will use traditional regulatory tools (e.g., imputed capital structure, below the line accounting, etc.) to ensure that customers bear no negative consequences from this merger.

3. Service Quality

a. Retail Service Quality

i. White Paper Analysis

Staff's White Paper noted that, in approving previous mergers, the Commission has incorporated service quality protections, such as hiring commitments, to address service quality problems or required capital expenditures in order to effect service-related infrastructure improvements.[75] The White Paper concluded, however, that neither strict retail service quality provisions like those contained in the Performance Regulatory Plan and the Verizon Incentive Plan nor specific service-related expenditures are required in today's competitive telecommunications environment in New York.[76]

Verizon and MCI acknowledge that, post-merger, they will reduce the companies' workforce by approximately 7,000 employees.[77] However, the specific jobs that will be eliminated and their locations will not be made known until the transaction is completed.[78] Verizon has noted, however, that while final decisions have not been made, "it is anticipated that the post-transaction company will reduce headcount in those areas which the company is able to provide shared

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[75] See the BA/NYNEX Merger Order and the Fairpoint Communications, Inc/Berkshire Telephone Corporation merger Order (Case 03-C-0972 supra, Order Approving Acquisition Subject to Merger Conditions, issued March 18, 2005).

[76] For ten years prior to March 2005, Verizon operated under regulatory plans that included service quality provisions. From August 1995 to March 2002, Verizon was operating under a Performance Regulatory Plan (PRP), which was followed by the Verizon Incentive Plan (VIP) which began March 1, 2002. The service quality provisions of the VIP expired on March 1, 2005.

[77] WC Docket No. 05-75, Verizon Communications, Inc. and MCI, Inc., Applications for Approval of Transfer of Control, Public Interest Statement (FCC), Smith Decl., p.3.

[78] Response to PSC-VZ-13.

services more efficiently – i.e., areas such as finance, legal and human resources" and that "there has been no suggestion that the transaction will result in service-affecting reductions….".[79]

ii. Comments on Staff's Analysis

Several parties object to the White Paper's conclusion that broad service quality provisions were not required. The Committee on Corporations believes that removing service quality provisions is a "breach of the Commission's fiduciary duty under the PSL"[80] and advocates that a performance-based plan be implemented for a three-year period. Similarly, CWA believes that competition alone will not protect consumers and that the Commission's merger approval should be conditioned on a service quality incentive plan and penalties in conjunction with commitments for increased labor and capital resources for non-fiber networks. CWA also believes that the 2004 service quality audit recommendations[81] should be mandated as a condition of merger approval.

The Attorney General argues that customer choice is not an adequate substitution for service quality-based regulation, and rejects the notion that there is no need to ensure the adequacy of Verizon's post-merger service quality, claiming good service quality "is critical to the economic well being of New York and its citizens."[82] Conversent suggests that in the absence of extensive intermodal competition, a "service penalty rebate" plan may be appropriate.

79 Verizon /MCI Reply Comments, p. 62.

80 Committee on Corporations Reply Comments, p. 4.

81 Case 03-C-0971, Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.'s Retail Service Quality Processes and Programs, Order Directing Comments on the Verizon New York Inc. Retail Service Quality Audit (issued November 12, 2004).

82 Attorney General Reply Comments, pp. 20-21.

Petitioners argue that the level of intermodal competition is sufficient to motivate Verizon to pay attention to service quality, and that parties suggesting otherwise fail to acknowledge the realities of the emerging telecommunications market. Petitioners also argue that passing certain service quality thresholds for selected geographical areas is unworkable and costly and that mandating implementation of the audit recommendations is unrelated to the merger and should be rejected. Petitioners also suggest that CWA's argument, that investment should be mandated for non-fiber (copper) facilities, is misplaced, because Verizon has no incentive to ignore copper investment. Moreover, Petitioners argue, spare copper facilities have been created in any case through customer defections to intermodal carriers.[83]

iii. Discussion

Some parties call for a service quality penalty regime, but we will forebear from this approach. While the Commission has endorsed such regimes in the past, Verizon’s service quality has not deteriorated in the absence of such a plan since the end of the VIP.[84] Staff's most recent review of Verizon's service

[83] Petitioners note that after the transaction is completed, all MCI subsidiaries will become second-tier subsidiaries of Verizon and will continue to provide services to their customers in New York under the existing subsidiaries' names: MCImetro Access Transmission Service LLC, MCI WORLDCOM Communications, Inc., MCI WORLDCOM Network Services, Inc., TTI National, Inc., Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA, and Metropolitan Fiber Systems of New York, Inc. Therefore, MCI's retail service quality performance data will continue to be reported separately pursuant to 16 NYCRR Part 603, which means that routine reporting of certain service quality metrics will continue to be waived pursuant to the waiver granted to MCIMetro Access Transmission Services LLC by the Commission on December 19, 2001. Verizon's retail service quality data will be reported separately. No changes in measuring and reporting are anticipated.

[84] Cases 00-C-1945 et al., Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate Future Regulatory Framework, Order Instituting Verizon Incentive Plan (issued February 27, 2000) (VIP).

quality shows that the company continues to meet Commission-established performance thresholds for most standards.[85] Moreover, Verizon has addressed the service quality audit recommendations to our satisfaction. In addition, we have a number of other remedies at our disposal to guard against potential service quality degradation, and we will not hesitate to employ them should the need arise.

Today, the level of intermodal competition for telecommunications services statewide has increased to such a degree that we believe it significantly reduces the need for a Verizon statewide retail service quality rebate program and, therefore, we will impose no requirement on Verizon to implement one. In general, we agree with Verizon that the ability of consumers to seek out competitive alternatives provides a strong incentive for it to address retail service quality. [86] Measures taken on the wholesale service quality side of the business, as discussed in the following section, will further strengthen retail service quality.

b. Wholesale Service Quality

i. White Paper

The White Paper tentatively concluded that the merger could impact wholesale markets and that continued monitoring of performance is critical. Staff

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85 Verizon New York Inc., Third Quarter 2005 Service Quality Report.

86 Intermodal competition has taken a firm foothold in New York and significantly reduced the need to implement additional statewide service quality provisions beyond those which already apply to either company. For example, since November 2000, Verizon has lost access lines every month; in early (January/February) 2004, the company was losing about 40,000 access lines a month. In mid-2005 (June, July and August) Verizon New York was losing over about 94,000 a month. Some of these losses have been to competitive local exchange and wireless carriers, but increasingly such losses are to VoIP and cable carriers. Vonage, for example, has doubled its customer base every six months, and is currently adding almost 20,000 subscribers a week. Time Warner is adding close to 15,000 new phone customers a week. While subscribership figures are not available on a state-by-state basis, we have no reason to assume the trends for New York are any different than they are for the rest of the nation.

suggested remedies including separately reported MCI and Verizon carrier-to-carrier reporting; inclusion of data pertaining to products offered under commercial agreements; expanding the list of collaboratively developed wholesale metrics; and the creation of a process to ensure the integrity of the reporting systems.

ii. Comments

Petitioners believe all of the proposed remedies suggested in the White Paper should be rejected as unnecessary and inappropriate. Petitioners contend that any suggestion of deterioration in wholesale service quality is misplaced.

CCG believes that performance standards in commercial agreements should be examined. Conversent agrees that all wholesale service quality performance data should be reported to Staff. The Attorney General believes the Commission should take direct measures to ensure the adequacy of Verizon's post-merger service quality, and, like the Committee on Corporations, does not believe MCI's wholesale performance data should be reported separately from Verizon's.

iii. Discussion

We have an essential interest in maintaining the viability of wholesale markets since they increase and expand consumer choice. We concur with the White Paper's tentative conclusion that the merger of MCI and Verizon could impact these markets, and, therefore, we must remain vigilant regarding wholesale service quality provided by Verizon and/or MCI in order to ensure that carriers receiving such services from them can, in turn, provide good service to their own end-users.

The parties have expressed concern that in a post-merger environment, there may be less incentive for Verizon to address deficiencies in wholesale service quality for smaller carriers, and in particular for carriers now obtaining services through commercial agreements. Currently, Verizon's wholesale service quality performance is measured via the Inter-Carrier Service

Quality Guidelines (C2C or Carrier-to-Carrier).[87] Poor performance in certain C2C metrics deemed important to wholesale market competition can also translate into monetary penalties against Verizon in the Performance Assurance Plan (PAP), established in Case 99-C-0949.

The White Paper tentatively concluded that certain remedies could be implemented in order to assure that Verizon's overall level of performance remains open to review and is adequately maintained in a post-merger environment. The White Paper sought input on whether MCI's service quality performance should be reported separately in carrier-to-carrier reporting. While MCI's wholesale service quality performance data will no longer be aggregated with the other CLEC data for C2C reporting purposes, the data should, nonetheless, be captured; either by reporting it separately or aggregating it with Verizon's own data. We direct the Carrier Working Group to evaluate the impact of either including MCI's data with Verizon's wholesale data in the C2C reports or having MCI report its data separately, and to report back to us no later than one year from the date of this Order. The Carrier Working Group should either develop the necessary detail to implement this requirement or determine an appropriate alternative solution.

The White Paper asked whether service quality data for services purchased via commercial agreements should be reported in carrier-to-carrier metrics. Verizon objects to including the measurement of UNE-like products offered through commercial agreements in future wholesale performance reporting. Given the contractual and competitive nature of these agreements, we

[87] Case 97-C-0139, Service Quality Standards for Telephone Companies, (issued October 29, 2003). The Carrier-to-Carrier Guidelines measure performance against an established absolute standard or against parity with performance Verizon provides to its own customers. Whether MCI products will continue to be reported separately or reported in Verizon's retail parity data could impact measurement against remaining CLEC performance data.

conclude that service quality data reporting for services provided via these new contracts should not be required.

The White Paper asked whether future negotiation processes might benefit from an expanded list of collaboratively developed wholesale metrics. While specific changes or additions to the metrics are not adopted here, additional exploration of special services metric definitions and/or standards, if deemed necessary by the industry on a going-forward basis, are not precluded, and should be pursued at least initially in a collaborative manner, similar to the industry-facilitated Carrier Working Group in the C2C proceeding.

The White Paper also sought comment on whether or not the Commission needs to implement a process to ensure the integrity of the reporting systems for transport and special services. In this regard, Verizon and MCI have made several commitments in conjunction with their FCC merger petition. First, the Petitioners will provide a series of performance metrics results for interstate special access services, including information that distinguishes service provided to affiliates and non-affiliates[88] for a period of 30 months. Second, 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.[89] We believe these two conditions go a long way to address discrimination concerns raised by parties in this proceeding.

In addition to federal actions, on-going proceedings, such as the Carrier-to-Carrier case and the PAP proceedings, as well as Verizon's requirement to report under our Special Services Guidelines, provide visibility into, and monitoring of, Verizon's wholesale service quality at the state level. The Carrier

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88 Similar data is provided to the Department monthly as part of our Special Services Guidelines.

89 Letter to FCC Chairman Martin from Susanne A. Guyer dated October 31, 2005.

Working Group, which has been involved in this monitoring process, should continue its pro-active role and should report deficiencies to us, as necessary. In addition, any carrier experiencing poor service quality is free to report any inadequacies to us. We reserve the right to investigate and remediate, where required, any wholesale activities that are not consistent with our expectations. The quarterly reports that we review on Verizon's retail special service performance also provide an appropriate level of visibility in this area. At this time, therefore, we conclude no additional processes or enforcement mechanisms are required. However, given the importance of this market, we will ask Staff to provide us with a report on Verizon's performance one year from the date of this Order. To aid in Staff's review, Verizon is directed to provide data as requested.

CONCLUSION

Public Service Law Section §100 specifies that stock transfers require an affirmative public interest determination by the Commission and utility transfers pursuant to Public Service Law §99 (2) have also been interpreted as requiring an affirmative public interest determination. We conclude that, on balance, this transaction is in the public interest.

The proposed merger is taking place at a time when telecommunications markets are undergoing significant changes, not only in New York, but nationwide. Alternative telecommunications, voice, and data services are being widely provided not only by traditional wireline telephone companies, but also by the cable industry, broadband, VoIP providers, and wireless carriers. Changes in technology are providing consumers with a variety of choices from alternative providers.

The merger can be seen as a somewhat defensive move by two significant providers in the New York markets to offset competitive losses caused by inroads made by the alternatives discussed above. The combined Verizon/MCI entity will be positioned as an international telecommunications provider with strong ties to New York and with the ability to provide world class services to the financial services industry which benefits the New York economy. The long term efficiency savings that the combined firm expects to realize should help the new entity to continue to invest in its network and operations and provide better service products over the long term. These are important benefits which we expect, over time, will inure to the benefit of consumers. These benefits, however, must be balanced against the potential for the transaction to undermine competitive alternatives and ultimately diminish consumers' choices and the benefits associated with competitive alternatives.

Overall, we conclude that some segments of the telecommunications market will experience concentration due to the merger; however these concentration effects are substantially offset by the commitments that have been made by Petitioners to both the Department of Justice and the FCC. Accordingly, subject to Petitioners' full implementation of certain critical commitments identified herein, we approve the proposed transaction.

We have considered several key issues related to the impact of the merger on the mass market, the Enterprise market (large and medium business customers) and the wholesale market (transport and building access or loops). We conclude that the merger will not likely result in anti-competitive effects for mass market customers. This conclusion is based on the fact that MCI already was poised to exit the mass market and as such would not likely have been a significant constraining force on Verizon in any event. Further, to the extent MCI might have continued operating as a VoIP-based provider, we conclude MCI would have been one among a number of other such competing providers. Moreover, we note that emerging cable, voice, and VoIP, as well as wireless offerings will generate new market pressures and should serve to constrain Verizon's prices in the mass market. Finally, to the extent the merger increases concentration in the mass market segment, Petitioners' commitment to offer stand-alone DSL service for two years, which enhances consumer ability to access VoIP offerings, provides a concrete, pro-competitive public benefit.

In the Enterprise market, data indicates that a number of alternative fiber providers exist in close proximity to building locations where MCI currently provides a facilities-based alternative to Verizon. Nevertheless, because MCI has an extensive network in New York, the merger increases concentration in the loop segment of the market. Likewise, MCI's departure as an independent entity in the wholesale transport market segment increases concentration in the transport segment. We recognize that alternative networks do exist in New York, but that it is difficult to expand existing networks quickly to replace MCI. On balance, we conclude that the FCC's conditions, which 1) modestly expand the availability of transport routes that will be subject to federal unbundled network element pricing standards, 2) ensure that price benefits previously provided by MCI in the wholesale market will continue for 2.5 years, and 3) cap existing UNE prices for two years provide significant pro-competitive benefits. These conditions provide alternative competitive carriers with significant post-merger pricing stability as the market matures and these carriers evolve their business plans. For theses reasons, the merger will be approved, subject to the conditions discussed in this document, which include:

- Verizon must fully implement its commitment to not seek any increase in state-approved rates for unbundled network elements (UNEs) for a period of two years from the merger closing date.

- Verizon must modify its intrastate tariffs to exclude fiber-based collocation arrangements established by MCI or its affiliates and AT&T in identifying wire centers in which Verizon claims there is no impairment pursuant to § 51-319 (a)(e) of the FCC's rules.

- Verizon/MCI must not increase rates paid by MCI's existing customers (as of the merger closing date) of the DS1 and DS3 (i.e., high capacity) 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 for a period of 2.5 years.

- Verizon must deploy and offer stand-alone ADSL in its New York territory without requiring customers to purchase circuit switched voice grade telephone service. This service will be offered for two years after the implementation date, which is the date that Verizon can offer this service on 80% of its ADSL-equipped lines in its New York territory.

- In any traditional rate filing, Verizon must demonstrate that costs incurred to consummate the merger transaction are not booked to New York regulated accounts and that intrastate rates will not be burdened by any net merger related costs or any MCI accounting improprieties.

Finally, consistent with prior Commission conditions related to the merger between NYNEX and Bell Atlantic, the newly merged company shall continue to maintain its permanent headquarters in New York City.

The Commission orders:

1. The merger between Verizon Communications Inc., MCI, Inc. and the MCI subsidiaries, in accordance with the Agreement and Plan of Merger, jointly executed on February 14, 2005, and as described in this Order, is approved to the extent consistent with the foregoing Opinion.

2. Pursuant to Public Service Law § 23(1), Petitioners are directed to submit a written statement of unconditional acceptance of this Order and the conditions it contains, within seven days following its issuance, signed and acknowledged by a duly authorized officer. If an acceptance statement is not so filed, the Order may be revoked. The acceptance statement should be filed with the Secretary of the Commission and served on the parties to this proceeding.

3. This proceeding is continued pending compliance with ordering clause 2, following compliance it will be closed.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

APPENDIX A

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-C-0237 - Joint Petition of Verizon Communications, Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction Over, or in the Alternative for Approval of Agreement and Plan of Merger.

NOTICE OF DETERMINATION
OF NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the merger of Verizon Communications, Inc. and MCI, Inc. based upon our determination, in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR §17.7(c).

Based upon our review of the record, the action proposed in this proceeding, approval of the transfer of control of certain communications facilities pursuant to §§ 99(2) and 100 of the Public Service Law, will not have a significant adverse impact on the environment.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or at the address listed above.

JACLYN A. BRILLING
Secretary