

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Petition of
Verizon Communications, Inc., and MCI
Inc., For Approval of Agreement and Plan
of Merger

**MERGER CONDITION
COMPLIANCE.**

NO. UT-050814

PUBLIC COUNSEL ANSWER TO
VERIZON STATEMENT RE
SUMMARY OF PLANS FOR
MERGED OPERATIONS

1. Public Counsel files this Answer in response to Verizon's letter filing of October 20, 2006, as permitted by the Commission Notice of Opportunity to File Answer.

I. ANSWER

A. Issue.

2. The matter at issue is whether Verizon has complied with the requirement in the Merger Order¹ that it files a summary of its plans for conducting merged operations in Washington State.

B. Background.

3. Paragraphs 168 - 172 of the Merger Order discuss Public Counsel's recommendation that the merged company be prevented from operating its MCI subsidiary within Verizon's Washington service territory in a manner which would allow Verizon to circumvent Verizon's Washington tariffs. This section also discusses Public Counsel's recommendation that the competitive classification of MCI's CLEC subsidiary, MCImetro Access Transmission Services (MCImetro), be reviewed. The reason for Public Counsel's recommendation was the provision in the original order granting competitive classification for MCI calling for automatic

reevaluation by the Commission of the classification in the event that MCI was acquired by a company subject to rate regulation. It should also be remembered that Verizon and MCI consistently took the position during the merger proceedings, both in discovery and at the hearing, that post-merger planning had not begun. This was the response when the merger partners were asked about, *inter alia*, broadband deployment, post-transaction operational planning, changes in operations and staffing levels in Washington, treatment of MCI customers, services that MCI would offer, operations under the MCI name, continued availability of MCI Neighborhood, and transition planning.²

4. The Commission held that the Verizon-MCI merger did “call into play the provisions of the earlier order” but declined to condition the merger in this regard as Public Counsel had recommended.³ However, the Commission did order Verizon to file a summary report of its plans for the merged operations no later than January 1, 2007. stating as follows:

While we recognize Public Counsel’s concerns, we decline to condition the merger as suggested. We believe it is premature to initiate such a proceeding in advance of Verizon’s determinations regarding future structure and operations of its enterprise. *We direct Verizon NW to file in this docket a summary of its plans for conducting its merged operations in Washington State within 60 days after those plans are determined but not later than January 1, 2007.*⁴

¹ *In the Matter of the Joint Petition of Verizon Communications, Inc., and MCI, Inc., for Approval of Agreement and Plan of Merger*, UT-050814, Order No. 7 (Merger Order), ¶¶ 168-172.

² *See*, Brief of Public Counsel (Merger Review), UT-050814, November 23, 2005, ¶ 64 (listing exhibits containing this response)

³ *Id.*, ¶¶ 170-171.

⁴ *Id.*, ¶ 171.

5. Verizon's October 20, 2006, letter acknowledges that subsequent to the order, Verizon has made at least two filings which purport to comply with this requirement. The letter sets out Verizon's basic position as follows:

As Verizon NW has previously noted, Verizon NW's parent company, Verizon, and its subsidiaries do not have, and likely will not have, an overall plan for "merged operations" that can be summarized in a single document as of a particular date. Verizon NW noted as much in two filings (dated March 17, 2006 and June 2, 2006) informing the Commission of tariff changes affecting post-merger operations. Verizon NW made those notifications to comply with the Operations Filing Requirement in the absence of an overall plan that could be summarized in a single document as of a particular date.

The March and June letters also contained the statement that "Verizon does not have, and likely will not have, overall plans for merged operations that can be summarized in a single document as of a particular date. But Verizon will provide filings such as this one to notify the Commission of plans of major change impacting merged operations."⁵

6. After receiving these letters, Public Counsel conferred with Verizon counsel and expressed the concern that these statements and filings did not comply with the Merger Order. We were not able to resolve our concerns in the discussions and it is our understanding the Verizon has made the October 20, 2006, filing in order to seek approval from the Commission for this approach to the Paragraph 171 requirement.

⁵ See, Letter of June 2, 2006, David S. Valdez to Carole Washburn, Docket UT-050814, regarding TTI National, Inc. Verizon's June 2 letter pertained to TTI National, Inc (TTI), a subsidiary of MCI, LLC, and indicated that on May 22, 2006 TTI filed tariffs to grandfather all of its services in Washington State. Verizon's letter dated March 17, 2006, in this docket indicated that on February 13, 2006, MCI Communications Services (d/b/a "Verizon Business Services") and MCI Metro Access Transmission Service (d/b/a "Verizon Access Transmission Services") filed tariffs to grandfather the "Neighborhood" offerings in the Verizon Northwest Inc. ("Verizon") service territory. Verizon indicated that the grandfathering of the "Neighborhood" service "will not affect existing customers (existing customers will be able to make changes to their service)." (para.1) Verizon further indicated that the grandfathering does not affect any customers in the Qwest ILEC service territory, and that the tariffs became effective on February 23, 2006.

7. Verizon is required to file a summary of its plans for conducting its merged operations within 60 days after the plans are determined but not later than January 1, 2007. Public Counsel is concerned that either the 60 day deadline for filing has passed without compliance, or that Verizon is establishing a pattern of inadequate compliance which it will rely on at the time of the January 1 filing deadline.

C. Verizon's Filing Does Not Comply With Paragraph 171.

8. While Verizon's October letter does go beyond the March and July letters and provide some additional useful information about the current status of operations in Washington, it also prompts a number of additional factual questions that need to be pursued. From our perspective, the letter does not fully address or comply with the requirements of the Merger Order.

9. As noted above, the Merger Order requires a summary of Verizon's plan for conducting its merged operations. The letter sheds some light on current operations but says nothing significant about what is planned for the combined operation or what role the former MCI entities will have. The order does not seek this information only to address the question of whether MCI subsidiaries are being operated to circumvent Verizon tariffs. A concern of at least equal magnitude is the competitively classified status of MCI entities in Washington. As noted above, this status is required to be automatically reevaluated upon acquisition of MCI by a rate of return regulated company. The Commission noted this issue in its order, but reserved judgment on whether it needed to take specific action pending receipt of a report of the plan for merged operations. The Verizon October letter does not address this issue.

10. The October letter describes current operations in part, as follows:

MCImetro is the entity through which MCI-branded local service is provided to mass market customers, and MCI Communications is the entity through which MCI-branded long distance service is provided to mass market customers. As a result of the post-merger tariff filings described in the notifications made to the Commission, these entities now provide service to mass market customers in Washington...⁶

The letter goes on to list how the entities provide service. These representations raise a number of additional questions, including:

- If MCImetro filed ‘tariffs’ for these services, does that mean since they are not being offered under price list and are not being treated as competitively classified services?
- What does it mean to say existing customers in Verizon NW service territory are “unaffected”?
- Have existing customers experienced any price changes since the merger?
- Since new customers in Verizon’s territory cannot subscribe to specified offerings, does that mean this service is gradually being phased out?
- What happens if new customers in Verizon’s territory call-in to request service? Are they referred to another Verizon entity?
- For MCImetro service in Qwest territory, under what brand name are services being sold? Are new customers actively being sought? Is advertising taking place?
- What kind of services are offered by TTI and Telecom USA? Are the services retail or wholesale? Who are the customers?

- Why doesn't the October 20 letter discuss Verizon Telecom in the same manner as Verizon Business is explained? Is Verizon NW part of Verizon Telecom?

11. In summary, the October 20 filing falls well short of providing a summary of plans for the merged operations. It defies credulity that a subsidiary of one of the largest telecommunications carriers in the United States, and the second largest carrier in Washington, “does not have, and likely will not have, overall plans for merged operations.” The statement that it has no plans “that can be summarized in a single document as of a particular date” sounds like a carefully worded evasion of the Merger Order requirement. If the Company did not want to report to this Commission on its merged operations in Washington, the Company could and should have filed a petition for reconsideration of paragraph 171. It did not do so.

II. CONCLUSION AND REQUEST FOR RELIEF

12. Public Counsel respectfully requests the Commission to order Verizon to comply with the terms of Order No. 7, ¶ 171, and provide a summary of its plans for conducting its merged operations in Washington State no later than January 1, 2007, and that it find that the Verizon letter filings for March, June, and October 20, 2006, do not constitute compliance. Public Counsel further requests that the Commission initiate a complaint proceeding to reevaluate

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MCI's competitive classification status, pursuant to its order in the original grant of certification.⁷

13. DATED this 13TH day of November, 2006.

ROB MCKENNA
Attorney General

Simon J. ffitch
Assistant Attorney General
Public Counsel

⁷ *In the Matter of the Petition of U.S. Sprint Communications Company and MCI Telecommunications Corporation for Classification as Competitive Telecommunications Companies*, Docket Nos. U-86-79, U-86-101, Order Granting Petitions in Part, p. 8.