

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF THE COMPETITIVE ENTERPRISE INSTITUTE

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The Competitive Enterprise Institute hereby (CEI)¹ submits this reply comment regarding the applications by Verizon Communications Inc. (Verizon) and MCI Inc. (MCI) seeking FCC approval of the transfer of licenses held by MCI to Verizon.²

CEI believes that it is in the public interest that the Verizon-MCI merger should be quickly approved without conditions.

I. Introduction – The Genesis of Today’s Telecom Market

Technological “convergence” – when providers compete with different technologies to supply the same service – is revolutionizing the telecommunications industry. Cable companies are now in the business of providing local phone service. Wireless companies compete for long distance. Satellite competes against cable for video entertainment, and phone companies are rapidly developing a video offering that will compete against both satellite and cable.

The Commission must consider the reality of convergence. New markets are in the process of being created out of technology previously relegated to a single use. The convergence of voice, video and data (the “triple play”) onto a single technological platform is the result of consumer demand for a complete end-to-end communications experience. It therefore makes sense that the network that provides this experience also be owned and operated end-to-end.

Yet, the acquisitions of AT&T and MCI by SBC and Verizon have stoked fears of market domination. Even though technology is transforming the industry, at least one advocacy group believes these mergers would set the marketplace back to a world of “deregulated monopoly.”³ It is this rhetoric of the past that, if adopted by the Commission, will prevent consumers from receiving the benefits of competing networks of the future.

Of course, there was a monopoly in communications – one created and regulated by government – for seventy-one years. The dominant economic thought of the early twentieth century was that telephone service is a “natural monopoly.” Yet there was never anything natural about AT&T providing phone service to almost every household in the nation.

The DOJ breakup of AT&T resulted in a fracturing of a network into two distinct types of service providers – local exchange carriers (the Baby Bells) and interexchange

¹ CEI is a non-profit public policy organization that works on a broad range of regulatory issues, including telecommunications and technology policy. CEI has a long history of promoting consumer welfare by analyzing alternatives to government regulation of the dynamic communications marketplace.

² In addition, there is another proposed merger the Commission must consider, that of SBC & AT&T (WC Docket No. 05-65). Though each merger has its own particular details and considerations, the thrust of these comments – that it is in the public interest that the Verizon - MCI merger should be quickly approved without conditions – applies equally to SBC – AT&T.

³ Petition to Deny of Consumer Federation of America, Consumers Union and U.S. Public Interest Research Group at p. 1.

carriers (long distance). Unfortunately, AT&T's divestiture, like its original monopolization, did not encourage competing networks. A stratified network divided into local and long distance service ignored the efficiencies of vertically integrated networks. But new technology has come to the rescue. Competitive cable and wireless networks have emerged from outside the regulated landline sector. And these competitors are largely free to manage themselves as fully integrated networks.

II. Communications Networks Compete

Networks compete against other networks; therefore, consolidation within one network typology doesn't mean concentration within the broader communications industry. Consolidation of various parts of the telephone network infrastructure is a natural progression of a communications market working for consumers.

The acquisitions of AT&T and MCI by SBC and Verizon seem necessary if traditional telephone companies are to compete against cable companies. A PricewaterhouseCoopers study advises cable companies to move quickly to capitalize on the two-year advantage they currently have on telephone companies, in terms of delivering triple-play service over a broadband network.⁴ A Forrester Research report, "The Battle for the Digital Home," discusses how communications companies must focus on capturing and controlling new revenue streams through key cross-industry partnerships and acquisitions.⁵

Competition is the ultimate regulator on price and quality. An economic study recently released by CEI in December 2004 reveals intense price competition in the local phone market from wireless.⁶ It finds conclusive evidence that if a local phone company raised its rates by just one percent, wireless demand would increase by two percent. Thus, wireline and wireless phones are substitutable for each other because consumers use them interchangeably.

Communications is much more than a voice transmission. Indeed, a significant communications trend in recent years is interactive video game play on broadband platforms. In just two months after its release, the Xbox Live community logged 91 million online hours playing Halo 2.⁷ Other forms of nontraditional communications include email and instant messaging. And everyone is a potential broadcaster, as podcasting proves.⁸ The various forms of content delivered over multiple and competing

⁴ PricewaterhouseCoopers, Big Bets for the U.S. Cable Industry – Key Opportunities for Future Revenue Growth, January 2005, available at http://www.pwc.com/techforecast/pdfs/mso_wb-x.pdf

⁵ Ted Schadler, The Battle For The Digital Home: Leaders, Long Shots, And Strange Bedfellows Coming To A Home Near You, December 17, 2004.

⁶ Stephen B. Pociask, Wireless Substitution and Competition: Different Technology but Similar Service--Redefining the Role of Telecommunications Regulation, Issue Analysis 2004 No. 5, December 15, 2004, available at <http://www.cei.org/pdf/4329.pdf>

⁷ Xbox Popularity Rises with Steady Market Share Growth in 2004, Microsoft Press Release, January 20, 2005.

⁸ According to Wikipedia, "podcasting is a way of publishing sound files to Internet, allowing users to subscribe to a feed and receive new audio files automatically." See <http://en.wikipedia.org/wiki/Podcasting>

communications networks guarantees that the merged entities will face a competitive marketplace.

III. Merger Recommendations

The Commission needs to resist pressures from competitors of the merging entities and certain advocacy groups that will call for an overly narrow definition of the relevant market. Furthermore, the Commission should be wary of the self-interested calls by parties to impose conditions that will benefit those parties. Finally, the Commission should proceed quickly with its public interest determination, knowing that the Department of Justice will be instituting its own merger antitrust analysis.

A. Approve the Merger

The merger will result in significant public interest benefits. A network platform that will deliver voice, video and data needs enhanced quality of service. Integrating backbone networks with front-end delivery platforms allows communications providers to enable the faster deployment of IP-based services.

Some commentators allege that the communications market is a “cozy duopoly.”⁹ This characterization presents a static and distorted view of the market. As stated above, the market for communications is active and changing. A provider that is too “cozy” is a company that will soon be losing customers and out of business. And the market is hardly a duopoly, but even if it were, there would still be enough competition, or at least the contestable threat of competition through new technology platforms, to ensure consumer welfare.

B. No Conditions

Intermodal competition is reality, not fantasy. In the mass market, competition exists to rectify any theoretically bad outcomes of the merger. Competitive concerns that may arise in the Internet backbone market can be alleviated by existing competing tier networks. Concerns regarding vertical market interconnection incentives do not rise to an actionable level because it will be difficult for a merged entity to impede interconnection among rivals.¹⁰ Market solutions exist to alleviate the potential for a merged AT&T and a merged MCI to discriminatorily raise prices.

It is also important to realize that the process of merger review is itself a cost.¹¹ Indeed, the larger the list of conditions, the longer the delay for the completion of review.

⁹ Petition to Deny of Consumer Federation of America, Consumers Union and U.S. Public Interest Research Group

¹⁰ See Declaration of Marius Schwartz at p. 6, speaking directly about a merged SBC and AT&T.

¹¹ See Jerry Ellig, “Costs and Consequences of Federal Telecommunications and Broadband Regulations,” Mercatus Center, George Mason University, Feb. 2005, for the proposition that government telecommunications regulation has cost consumers up to \$105 billion annually in higher prices and foregone services, available at <http://www.mercatus.org/pdf/materials/1074.pdf>

C. Fast-track Review

Time is of the essence and the Commission should pass the competition review portion of the merger analysis to the Department of Justice.¹² In addition, the FCC should resist granting petitions that demand more information from the merging parties. It is in the interest of the communications market and consumers that the review process is completed quickly. The benefits of the merger should not be denied through delay.

IV. Conclusion

CEI agrees with the sentiment that when considering these mergers, “antitrust authorities and regulators must now take a broader view of the industry structure and this [Judiciary] Committee should send a clear signal that maximum competition is paramount.”¹³ Indeed, a broader view of the traditional telephone industry takes into consideration competitive entry from other networks. Maximizing competition between networks requires close coordination and control of infrastructure. By allowing these mergers to proceed unencumbered by regulatory intervention, the FCC sends a clear signal that it is for competition, now and into the future.

Respectfully submitted,

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¹² CEI agrees with the April 25, 2005 letter submitted to Chairman Martin by Randolph J. May, Senior Fellow at the Progress & Freedom Foundation, wherein he advocates that 1) the Commission should largely defer to the DOJ’s expertise regarding competition concerns, and 2) the Commission should not impose “voluntary” conditions unrelated to compliance with existing statutory or regulatory requirements.

¹³ Consumer Federation of American and Consumers Union, Letter to Senators Specter, Leahy, DeWine, and Kohl, dated February 23, 2005.