

violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. See *United States v. Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

“Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). Thus, in conducting this inquiry, “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).¹

Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cass. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988)

¹ See *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer “whether the settlement achieved [was] within the reaches of the public interest”). A “public interest” determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

(citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “within the reaches of the public interest.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom.*

Maryland v. United States, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Because the “court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,” it follows that

² Cf. *BNS*, 858 F.2d at 464 (holding that the court's “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass”); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

“the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 16, 2005.

Respectfully submitted,

/s/

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/s/

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Verizon Communications Inc. and MCI, Inc.; Competitive Impact Statement, Proposed Final Judgment, Complaint, Stipulation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States v. Verizon Communications Inc.*, Civil Case No. 1:05CV02103 (HHK). On October 27, 2005, the United States filed a complaint alleging that the proposed acquisition of MCI, Inc. (“MCI”) by Verizon Communications Inc. (“Verizon”) would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by substantially lessening competition in the provision of locally private lines (also called “special access”) and other

telecommunications services that rely on local private lines in eight metropolitan areas: Baltimore; Boston; New York; Philadelphia; Tampa; Richmond, Virginia; Providence, Rhode Island; and Portland, Maine. The proposed Final Judgment requires the defendants to divest assets in those eight metropolitan areas in order to proceed with Verizon's \$8.54 billion acquisition of MCI. A Competitive Impact Statement filed by the United States on November 16, 2005 describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Stipulation, Competitive Impact Statement, and all further papers filed with the Court in connection with this Complaint will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20530 (202-514-4281), and at the Office of the Clerk of the U.S. District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments in writing regarding the proposed consent decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202-514-5621). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. Verizon Communications Inc., 1095 Avenue of the Americas, New York, NY 10036; and MCI, Inc., 22001 Loudoun County Parkway, Ashburn, VA 20147, Defendants

Civil Action No. _____
CASE NUMBER 1:05CV02103

JUDGE: Henry H. Kennedy
DECK TYPE: Antitrust
DATE STAMP: 10/27/2005

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of two of the largest providers of telecommunications services in the United States, Verizon Communications, Inc. ("Verizon") and MCI, Inc. ("MCI"), and alleges as follows:

1. On February 14, 2005, Verizon entered into an agreement to acquire MCI. If approved, the transaction would create one of the nation's largest providers of telecommunications services. Plaintiff seeks to enjoin this transaction because it will substantially lessen competition for (a) Local Private Lines that connect hundreds of commercial buildings in Verizon's franchised territory to a carrier's network or other local destination, and (b) other telecommunications services that rely on Local Private Lines.

2. Verizon and MCI compete in the sale of wireline telecommunications services to retail and wholesale customers in the United States.

3. For hundreds of commercial buildings in the metropolitan areas of Baltimore-Washington, DC; Boston, Massachusetts; New York, New York; Richmond, Virginia; Providence, Rhode Island; Tampa, Florida; Philadelphia, Pennsylvania; and Portland, Maine, Verizon and MCI are the only two firms that own or control a direct wireline connection to the building. These building connections are used to supply voice and data telecommunications services to business customers. As described in this Complaint, the proposed merger is likely to substantially reduce competition for Local Private Lines and telecommunications services that rely on Local Private Lines to those buildings.

I. Jurisdiction and Venue

4. This action is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Verizon and MCI are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26, and 28 U.S.C. 1331, 1337.

6. Verizon and MCI transact business and are found in the District of Columbia. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

II. The Defendants and the Transaction

7. Verizon is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in New York, New York. Verizon, formerly Bell Atlantic Corporation ("Bell Atlantic"), is the nation's largest regional Bell operating company ("RBOC"). Bell Atlantic was one of the seven regional holding companies to result from the breakup of AT&T's local telephone business in 1984. In 1996 Bell Atlantic acquired another of the seven original holding companies, NYNEX Corporation. In 2000 Bell Atlantic acquired GTE Corporation, an incumbent local exchange carrier ("ILEC") that provided local exchange and other services in 28 states, and formed Verizon. Today, Verizon's wireline telecommunications operations serve about 51 million total switched access lines, including 32.4 million residential and 17.8 million business lines, in 29 states plus the District of Columbia. In 2004, Verizon earned approximately \$38.6 billion in revenues from its domestic wireline services, including at least \$8.8 billion in revenue from business customers. Verizon has fiber optic or copper connections to virtually all of the commercial buildings in its franchised territory.

8. MCI is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in Ashburn, Virginia. MCI is one of the nation's largest interexchange carriers ("IXC"), offering traditional long distance telephone service, as well as one of the largest competitive local exchange carriers ("CLEC"), offering local network exchange and access for voice and data services. MCI serves consumers and businesses across the United States and around the globe, and owns significant local network assets within Verizon's 29-state operating territory including direct fiber optic connections to numerous commercial buildings. In 2004, MCI earned approximately \$20.7 billion in revenues, including almost \$4 billion from domestic business customers.

9. Pursuant to an Agreement and Plan of Merger dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005, Verizon agreed to acquire MCI for approximately \$8.54 billion.

III. Trade and Commerce

A. Nature of Trade and Commerce

10. Verizon owns and operates local telecommunications networks throughout its territory and provides local and long distance voice and data services to, inter alia, business customers and other telecommunications carriers.

11. MCI owns and operates local networks in dozens of metropolitan areas in the United States, a substantial number of which are in Verizon territory. Like Verizon, MCI also provides local and long distance voice and data services to business customers and other telecommunications carriers. Significant numbers of MCI's customers have locations in Verizon's franchised territory, and the two firms compete to serve those wholesale and retail customers.

12. One element of the parties' local networks are local loops, sometimes referred to as "last-mile" connections, which are typically either copper or fiber-optic transmission facilities that connect commercial buildings to a carrier's network. These last-mile connections are a critically important asset for providing service to business customers.

13. A Local Private Line is a dedicated, point-to-point circuit offered over copper and/or fiber-optic transmission facilities that originates and terminates within a single metropolitan area and typically includes at least one local loop. Local Private Lines are sold at both retail (to business customers) and wholesale (to other carriers). Verizon refers to Local Private Line circuits as "special access," and MCI refers to its own such circuits as "metro private lines."

14. Depending on how they are configured, Local Private Lines can be used to carry voice traffic, data, or a combination of the two. Local Private Lines may be purchased as stand-alone products but are also an important input to value-added voice and data telecommunications services that are offered to business customers.

15. For the vast majority of commercial buildings in its territory, Verizon is the only carrier that owns a last-mile connection to the building. Thus, in order to provide voice or data telecommunications services to customers in those Verizon-only buildings, competing carriers typically must lease the connection from Verizon as Local Private Line service (special access).

16. For a small percentage of commercial buildings (though one that accounts for a substantial percentage of

customer demand and revenue), Verizon's CLEC competitors have built or acquired their own last-mile fiber-optic connections, separate from Verizon's, to connect their networks to the buildings. The CLECs typically refer to buildings with these connections as their "lit buildings" or "on-net buildings." Once a CLEC has incurred the high fixed cost to construct a last-mile connection to a building, the CLEC can usually provide service to business customers in the building at a lower marginal cost than it would otherwise be able to do if it had to lease the connection from the RBOC. It can also provide alternative access to other CLECs seeking to serve business customers in the building.

17. MCI is among the leading CLECs in Verizon's territory in the number of buildings it has connected with its own last-mile fiber facilities. For hundreds of buildings in Verizon's territory, the only two carriers that own or control the direct building connection are MCI and Verizon.

18. In the hundreds of buildings where MCI is the only CLEC with a last-mile connection, the merge of MCI and Verizon would reduce the number of carriers with an owned or controlled last-mile connection from two to one.

B. Relevant Product Markets

19. The relevant product markets affected by this transaction are the markets for: (a) Local Private Lines, and (b) voice and data telecommunications services that rely on Local Private Lines.

20. Verizon is the dominant provider of Local Private Lines (special access) in its franchised territory with \$3.5 billion in special access sales in 2004. MCI is one of Verizon's largest competitors with \$532 million in metro private line sales in 2004, of which more than \$198 million were in Verizon territory.

21. Local Private Lines are a recognized service category among telecommunications carriers and end-user business customers. Customers typically purchase Local Private Lines in standard bandwidth increments such as DS1 ("T1," 1.54 megabits per second), DS3 (44.74 megabits per second), OC3 (155.52 megabits per second), and higher. Local Private Lines can interconnect with industry-standard data networking and telephone equipment, and can be "channelized" to carry various amounts of voice and/or data traffic.

22. Local Private Lines are distinct from switched local exchange telephone services. Switched local exchange lines route calls through a voice switch in the local carrier's central office and do not necessarily use a dedicated circuit.

These switched circuits do not offer the guaranteed bandwidth, high service levels, and security that Local Private Lines provide.

23. Competing carriers often rely on Local Private Line (special access) circuits to connect an end-user customer's location to their networks, enabling the competitor to supply value-added data networking, Internet access, local voice and long distance services to the customer. Although carriers can provide some types of voice and data services over switched local exchange lines (e.g., when an access line is pre-subscribed to a long distance carrier), most large business customers do not find those services to be a viable or cost-effective substitute for voice and data telecommunications services provided via Local Private Lines. In the event of a small, but significant, nontransitory increase in price for either Local Private Lines or voice and data telecommunications services provided via Local Private Lines, insufficient customers would switch to switched circuits to render the increase unprofitable.

C. Relevant Geographic Markets

24. The relevant geographic markets for both Local Private Lines, as well as voice and data telecommunications services that rely on Local Private Lines, are no broader than each metropolitan area and no more narrow than each individual building.

IV. Anticompetitive Effects

25. Verizon and MCI are the only two carriers that own or control a Local Private Line connection to many buildings in each region. The merger would, therefore, effectively eliminate competition for facilities-based Local Private Line service to those buildings, and many retail and wholesale customers would no longer have MCI as a competitive alternative to Verizon. Although other competitors might resell Local Private Lines from Verizon, those competitors would not be as effective a competitive constraint because Verizon would control the price of the resold circuits. The merged firm would, therefore, have the ability to raise price to retail and wholesale customers of Local Private Lines.

26. In addition, because the cost of dedicated local access via Local Private Line represents an important cost component of many value-added voice and data telecommunications services provided over such access, by (a) eliminating MCI as the only competitive alternative to Verizon for such services with its own Local Private Line connection to hundreds of buildings,

and (b) depriving other carriers seeking to provide such value-added services of the only fully-facilities based wholesale competitive alternative to Verizon in those buildings, the merger would tend to lessen competition for retail voice and data telecommunications services provided over dedicated access.

V. Entry

27. Although other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process. Whether a CLEC builds a last mile connection to a given building depends upon many factors, including:

- a. The proximity of the building to the CLEC's existing network interconnection points;
- b. The capacity required at the customer's location (and thus the revenue opportunity);
- c. The availability of capital;
- d. The existence of physical barriers, such as rivers and railbeds, between the CLEC's network and the customer's location; and
- e. The ease or difficulty of securing the necessary consent from building owners and municipal officials.

28. The costs of building a last-mile connection vary substantially for each location. Even if all the above criteria favor the construction of a last-mile connection in a particular case, a single such connection typically costs tens, sometimes hundreds, of thousands of dollars to build and activate. Thus, CLECs will typically only build in to a particular building after they have secured a customer contract of sufficient size to justify the anticipated construction costs for that building.

29. Although entry may occur in response to a post-merger price increase in some of the buildings where MCI is the only connected CLEC, the conditions for entry are unlikely to be met in hundreds of those buildings. Thus, entry is unlikely to eliminate the competitive harm that would likely result from the proposed merger.

VI. Violation Alleged

30. The United States hereby incorporates paragraphs 1 through 29.

31. Pursuant to an Agreement and Plan of Merger dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005 Verizon and MCI intend to merge their businesses.

32. The effect of the proposed acquisition of MCI by Verizon would be to lessen competition substantially in interstate trade and commerce in numerous geographic markets for (a)

Local Private Lines and (b) voice and data telecommunications services that rely on Local Private Lines, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. The transaction would likely have the following effects, among others:

- a. Competition in the provision and sale of Local Private Lines in numerous Geographic markets would be eliminated or substantially lessened;
- b. Competition in the provision and sale of voice and data telecommunications services that rely on Local Private Lines in numerous geographic markets would be substantially lessened; and
- c. Prices for Local Private Lines, as well as voice and data telecommunications services provided via Local Private Lines, would likely increase to levels above those that would prevail absent the merger.

VII. Prayer for Relief

The United States requests:

34. That Verizon's proposed acquisition of MCI be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

35. That Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger, dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005 or from entering into or carrying out any agreement, understanding, or plan by which Verizon would merge with or acquire MCI, its capital stock or any of its assets;

36. That the United States be awarded costs of this action; and

37. That the United States have such other relief as the Court may deem just and proper.

Dated: October 27, 2005.

Respectfully submitted,
For Plaintiff United States:
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In the United States District Court for the District of Columbia

United States of America, Plaintiff; v. Verizon Communications Inc. and MCI, Inc., Defendants

Civil Action No. 1:05CV02103 (HHK)

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on October 27, 2005, plaintiff and defendants, Verizon Communications Inc.

("Verizon") and MCI, Inc. ("MCI"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

New Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon cosnet of the parties, it is *ordered, adjudged, and decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Verizon" means defendant Verizon Communications Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "MCI" means defendants MCI, Inc., a Delaware corporation with its headquarters in Ashburn, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest the Divestiture Assets.

D. "Divestiture Assets" means IRUs for Lateral Connections to the locations listed in Appendix A and sufficient transport as described below and all additional rights necessary to enable those assets to be used by the Acquirer to provide telecommunications services. The Divestiture Assets shall include IRUs for transport facilities sufficient to connect the Lateral Connections to locations mutually agreed upon by defendants and the Acquirer, subject to the approval of the United States in its sole judgment. The term "Divestiture Assets" shall be construed broadly to accomplish the complete divestiture of assets and the purposes of this Final Judgment. With the approval of the United States, in its sole discretion, and at the Acquirer's option, the Divestiture Assets may be modified to exclude assets and rights that are not necessary to meet the competitive aims of this Final Judgment.

E. "IRU" means indefeasible right of use, a long-term leasehold interest that gives the holder the right to use specified strands of fiber in a telecommunications facility. An IRU granted by defendants under this Final Judgment shall (1) be for a minimum of 10 years; (2) not require the Acquirer to pay a monthly or other recurring fee to preserve or make use of its rights; (3) include all additional rights and interests necessary to enable the IRU to be used by the Acquirer to provide telecommunications services; and (4) contain other commercially reasonable and customary terms, including terms for payment to the grantor for ancillary services, such as maintenance fees on a per occurrence basis; and (5) not unreasonably limit the right of the Acquirer to use the asset as it wishes (e.g., the Acquirer shall be permitted to splice into the IRU fiber, though such splice points must be mutually agreed upon by defendants and Acquirer).

F. "Lateral Connection" means fiber strands from the point of entry of the building to the splice point with fiber used to serve different buildings and shall consist of the greater of (1) eight (8) fiber strands or (2) one-half of the currently unused fiber strands in MCI's facilities serving the building measured at the time of the filing of the Complaint. The fiber strands may be provided from those owned or controlled by either Verizon or MCI, as mutually agreed by defendants and Acquirer.

III. Applicability

A. This Final Judgment applies to Verizon and MCI, as defined above, and all other person in active concern or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchasers agree to be bound by the provisions of this Final Judgment, provided however, that defendants need not obtain such an agreement from the Acquirers.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the closing of Verizon's acquisition of MCI, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an acquirer and on terms acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to divestiture of the Divestiture Assets by defendants or the Divestiture Trustee and if applications or requests for approval or consent have been filed with the appropriate governmental unit within 120 calendar days after the closing of Verizon's acquisition of MCI, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which governmental approval or consent has not been issued until five (5) days after such approval or consent is received. Defendants agree to use their best efforts

to divest the Divestiture Assets and to seek all necessary regulatory or other approvals or consents necessary for such divestitures as expeditiously as possible. This Final Judgment does not limit the Federal Communications Commission's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the Federal Communications Commission to conduct the divestiture of a Divestiture Asset in a particularly manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall warrant to all Acquirers of the Divestiture Assets that each asset will be operational on the date of sale.

E. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

F. At the option of the Acquirers, defendants shall enter into a contract for a period of up to one (1) year for transition services customarily necessary to maintain, operate, provision, monitor, or otherwise support the Divestiture Assets. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing telecommunications business. Divestiture of the Divestiture Assets may be made to more than one Acquirer, provided that (i) all Divestiture Assets in a given metropolitan area are divested to a single Acquirer unless otherwise approved by the United States, in its sole discretion, and (ii) in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers) that, in the United States's role judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of telecommunications services; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer (or Acquirers) and defendants gives defendants the ability unreasonably to raise the Acquirer's cost, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to complete effectively.

I. To the extent leases, contracts, agreements, intellectual property rights, licenses or other commitments with third-parties are not assignable or transferable without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A),

defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to Acquirers acceptable to the United States, in its sole judgment, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, technical experts, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory or other approvals or consents and will provide necessary representations or warranties as appropriate, related to the sale of the

Divestiture Assets. The trustee and any consultants, accountants, attorneys, technical experts, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. In addition, notwithstanding any provision to the contrary, the United States, in its sole discretion, may require defendants to include additional assets, or allow, with the written approval of

the United States, defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the trustee to facilitate prompt divestiture to an acceptable Acquirer or Acquirers.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Stipulation signed by defendants and the United States. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of the receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all action defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest

the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted.

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require that defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material,

“Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XI. No Reacquisition

Defendants may not reacquire (or lease back without the approval of the United States, in its sole discretion) any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment

to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to

the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States’ response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____
 Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

 United States District Judge

APPENDIX A

Address	City	State	Zip	Metropolitan area
City Hall Plz	Boston	MA	02201	Boston-Worcester.
10 Tara Blvd	Nashua	NH	03062	Boston-Worcester.
100 Nagog Park	Acton	MA	01720	Boston-Worcester.
1000 Technology Park Dr	Billerica	MA	01821	Boston-Worcester.
109 State St	Boston	MA	02109	Boston-Worcester.
Hunting Ave	Boston	MA	02116	Boston-Worcester.
110 Spit Brook Rd	Nashua	NH	03062	Boston-Worcester.
12 Hartwell Ave	Lexington	MA	02421	Boston-Worcester.
12 New England Executive Park	Burlington	MA	01803	Boston-Worcester.
125 Cambridgepark Dr	Cambridge	MA	02140	Boston-Worcester.
125 Middlesex Tpke	Bedford	MA	01730	Boston-Worcester.
1255 Boylston St	Boston	MA	02215	Boston-Worcester.
1295 Boylston St	Boston	MA	02215	Boston-Worcester.
132 Brookline Ave	Boston	MA	02215	Boston-Worcester.
135 Santilli Hwy	Everett	MA	02149	Boston-Worcester.
141 Ledge St	Nashua	NH	03060	Boston-Worcester.
1550 Soldiers Field Rd	Boston	MA	02135	Boston-Worcester.
161 Devonshire St	Boston	MA	02110	Boston-Worcester.
165 Dascomb Rd	Andover	MA	01810	Boston-Worcester.
175 Great Rd	Bedford	MA	01730	Boston-Worcester.
180 Hartwell Rd	Bedford	MA	01730	Boston-Worcester.
2 Charlesgate W	Boston	MA	02215	Boston-Worcester.
2 Fenway Plz	Boston	MA	02215	Boston-Worcester.
2 Heritage Dr	Quincy	MA	02171	Boston-Worcester.
211 Congress	Boston	MA	02110	Boston-Worcester.
220 Bear Hill Rd	Waltham	MA	02451	Boston-Worcester.
235 Wyman St	Waltham	MA	02451	Boston-Worcester.
25 Linnell Cir	Billerica	MA	01821	Boston-Worcester.
25 Mall Rd	Burlington	MA	01803	Boston-Worcester.
262 Washington St	Boston	MA	02108	Boston-Worcester.
275 Wyman St	Waltham	MA	02451	Boston-Worcester.
28 Crosby Dr	Bedford	MA	01730	Boston-Worcester.
29 Randolph Rd	Bedford	MA	01731	Boston-Worcester.
3 Clock Tower Pl	Maynard	MA	01754	Boston-Worcester.
30 Hamilton Rd	Lexington	MA	02420	Boston-Worcester.
300 Longwood Ave	Boston	MA	02115	Boston-Worcester.
31 Nagog Park	Acton	MA	01720	Boston-Worcester.
33 Arch St	Boston	MA	02110	Boston-Worcester.
330 Brookline Ave	Boston	MA	02215	Boston-Worcester.
35 Dunham Rd	Billerica	MA	01821	Boston-Worcester.
35 Northeastern Blvd	Nashua	NH	03062	Boston-Worcester.
4 Crosby Dr	Bedford	MA	01730	Boston-Worcester.
40 Old Bolton	Stow	MA	01775	Boston-Worcester.
4040 Mystic Valley Pkwy	Medford	MA	02155	Boston-Worcester.
419 Boylston	Boston	MA	02116	Boston-Worcester.
420 Bedford St	Lexington	MA	02420	Boston-Worcester.
426 Washington St	Boston	MA	02108	Boston-Worcester.
44 Binney St	Boston	MA	02115	Boston-Worcester.
465 Hunting Ave	Boston	MA	02115	Boston-Worcester.
5 Clock Tower Pl	Maynard	MA	01754	Boston-Worcester.
55 North Rd	Bedford	MA	01730	Boston-Worcester.
550 King St	Littleton	MA	01460	Boston-Worcester.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
561 Virginia Rd	Concord	MA	01742	Boston-Worcester.
565 Memorial Dr	Cambridge	MA	02139	Boston-Worcester.
60 1st Ave	Waltham	MA	02451	Boston-Worcester.
600 Technology Park Dr	Billerica	MA	01821	Boston-Worcester.
61 Hancock St	Quincy	MA	02171	Boston-Worcester.
63 3rd Ave	Burlington	MA	01803	Boston-Worcester.
65 Boston Post Rd W	Marlborough	MA	01752	Boston-Worcester.
650 Elm St	Manchester	NH	03101	Boston-Worcester.
67 S Bedford St	Burlington	MA	01803	Boston-Worcester.
7 Shattuck Rd	Andover	MA	01810	Boston-Worcester.
7 Van De Graaff Dr	Burlington	MA	01803	Boston-Worcester.
700 Boylston St	Boston	MA	02116	Boston-Worcester.
745 Boylston St	Boston	MA	02116	Boston-Worcester.
77 S Bedford St	Burlington	MA	01803	Boston-Worcester.
8 Commerce Dr	Bedford	NH	03110	Boston-Worcester.
8 Cotton Rd	Nashua	NH	03063	Boston-Worcester.
80 Central St	Boxborough	MA	01719	Boston-Worcester.
81 Grenier St	Bedford	MA	01731	Boston-Worcester.
90 Central	Boxborough	MA	01719	Boston-Worcester.
900 Technology Park Dr	Billerica	MA	01821	Boston-Worcester.
91 Hartwell Ave	Lexington	MA	02421	Boston-Worcester.
1 International Blvd	Mahwah	NJ	07495	New York.
1 Malcolm Ave	Teterboro	NJ	07608	New York.
1 Rockwood Rd	Sleepy Hollow	NY	10591	New York.
1 Sharp Plz	Mahwah	NJ	07430	New York.
10 Union Sq E	New York	NY	10003	New York.
100 Route 206 North	Peapack	NJ	07977	New York.
100 Wood Ave S	Iselin	NJ	08830	New York.
1000 Harbor Blvd	Weehawken	NJ	07086	New York.
106 Corporate Park Dr	White Plains	NY	10604	New York.
1101 Westchester Ave	White Plains	NY	10604	New York.
1111 Westchester Ave	White Plains	NY	10604	New York.
112 Mulberry St	Newark	NJ	07102	New York.
1212 Avenue of the Americas	New York	NY	10036	New York.
125 Kingsland Ave	Clifton	NJ	07014	New York.
1441 Chestnut Ave	Hillside	NJ	07205	New York.
15 Columbus Cir	New York	NY	10019	New York.
1639 State Rt 10	Parsippany	NJ	07054	New York.
173 Belmont Dr	Somerset	NJ	08873	New York.
180 Water St	New York	NY	10038	New York.
1865 Broadway	New York	NY	10023	New York.
199 Chambers St	New York	NY	10007	New York.
2 Campus Dr	Parsippany	NJ	07054	New York.
200 Metroplex Dr	Edison	NJ	08817	New York.
221 W 26th St	New York	NY	10001	New York.
226 E 54th St	New York	NY	10022	New York.
226 Westchester Ave	White Plains	NY	10604	New York.
230 US Highway 206	Flanders	NJ	07836	New York.
242 W 36th St	New York	NY	10018	New York.
25 W 39th St	New York	NY	10018	New York.
253 Broadway	New York	NY	10007	New York.
27 Randolph St	Carteret	NJ	07008	New York.
27 W 23rd St	New York	NY	10010	New York.
286 Eldridge Rd	Fairfield	NJ	07004	New York.
2975 Westchester Ave	Purchase	NY	10577	New York.
30 Dunnigan Dr	Suffern	NY	10901	New York.
30 Freneau Ave	Matawan	NJ	07747	New York.
346 Broadway	New York	NY	10013	New York.
346 Madison Ave	New York	NY	10017	New York.
360 Park Ave S	New York	NY	10010	New York.
380 Route 59	Airmont	NY	10901	New York.
4 Manhattanville Rd	Purchase	NY	10577	New York.
460 W 54th St	New York	NY	10019	New York.
465 Endo Blvd	Garden City	NY	11530	New York.
485 US Highway 1	Edison	NJ	08817	New York.
501 Franklin Ave	Garden City	NY	11530	New York.
511 Benedict Ave	Tarrytown	NY	10591	New York.
55 Carter Dr	Edison	NJ	08817	New York.
580 White Plains Rd	Tarrytown	NY	10591	New York.
63 Madison Ave	New York	NY	10016	New York.
7 Amherst Pl	White Plains	NY	10601	New York.
7 Campus Dr	Parsippany	NJ	07054	New York.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
70 W Red Oak Ln	West Harrison	NY	10604	New York.
707 Broad St	Newark	NJ	07102	New York.
75 Virginia Rd	White Plains	NY	10603	New York.
80 Grasslands Rd	Elmsford	NY	10523	New York.
800 Westchester Ave	Rye Brook	NY	10573	New York.
845 N Broadway	White Plains	NY	10603	New York.
875 Merrick Ave	Westbury	NY	11590	New York.
Davis Ave	White Plains	NY	10601	New York.
100 S Broad St	Philadelphia	PA	19110	Philadelphia.
1100 N Market St	Wilmington	DE	19801	Philadelphia.
1400 Liberty Ridge Dr	Chesterbrook	PA	19087	Philadelphia.
2 Walnut Grove Dr	Horsham	PA	19044	Philadelphia.
301 W 11th St	Wilmington	DE	19801	Philadelphia.
400 Chesterfield Pkwy	Malvern	PA	19355	Philadelphia.
400 Market St	Philadelphia	PA	19106	Philadelphia.
460 E Swedesford Rd	Wayne	PA	19087	Philadelphia.
620 Lee Rd	Chesterbrook	PA	19087	Philadelphia.
735 Chesterbrook Blvd	Chesterbrook	PA	19087	Philadelphia.
750 East Swedesford Road	Valley Forge	PA	19482	Philadelphia.
900 W Valley Rd	Wayne	PA	19087	Philadelphia.
1 Mcalister Farm Rd	Portland	ME	04103	Portland.
10 Free St	Portland	ME	04101	Portland.
111 Wescott Rd	South Portland	ME	04106	Portland.
121 Free St	Portland	ME	04101	Portland.
137 Kennebec St	Portland	ME	04101	Portland.
144 State St	Portland	ME	04101	Portland.
145 Newbury St	Portland	ME	04101	Portland.
148 Middle St	Portland	ME	04101	Portland.
162 Canco Rd	Portland	ME	04103	Portland.
164 Middle St	Portland	ME	04101	Portland.
2 Ledgeview Dr	Westbrook	ME	04092	Portland.
20 Milk St	Portland	ME	04101	Portland.
25 Bradley Dr	Westbrook	ME	04092	Portland.
25 Preble St	Portland	ME	04101	Portland.
261 Commercial St	Portland	ME	04101	Portland.
3 Canal Plz	Portland	ME	04101	Portland.
33 Sewall St	Portland	ME	04102	Portland.
4 Westbrook Cmn	Westbrook	ME	04092	Portland.
400 Congress St	Portland	ME	04101	Portland.
400 Southborough Dr	South Portland	ME	04106	Portland.
45 Bradley Dr	Westbrook	ME	04092	Portland.
500 Southborough Dr	South Portland	ME	04106	Portland.
51 Nonesuch Cove Rd	Scarborough	ME	04074	Portland.
510 Congress St	Portland	ME	04101	Portland.
565 Congress St	Portland	ME	04101	Portland.
636 Riverside St	Portland	ME	04103	Portland.
65 Bradley St	Portland	ME	04102	Portland.
696 Congress St	Portland	ME	04102	Portland.
1 R I H T Way	Riverside	RI	02915	Providence.
10 Admiral St	Providence	RI	02908	Providence.
10 Dorrance St	Providence	RI	02903	Providence.
111 Brewster St	Pawtucket	RI	02860	Providence.
111 Dorrance St	Providence	RI	02903	Providence.
120 Corliss St	Providence	RI	02904	Providence.
125 Dupont Dr	Providence	RI	02907	Providence.
127 Dorrance St	Providence	RI	02903	Providence.
146 Westminster St	Providence	RI	02903	Providence.
155 S Main St	Providence	RI	02903	Providence.
196 Richmond St	Providence	RI	02903	Providence.
2 Richmond Sq	Providence	RI	02906	Providence.
20 Washington Pl	Providence	RI	02903	Providence.
21 Peace St	Providence	RI	02907	Providence.
259 Pine St	Providence	RI	02903	Providence.
291 Westminster St	Providence	RI	02903	Providence.
30 Chestnut St	Providence	RI	02903	Providence.
4 Richmond Sq	Providence	RI	02906	Providence.
40 Catamore Blvd	East Providence	RI	02914	Providence.
400 Westminster St	Providence	RI	02903	Providence.
444 Westminster St	Providence	RI	02903	Providence.
50 Kennedy Plz	Providence	RI	02903	Providence.
56 Pine St	Providence	RI	02903	Providence.
75 Fountain St	Providence	RI	02902	Providence.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
76 Dorrance St	Providence	RI	02903	Providence.
86 Weybosset St	Providence	RI	02903	Providence.
89 Ship St	Providence	RI	02903	Providence.
1000 Semmes Ave	Richmond	VA	23224	Richmond.
11100 W Broad St	Glen Allen	VA	23060	Richmond.
1200 E Main St	Richmond	VA	23219	Richmond.
1313 E Main St	Richmond	VA	23219	Richmond.
1450 E Parham Rd	Richmond	VA	23280	Richmond.
2040 Thalbro St	Richmond	VA	23230	Richmond.
22150 Tomlyn St	Richmond	VA	23230	Richmond.
2235 Staples Mill Rd	Richmond	VA	23230	Richmond.
4120 Cox Rd	Glen Allen	VA	23060	Richmond.
4461 Cox Rd	Glen Allen	VA	23060	Richmond.
4600 Cox Rd	Glen Allen	VA	23060	Richmond.
4851 Lake Brook Dr	Glen Allen	VA	23060	Richmond.
7814 Carousel Ln	Richmond	VA	23294	Richmond.
9950 Mayland Dr	Richmond	VA	23233	Richmond.
9960 Mayland Dr	Richmond	VA	23233	Richmond.
100 S Ashley Dr	Tampa	FL	33602	Tampa.
10410 Highland Manor Dr	Tampa	FL	33610	Tampa.
10420 Highland Manor Dr	Tampa	FL	33610	Tampa.
10430 Highland Manor Dr	Tampa	FL	33610	Tampa.
10500 University Center Dr	Tampa	FL	33612	Tampa.
110 Douglas Rd E	Oldsmar	FL	34677	Tampa.
1410 N Westshore Blvd	Tampa	FL	33607	Tampa.
1511 N Westshore Blvd	Tampa	FL	33607	Tampa.
18301 Crane Nest Drive	Tampa	FL	33647	Tampa.
18335 Digital Dr	Tampa	FL	33647	Tampa.
1915 N Dale Mabry Hwy	Tampa	FL	33607	Tampa.
2002 N Lois Ave	Tampa	FL	33607	Tampa.
2502 N Rocky Point Dr	Tampa	FL	33607	Tampa.
2701 N Rocky Point Dr	Tampa	FL	33607	Tampa.
3505 E Frontage Rd	Tampa	FL	33607	Tampa.
3608 Queen Plam Dr	Tampa	FL	33619	Tampa.
3800 Citibank Center Tampa	Tampa	FL	33610	Tampa.
3802 Coconut Palm Dr	Tampa	FL	33619	Tampa.
4343 Anchor Plaza Pkwy	Tampa	FL	33634	Tampa.
501 Brooker Creek Blvd	Oldsmar	FL	34677	Tampa.
5050 W Lemon St	Tampa	FL	33609	Tampa.
5120 W Clifton St	Tampa	FL	33634	Tampa.
5201 W Kennedy Blvd	Tampa	FL	33609	Tampa.
5300 W Knox St	Tampa	FL	33634	Tampa.
5401 Hangar Ct	Tampa	FL	33634	Tampa.
550 N Reo St	Tampa	FL	33609	Tampa.
5755 Hoover Blvd	Tampa	FL	33634	Tampa.
8800 Grand Oak Cir	Tampa	FL	33637	Tampa.
8875 Hidden River Pkwy	Tampa	FL	33637	Tampa.
1 Curie Ct	Rockville	MD	20850	Washington-Baltimore.
1000 Wilson Blvd	Arlington	VA	22209	Washington-Baltimore.
10000 Derekwood Ln	Lanham	MD	20706	Washington-Baltimore.
1001 G St NW	Washington	DC	20001	Washington-Baltimore.
107 Carpenter Dr	Sterling	VA	20164	Washington-Baltimore.
10802 Parkridge Blvd	Reston	VA	20191	Washington-Baltimore.
10942 Beaver Dam Rd	Cockeysville	MD	21030	Washington-Baltimore.
10955 Golden West Dr	Hunt Valley	MD	21031	Washington-Baltimore.
111 S Calvert St	Baltimore	MD	21202	Washington-Baltimore.
1111 Constitution Ave NW	Washington	DC	20002	Washington-Baltimore.
11200 Pepper Rd	Hunt Valley	MD	21031	Washington-Baltimore.
120 E Baltimore St	Baltimore	MD	21202	Washington-Baltimore.
1200 1st St SE	Washington	DC	20303	Washington-Baltimore.
12001 Indian Creek Ct	Beltsville	MD	20705	Washington-Baltimore.
12007 Sunrise Valley Dr	Reston	VA	20191	Washington-Baltimore.
1201 Seven Locks Rd	Rockville	MD	20854	Washington-Baltimore.
12012 Sunset Hills Rd	Reston	VA	20190	Washington-Baltimore.
12355 Sunrise Valley Dr	Reston	VA	20191	Washington-Baltimore.
12600 Fair Lakes Cir	Fairfax	VA	22033	Washington-Baltimore.
12701 Fair Lakes Cir	Fairfax	VA	22033	Washington-Baltimore.
1301 Pennsylvania Ave NW	Washington	DC	20004	Washington-Baltimore.
13461 Sunrise Valley Dr	Herndon	VA	20171	Washington-Baltimore.
1350 I St NW	Washington	DC	20005	Washington-Baltimore.
1375 Piccard Dr	Rockville	MD	20850	Washington-Baltimore.
1390 Piccard Dr	Rockville	MD	20850	Washington-Baltimore.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
1401 H St NW	Washington	DC	20005	Washington-Baltimore.
16050 Industrial Dr	Gaithersburg	MD	20877	Washington-Baltimore.
16060 Industrial Dr	Gaithersburg	MD	20877	Washington-Baltimore.
1709 New York of Ave NW	Washington	DC	20006	Washington-Baltimore.
1722 I St NW	Washington	DC	20006	Washington-Baltimore.
1759 Business Center Dr	Reston	VA	20190	Washington-Baltimore.
1760 Business Center Dr	Reston	VA	20190	Washington-Baltimore.
1800 G St NW	Washington	DC	20006	Washington-Baltimore.
1800 Robert Fulton Dr	Reston	VA	20191	Washington-Baltimore.
1820 Fort Myer Dr	Arlington	VA	22209	Washington-Baltimore.
1861 International Dr	McLean	VA	22102	Washington-Baltimore.
1900 Campus Commons Dr	Reston	VA	20191	Washington-Baltimore.
1916 Isaac Newton SQ W	Reston	VA	20190	Washington-Baltimore.
2 E Chase St	Baltimore	MD	21202	Washington-Baltimore.
200 Fairbrook Dr	Herndon	VA	20170	Washington-Baltimore.
200 International Cir	Cockeysville	MD	21030	Washington-Baltimore.
2010 Corporate RDG	McLean	VA	22102	Washington-Baltimore.
2021 L St NW	Washington	DC	20036	Washington-Baltimore.
20300 Century Blvd	Germantown	MD	20874	Washington-Baltimore.
20400 Century Blvd	Germantown	MD	20874	Washington-Baltimore.
210 N Charles St	Baltimore.	MD	21201	Washington-Baltimore.
21355 Ridgetop Cir	Dulles	VA	20166	Washington-Baltimore.
21545 Ridgetop Cir	Sterling	VA	20166	Washington-Baltimore.
2216 Gallows Rd	Dunn Loring	VA	22027	Washington-Baltimore.
2240 Broadbirch Dr	Silver Spring	MD	20904	Washington-Baltimore.
22461 Shaw Rd	Sterling	VA	20166	Washington-Baltimore.
22800 Davis Dr	Sterling	VA	20164	Washington-Baltimore.
2401 E St NW	Washington	DC	20241	Washington-Baltimore.
250 E St SW	Washington	DC	20024	Washington-Baltimore.
2650 Park Tower Dr	Vienna	VA	22180	Washington-Baltimore.
2707 Wilson Blvd	Arlington	VA	22201	Washington-Baltimore.
2811 Lord Baltimore Dr	Baltimore	MD	21244	Washington-Baltimore.
300 14th St SW	Washington	DC	20228	Washington-Baltimore.
301 W Preston St	Baltimore	MD	21201	Washington-Baltimore.
307 International Cir	Cockeysville	MD	21030	Washington-Baltimore.
35 Market Pl	Baltimore	MD	21202	Washington-Baltimore.
3910 Keswick Rd	Baltimore	MD	21211	Washington-Baltimore.
4 Choke Cherry Rd	Rockville	MD	20850	Washington-Baltimore.
401 14th St SW	Washington	DC	20024	Washington-Baltimore.
401 M St SW	Washington	DC	20024	Washington-Baltimore.
403 Glenn Dr	Sterling	VA	20164	Washington-Baltimore.
4201 Wilson Blvd	Arlington	VA	22203	Washington-Baltimore.
4330 E West Hwy	Bethesda	MD	20814	Washington-Baltimore.
4350 Fairfax Dr	Arlington	VA	22203	Washington-Baltimore.
450 Springpark Pl	Herndon	VA	20170	Washington-Baltimore.
5 Choke Cherry Rd	Rockville	MD	20850	Washington-Baltimore.
500 N Capitol St NW	Washington	DC	20001	Washington-Baltimore.
5161 River Rd	Bethesda	MD	20816	Washington-Baltimore.
523 E Monument St	Baltimore	MD	21202	Washington-Baltimore.
5260 Western Ave	Chevy Chase	MD	20815	Washington-Baltimore.
540 Huntmar Park Dr	Herndon	VA	20170	Washington-Baltimore.
5515 Security Ln	Rockville	MD	20852	Washington-Baltimore.
5600 Fishers Ln	Rockville	MD	20852	Washington-Baltimore.
575 Herndon Pkwy	Herndon	VA	20170	Washington-Baltimore.
6000 McDill Blvd	Washington	DC	20340	Washington-Baltimore.
6009 Oxon Hill Rd	Oxon Hill	MD	20745	Washington-Baltimore.
601 12th St S	Arlington	VA	22202	Washington-Baltimore.
601 D St NW	Washington	DC	20004	Washington-Baltimore.
601 F St NW	Washington	DC	20004	Washington-Baltimore.
6495 New Hampshire Ave	Hyattsville	MD	20783	Washington-Baltimore.
656 Quince Orchard Rd	Gaithersburg	MD	20878	Washington-Baltimore.
6610 Rockledge Dr	Bethesda	MD	20817	Washington-Baltimore.
666 11th St NW	Washington	DC	20001	Washington-Baltimore.
6710 Oxon Hill Rd	Oxon Hill	MD	20745	Washington-Baltimore.
6801 Rockledge Dr	Bethesda	MD	20817	Washington-Baltimore.
6903 Rockledge Dr	Bethesda	MD	20817	Washington-Baltimore.
7020 Virginia Manor Rd	Beltsville	MD	20705	Washington-Baltimore.
7067 Columbia Gateway Dr	Columbia	MD	21046	Washington-Baltimore.
7129 Ambassador Rd	Baltimore	MD	21244	Washington-Baltimore.
7500 Boston Blvd	Springfield	VA	22153	Washington-Baltimore.
7811 Montrose Rd	Rockville	MD	20854	Washington-Baltimore.
7925 Westpark Dr	McLean	VA	22102	Washington-Baltimore.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
8230 Leesburg Pike	Vienna	VA	22182	Washington-Baltimore.
8230 Old Courthouse Rd	Vienna	VA	22182	Washington-Baltimore.
8400 Baltimore Ave	College Park	MD	20740	Washington-Baltimore.
8521 Leesburg Pike	Vienna	VA	22182	Washington-Baltimore.
8620 Westwood Center Dr	Vienna	VA	22182	Washington-Baltimore.
8930 Stanford Blvd	Columbia	MD	21045	Washington-Baltimore.
9201 Corporate Blvd	Rockville	MD	20850	Washington-Baltimore.
9210 Corporate Blvd	Rockville	MD	20850	Washington-Baltimore.
9211 Corporate Blvd	Rockville	MD	20850	Washington-Baltimore.
9270 Gaither Rd	Gaithersburg	MD	20877	Washington-Baltimore.
9307 Gerwig Ln	Columbia	MD	21046	Washington-Baltimore.
9704 Medical Center Dr	Rockville	MD	20850	Washington-Baltimore.
9840 O'Brian Road	Fort Meade	MD	20755	Washington-Baltimore.
Langley Hqtrs	Langley	VA	22101	Washington-Baltimore.
NASA Goddard SFC Bldg 1	Greenbelt	MD	20771	Washington-Baltimore.
Rte 198 Racetrack Road	Laurel	MD	20725	Washington-Baltimore.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Verizon Communications, Inc. and MCI, Inc., Defendants

Civil Action No.: 1:05CV02103 (HHK)
Filed: November 16, 2005

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated February 14, 2005—subsequently amended on March 4, March 29, and May 2—pursuant to which Verizon Communications, Inc. ("Verizon") will acquire MCI, Inc. ("MCI"). The United States filed a civil antitrust Complaint on October 27, 2005 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for Local Private Lines and other telecommunications services that rely on Local Private Lines in eight metropolitan areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in customers facing higher prices for Local Private Lines and other telecommunications services that rely on Local Private Lines than they would absent the merger.

At the same time the Complaint was filed, the United States also filed a Stipulation and proposed Final Judgment that are designed to eliminate

the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest infeasible rights of use ("IRUs") for lateral connections to certain buildings located in a number of metropolitan areas as listed in Appendix A of the proposed Final Judgment (collectively the "Divestiture Assets"). Under the terms of the Stipulation, Defendants will take certain steps to ensure that these assets are preserved and maintained.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, Defendants have also committed to continue to abide by its requirements and those of the Stipulation until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Verizon is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in New York, New York. Verizon, formerly Bell Atlantic Corporation ("Bell

Atlantic"), is the nation's largest regional Bell operating company ("RBOC"). Bell Atlantic was one of the seven regional holding companies created as a result of the breakup of AT&T's telephone business into local and long distance components initially in 1984. Since then, Bell Atlantic formed Verizon, including its acquisitions of another RBOC, NYNEX Corporation, and GET Corporation, an incumbent local exchange carrier ("ILEC") that provided local exchange and other services in 28 states. Verizon owns and operates local telecommunications networks throughout its territory and provides local and long distance voice and data services to, inter alia, business customers and other telecommunications carriers. Today, Verizon's wireline telecommunications operations serve about 51 million total switched access lines, including 32.4 million residential and 17.8 million business lines, in 29 states plus the District of Columbia. In 2004, Verizon earned approximately \$38.6 billion in revenues from its domestic wireline services, including at least \$8.8 billion in revenue from business customers. Verizon has fiber-optic or copper connections to virtually all of the commercial buildings in its franchised territory.

MCI is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in Ashburn, Virginia. MCI is one of the nation's largest interexchange carriers ("IXC"), offering traditional long distance telephone service, as well as one of the largest competitive local exchange carriers ("CLEC"), offering local network access for voice and data services. MCI serves consumers and businesses across the United States and around the globe, and owns significant

local network assets within Verizon's 29-state operating territory including direct fiber-optic connections to numerous commercial buildings. In 2004, MCI earned approximately \$20.7 billion in revenues, including almost \$4 billion from domestic business customers.

Pursuant to an Agreement and Plan of Merger dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005, Verizon agreed to acquire MCI for approximately \$8.54 billion. The proposed transaction, as agreed to by Defendants, would lessen competition substantially for Local Private Lines and other telecommunication services that rely on Local Private Lines in eight metropolitan areas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States.

B. Local Private Lines

A Local Private Line is a dedicated, point-to-point circuit offered over copper and/or fiber-optic transmission facilities that originates and terminates within a single metropolitan area and typically includes at least one local loop. A local loop, sometimes referred to as a "last-mile" connection, is typically either a copper or fiber-optic transmission facility that connects commercial buildings to a carriers' network, making the local loop a critically important asset for providing telecommunications services to business customers.

Local Private Lines are a recognized service category among telecommunications carriers and end-user business customers and are sold at both retail (to business customers) and wholesale (to other carriers). Depending on how they are configured, Local Private Lines can be used to carry voice traffic, data, or a combination of the two. Local Private Lines may be purchased as stand-alone products but are also an important input to value-added voice and data telecommunications services for business customers and represent a significant portion of the costs incurred in providing those services. Customers typically purchase Local Private Lines in standard bandwidth increments such as DS1 ("T1," 1.54 megabits per second), DS3 (44.74 megabits per second), OC3 (155.52 megabits per second), and higher. Local Private Lines can interconnect with industry-standard data networking and telephone equipment, and can be "channelized" to carry various amounts of voice and/or data traffic. Local Private Lines are distinct from switched local exchange

telephone services, which route calls through a voice switch in the local carrier's central office and do not necessarily use a dedicated circuit. Customers do not consider switched local exchange services to be a substitute because they do not offer the guaranteed bandwidth, high service levels, and security that Local Private Lines provide.

Competing carriers often rely on Local Private Line circuits to connect an end-user customer's location to their networks, enabling the competitor to supply value-added data networking, Internet access, local voice and long distance services to the customer. Although carriers can provide some types of voice and data services over switched local exchange lines (e.g., when an access line is pre-subscribed to a long distance carrier), most large business customers do not find those services to be a viable or cost-effective substitute for voice and data telecommunications services provided via Local Private Lines. In the event of a small, but significant, nontransitory increase in price for either Local Private Lines or voice and data telecommunications services provided via Local Private Lines, insufficient customers would switch to switched circuits to render the increase unprofitable.

For the vast majority of commercial buildings in its territory, Verizon is the only carrier that owns a last-mile connection to the building. Thus, in order to provide Local Private Line circuits or voice or data telecommunications services to customers in those Verizon-only buildings, competing carriers typically must lease the connection from Verizon as Local Private Line service, which Verizon refers to as "special access" and MCI refers to as "metro private line." For a small percentage of commercial buildings (though these buildings account for a significant amount of customer demand and revenue), Verizon's CLEC competitors have built or acquired their own last-mile fiber-optic connections, separate from Verizon's, to connect their networks to the buildings. The CLECs typically refer to buildings with these connections as their "lit buildings" or "on-net buildings." Once a CLEC has incurred the high fixed cost to construct a last-mile connection to a building, the CLEC can usually provide service to business customers in the building at a lower marginal cost than it would otherwise be able to do if it had to lease the connection from the RBOC. It can also provide alternative access to other

CLECs seeking to serve business customers in the building.

The relevant geographic market for both Local Private Lines, as well as voice and data telecommunications services that rely on Local Private Lines, is no broader than each metropolitan area and no more narrow than each individual building.

C. The Competitive Effects of the Transaction on Local Private Lines

Verizon's acquisition of MCI will substantially lessen competition in the markets for (a) Local Private Lines and (b) voice and data telecommunications services that rely on Local Private Lines. Verizon is the dominant provider of Local Private Lines in its franchised territory, and MCI is one of its largest competitors. MCI is among the leading CLECs in Verizon's territory in the number of buildings it has connected with its own last-mile fiber facilities. For hundreds of commercial buildings located in the metropolitan areas of Baltimore-Washington, DC; Boston, Massachusetts; New York, New York; Richmond, Virginia; Providence, Rhode Island; Tampa, Florida; Philadelphia, Pennsylvania; and Portland, Maine, Verizon and MCI are the only two firms that own or control a direct wireline connection to the building. In these buildings, the merger of Verizon and MCI would reduce the number of carriers with an owned or controlled last-mile connection from two to one.

The merger would, therefore, effectively eliminate competition for facilities-based Local Private Line service to those buildings, and many retail and wholesale customers would no longer have MCI as a competitive alternative to Verizon. Although other competitors might resell Local Private Lines from Verizon, those competitors would not be as effective a competitive constraint because Verizon would control the price of the resold circuits. The merged firm would, therefore, have the ability to raise price to retail and wholesale customers of Local Private Lines. In addition, because the cost of dedicated local access via Local Private Line represents an important cost component of many value-added voice and data telecommunications services provided over such access, the merger would tend to lessen competition for retail voice and data telecommunications services provided over dedicated access by (a) eliminating MCI as the only competitive alternative to Verizon for such services with its own Local Private Line connection to hundreds of buildings and (b) depriving other carriers seeking to provide such value-added network services of the

only fully-facilities based wholesale competitive alternative to Verizon in those buildings.

Although other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process. Whether a CLEC builds a last-mile connection to a given building depends upon many factors, as noted in the Complaint, and the costs of building a last-mile fiber-optic connection vary substantially for each location. Because a single such connection may cost hundreds of thousands of dollars to build and light, CLECs will typically only build in to a particular building after they have secured a customer contract of sufficient size and length to justify the anticipated construction costs for that building. While entry may occur in some buildings where MCI is the only CLEC present in response to a post-merger price increase, the conditions for entry are unlikely to be met in the hundreds of buildings that are the subject of the Complaint. For these buildings, the expected customer demand and proximity of other CLEC fiber to the building (two important factors in the decision to build in) indicate that such entry, even in the face of a price increase, is unlikely to be profitable for any CLEC. Thus, entry would not be timely, likely, or sufficient to eliminate the competitive harm that would likely result from Verizon's proposed acquisition of MCI.

For these reasons, the United States concluded that Verizon's proposed acquisition of MCI will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of Local Private Lines and other telecommunication services that rely on Local Private Lines in the eight metropolitan areas listed above.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed final Judgment will eliminate the anticompetitive effects of the acquisition in Local Private Lines and other telecommunications services that rely on Local Private Lines in the relevant areas. The proposed Final Judgment requires Defendants, within 120 days after the closing of Verizon's acquisition of MCI, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Divestiture Assets. The Divestiture Assets consist of IRUs for lateral connections (or last-mile connection) to hundreds of buildings in

the identified metropolitan areas along with transport facilities sufficient to enable the IRUs to be used by the purchaser to provide telecommunications services. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

These assets must be divested in such a way as to satisfy the United States in its sole discretion that they will be used by the purchaser to compete effectively and remedy the harm alleged in the Complaint in the markets for Local Private Lines and other telecommunications services that rely on Local Private Lines. In reviewing the purchaser or purchasers of the Divestiture Assets, the United States will be particularly focused on the purchaser's ability to be a viable competitor in offering Local Private Lines on both a retail and/or wholesale basis. Purchasers that are already offering similar services in or near the metropolitan area are more likely to be viable competitors than other potential purchasers.

Divesting the last-mile connections to the hundreds of buildings in Verizon's territory will remedy the harm alleged in the Complaint. Although other CLECs have local fiber networks in each of the metropolitan areas at issue, they cover only a small percentage of buildings, and the buildings covered vary from CLEC to CLEC. As a result, there are numerous buildings where MCI is the only CLEC with a last-mile connection. It is the decreased competition in the provision of these last-mile connections to buildings where MCI is the only CLEC that creates the harm alleged in the Complaint. Whether the geographic market for the sale of Local Private Line or other telecommunications services that rely on Local Private Lines is as broad as the metropolitan area or as narrow as individual locations or buildings, divesting these last-mile connections will restore the lost facilities-based competition. The proposed Final Judgment also strengthens metropolitan area competition by divesting to a single purchaser in each area all of the buildings that were unique to MCI.

To ensure that the purchaser has adequate capacity to serve customers in a given location, the lateral or last-mile connection to be divested will consist of an IRU for the greater of (1) eight (8) fiber strands or (2) one-half of the currently unused fiber strands in MCI's facilities serving the building measured at the time of the filing of the Complaint, from the point of entry of the building to the splice point with

fiber used to serve different buildings. This should be sufficient capacity for the purchaser to serve current demand and allow for future growth and changes in the local service area while allowing Verizon to retain the MCI circuits being used to serve current customers without disruption to their service. In addition, to accommodate network engineering and design requirements, the divestiture IRUs can be granted for fiber strands owned or controlled by either Verizon or MCI, as mutually agreed by Defendants and the purchaser.

Last-mile connections, however, are of little use if they are not connected to a network. Therefore, the proposed Final Judgment also requires the divestiture of IRUs for transport facilities sufficient to connect the divested last-mile connections to locations mutually agreed upon by Defendants and the purchaser. This will ensure that the purchaser can connect the last-mile connections to its network facilities and provide both Local Private Lines and any other telecommunications services that rely on Local Private Lines that a customer in the building may require.

An IRU (or indefeasible right of use) is a long-term leasehold interest commonly used in the telecommunications industry that gives the holder the right to use specified strands of fiber in the telecommunications facility. The proposed Final Judgment contemplates that the purchaser and Defendants will negotiate commercially reasonable IRUs, that must meet minimum requirements, including: (1) To ensure that the purchaser has the asset for a long enough time period to serve customers while taking into account the dynamic nature of the telecommunications industry and the useful life of the existing fiber, the IRU must be for a minimum of 10 years; (2) to minimize ongoing carrying costs for the IRU, the IRU cannot contain a monthly or other recurring fee; and (3) to ensure that Defendants cannot limit the purchasers' use of the last-mile connection, the IRU cannot unreasonably limit the right of the purchaser to use the asset as it wishes (e.g., the purchaser shall be permitted to splice into the IRU fiber, though such splice points must be mutually agreed upon by Defendants and purchaser). This last requirement, allows the purchaser to splice into the IRUs to serve locations other than those listed in Appendix A of the proposed Final Judgment, at mutually agreed upon splice points.

The requirements of the proposed Final Judgment ensure that the purchasers can use the Divested Assets

to begin competing immediately for customers in these buildings and will have the rights and cost structure necessary to be effective by (1) minimizing carrying costs so that viability is not threatened if customers are not immediately procured and (2) giving the purchaser flexibility in use of the last-mile connections by allowing splicing into the fiber.

Lastly, with the approval of the United States, in its sole discretion, and at the purchaser's option, the Divestiture Assets may be modified to exclude assets and rights that are not necessary to meet the aims of this Final Judgment. This will allow for minor modifications of the Divestiture Assets to exclude assets that may not be necessary in order to remedy the competitive harm.

A. Timing of Divestitures

To rapidly restore lost competition, the United States requires divestitures to be completed within the shortest time period reasonable under the circumstances. In this case, the proposed Final Judgment requires, in Section IV.A, divestiture of the Divestiture Assets, within 120 days after the closing of Verizon's acquisition of MCI, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. The United States in its sole discretion may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit Defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process.

B. Use of a Divestiture Trustee

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. To ensure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, the United States, in its sole discretion, may require Defendants to include additional assets, or allow Defendants to substitute substantially similar assets, which substantially relate the Divestiture Assets to be divested by the divestiture trustee.

The proposed Final Judgment provides that Defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under

Section V.D of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. Section V.G of the proposed Final Judgment requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after his or her appointment. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be

considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Verizon's acquisition of MCI. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for Local Private Lines and other telecommunications services that rely on Local Private Lines in the metropolitan areas identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint

including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit had held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. See *United States v. Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

“Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).¹

Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*,

648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “within the reaches of the public interest.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Because the “court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review

the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 16, 2005.

Respectfully submitted,

/s/

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 8, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

¹ See *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer “whether the settlement achieved [was] within the reaches of the public interest”). A “public interest” determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

² *Cf. BNS*, 858 F.2d at 464 (holding that the court's “ultimate authority under the [APPA] is limited to approving to disapproving the consent decree”); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass”); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).