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-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

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In the Matter of the Proposed Acquisition of MCI, Inc. by Verizon Communications, Inc.	DOCKET NO. 05-2430-01  Covad's Response to MCI and Verizon's Motion to Strike Covad's Comments
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DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), responds to MCI and Verizon's motion to strike Covad's comments:

Verizon and MCI vigorously assert that their proposed union will “enhance, rather than diminish, competition and the availability of affordable, quality service for all types of Utah consumers.” (Verizon Motion to Strike, May 19, 2005, p. 6). Not surprisingly, their claims are unsupported by any substantial evidence and are, in fact, contradicted by Verizon's long tradition of avoiding competition with its RBOC brethren at all costs. Should Verizon apply its no-competition policy to its post-merger MCI assets in Utah the impact on both wholesale and retail competition in the state will be staggering. Covad itself will be harmed directly by a decrease in competition for interoffice transport, but—as is always the case—the ultimate burden of Verizon's withdrawal will fall upon the shoulders of the citizens of Utah. If Verizon does indeed shutter its post-merger Utah network, the impact will be felt in several ways.

MCI's presence in the Utah market delivers many benefits to Utah. On the retail side of the equation, MCI's vigorous competition with Qwest serves to keep prices for

both local and long distance rates at historically low levels. In this context it is important to note that MCI has signed up to sell Qwest's UNE-P replacement product and—until the announcement of this merger—showed no signs of exiting the market. With AT&T's recent abandonment of its residential strategy, MCI is now the only well-financed competitor that Qwest must fight for residential customers. If Verizon shuts them down, Qwest's re-monopolization of the Utah wireline market will be a serious threat.

On the wholesale side, MCI's presence in Utah is every bit as significant. With the exception of AT&T, MCI has more interoffice transport available to competitive carriers such as Covad than any other carrier. Its broad network provides many benefits to the wholesale market. First, the threat that MCI will deploy additional facilities serves as a check on Qwest's otherwise unfettered ability to raise special access rates. Second, MCI's price competition with AT&T and smaller carriers to capture CLEC interoffice transport business helps keep alive viable alternatives to Qwest's anti-competitive special access pricing. Third, in many Central Offices affected by the new rules in the Triennial Review Remand Order ("TRRO"), MCI is one of the fiber collocators whose presence in a given CO may result in that CO being removed from the UNE transport world. If these MCI fiber collocations go dark, these COs will no longer meet the TRRO criteria established by the FCC, but the FCC has provided no mechanism within the TRRO to account for a loss of competitive transport such as this.

While Verizon and MCI may consider the significance of their merger to competition in the state to be "irrelevant" (Verizon/MCI Motion to Strike at p. 3) to the Utah Public Service Commission, Covad sees things differently. The threat of dramatically reduced telecommunications competition in the state is clearly within the

purview of the Commission, and Covad would again urge a probing inquiry of the proposed merger. Verizon and MCI strain to show that the Commission does not have jurisdiction over the Verizon-MCI transaction under Utah Code Ann. §§ 54-4-28, 54-4-29, and 54-4-30. When a company like Verizon acquires the stock of another telecommunications company like MCI and that acquisition could seriously affect competition in Utah, the Commission has jurisdiction, either pursuant to one of the three previously-cited merger-acquisition statutes, or under Utah Code Ann. §54-4-1 the Commission's general jurisdiction and public interest statute. In Docket No. 99-049-41, *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp. and US West Communications, Inc.*, the Commission asserted jurisdiction where two parent corporations merged. The Commission stated:

Since the statute charges the Commission with ensuring that the conditions which merited granting the certificates in the first instance remain intact, the issue of whether the Commission has jurisdiction over the merger or just over the determination that the resulting corporate structure meets the conditions required to hold certificates renders the discussion moot. Either the Commission can approve or disapprove the merger, or it can evaluate the ongoing validity of the subsidiaries' separate certificates post merger. In one case or the other, the Commission has the authority to examine the effect of the resulting structure on the utility operations under the certificates held by the subsidiaries of the merging parent corporations. *June 9, 2000 Commission order, p. 9.*

In that case the Commission decided that it had to determine if the proposed merger was in the public interest. The same holds true for the proposed Verizon-MCI acquisition. Verizon and MCI cannot structure a transaction that relieves the Commission of its mandate to protect the public interest.

In keeping with Covad's primary concern regarding the proposed merger, Covad will be willing to withdraw its request that the Commission scrutinize the proposed

transaction if Verizon and MCI provide written assurances to the Commission that MCI will continue to compete vigorously in both the wholesale and retail telecommunications markets of Utah, and—in particular—assure the Commission that the merged company will continue to provide competitive transport services.

In light of the foregoing, Covad requests entry of an order denying MCI and Verizon's motion to strike.

Respectfully submitted this 31<sup>st</sup> day of May, 2005.

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## Certificate of Mailing

I hereby certify that on May 31, 2005 I mailed a copy of Covad Communications Company's Response to MCI and Verizon's Motion to Strike Covad's Comments by first-class mail, postage prepaid, to:

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