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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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<p>In the Matter of the Proposed Acquisition of MCI, Inc. by Verizon Communications, Inc.,</p>	<p>Docket No. 05-2430-01</p> <p><b>MOTION TO STRIKE</b></p> <p><b>OR IN THE ALTERNATIVE</b></p> <p><b>RESPONSE OF MCI, INC. AND VERIZON COMMUNICATIONS INC. TO THE COMMENTS OF COVAD COMMUNICATIONS COMPANY</b></p>
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Verizon Communications Inc. (“Verizon”) and MCI, Inc. (“MCI”) (collectively, “the Parties”), hereby move to strike the Comments of Covad Communications Company (“Covad”), or, in the alternative, respond to Covad’s Comments as follows.

## **MOTION TO STRIKE**

The Parties move the Commission to strike Covad's Comments. The Commission's rules allow the parties to a proceeding to present evidence, make argument, and otherwise participate. R746-100-8. A "party" under the Rule may include the agency, the complainant, the respondent, parties authorized to participate by statute or rule, and "all persons permitted by the presiding officer to intervene." Utah Code Ann. § 63-46b-2(f). Covad is none of the above. Unless and until intervention is granted, the Commission should not receive or consider Covad's Comments, nor allow it otherwise to present evidence or argument except in support of its Petition to Intervene ("Petition").

Covad has not replied to the Parties' Opposition to Covad's Petition to Intervene ("Opposition"), and the Commission has not ruled on the Covad Petition. It would therefore be premature for the Commission to hear Covad's arguments. As the Parties argued in their Opposition, the Commission should conclude that Covad is not entitled to intervene in this docket. In the meantime, it should not consider Covad's Comments as facts or argument in support of its Petition, or with respect to the need for proceedings on the Parties' proposed acquisition.

## **RESPONSE TO COMMENTS OF COVAD**

If the Commission grants intervention or otherwise considers Covad's Comments, the Parties submit the following response:

1. Covad contends, in conclusory form, that the Commission should "undertake a comprehensive and probing examination" of the proposed acquisition in order to evaluate its "significant impact on telecommunications competition in the [sic] Utah." (Covad Comments at 2.) But Covad offers no basis for asserting that the proposed acquisition is subject to Commission review or will harm competition. Specifically, Covad offers no justification for disregarding the statements in the Parties' Notification that: (1) the Commission lacks jurisdiction to review the proposed acquisition in the manner Covad requests; and (2) even if

such jurisdiction exists, review is unnecessary because the proposed acquisition will not have anti-competitive effects on communications services in Utah. Covad offers no such justifications because they do not exist.

**I. There Is No Jurisdictional Basis for the Inquiry Covad Seeks**

2. Covad cites no authority showing that the Commission has jurisdiction to conduct a “probing” examination of the acquisition’s impact on communications services. As explained in the Parties’ Notice, the Commission’s statutory approval jurisdiction does not cover the proposed transaction because the transaction does not involve an acquisition by a Utah public utility. The acquisition’s purported “significance” is irrelevant.

3. As explained in the Parties’ Notice, the proposed acquisition does not call for the merger of any assets, operations, lines, plants, franchises, or permits of MCI’s regulated subsidiaries with the assets, operations, lines, plants, franchises or permits of any Verizon entity. Under Utah Code Sections 54-5-28, 54-4-29, and 54-4-30, Commission approval is required only if one Utah public utility merges with, acquires the voting stock of, or acquires the plants, facilities, equipment or properties of, another public utility engaged in the same general line of business in the State. In the proposed acquisition, Verizon (a Delaware holding company) will be acquiring the stock of MCI (another Delaware holding company). Neither company holds Utah certificates, and no regulated Verizon or MCI subsidiary is a party to the acquisition. For that reason, the proposed acquisition is not the kind of transaction over which the Commission has jurisdiction under Utah law.

4. Neither Verizon nor any of its subsidiaries provide any regulated service in Utah. Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, is a reseller of IXC services in Utah and Verizon Wireless also provides service in the State. But these entities are expressly exempt from the definition of “telephone corporation,” and thus are not public utilities subject to

Commission regulation for the purposes of Title 54. Utah Code Ann. § 54-2-1(15); 54-1-2(23)(b). There is thus no statutory basis for the Commission to exercise jurisdiction over the proposed transaction. For this reason alone, Covad's request for a "probing" inquiry into the transaction should be denied.

## **II. There Is Also No Substantive Basis for the Inquiry Covad Seeks**

5. Covad's request for Commission inquiry into the proposed transaction should also be denied for the independent reason that the transaction will not adversely affect competition in Utah. As explained in the Parties' Notice, the Parties' core assets and strengths are complementary rather than overlapping. The acquisition will simply enhance the abilities that both Verizon and MCI now possess as stand-alone companies to provide a comprehensive suite of communications services to consumers, businesses, and government customers. In so doing, the transaction will create significant *benefits* to competition, not harm as Covad suggests.

6. This transaction is the logical next step in the continuing evolution of the communications industry, an evolution that is driven by customers and technology. In the past, competition for telecommunications services was essentially limited to providers with access to traditional wireline facilities. Today, the communications market has expanded far beyond traditional wireline service to include numerous competitors ready, willing, and able to provide a diverse array of competing communications services to business and residential customers. This market expansion is due in large part to the advent of wireless and other intermodal (*e.g.*, cable, DSL and broadband) technology capable of carrying both digital data and voice traffic over something other than traditional telecommunications wire lines.

6. These technological advances have placed tremendous new competitive pressure on traditional telecommunications providers by enabling cable companies, wireless service providers, global network service providers, equipment providers, systems integrators, and IP

applications providers to offer customers the types of services formerly offered only by telecommunications companies.<sup>1</sup> The extent of this competition is evidenced by the fact that this year, for the first time in history, more communications consumers will have their communications needs served by wireless and broadband providers than by traditional wireline connections. These undisputed competitive trends have redefined the communications market and, in so doing, have all but eliminated the type of competitive concerns Covad references in its comments. Verizon's acquisition of MCI is simply a procompetitive part of, and response to, these developments. As William F. Flynn, Chairman of the New York Public Service Commission, recently remarked:

The New York Public Service Commission recognizes the telecommunications industry is in a period of significant transition as a consequence of emerging technologies, converging markets, and regulatory and legal developments. The announced acquisition of MCI by Verizon reflects many of the new realities within the telecommunications arena.<sup>2</sup>

The proposed acquisition is intended to complement and accelerate Verizon's continuing transformation into a premier wireless and broadband provider. It represents a vital strategic move for Verizon that is focused on growth and continued investment, not just on cost reductions. The transaction is in keeping with the industry evolution described above, and the acquisition's primary goal is to deliver benefits to customers over the long term.

8. For all of these reasons, Covad is simply wrong in arguing that Commission investigation is necessary because Verizon's acquisition of MCI will harm competition in Utah. Verizon's acquisition of MCI will in fact increase competition in the new communications market by creating a company that is better able to provide the broad array of services necessary

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<sup>1</sup> Such competitors include, among others: AT&T, BT, Sprint, NTT Corporation, Cisco, Avaya, Nortel, Lucent, NEC, Alcatel, XO, IBM, and others.

<sup>2</sup> Statement from NYPSC Chairman William M. Flynn on Verizon's Proposed Acquisition of MCI (February 14, 2005).

to compete with intermodal providers than either Verizon or MCI would have been able to provide alone. In so doing, the proposed acquisition will enhance, rather than diminish, competition and the availability of affordable, quality service for all types of Utah consumers. Accordingly, there is no reason to undertake the kind of Commission review Covad urges in its Comments.

### CONCLUSION

If the Commission grants Covad's petition to intervene, Covad's request for investigation of the Verizon's proposed acquisition of MCI should be denied for the reasons set forth above.

Respectfully submitted this 19th day of May, 2005,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of May, 2005, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing Motion to Strike or in the Alternative, Response of MCI, Inc. and Verizon Communications, Inc. to the Comments of Covad Communications Company

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