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August 5, 2005

Honorable Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Cases 05-C-0237 and 05-C-0242

Dear Secretary Brilling:

Enclosed please find an original and five (5) copies of the Communications Workers of America's comments in Case 05-C-0237 as per the Commission's Notice Soliciting Comments On Staff White Paper issued July 6, 2005. These comments are being sent to parties by e-mail and U.S. mail.

Respectfully submitted,

Kenneth R. Peres

Kenneth R. Peres, Ph.D.
CWA Economist

cc: Active Parties

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

---x Joint Petition of Verizon New York Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction over or in the Alternative for Approval of Agreement and Plan of Merger ---x	Case 05-C-0237
---x Joint Petition of SBC Communications Inc., AT&T Corporation, together with its Certificated New York Subsidiaries, for Approval of Merger ---x	Case 05-C-0242

Comments of the Communications Workers of America, AFL-CIO

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Comments of the Communications Workers of America, AFL-CIO on the Department of Public Service Staff White Paper on the Proposed Verizon-MCI and SBC-AT&T Mergers

I. Introduction

The following comments are presented in response to the "Notice Soliciting Comments on Staff White Paper" issued by the Public Service Commission (PSC).[1] The Department of Public Service Staff White Paper (Staff White Paper) presents Staff's preliminary analyses and tentative conclusions about the impact of the Verizon-MCI and SBC-AT&T mergers.

As presented in the following sections, CWA contends and/or recommends

- ♦ The PSC not only has clear jurisdiction over these mergers but also the duty to determine whether the mergers as constituted are in the public interest.

- ♦ The Verizon-MCI merger should only be approved with the following conditions in order to protect the public interest.

    A. Insure that Enough Capital and Labor Resources Are Allocated to Maintain the Network Infrastructure Adequately
        1. The allocation of specific levels of capital and labor resources to maintain adequately the condition of the existing Verizon network as Verizon makes the transition to an all fiber network

[1] Cases 05-C-0237 and 05-C-0242, Notice Soliciting Comments on Staff White Paper (Issued July 6, 2005).

2. The PSC should institute a proceeding to examine methods and plans so that all providers that use the public switched network would share in the maintenance and upkeep of this network

B. Insure the Provision of Adequate Levels of Service Quality

3. A service quality program that would institute penalties if and when specific targets are not met
4. Verizon should include MCI's performance in its retail service quality measures and reports

C. Insure that New Yorkers Share in the Merger's Benefits

5. An audit to determine the amount of "synergy savings" resulting from the merger in New York
6. A requirement that a significant portion of these savings be utilized to benefit New Yorkers by enhancing service quality through a net increase in capital expenditures and staffing

D. Insure Verizon's On-going Commitment to Upstate Communities

7. A commitment by Verizon-NY to retain its upstate access lines

E. Provide Affordable High Speed Broadband throughout New York

8. A commitment by Verizon to deploy high speed broadband throughout the entire state over a specified timeframe
9. The PSC should examine methods and plans so that all providers contribute to universal access to affordable high-speed broadband services whether in a new proceeding or in Comp III

F. Insure Verizon's On-going Commitment to its New York Headquarters

10. Verizon must retain its permanent headquarters and major telecommunications functions in New York

♦ The Commission should approve the SBC-AT&T merger because it has minimal anti-competitive impacts and serves and public interest.

Without these conditions attached to the Verizon-MCI merger, the public interest will be adversely affected because Verizon's non-fiber infrastructure investment, workforce and service quality will decline. The digital divide between broadband haves and have-nots will grow as Verizon shifts its focus to wireless and high-end business and residential customers. In addition, Verizon most likely would attempt again to sell or spin-off its upstate access lines.

There are important precedents for such conditions. The PSC approved the Bell Atlantic-NYNEX merger in 1997 with conditions requiring the company to continue a strict service quality performance plan with penalties (the Performance Regulation Plan), spend an additional $1 billion on infrastructure, hire 750 to 1,000 additional workers and locate the company's permanent headquarters in New York.

Now is the time for the PSC to take strong action to protect the public interest and only approve the Verizon-MCI merger with strict and enforceable conditions.

II. The PSC Has Clear Jurisdiction Over the Proposed Mergers and a Duty to Protect the Public Interest

In our initial comments, CWA examined how New York's Public Service Law (PSL) gives the PSC clear jurisdiction over Verizon's acquisition of MCI's New York properties.[2] The mergers of NYNEX and Bell Atlantic, Bell Atlantic and GTE, Frontier and Rochester Tel, Frontier and Global Crossing, and Frontier-Rochester and Citizens all had to obtain the approval of the PSC before they could be closed. Thus, CWA agrees with staff's conclusion that

> … jurisdiction to investigate and approve or deny the proposed acquisition of MCI by Verizon is vested in the Commission by the statutory authority conferred to Public Service Law Sections 99 and 100.[3]

The PSL requires that PSC approval of a merger only be given if it is determined to be in the public interest. PSL Section 100 states the following.

> No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest.

The PSC not only has clear jurisdiction over the Verizon-MCI and SBC-AT&T mergers but also the duty to determine whether the mergers are in the public interest.

[2] Case 05-C-0237, Comments of the Communications Workers of America, AFL-CIO, April 29, 2005.
[3] Staff White Paper, p. 12.

III. The Verizon-MCI Merger As Constituted Is Not in the Public Interest

The proposed merger as constituted does not include adequate protections for communities, consumers and workers and, thus, is not in the public interest. If the merger is approved as proposed, the public will be adversely affected in relation to the level of competition, the quality of service offered to millions, employment levels in the telecommunications industry, infrastructure investment, the potential sale of millions of upstate access lines and economic development – especially in terms of the deployment of broadband throughout the state and the condition of Verizon's infrastructure. The PSC should not approve the acquisition as presently proposed.

The Staff of the Department of Public Service released a White Paper that includes an extensive analysis of the merger and suggests a number of remedies that, in Staff's opinion, could ameliorate some of the merger's negative impacts. In general, Staff presents a comprehensive analysis of the anti-competitive aspects of the proposed merger. However, in a number of important instances, there is a major disconnect between Staff's analysis and their proposed remedies. For example, Staff's analysis shows that the merger will lead to a significant increase in Verizon's market power and, thus, a decrease in levels of competition. Yet, Staff relies on greater competition and the threat of "customer flight" to force Verizon to improve service quality. Thus, Staff's policy remedy that relies on increased competition is contradicted by Staff's analytical conclusion of reduced competition. This contradiction between analysis and remedy is startling. Unfortunately, it is not unique. The following comments examine some of the significant issues raised by the merger and Staff's proposed remedies.

A. The PSC Should Protect the Public Interest by Insuring that Verizon Allocates Enough Capital & Labor Resources to Adequately Maintain its Non-Fiber Infrastructure

1. The Merger Will Increase Incentives for Verizon to Transfer Even More Capital and Labor Resources Away from its Non-Fiber Plant

It is clear that Verizon is instituting a strategy that redirects resources from its traditional infrastructure with its shrinking customer base to its high-growth cellular and broadband operations. Verizon will divert even more resources to its cellular and broadband operations after the acquisition of MCI's lucrative corporate client base. Indeed, the Companies state that the objective of the merger is to "complement and accelerate Verizon's continuing transformation into a premier wireless and broadband provider."[4] To accomplish this transformation, Verizon is starving its non-fiber infrastructure to feed its broadband and cellular infrastructure. The merger will speed this process and exacerbate the already deteriorating condition of the largely copper based infrastructure upon which millions of New Yorkers will rely until fiber becomes universal.

Verizon already is in the process of diverting capital resources from its traditional infrastructure to its wireless and broadband operations. Verizon's CFO, Doreen Toben, clearly indicated this in the following statement.

> More than 70% of [this] capital spending is allocated to the growth platforms of wireless and broadband.[5]

Verizon Inc., the parent company of Verizon NY, cut its domestic telecommunications capital expenditures by $1 billion over the past two years - even as it announced that it spent $1 billion on its major broadband initiative of installing Fiber to the Premises

[4] Case 05-C-0237, Joint Petition of Verizon and MCI, February 25, 2005, p. 9.
[5] Doreen Toben, Verizon CFO, Conference Call with Investors, July 26, 2005

(FTTP). Thus, Verizon Inc. cut its capital expenditures on the non-FTTP network by approximately $2 billion or 28% in just two years.

A similar process is taking place in New York. Verizon-NY cut its capital expenditures by almost $1.5 billion or 58% from 2001 to 2003 before its FTTP initiative. We do not have capital expenditure figures for 2004 yet but it is clear that while Verizon increased capital spending on installing FTTP it simultaneously decreased spending on its traditional copper based plant.

The PSC's own independent audit report identified the following problems with Verizon's capital expenditures.[6]

> The infrastructure improvement program for outside plant capital was under-funded for 2003 and 2004. (Finding VII-2)
>
> Verizon NY current capital and maintenance programs are not adequate. (II-10)
>
> Without improving the performance of the outside plant, these failures will continue with only average amounts of rainfall. (II-11)

Verizon also is shifting labor resources away from servicing the non-FTTP based infrastructure. Verizon's CFO described the company's employment strategy in the following terms.

> [W]hat we're trying to do is bring the embedded [employment] base down, which we have been doing, but we have been growing the Fios [FTTP]… So we will continue to do what we said, bring the base down and put additional people in Fios.[7]

The merger will clearly exacerbate these trends. New York Telephone cut its labor force by more than 7,850 workers or 25% from 2001 to 2003. Verizon NY reduced its workforce by another 340 workers in 2004. The Staff White Paper projects that Verizon

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[6] Doherty and Company, A Final Report of the Review of Retail Service Quality Performance of Verizon New York, Inc. (Public) for the New York State Department of Public Service.

[7] Doreen Toben, Verizon CFO, Conference Call with Investors, April 27, 2005

will cut an additional 1,166 jobs in New York after the merger – 17% of the total post-merger national job cuts identified by Verizon.[8] Obviously, these cuts will not be taken from Verizon's broadband operations.

The independent audit report identified the importance of adequate staffing for service quality improvements.[9]

> Increased staffing in 2004 and the reduced trouble load because of improved weather conditions were two factors that appear to have helped Verizon improve performance results." (II-9)
>
> DCI believes that the outside problems still exist and will be a problem in years with bad weather conditions. If sufficient staffing levels are maintained to accommodate the increased trouble volumes, Verizon can possibly meet the required service levels. However, if Verizon NY reduces its force… or if outside plant improvement expenditures are not sufficient to improve outside plant performance, then in DCI's opinion, service levels will not be met. (IV-56)
>
> Operations support staff activity is inadequate to provide sufficient support to the field in relation to the implementation of new systems and the provision of adequate follow-up." (II 14-15)

The transfer of resources to Verizon's FTTP broadband initiative has aggravated these problems. CWA technicians report numerous instances where workers in construction and installation have been transferred away from servicing the copper network to installing FTTP. The remaining workforce is under significant pressure to jerry-rig rather than fix problems in the outside plant. In addition, management is not replacing defective copper facilities. Simultaneously, central offices are understaffed making it even more difficult to repair on-going problems.

The acquisition of MCI's lucrative corporate client base would exacerbate the problems caused by understaffing and under funding the maintenance of the non-FTTP

[8] Staff White Paper, p. 47.
[9] Doherty and Company, A Final Report of the Review of Retail Service Quality Performance of Verizon New York, Inc. (Public) for the New York State Department of Public Service.

infrastructure. The reduction in the capital and labor resources allocated to Verizon's non-FTTP network already has resulted in substandard service quality in many areas of the state – especially in terms of fixing out-of-service conditions. The further reallocation of Verizon's resources away from the mass of its customers to MCI's large corporate and government clients would leave millions of New Yorkers in a worse position. Verizon's customers who are tied to the non-fiber portion of the network should not receive poor service while they are waiting for Verizon to bring FTTP in their neighborhood.

2. Staff's Analysis and Remedies are Inadequate

The Staff White Paper neither examines these resource allocation issues nor proposes potential remedies to protect the public interest. This is a significant oversight.

3. CWA Recommendations

Recommendation #1: **Verizon must agree to specific net increases in the levels of capital and labor resources allocated to maintain adequately the condition of the existing non-fiber network**

The PSC should require Verizon to commit a specified amount of additional capital and labor resources to properly maintain the existing infrastructure and improve service quality. The PSC required similar conditions when it approved Bell Atlantic's acquisition of NYNEX. Specifically, the PSC required Bell Atlantic to do the following:

> … hire between 750 and 1,000 additional employees [within nine months]... for the purpose of addressing service quality problems…
>
> Invest an additional $1 billion in service-related infrastructure improvement over the next five years, including a commitment to invest at least one-half of the amount within the next two years on capital improvement projects to improve service quality throughout New York State, particularly in areas where service quality is currently most

significantly below standards.[10]

The need for such net increases in the capital and labor resources allocated to maintain the existing network will only grow in the future given the added pressures on Verizon after a merger. The adoption of this recommendation will protect Verizon's customers and the viability of the entire network.

Recommendation #2: The PSC should institute a proceeding to examine methods and plans so that all providers that use the public switched network would share in the maintenance and upkeep of this network

Verizon should not be placed at a competitive disadvantage by increasing investment in its infrastructure. Other providers should not be allowed to get a free ride off Verizon's investment. For example, no one would buy Vonage's service unless Vonage can promise that it has access to everyone on the entire network. Vonage would go out of business if it could not ride the public switched access network. And it is not just an issue of access fees because Vonage benefits from the opportunity to ride the public network irrespective of the amount of traffic it actually generates or for which it indirectly pays. Verizon should not be burdened unfairly to pay for the infrastructure for every other provider.

CWA recommends that the PSC institute another proceeding to develop a method and plan so that all providers that use the public switched network would share in the maintenance and upkeep of this network if it finds that Verizon is placed at an unfair competitive disadvantage because it must expend capital for the maintenance of the public switched network without adequate remuneration.

[10] Cases 96-C-0603 and 96-C-0599, Order Approving Bell Atlantic-NYNEX Merger, p. 5.

B. The PSC Should Protect the Public Interest by Insuring that Verizon Will Not Deliver Substandard Service Quality

1. The Merger Will Create Even More Incentives for Verizon to Reduce Service Quality

Verizon's service quality is still substandard – even after $70 million in penalties assessed during the three-year existence of the Verizon Incentive Plan (VIP) and, according to both the PSC and Verizon, the existence of a healthy and robust competitive market in New York. In other words, neither competition nor penalties led to significant improvements in Verizon's service quality.

Verizon had to pay a significant amount of penalties even though the VIP was a watered down version of the previous incentive regulation plan. The VIP was weak because the targets were annual, not monthly and quarterly; the targets were statewide, not regional; a number of targets were relaxed while others were eliminated; and the penalties did not increase as service worsened but were assessed at the same level whether Verizon's performance was just a bit or significantly worse than the target. Moreover, Verizon most likely would have been penalized another $60 million had the PSC not further diluted its customer complaint target in mid-stream.

Verizon missed the statewide annual Out-of-Service over 24-hour (OOS) target in each of the VIP's three years because of its failure to allocate enough capital and labor resources to significantly improve its performance. In the VIP's third year (March 2004-February 2005), the OOS target was missed for at least a quarter of the year in 24 of Verizon's 35 Installation & Maintenance Centers.

Areas In Which Verizon Missed Its Out-of-Service over 24 Hour Target for Three or More Months During the 3rd Year of the Verizon Incentive Plan		
Missed 3-4 Months	**Missed 5-6 Months**	**Missed 7+ Months**
Adirondack Capital North Capital South Syracuse Waterfront Watertown South Westchester North Westchester East Suffolk East Bronx East Manhattan East 30th Street	East Hudson Johnson City Utica North Suffolk South Suffolk North Queens West Bronx West 50th Street East 56th Street	South Nassau North Nassau South Queens

Service was especially poor in the Island Metro Region where the target was missed in eleven months in South Nassau, nine months in North Nassau and eight months in South Queens.

It should be noted that Verizon's service quality improved somewhat in 2004 compared to the disastrous year of 2003. However, the PSC should not give Verizon too much credit for this: DCI in its Audit Report to the PSC primarily credited this "improvement" to good weather and an increase in staffing.

2. Staff's Analysis & Remedies are Contradictory and Inadequate and Do Not Protect the Public Interest

There is a significant contradiction between Staff's overall analysis that the merger will decrease competition at the same time that Staff relies on an increase in competition to ensure high quality service.

The Staff White Paper contains little specific analysis of Verizon's actual service quality performance over the past few years except to state, "Verizon's performance generally improved with each subsequent year of the [Verizon Incentive] plan."[11] This is not correct. Verizon's service quality performance dropped significantly during the second year of the VIP and only rebounded the following year because of good weather and increased staffing as previously stated.

Staff basically makes two significant recommendations regarding service quality. The first recommendation rejects any penalty or incentive based plan. The second proposes to punt the entire service quality issue to an entirely different proceeding, the Comp III proceeding.

Staff's rejection of penalty or incentive based plans – plans that were in effect from 1995 to 2005 – is decidedly weak and contradictory.

> In general, Staff does not propose a retail service quality penalty or incentive program, and agrees with Verizon that "customer flight" is a strong incentive for Verizon to address retail service quality.[12]

This statement is contradicted by Staff's own analysis and Verizon's track record. The most startling and central conclusion of staff's entire analysis is that the merger will lead to a significant increase in concentration and, thus, a decrease in competition.

> … Staff's analysis of the residential/small business, enterprise, transport and special access/high capacity loop market shares associated with the proposed merger raises significant concerns regarding market concentration in each of the segments that were analyzed.[13]
>
> Such a significant change in mass market concentration as a direct result of a merger raises concerns.[14]

Thus, Staff is caught between its analysis that specifically identifies a post-merger decrease in competition and its policy recommendation that relies on an increase in competition.

[11] Staff White Paper, p. 48.
[12] Staff White Paper, p. 52.
[13] Staff White Paper, p. 15.
[14] Staff White Paper, p. 20.

Staff's analysis shows that if the merger were approved the combined Verizon-MCI would control as much of the market as Verizon did in June 2001 – the period immediately preceding the adoption of the Verizon Incentive Plan (VIP). The Commission adopted the VIP when the HHI measure for market concentration approached the very high level of 4750. Yet, Staff rejects a similar or penalty based plan for a post merger Verizon that will also approach an HHI level of 4750.[15]

The PSC staff and the Commission have contended that competition necessarily will lead to improved service quality. However, it should be noted that Verizon's Out of Service performance has been substandard in areas with the most potential competition including Westchester, Nassau, Queens and Suffolk counties. For example, in July 2005, Verizon filed Service Inquiry Reports for its substandard performance in North and South Westchester and South Nassau.[16] Increasing competition does not necessarily lead to high levels of service quality.

Staff also recommends that the entire issue of service quality be punted into another proceeding altogether.

> Given the concerns raised earlier in our evaluation of mass market concentration, and concerns that Verizon may dedicate investment to more competitive areas at the expense of less competitive areas (due in part to a loss of merger related choice), we tentatively conclude that a rate related remedy may be in order. We seek comment on a framework that would limit Verizon's ability to increase rates in areas where neither a competitive nor a service quality gateway is passed. The details of this framework should be considered in the Comp III proceeding to ensure a full airing of all issues.[17]

[15] Staff White Paper, p. 22.
[16] Cases 03-C-0971 and 00-C-1945, Service Inquiry Reports issued July 11, 2005. A service inquiry report is issued when Verizon fails to meet basic levels of service quality performance in the current month and any two of the 4 previous months statewide or for a Central Office or Installation Maintenance Center.
[17] Staff White Paper, p. 51.

There are a number of problems with this recommendation. First, the Comp III proceeding is inappropriate as a forum to institute remedies to problems created by the Verizon-MCI merger. The Commission must determine whether the merger is in the public interest and not defer issues that are critical for this determination to another proceeding. The Comp III proceeding will not consider company specific remedies such as those needed to protect Verizon and MCI's residential and business customers from the specific impacts of the merger. Indeed, Verizon most likely would sue the PSC for any action in Comp III that applies solely to Verizon and not to other companies.

Second, it is inappropriate to tie service quality or pricing flexibility to competition. As previously discussed, competition does not guarantee improved service quality. Nor does competition guarantee reduced prices. For example, Verizon raised residential prices under the VIP even though the CLECs obtained 25% of the market.

Finally, staff's recognition of the proposed merger's reduction of competition directly contradicts the "customer flight" rationale it used to reject penalty and incentive based plans.

3. CWA Recommendations

Recommendation #3: Verizon must agree to a service quality plan with penalties if and when specific targets are not met

Historically, Verizon has responded to market forces and competition by slashing capital expenditures and its workforce – the same corporate strategy that created the service quality problems that incentive regulation was designed to counteract. Only the existence of the PSC's service quality standards, even in their weakened state, combined with the multi-million penalties levied when those standards were not met, have prevented service quality from deteriorating even further.

From 1994-2004, the PSC regulated Verizon largely through various incentive regulation plans. During this period, Verizon was penalized by more than $220 million – including $70 million in just the last three years including $15 million in 2004.

In early 2005, the PSC abandoned incentive regulation. The PSC not only put its hopes in the market and in Verizon's management to refrain from further cutting capital expenditures and workforce but also, according to the Audit Report, on good weather. Unfortunately, the market and the weather are less than reliable.

A Verizon-MCI merger would provide yet another rationale for Verizon to cut its service quality as it shifts its focus to high-end business and residential customers. The PSC should condition any approval of this merger with a strict and tough incentive regulation plan modeled after the Performance Regulation Plan. Specifically, targets should be calculated on a monthly and quarterly basis; applied to specific central offices, installation maintenance centers, business offices or regions; and penalties should increase in severity as service levels fall further from the target. Special focus should also be given to areas with on going service quality problems.

Recommendation #4: The PSC should require Verizon to include MCI's performance in its retail service quality measures and reports

The Staff White Paper recommends that MCI continue to separately report its retail service quality performance data even after the merger. According to Commission regulations, CLECs only have to report data on their Customer Trouble Report Rate (CTRR) performance. However, MCI received an exemption from this requirement for its UNE-P lines. The rationale for this exemption is that MCI did not have control over the underlying facilities that determine CTRR or even other performance measures. Verizon controlled the underlying plant and provided the workforce needed for repairs and installations. However, the merger will change these conditions. MCI's customers will become Verizon's customers irrespective of the name of the Verizon subsidiary. As the merger unfolds, there will be less and less of a basis for identifying whether Verizon's customers are Verizon's Verizon customers or Verizon's MCI customers.

The PSC should recognize that the Verizon-MCI merger would actually unfold as a merger in fact and not preserve the fiction that Verizon's retail customers will be artificially segmented. Thus, the PSC should require that Verizon include all of Verizon's retail customers and access lines in its service quality performance reporting.

C. The Commission Should Develop Verifiable Estimates of the Merger's Savings and, if significant, Allow New Yorkers to Share in the Benefits Through Service Quality Improvements

1. The Commission Does Not Have Adequate Data to Estimate the Merger's Costs and Synergy Savings

The primary rationale given for the merger is that it would solidify Verizon's position in a competitive telecommunications market and provide significant revenue and cost savings. In its merger petition, Verizon states, "the transaction is expected to eliminate duplicative expenses and create operational efficiencies, thus enabling investment in the deployment of new services for all customers."[18] The Staff White Paper states the following

> The primary rationale for the merger is that it will enhance Verizon's ability to provide a full array of telecommunications services… Petitioners estimate the merger will generate significant revenues and cost savings for both entities.[19]

[18] Case 05-C-0237, Joint Petition of Verizon and MCI, February 25, 2005.
[19] Staff White Paper, p. 9

> One of the main reasons for mergers and acquisitions is that they produce cost savings through economies of scale and scope as well as opportunities for revenue enhancements.[20]

Thus, the actual costs and synergy savings resulting from the merger are critical to any determination of the public interest.

The Staff White Paper states, "there appears to be a potential for substantial synergy savings as a result of the merger."[21] Verizon estimated that the merger would result in total benefits with a net present value of $7 billion. However, Staff was unable to recreate this estimate or determine a more precise estimate of the synergy savings from the data supplied by Verizon.

> Staff could not determine precisely how Verizon determined many of its estimates. Staff also discovered some estimates were inconsistently determined. Further, Staff found that the expected costs are a combination of items…
>
> To properly evaluate the impact of the synergies on Verizon's New York intrastate operations, a comprehensive understanding is needed of Verizon's New York intrastate financial condition as well as current and projected earnings. Verizon's petition did not include historic or projected financial data for Verizon's New York operations.[22]
>
> …all Verizon provided were the above unsupported statements.[23]

The actual amount of synergy savings could be billions of dollars more or less than the unsupported estimates provided by Verizon. This problem is compounded by the financial risks involved in the merger. Moody's warned that Verizon's securities could be downgraded if the expected synergies required additional investment or took longer than

[20] Staff White Paper, p. 59.
[21] Staff White Paper, p. 67.
[22] Staff White Paper, p. 62.
[23] Staff White Paper, p. 68

expected to materialized.[24] There are also additional risks associated with a continuing pattern of misstatements in MCI's financial reports.

> In one of its filings with the SEC, Verizon referred to a consultant's report that found MCI did not maintain effective internal control over financial reporting as of December 31, 2004. Specifically, the consultant found a material weakness related to MCI's internal control over accounting for income taxes due to a lack of personnel with adequate expertise in income tax accounting matters, a lack of documentation, insufficient historical analysis and ineffective reconciliation procedures.[25]

2. Staff's Recommendation To Ignore Synergy Savings Cannot be Supported

Startlingly, Staff concludes "there appears to be no basis at this time, for the Commission to… require Verizon to pass along the savings to customers."[26] Yet, Staff admits that it cannot independently verify Verizon's estimates of these savings.

The lack of sufficient information to determine a more precise estimate of the merger's costs and savings alone provides the Commission with a strong rationale to deny the merger petition. After all, the Commission cannot determine adequately whether the merger is in the public interest if it is unable to provide supportable estimates of the merger's costs and benefits.

3. CWA Recommendations

Recommendation #5: The Commission should conduct a comprehensive audit of the merger or conduct a rate proceeding in order to develop reliable and verifiable estimates of the merger's synergy savings

CWA agrees with Staff's recommendations that New Yorkers be protected from the merger's costs and risks. Staff recommended that the Commission require Verizon to insure that its New York operations are not affected by any MCI accounting or financial

[24] Staff White Paper, p. 66.
[25] Staff White Paper, p. 62.
[26] Staff White Paper, p. 63.

improprieties found after Commission approval and that Verizon's customers be insulated from costs that result from the merger.[27]

However, CWA also believes that the Commission must determine whether there will be significant synergy savings associated with the merger. The Commission should have as full and exhaustive a record as possible in order to make a fully informed decision about whether or not the merger serves the public interest. A critical component in this decision concerns the estimated costs and benefits of the merger. Yet, at this time, the Commission cannot develop such an estimate or even verify Verizon's estimates.

Consequently, CWA recommends that the Commission refrain from approving the merger until it has developed the most supportable estimates of the merger's synergy savings as possible. Such estimates could best be developed either through a rate case type of proceeding or an exhaustive audit.

Recommendation #6: A significant portion of synergy savings should be utilized to benefit New Yorkers by enhancing service quality through increased capital expenditures and/or staffing

New Yorkers also should be able to share in the synergy savings if the Commission determines that they will be significant. There are precedents for such action by the Commission. In its 1997 Order approving the Bell Atlantic-NYNEX merger the Commission set specific standards to "ensure that anticipated savings and other benefits of the merger are appropriately flowed through to customers."[28]

New Yorkers also should be allowed to share in the benefits of the proposed Verizon-MCI merger. CWA recommends that residential and business customers would benefit most from improvements in Verizon's quality of service. There also is a precedent

[27] Staff White Paper, p. 69.
[28] Case 96-C-0603 and Case 96-C-0599, Order Approving Proposed Merger Subject to Conditions, p. 6.

for this recommendation – the Commission conditioned its approval of the Bell Atlantic-NYNEX merger on the company's hiring of an additional 750 to 1,000 workers to address service quality problems and invest an additional $1 billion in service related infrastructure improvements.

D. The PSC Must Protect New York Communities From The Real Possibility That Verizon Will Sell or Spin Off its Upstate Assets

1. The Merger Provides Even More Incentives for Verizon to Sell Its Upstate Lines

Verizon plans to sell or spin off millions of its access lines. Indeed, Verizon may be actively hiding the real possibility that it will sell or spin off its upstate lines AFTER the merger is approved. In June, Verizon's Chief Financial Officer, Doreen Toben, stated the following when asked whether Verizon was holding off on access line sales while approvals for its merger with MCI are pending before state utility commissions.

> Certainly, as we are going through the regulatory process, **you can't imagine going into a state and say, we would like approval. And by the way, I would also like to spin-off your lines. So that would not help the approval process**. After that there – perhaps we might relook at some of the states that we were thinking about doing (emphasis added)[29]

It is clear that Verizon is planning on selling or spinning off a significant number of its rural access lines. The Chairman and CEO of Verizon, Ivan Seidenberg, stated

> We originally said we would put some access lines up for sale in New York state… the more important issue was to scale down the size of our access line business so that we can concentrate on building a more preemptive platform… we still want to think about taking some clusters of access lines and **reducing the size of our access line business**… **The issue for us is changing the growth profile of Verizon** so that the investor looks at us completely differently that the way they looked at

[29] Doreen Toben, Verizon CFO, addressing Deutsche Bank Securities Media Conference on June 6, 2005.

> any old RBOC in the past (emphasis added).[30]

Analysts have been even more specific.

> Verizon is looking at a potential spin off of 10-15 million access lines in 2005. We believe this decision is largely driven by two goals: 1) to improve the wireless mix of the business; and 2) to focus on wireline properties that will get fiber connection (emphasis added).[31]

2. Staff's Analysis & Remedies are Inadequate and Do Not Protect the Public Interest

The Staff White Paper neither examines the post-merger pressures on Verizon to sell or spin off its upstate lines nor the implications of such a divestiture on the upstate economy. This is a significant oversight.

3. CWA Recommendations

Recommendation #7: The PSC Should Condition Merger Approval With The Condition That Verizon Not Sell Or Spin-Off Its Upstate Properties

Verizon, most likely, will attempt to sell or spin off its 2.4 million upstate New York access lines. After all, Verizon tried to sell off its upstate properties in 2004. At that time, the most likely buyers mentioned in media reports were large private equity firms that would leverage such purchases with large amounts of debt. The result would have been significant cuts in capital and labor resources allocated to services in order to increase cash flow to reduce debt and increase any potential pay-off when the private equity firm would resell the upstate lines at a future date. Obviously, this would not serve the public interest of upstate New York communities, residents and businesses.

The acquisition of MCI's corporate client base along with the need to pay off additional debt would provide further incentives for Verizon to sell its upstate lines. Yet,

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[30] Ivan Seidenberg, Remarks at Analyst Conference, October 2004.
[31] UBS Investment Research, Wireline Telecom Playbook, January 14, 2005

the sale of these properties would not serve the broad public interest. Consequently, the PSC should obtain a commitment from Verizon to refrain from selling or spinning off its upstate properties.

E) The PSC Should Insure That All of Verizon's Customers Ultimately Benefit from Access to Affordable, High Speed Broadband Services

Verizon has undertaken an expensive and commendable program to install FTTP in selected parts of the state. However, many other parts of the state will not benefit from the installation of such advanced broadband services. The merger with MCI could either slow or prevent Verizon's deployment of FTTP throughout the state due to increased pressures to pay down debt or focus solely on the most profitable segments of the market i.e., high income suburban markets.

Recommendation #8: Verizon Must Agree to Deploy High Speed Broadband throughout the Entire State based on a Specific Timetable

Verizon has stated its intention to roll out FTTP to the entire state – a corporate strategy that would benefit all New Yorkers. However, intention is not reality and, as discussed, the MCI merger might stand in the way of such a roll out. The PSC should obtain a commitment from Verizon to insure that FTTP is deployed to as many sections of the state as possible. In addition, the PSC should determine a reasonable schedule for Verizon to roll out FTTP to the entire state.

This recommendation would prevent Verizon from dividing the state between high-speed digital haves and have-nots. Indeed, the state's future economic development may depend on universal access to affordable, high-quality, high-speed Internet based communications and services.

Recommendation #9: The PSC Should Examine Methods and Plans So That All Providers Contribute to Universal Access to Affordable High-Speed Broadband Services

Verizon should not be the only company required to install broadband throughout the entire state. This could place Verizon at a competitive disadvantage because in some or even many locations, high-speed broadband services may not be profitable enough given the associated costs. Thus, CWA recommends that the PSC investigate the creation of a universal service fund – funded by all providers in the state – that would enable corporations, including Verizon, to roll out broadband services throughout New York. This investigation could be accomplished in a separate proceeding or as an integral part of the Comp III proceeding.

F. The PSC Should Obtain Yet Another Commitment by Verizon to Retain its Headquarters and Major Telecommunications Functions in New York

In its 1997 Order approving the Bell Atlantic acquisition of NYNEX, the PSC required the company to establish its permanent headquarters in New York.

> The merged company's commitment to establish its permanent headquarters in New York City is a condition of our approval and existing major New York Telephone or NYNEX functions shall not be relocated outside of New York State.[32]

Verizon recently attempted to relocate its headquarters out of state despite the explicit condition that it retains its headquarters in New York. Ultimately, the company retained its New York City headquarters. However, Verizon did purchase property in New Jersey and is in the process of shifting employees to this site. It is not clear whether or not Verizon will only retain the façade of a permanent headquarters in this state while shifting its major functions out of state.

[32] Cases 96-C-0603 and 96-C-0599, Order Approving Proposed Merger Subject to Conditions, pp. 4 and 9.

Recommendation #10: Verizon Must Retain Its Permanent Headquarters and Major Telecommunications Functions in New York

As a condition of this merger, the PSC should reiterate Verizon's commitment to retain its permanent headquarters in New York City and establish clear guidelines to insure that Verizon's major telecommunications functions also remain in New York State.

IV. SBC & AT&T Merger Is In the Public Interest and Should Be Approved

A. CWA Agrees With Staff's Assessment That the SBC-AT&T Merger Has Minimal Anti-Competitive Effects and Should Be Approved

The Staff White Paper also provides an analysis and discussion of the proposed SBC-AT&T merger. While both AT&T and SBC operate as competitive local exchange carriers (CLECs) in New York they differ significantly in terms of the size of their market they serve. AT&T has a significant presence in the New York mass, enterprise, wholesale transport, and wholesale special access/high capacity loop markets. Conversely, SBC has a minimal presence in each of these markets. For example, SBC has less than 10,000 lines in the New York mass market. In addition, SBC and AT&T note that the merger does not call for any change in the rates, terms or conditions for the provision of any telecommunications services provided in New York – including the measurement and reporting of service quality data to the PSC. Based on this information, Staff makes reaches the following conclusion.

> In general, the SBC/AT&T merger does not raise the same level of concern as the Verizon/MCI merger in New York State. SBC and AT&T operate as CLECs.. and, as such, both are subject to lightened regulation. SBC has a relatively small share of the New York market, and AT&T will remain a distinct and independent entity from the major ILEC in New York (Verizon-NY). Therefore, we tentatively conclude this merger will not have a major impact on New York's market.

> Given the lack of significant harm to competition caused by the SBC-AT&T merger, Staff tentatively concludes that, unlike the Verizon-MCI merger, remedies are not needed. Moreover, Staff tentatively concludes that there is little cause for concern associated with service quality as both AT&T and SBC have recently received Commission commendations for service quality.
>
> Staff tentatively concludes that there is no basis for recommending the Commission reject the proposed transaction or impose remedies.[33]

CWA concurs with Staff's recommendation. However, CWA would further argue that the PSC should approve the merger because it serves the public interest.

B. The PSC Should Approve The SBC-AT&T Merger Because It Serves the Public Interest By Promoting Competition, Good Paying Union Jobs and Economic Development

The Commission also should approve the merger of SBC and AT&T because it actually serves the public interest by promoting competition, jobs and economic development. First, the merger will allow AT&T to continue to operate as a significant competitor in the New York market. The company is in bad financial shape and could not continue to survive as a stand-alone company for much longer. Since 1999, AT&T total revenue declined by $19 billion, or 38 percent. Most of this decline came in the consumer business where total revenue plummeted by $13.8 billion or 64 percent over the same period. In 2004, AT&T suffered a $10 billion operating loss. No company could continue to compete in the telecommunications market very long with such losses.

AT&T's management cannot be relied upon to turn the company around. Indeed, AT&T's decline from prominence was caused primarily by mismanagement. In recent years, AT&T has careened from one failed business strategy to another. Two years after its $92 billion cable purchase, AT&T reversed course by selling its cable division for $54

[33] Staff White Paper, pp. 7-8.

billion, thereby abandoning its facilities-based broadband strategy and incurring a stunning $38 billion loss. In 2001, AT&T spun off its wireless business, leaving the company without a wireless product of its own to meet consumer demand for bundled offerings.

In contrast to AT&T's recent history of financial decline and strategic missteps a merger with SBC would create a financially stronger company well positioned to continue to play an active role in the New York market. The merger offers AT&T its best prospect to survive as a competitor. Conversely, AT&T's demise is certain absent a merger.

Second, the merger may be the only way to save what remains of AT&T's union jobs. Since 1999, AT&T has cut 27,000 jobs or two-thirds of its in its wireline operations workforce. The job losses in New York are even more dramatic. AT&T once had its national headquarters in New York and employed tens of thousands of technicians, sales people, operators and clerical workers. Now only a handful of AT&T workers are left. For example, in just one CWA Local in New York City, the number of AT&T workers fell by more than 92% - from 1,700 in 1986 to just 130 now.

These numbers mask the many individual stories that document the devastation to families and communities caused by AT&T's slash and burn employment policy. AT&T eliminated thousands of good union jobs that had paid middle class wages and provided good health care and pension benefits, a steady stream of tax revenue to state and local governments, and social stability for many communities.

AT&T continues to eliminate good union jobs in the U.S. Over the past year, AT&T has closed its call center in Syracuse along with call centers in Charleston, West Virginia; Hawaii; Puerto Rico; Mesa, Arizona; Atlanta, Georgia; and St. Louis, Missouri.

Basically, AT&T has shipped many of these and other jobs to such low waged countries as India, the Philippines and Mexico.

The best way to save jobs at AT&T is to allow it to merge with SBC, another union company that, in contrast to AT&T, has a stable and growing presence in the communications industry. CWA and SBC have a strong partnership based upon a shared understanding that service provided by skilled, career union employees is the best way to deliver quality service to customers and ensure good jobs for families and communities. There could be no better partner to ensure that the jobs remaining at AT&T remain union jobs that provide career opportunities, good wages, pensions, and health benefits to employees and their families thereby benefiting the communities in which they live.

Finally, the merger will promote economic development. The combination of AT&T's global network and research innovations with SBC's financial strength and local exchange, broadband, and wireless capabilities will result in a global leader with the resources, assets and expertise to invest in advanced networks and services that will benefit customers and businesses. The new entity will be able to deploy and deliver next-generation services and networks to both consumers and business customers faster than either company could do separately.

CWA urges the Commission to approve the proposed SBC-AT&T merger.

V. Conclusion

The public interest would be diminished if the PSC fails to apply specific conditions to the proposed Verizon- MCI merger. Without such conditions, the New York telecommunications market would be segmented between those with access to high quality, technologically advanced services and those who would remain tied to a deteriorating network characterized by poor service quality. Access to the entire telecommunications economy would be stunted in those communities where Verizon failed to roll out FTTP and/or provide adequate service. Indeed, the integrity of the entire New York network would be compromised because its viability depends on the ability of everyone to be connected to everyone else. For example, a business would be placed at a competitive disadvantage if its service could not be properly restored within 24 hours. Conversely, the business would also suffer if it could not reach the entire market efficiently and reliably. Residential customers would also face similar disadvantages if they had to rely on an inadequately maintained network.

Any policy or regulatory action that reinforces such a “digital divide” ultimately would weaken the entire communications network and, thus, adversely affect the economic development of the entire state.

The PSC should focus on the larger picture and protect adequately the public interest by attaching the specific conditions recommended by CWA to any approval of Verizon’s proposed acquisition of MCI. Conversely, the PSC should approve the SBC-AT&T merger because it will benefit the public interest.

Respectfully submitted,

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