

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

TELSTAR RESOURCES GROUP, INC.

Plaintiff,

MCI, Inc., a Delaware Corporation

Defendant

DOCUMENT FILED ELECTRONICALLY

Civil Action No. 05 CV 10671(JGK)

**PLAINTIFF'S NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS
AND APPROVAL OF NOTICE TO THE CLASS**

PLEASE TAKE NOTICE, that upon the Stipulation of Settlement ("Settlement Agreement") dated December 3, 2007, attached hereto as Exhibit 2, and the Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of Settlement, Provisional Certification of Settlement Class ("Memorandum"), and Approval of Notice to the Class, Plaintiff Telstar Resources Inc. ("Plaintiff"), hereby moves this Court before the Honorable John G. Koeltl at Room 12B, United States Courthouse, Southern District of New York, 500 Pearl Street, New York, New York, at a date and time to be set by the Court, for entry of an order (i) preliminarily approving the proposed Settlement with Defendant and approving the proposed Form of Mailed Notice (ii) certifying a settlement class pursuant to Fed. R. Civ. P. 23(b)(3); (iii) designating Garden City Group as Claims Administrator; (iv) appointing Plaintiff as the representative of the Class for the purposes of settlement and appointing Plaintiff's counsel as Class Counsel for the Class (v) scheduling a final settlement hearing.

For the reasons set forth in Plaintiffs' Memorandum and in the Settlement Agreement, Plaintiffs respectfully request that the Court find that the proposed settlement merits preliminary approval. A proposed order granting the relief requested herein is attached hereto as Exhibit 1.

Respectfully submitted this 10th day of December, 2007.

GIRARD GIBBS LLP

By: /s/ A. J. De Bartolomeo

Daniel C. Girard

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(415) 981-4800

Attorneys for Plaintiff and Proposed
Class Counsel

EXHIBIT 1

1. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Litigation is hereby certified as a class action on behalf of the following Settlement Class:

All customers of MCI, Inc. or its successor in interest, Verizon Business, who subscribed to private line service or frame relay service and who were assessed the Federal USF surcharge and a state USF surcharge for the same service or services during the same billing period between June 22, 2005 and March 16, 2007, inclusive.

Excluded from the Settlement Class are Verizon Business; any entity in which Verizon Business has a controlling interest; any of the officers, directors, or employees of Verizon Business; the legal representatives, heirs, successors, and assigns of Verizon Business; anyone employed with Class Counsel or Seeger Weiss LLP; any Judge to whom the Litigation is or was assigned, and his or her immediate family; any entity of the United States government, or any state, territory, or municipality of the United States, or any entity thereof; and any person or entity that submits a timely and valid request to be excluded from the Settlement Class.

2. Plaintiff asserts claims against Verizon Business under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 201-02. For purposes of the Settlement, the Court certifies these claims for class treatment.

3. The Court finds that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that (a) the number of Class Members is so numerous that joinder of all individual Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) Plaintiff's claims are typical of the claims of the Settlement Class it seeks to represent; (d) Plaintiff and its counsel will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Class Members predominate over any questions affecting only individual Class

Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby appoints Plaintiff Telstar Resource Group, Inc. as representative of the Settlement Class for purposes of the Settlement.

5. Having considered the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby appoints the law firm of Girard Gibbs LLP as Class Counsel, to represent the Settlement Class for purposes of the Settlement.

6. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Settlement Agreement and Settlement set forth therein, and finds that the Settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the Settlement Agreement and the Settlement, subject to further consideration at the Settlement Hearing described below.

7. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby sets a hearing (“Settlement Hearing”) to be held _____, 2008, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, 1007-1312, for the following purposes:

(a) to make a final determination of whether this Litigation satisfies the applicable prerequisites for class action treatment, for purposes of settlement, under Rules 23(a) and (b) of the Federal Rules of Civil Procedure;

(b) to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;

(c) to determine whether the Judgment as provided under the Settlement Agreement should be entered, dismissing the Amended Complaint filed herein, on the merits and

with prejudice, and to determine whether the release by the Settlement Class of the Class Claims as set forth in the Settlement Agreement should be provided to Verizon Business;

(d) to determine whether the Plan of Allocation proposed by Class Counsel for the proceeds of the Settlement is fair, reasonable, and adequate and should be approved by the Court;

(e) to determine whether Class Counsel's application for an award of attorneys' fees and reimbursement of expenses and an incentive award to Plaintiff should be granted;

(f) to rule upon such other matters as the Court may deem appropriate.

8. Memoranda, affidavits, and other materials in support of the proposed settlement, the proposed Plan of Allocation, and the request for an award of fees and expenses, shall be filed not later than twenty-one days prior to the date of the Settlement Hearing. Any reply briefs shall be filed not later than seven days prior to the date of the Settlement Hearing.

9. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter the Judgment approving the Settlement Agreement and dismissing the Amended Complaint against Verizon Business on the merits and with prejudice regardless of whether it has approved a Plan of Allocation or awarded attorneys' fees, reimbursement of expenses, or an incentive award.

10. Neither Verizon Business nor its counsel shall have any responsibility for the Plan of Allocation or any application for attorney's fees or reimbursement of expenses submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the settlement.

11. The Court approves the form and substance of, and requirements set forth in, the proposed notice of pendency of this Litigation and the proposed Settlement ("Notice") and the Proof of Claim form attached as Exhibits B and C, respectively, to the Settlement Agreement.

12. The Court approves the designation of Garden City Group as Settlement Administrator. The Settlement Administrator shall cause the Notice and the Proof of Claim form, substantially in the forms attached hereto, to be mailed by first-class mail, postage prepaid, on or before _____, to all potential Class Members identified on the list provided by Verizon Business under paragraph 7.1 of the Settlement Agreement. At or before the Settlement Hearing, Class Counsel shall file or cause to be filed with the Court proof of such mailing.

13. The form and content of the Notice, and the method set forth herein of notifying potential Class Members of the Settlement, its terms and conditions, and the Settlement Hearing meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process; constitute the best notice practicable under the circumstances; and shall constitute due and sufficient notice to all persons and entities entitled thereto.

14. To be entitled to receive a distribution from the Net Settlement Fund, in the event the Settlement is approved and effected in accordance with the terms and conditions set forth in the Settlement Agreement, a Class Member shall take the following action and be subject to the following condition: A properly completed and signed Proof of Claim, substantially in the form attached to the Settlement Agreement as Exhibit C, must be submitted to the Settlement Administrator at the address listed on the Proof of Claim form no later than _____, 2008. Such deadline may be further extended by Court order. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim submitted by United States mail shall be deemed to have been submitted on the date of the postmark, if received with a postmark

indicated on the envelope and if mailed by first-class mail. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Settlement Administrator.

15. Regardless of whatever Plan of Allocation is approved, any Class Member who does not submit a timely and valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by all of the terms of the Settlement Agreement and the Settlement, including the terms of the Judgment to be entered in the Litigation and the releases provided for in the Settlement Agreement, and will be barred from bringing any action against the Released Verizon Parties asserting the Class Claims.

16. Each person or entity who submits a Proof of Claim shall be deemed to have submitted to the jurisdiction of the Court with respect to the claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that person's or entity's status as a Class Member and the validity and amount of the claim. No discovery shall be allowed on the merits of the Litigation or Settlement in connection with processing Proofs of Claim.

17. Distribution of the Net Settlement Fund in accordance with the Settlement Agreement and the Plan of Allocation approved by the Court shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of the Settlement Agreement and the Settlement, including the terms of the Judgment to be entered in the Litigation and the releases provided in the Settlement Agreement, and will be barred from bringing any action against the Released Verizon Parties asserting the Class Claims.

18. All proceedings with respect to the administration, processing, and determination of claims submitted by Class Members pursuant to the Settlement and the determination of all

controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

19. The Net Settlement Fund shall be distributed in accordance with the Plan of Allocation approved by the Court only after the Effective Date and after (i) all timely and valid Proofs of Claim have been processed; (ii) all Class Members who have submitted timely but otherwise deficient Proofs of Claim have been notified of the defects and given an opportunity to correct them; and (iii) all matters with respect to attorneys' fees, costs, disbursements, and any incentive award have been resolved by the Court and all appeals therefrom have been resolved or the time therefor has expired.

20. After the Effective Date, Class Counsel will apply to the Court, on notice to counsel for Verizon Business, for an order approving any fees and expenses not previously applied for and directing payment of the Net Settlement Fund to Class Members in accordance with the Plan of Allocation approved by the Court ("Class Distribution Order").

21. No person or entity shall have any claim against Plaintiff, any Class Members, the Settlement Administrator, Verizon Business, or their respective attorneys based on investments or distributions made substantially in accordance with the Settlement Agreement and the Settlement contained therein, the Plan of Allocation approved by the Court, or further orders of the Court.

22. Class Members shall be bound by all determinations and judgments in this Litigation, whether favorable or unfavorable, unless such persons or entities request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Class Member requesting exclusion shall mail the request in written form by first-class mail, postmarked no later than _____, to the address designated in the Notice. The exclusion request must clearly state the name, address, and telephone number of the person or entity seeking

exclusion; state that the person or entity wishes to be excluded from the class in *Telstar v. MCI*, Case No. 05 Civ. 10671 (JGK); be signed by the submitting person; and state the submitting person's name and business title. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

23. If, following the date of this Order, any action brought by a Class Member seeking to prosecute any Class Claims has been or is filed with any court, arbitration panel, or other such forum, the Parties may seek an order preliminarily enjoining any such action pending final approval of the Settlement and exhaustion of all appeals and review proceedings concerning final approval of the Settlement and/or expiration of the time to initiate such appeal or review proceeding; except that, if such an action is brought by a person or entity who has timely and validly requested exclusion from the Settlement Class, a Party may seek an order preliminarily enjoining such action only if the Party determines that it threatens this Court's jurisdiction or its ability to implement the Settlement.

24. The Court will consider comments in support of, or in opposition to, the Settlement, the proposed Plan of Allocation, or the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses and approval of an incentive award to Plaintiff, only if such comments and any supporting papers are submitted in writing to the Clerk of the Court, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312, and copies of all such papers are served, postmarked no later than _____, 2008 on each of the following:

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Girard Gibbs LLP
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San Francisco, CA 94108

Daniel A. Cantu
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave. NW, Suite 200
Washington, DC 20036

Class Counsel

Counsel for Verizon Business

Such comments must include a reference to *Telstar v. MCI*, Case No. 05 Civ. 10671 (JGK); the name of the person or entity on whose behalf they are submitted; and the person's or entity's address and telephone number. The comments must also be signed by the submitting person and must state the submitting person's name and business title. Attendance at the hearing is not necessary; however, persons wishing to be heard orally with respect to approval of the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and expenses and an incentive award are required to provide written notice of their intention to appear at the hearing as set forth in the Notice. Persons who intend to oppose the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and expenses and an incentive award, and desire to present evidence at the Settlement Hearing, must include in their written comments the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Class Members need not appear at the hearing or take any other action to indicate their approval. A person's failure to submit a written objection to the proposed Settlement, proposed Plan of Allocation, application for attorneys' fees and expenses, and/or application for a Plaintiff's incentive award in accordance with the deadline and procedure set forth above and in the Notice waives any right the person may have to appeal from any order or judgment of the Court granting approval of the matter to which the person fails to object as required.

25. Pending final determination of whether the Settlement should be approved, neither Plaintiff nor any Class Member, nor anyone who acts or purports to act on their behalf,

shall institute, commence, or prosecute any action which asserts any Class Claim against any Released Verizon Party.

26. Neither the Settlement Agreement, nor any stipulation contained therein or related proceedings, constitutes an admission of, or evidence of, liability on the part of Defendant, or a lack thereof on the part of Plaintiff.

27. If the Settlement is not ultimately consummated, then (a) the Settlement Agreement, including any amendments thereof, and this Order certifying the Settlement Class and appointing Plaintiff as a Settlement Class representative for purposes of the Settlement shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity; (b) each Party shall be restored to its respective position as it existed immediately prior to the commencement of settlement discussions; (c) Verizon Business shall be free to contest class certification, notwithstanding certification of the Settlement Class for purposes of the Settlement; and (d) the Settlement Fund shall be returned to Verizon Business as provided in paragraph 12.1 of the Settlement Agreement.

28. The Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or in connection with the Settlement.

DATED: _____

THE HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE