

April 15, 2005

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Applications for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc., WC Docket No. 05-75

Dear Ms. Dortch,

I am writing in response to XO Communications' request to suspend the comment schedule on the Verizon-MCI transaction in light of Qwest's competing attempt to acquire MCI.¹ There is no basis for the Commission to take this extraordinary step.

Verizon and MCI have a binding final agreement that has been approved and signed by both companies. MCI's Board of Directors unanimously adopted this agreement, and has recommended that MCI shareholders vote to approve it.² As a result, all interested parties have a definitive agreement and concrete set of facts on which to comment. Under these circumstances, suspending the instant proceeding is not only unnecessary, but also harmful and contrary to the Commission's stated merger-review policies.

Under established precedent, the possibility that Qwest might submit another competing bid for MCI does not provide a basis for the Commission to suspend the instant proceeding. Such an approach would make little sense, given that virtually every transaction the Commission reviews is potentially subject to disruption from a competing bidder until that transaction is closed. Thus, the Commission has previously approved transactions between parties that had an existing agreement where there was speculation of competing bids. For example, the Commission continued its review of the Qwest/US West and Arch Communications/Paging Group mergers despite speculation of competing

¹ See Letter from Jason R. Karp, Kelley Drye & Warren LLP, Counsel for XO Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (Apr. 12, 2005).

² See Verizon Communications Inc., *Form S-4 Registration Statement* (SEC filed Apr. 12, 2005).

bids from Deutsche Telekom and Metrocall, respectively.³ The Commission also will review transactions where there is no final merger agreement between the parties, but instead competing tender offers from multiple firms. In this circumstance, it is the Commission's policy not to suspend consideration of one bidder's proposal, simply because another bidder has made a contrary proposal.⁴

XO's only response is that it would be a "waste" of resources for the industry to prepare comments "only to have them potentially rendered moot at the 11th hour." But this speculative concern hardly provides a basis for the Commission to deviate from its past practices. In any event, any concerns about wasting resources are far outweighed by the negative effect that suspending this proceeding could have. As the Commission has recognized, a goal of the Commission's merger-review process is to "use procedures which promote strict governmental neutrality, favoring neither incumbents nor challengers."⁵ The Commission will accordingly "act expeditiously and avoid unnecessary delay, because delay often favors one party in the contest for control."⁶ Taking the unprecedented step of suspending this proceeding based on the possibility of a competing bid from Qwest could easily be viewed as regulatory favoritism, which would skew the market in favor of Qwest or another third-party, contrary to the Commission's stated goals. Moreover, suspending this proceeding could delay the close of the Verizon-MCI transaction and thereby deprive the public of the benefits this transaction will create.

³ See A. Raghavan & R. Blumenstein, *Qwest's Anschutz Favors Deutsche Telekom Deal*, Wall St. J. at A3 (Mar. 2, 2000) (reporting that Deutsche Telekom held merger talks with Qwest executives); *Qwest Communications International Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 53276 (2000) (approving the Qwest/US West merger a week after such talks were reported); T. Goldstein, *Metrocall Woos PageNet's Bondholders*, Daily Deal (Feb. 24, 2000) (reporting that Metrocall met with PageNet's bondholders in an effort to outbid Arch); See *Arch Communications Group, Inc. and Paging Network, Inc. for Consent To Transfer Control of Paging, Narrowband PCS, and Other Licenses*, Memorandum Opinion and Order, 16 FCC Rcd 3675 (2000) (approving the Arch/PageNet transaction approximately two months after such talks were reported).

⁴ See, e.g., *Applications of Viacom Inc. for Commission Consent to Interim Transfer of Control of Paramount Communications Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8439 (1993) (granting special temporary authorization to Viacom to acquire Paramount, despite competing bid from QVC).

⁵ *Applications of Rogers Communications Inc., for Consent to Interim Transfer of Control of Maclean Hunter Limited*, Memorandum Opinion and Order, 9 FCC Rcd 7350, ¶ 12 (1994) (citing *Tender Offers and Proxy Contests*, 59 Rad. Reg. 2d 1536, 1539-40 (1986)).

⁶ *Id.*

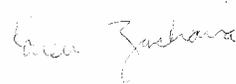
Finally, there is no merit to XO's claim that there is "too much uncertainty . . . for the industry to be able to meaningfully comment" on the current transaction. The relevant question in this proceeding is whether the proposed transaction is in the public interest, which does not turn on the ultimate price at which MCI sells. The financial terms of the deal are accordingly irrelevant to the core issues that the parties are likely to raise as part of the public interest inquiry. Indeed, XO fails to identify a single issue raised by Verizon and MCI's Public Interest Statement that is affected by the uncertainty supposedly created by Qwest's actions. And while XO raises the prospect that "the acquirer itself may change," for purposes of this proceeding the Commission is "precluded by statute from considering" the merits of a competing bid from a third party such as Qwest, and must look only at whether the current Verizon-MCI agreement satisfies the public interest standard.⁷

For all these reasons, the Commission should reject XO's request.

Sincerely,



Curtis Groves
MCI



Karen Zacharia
Verizon

cc: Gail Cohen
Bill Dever
Gary Remondino

⁷ *MCI Communications Corp., Transferor, and Southern Pacific Telecommunications Co., Transferee, for Consent to Transfer Control of Qwest Communications, Inc.*, 12 FCC Rcd 7790, ¶ 29 (1997); 47 U.S.C. § 310(d) ("the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.").