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VIA ELECTRONIC FILING

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

Re: Access to Confidential Materials in WC Docket No. 05-75

Dear Ms. Dortch:

By letter dated May 2, 2005, the American Antitrust Institute ("AAI") submitted an "Acknowledgement of Confidentiality" on behalf of Jonathan Rubin seeking access to confidential information filed in the above-referenced proceeding.[1] Pursuant to paragraph 7 of the Protective Order adopted in this proceeding,[2] Verizon and MCI hereby object to the disclosure of Confidential Information to Mr. Rubin.

The Protective Order makes clear that only a "party" may have access to the confidential documents at issue. *See* Protective Order ¶ 4. Section 309 of the Communications Act – which governs the Commission's review of the Verizon/MCI transfer – sets forth the criteria for determining whether an organization, such as AAI, is a party. *See* 47 U.S.C. § 309(d) (only a "party in interest" may "file with the Commission a petition to deny" a transfer application). Under Section 309, an entity seeking to qualify as a party must meet constitutional standing

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1 See Letter from Jonathan L. Rubin to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-75 (filed May 2, 2005).

2 *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, DA 05-647 at Appendix A (rel. Mar. 10, 2005) ("Protective Order").

requirements. *See Application to Assign Wireless Licenses from Worldcom, Inc. to Nextel Spectrum Acquisition*, 19 FCC Rcd. 6232 (2004); *Applications of KQQK, Inc. for Renewal of License for KQQK(FM) Galveston, Texas*, File No. BRH-970331XE, 1999 WL 865786 (1999) (citations omitted); *see Application of MCI Communications Corp. and Southern Pacific Telecommunications Company*, 12 FCC Rcd 7790 ¶ 10 (1997) (applying Article III test to determine whether an entity was a "party-in-interest" under section 309(d)(1) of the Act). AAI cannot satisfy this standing inquiry and thus does not qualify as a "party".

Specifically, Article III sets forth a tripartite inquiry – (1) injury-in-fact; (2) causation; and (3) redressability – the "irreducible constitutional minimum of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also AT&T Corp. v. Business Telecom, Inc.*, 16 FCC Rcd 21750, 21752 (2001). Article III demands that the injury be both "concrete and particularized" and "actual or imminent." *Lujan*, 504 U.S. at 560.

AAI has not suffered – nor has it alleged – a "concrete and particularized" injury in this instance. *See In re Western Communications Services, Inc.* 17 FCC Rcd 24636 ¶ 2 (2002) ("In general, to establish standing, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury."). AAI states that its mission is to "increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy." http://www.antitrustinstitute.org/about.cfm. Such a generalized grievance is insufficient to meet constitutional standing requirements; the injury must be to the petitioner – not to the general public. *In the Matter of USVI Cellular Telephone Corp. Station KNKN524*, 11 FCC Rcd 17386 ¶8 (1996) ("The threatened or actual injury must be to the petitioner, whether economic, aesthetic or otherwise, and must be likely to be prevented or redressed by a favorable decision."). AAI cannot meet this test. Further, AAI is not a competitor and therefore cannot satisfy the requirements for competitor standing. *In re Application for Transfer of Control WZVN-TV, Naples, FL*, 17 FCC Rcd 15742 (2002) ("FMBC has standing as a party-in-interest since it is a competitor of Waterman in the Naples-Fort Myers market.").[3]

There is an additional reason for questioning whether AAI is itself a party. AAI filed its request for access to confidential documents on the same day that Qwest withdrew from bidding for MCI. AAI has previously coordinated with Qwest in Qwest's claim that it would be a better acquirer of MCI. *See, e.g.*, Letter from AAI to Senators Specter and Leahy (Mar. 15, 2005), available at http://www.antitrustinstitute.org/recent2/394.pdf. Verizon and MCI do not object to

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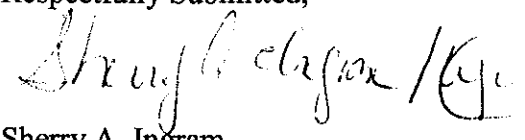
[3] Similarly, AAI is not an association. *See* http://www.antitrustinstitute.org/about.cfm (describing AAI as a 501(c)(3) corporation). Accordingly, the modified standing showing for associations does not apply. *Rainbow/Push*, 330 F.3d at 542 (citing *Hunt v. Washington Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)) (In addition to establishing that "at least one of its members would have standing to sue in his own right," an association must also prove that "the interest it seeks to protect is germane to its purpose" and that "neither the claim asserted nor the relief requested requires the member to participate in the lawsuit.").

AAI making similar submissions to the FCC, but since AAI itself lacks standing and may be acting merely as a surrogate for others, it should not be allowed access to Verizon's and MCI's most sensitive and confidential documents.

In view of Verizon's and MCI's objections, Mr. Rubin may not have access to Confidential Information unless and until the parties' objections are resolved in AAI's favor by the Commission and, if appropriate, any court of competent jurisdiction. Protective Order ¶ 7.

Respectfully Submitted,



Sherry A. Ingram

cc: Jonathan L. Rubin, American Antitrust Institute*

* Via facsimile and overnight delivery