



The American
Antitrust Institute

May 12, 2005

FILED VIA ECFS

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

Re: *In the Matter of Verizon Communications Inc. and MCI, Inc.,
Applications for Approval of Transfer of Control*, WC Docket No. 05-
75, Objection to Disclosure of Confidential Information

Dear Madam Secretary:

On May 5, 2005, Verizon Communications, Inc. (“Verizon”) and MCI, Inc. (“MCI,” collectively, the “Applicants”) objected to the disclosure of Confidential Information to the undersigned counsel for the American Antitrust Institute (“AAI”) in the above-referenced docket.¹ Under the clear and unambiguous terms of the Protective Order entered in this docket,² the undersigned is clearly entitled to review the Applicants’ Confidential Information. Accordingly, AAI respectfully requests that the Applicants’ *Objection* be expeditiously resolved by the Commission in favor of the AAI.

The procedures of ¶7 of the Protective Order permit counsel³ for a party to obtain access to Confidential Information upon the filing of an executed Acknowledgment of Confidentiality and the expiration of the waiting period for objections and, in the event such an objection is lodged, upon the resolution of the objection in the party’s favor. The undersigned, as a duly admitted attorney in good standing and counsel for AAI in this matter not involved in competitive decision-making, filed an executed Acknowledgment of Confidentiality on May 2, 2005, which was served upon the Commission’s staff and the Applicants’ counsel as required by the Protective Order.⁴

¹ See Letter from Sherry A. Ingram to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 05-75 (filed May 5, 2005) (“*Objection*”).

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

³ “Counsel” is defined in ¶1 of the Protective Order to include “In-House Counsel,” *i.e.*, an “attorney employed by a party to these proceedings ... and who [is] actively engaged in the conduct of this proceeding, *provided that*, such counsel [is] not involved in competitive decision-making”

⁴ See Letter from Jonathan L. Rubin to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 05-75 (filed May 2, 2005).

The Applicants' *Objection* is entirely without merit.

The main thrust of the *Objection* is that "only a 'party' may have access to the confidential documents at issue."⁵ According to the Applicants, the AAI is not a party because it has not established its legal standing to file a Petition to Deny under Section 309(d)(1) of the Communications Act.⁶ However, this spurious argument intentionally conflates the legal requirement for standing for the purposes of filing a Petition to Deny with the AAI's clear and unambiguous status as a party in this proceeding by virtue of its filed Comments.⁷

The Comment Public Notice⁸ in this docket is crystal clear:

Persons and entities that file comments or petitions to deny *become parties to the proceeding*. They may participate fully in the proceeding, *including seeking access to any confidential information that may be filed under a protective order*.⁹

In light of the clear and unambiguous conditions established by the Commission in this proceeding pertaining to the entitlement of the AAI and other similarly situated persons or entities, the absence of an affidavit containing allegations of fact necessary to support the finding that AAI has standing to bring a Petition to Deny as required by 47 U.S.C. §309(d)(1) is completely inapposite. Accordingly, insofar as the *Objection* relies on AAI's alleged lack of status as a "party," the *Objection* is wholly without merit and should be resolved in AAI's favor.

In addition to the foregoing, the Applicants' *Objection* raises a second argument, which similarly lacks merit. The *Objection* avers that "AAI has previously coordinated with Qwest in Qwest's claim that it would be a better acquirer of MCI" and that AAI "may be acting merely as a surrogate for others"¹⁰ The Applicants cite no legal authority for the proposition that such an alleged "coordination" with Qwest would serve to disqualify AAI from access to Confidential Information on the same terms as any other party or entity. Thus, even were the Applicants' allegations true, it would fail to provide any basis for the *Objection*.

The Applicants' averments, however, are decidedly *not* true, and lack any factual basis. As stated in the *AAI Comments*, "[t]he AAI adheres to a strict policy of

⁵ *Objection*, at 1.

⁶ 47 U.S.C. §309(d)(1).

⁷ See *Comments of the American Antitrust Institute*, WC Docket 05-75 (filed May 9, 2005) ("*AAI Comments*").

⁸ Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer Of Control, WC Docket No. 05-75, *Commission Seeks Comment on Applications for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc.* (DA 05-762, rel. March 24, 2005) ("Comment Public Notice").

⁹ *Id.*, at 4 [emphasis supplied, footnote omitted].

¹⁰ *Objection*, at 3.

independence; it does not slant its analysis or adopt positions based on the interests or desires of any private party. Donations are accepted into the organization's general treasury only, and donations earmarked for a particular purpose or conditioned on a particular position are not accepted."¹¹ The Applicants' unsupported averments fail to provide any legitimate basis for the *Objection*.

For the foregoing reasons, and because the *Objection* fails to raise any colorable concern that the AAI or the undersigned will in any way compromise the confidentiality of the information at issue or violate the terms of the Acknowledgment of Confidentiality, the AAI respectfully requests that the Commission resolve the Applicants' *Objection* in its favor at the Commission's earliest opportunity.

Respectfully submitted,

/s/
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¹¹ *AAI Comments*, at 2, note 5.