

September 30, 2005

Ex Parte

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

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

Dear Ms. Dortch:

We write in response to a recent ex parte submission by XO Communications (“XO”).¹ Like XO’s prior filings, this latest submission does nothing to undermine our showing that the transaction is in the public interest.

Indeed, the only “new” evidence that XO submits are results of a survey taken in the “third quarter of 2003.” XO Ex Parte at 2. Results based on a two-year-old survey are of little (if any) relevance to this transaction. Furthermore, the portion of the survey results that XO presents is limited to wholesale private line services. Those services make up an extremely small portion of the market for services purchased by large enterprise customers and medium businesses. As we have explained, the Commission has previously considered retail and wholesale provision of services as part of a single market.² The survey results, therefore, provide no meaningful data on this broader market.

In addition, XO makes no attempt to refute our showing that MCI has no unique capabilities as a wholesale supplier — whether using its own facilities or by purchasing and reselling special access from Verizon.³ And the survey results it presents vastly overstate MCI’s actual presence as a wholesale supplier. As we have shown, MCI’s Metro Private Line revenues

¹ See Ex Parte Letter from Thomas W. Cohen , Kelley Drye & Warren LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (filed Sept. 21, 2005) (“XO Ex Parte”).

² See, e.g., Memorandum Opinion and Order, *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control*, 13 FCC Red 18025, ¶ 28 (1998) (rejecting claim that it should “analyze wholesale services as a separate and distinct input market” from retail services); see also Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75, at 4 (filed Sept. 14, 2005).

³ See generally, e.g., Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (filed Sept. 9, 2005) (“Verizon/MCI Sept. 9, 2005 Ex Parte”).

account for no more than 2 percent of carrier customers' total demand for special access in Verizon's region. With respect to the DS1 circuits that the CLECs have expressed concern about in the past, MCI is an even less significant factor because MCI earns the majority of its wholesale Metro Private Line revenues from DS3 or higher services.⁴

In any event, the survey results XO presents actually *contradict* XO's claim that this transaction is not in the public interest. For example, the presentation confirms that "Tier 1 metros experience *enormous competition*" and that "CLECs, Carrier's Carriers, [and] Sprint" are "[v]ery competitive in Tier 1 metros."⁵ As we have shown, MCI's local fiber networks are deployed predominantly in just those areas. In addition, the presentation shows that, even in 2003, 44 percent of buyers used carriers other than RBOCs and traditional IXCs — including next generation carriers and CLECs — as their "first choice" to meet their "local wholesale private line needs."⁶

Finally, XO continues to assert that it possesses "data based on actual market bids" that supports its claim that this transaction is not in the public interest.⁷ Verizon and MCI have continually sought access to the data underlying these claims, but XO and others have refused to provide it.⁸ Here, XO again refuses to put the alleged data in the record here, instead contending that the Commission should "go to the Department of Justice to review [XO's] submissions" there.⁹ This is yet another attempt by XO to make claims without providing Verizon or MCI the opportunity to review and rebut the alleged data on which those claims are based. In contrast, XO's counsel and experts have had access to all of Verizon's and MCI's data. In short, the Commission could not rely upon XO's supposed secret data in assessing this transaction.¹⁰

⁴ See *id.* at 17.

⁵ XO Ex Parte, Attach. at 13.

⁶ *Id.* Attach. at 31. We note that XO has excised, without acknowledgement or elaboration, nearly 20 pages of the Yankee Group presentation attached to their ex parte.

⁷ XO Ex Parte at 1.

⁸ See, e.g., Verizon/MCI Sept. 9, 2005 Ex Parte at 3 n.8 & Attach. 5.

⁹ XO Ex Parte at 1.

¹⁰ See *Center for Auto Safety v. Fed. Highway Admin.*, 956 F.2d 309, 314 (D.C. Cir. 1992) (holding that an agency "cannot . . . rely on [evidence] to provide the requisite evidentiary support during judicial review" when that evidence was not "introduced . . . into the administrative record").

For the foregoing reasons, as well as those we have set forth in the record previously, the Commission should reject XO's claims and conclude that this transaction is in the public interest.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Dee May
Verizon

A handwritten signature in cursive script that reads "Curtis Groves".

Curtis Groves
MCI

cc: Julie Veach
William Dever
Ian Dillner
Gail Cohen
Tom Navin
Don Stockdale
Gary Remondino