

October 18, 2005

BY HAND AND ECFS

Ms. Marlene H. 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:

The recent *ex parte* filed by Conversent, Eschelon, NuVox, XO, and Xspedius again purports to analyze the effect of this transaction on competition to serve business customers.¹ In prior filings, which we have refuted at length,² these carriers — or their expert, Professor Wilkie — have made claims that this transaction will harm competition for such customers based on what they claim are “actual bid submissions” for wholesale special access.³ These CLECs, however, repeatedly refused to put this evidence in the record. When Verizon and MCI requested this data, the CLECs sponsoring Professor Wilkie’s analysis denied that request.⁴ The CLECs then suggested that the Commission should “go to the Department of Justice to review [the] submissions” there, but again refused to put the submissions in the record.⁵ As we explained, the Commission could not rely upon data that is not in the record in assessing this transaction.⁶

¹ Ex Parte Letter from Thomas W. Cohen, Kelley Drye & Warren LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75, at 1 & Attach. (filed Oct. 3, 2005) (“Joint CLEC Oct. 3, 2005 Ex Parte”).

² See Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75 (filed Sept. 14, 2005); Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75 (filed Sept. 9, 2005) (“Verizon/MCI Sept. 9, 2005 Ex Parte”); Verizon and MCI, Response to Analysis of the Alliance for Competition in Telecommunications (ACTel) (June 2005), *attached to* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (filed June 30, 2005); Special Access White Paper, *attached to* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (filed Aug. 25, 2005) (“Special Access White Paper”).

³ E.g., Ex Parte Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75, at 6 (filed Aug. 31, 2005) (“Joint CLEC Aug. 31 Ex Parte”); see, e.g., Professor Simon J. Wilkie, *Further Analysis of the Competitive Effects of the Proposed Mergers of SBC/AT&T and VZ/MCI*, WC Docket Nos. 05-65 & 05-75, at 5 (FCC filed July 29, 2005).

⁴ See Verizon/MCI Sept. 9, 2005 Ex Parte at 3 n.8 & Attach. 5.

⁵ See Ex Parte Letter from Thomas W. Cohen, Kelley Drye & Warren LLP, to Marlene Dortch, FCC, WC Docket Nos. 05-65 & 05-75, at 1 (filed Sept. 21, 2005).

⁶ See Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75, at 2 (filed Sept. 30, 2005); see also *Center for Auto Safety v. Fed. Highway Admin.*, 956 F.2d 309, 314

In the latest ex parte, **[BEGIN CONFIDENTIAL]**

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For all of these reasons, the CLECs' latest submission — no different from their earlier ones — does nothing to call into question our showing that this transaction is in the public interest.

(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”).

⁷ See Joint CLEC Oct. 3, 2005 Ex Parte Attach. at 2, 4.

⁸ See *id.* Attach. at 2.

⁹ See Special Access White Paper at 87.

¹⁰ See *id.* at 25-27.

¹¹ See *id.* at 26.

¹² See, e.g., Verizon/MCI Sept. 9, 2005 Ex Parte at 18-20.


¹³ See Special Access White Paper at 75.

¹⁴ See Joint CLEC Oct. 3, 2005 Ex Parte Attach. at 4 (Ex. 2).

¹⁵ See *id.* Attach. at 4 (Ex. 1)

¹⁶ See Special Access White Paper at 23.

Sincerely,


Sherry Ingram
Verizon


Curtis Groves
MCI