

WILLIAM J. EVANS (5276)
PARSONS BEHLE & LATIMER
Attorneys for MCI, Inc.
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

ANDREW B. CLUBOK
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, DC 20005
(202) 879-5000 (tel)
(202) 879-5200 (fax)

RICHARD B. SEVERY
Director, State Regulatory
MCI, INC.
201 Spear Street, 9th Floor
San Francisco, CA 94105
(415) 228-1121 (tel)
(415) 228-1094 (fax)

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Proposed Acquisition of MCI, Inc. by Verizon Communications, Inc.,	Docket No. 05-2430-01 REPLY IN SUPPORT OF PARTIES' MOTION TO STRIKE OR IN THE ALTERNATIVE TO OVERRULE THE COMMENTS OF COVAD COMMUNICATIONS COMPANY
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Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") ("the Parties"), hereby reply to Covad Communications Company's (n/k/a DIECA Communications Inc.'s) May 31 filing opposing the Parties' Motion to Strike Covad's Request for Intervention and Comments.

I. THE PARTIES' MOTION TO STRIKE SHOULD BE GRANTED BECAUSE COVAD HAS NOT DEMONSTRATED GROUNDS FOR INTERVENTION

Covad's Motion to Intervene should be denied and its Comments stricken because it has failed to establish any interest that would justify intervention in this proceeding pursuant to R746-100-8. Although Covad's May 31 filing is styled as a response to the Parties' Motion, it fails even to address, much less refute, the arguments against intervention set forth in the Parties' May 19 Motion and prior Opposition to Intervention.

Only a "party" as defined in Section 63-46b-2(f) of the Utah Code may present arguments or otherwise participate in this proceeding. Utah Code Ann. § 63-46b-2(f) (defining "parties" to include the Commission, the complainant, the respondent, parties authorized to participate by statute or rule, and "all persons permitted by the presiding officer to intervene"). Because Covad is not "party" to this proceeding as defined in Section 63-46b-2(f), and because Covad has not shown any interest justifying intervention,¹ Covad's Petition to Intervene should be denied and its Comments should be stricken.

II. EVEN IF COVAD COULD DEMONSTRATE GROUNDS FOR INTERVENTION, ITS COMMENTS SHOULD BE OVERRULED

Even if Covad could demonstrate a basis for intervention (it cannot), Covad's comments on the Parties' proposed acquisition would not merit any further action for two reasons.

First, Covad fails to establish a proper jurisdictional basis for the "probing inquiry" it urges. Covad cites the Commission's final order in Docket No. 99-049-41, *In re Merger of the Parent Corporations of Qwest Communications, LCI International Telecom Corp., and US West*

¹ Although Covad asserts that it will "be harmed directly by a decrease in competition for interoffice transport," Covad is not a "residential customer" that will be affected by any changes in the Parties' "residential strategy" in the "Utah wireline market," (Opp. at 1-2), nor does Covad state that it is a wholesale buyer of interoffice transport services from MCI, (*id.*). And even if it could establish its standing to address these concerns as an intervenor, Covad fails to identify any basis in evidence or the Parties' pleadings for its alleged concern that Verizon will "shutter its post-merger Utah network" and "shut down" MCI's ability to compete in the provision of residential

Communications (hereafter “*In re Qwest*”), as authority for the proposition that the Commission should assert approval jurisdiction over the parent company transaction in this case despite the plain language of Section 54-4-1. *See* Utah Code Ann. § 54-4-1 (limiting jurisdiction to acquisitions by Utah public utilities). But Covad fails to mention an important factual distinction between the Qwest-US West Merger and this transaction.

The Commission concluded that the parent-company merger at issue in *Qwest* (unlike the present transaction) could affect competition in Utah because Qwest was precluded from serving long distance customers residing in the former US West territory pending Section 271 approval, (*see* Order, *In re Qwest*, at 8 (June 9, 2000), thus creating a “significant hole in its market” that could be remedied only by meeting federal local competition and regulatory requirements, (*id.* at 15). The proposed Verizon/MCI transaction presents no such concerns. In addition, US West was the major incumbent local exchange carrier in Utah when its merger was considered by the Commission. Neither Verizon and its Utah subsidiaries nor MCI and its Utah subsidiaries are, or have ever been, incumbent local exchange carriers in Utah. Accordingly, to the extent the Commission’s assertion of authority over the Qwest-US West merger was warranted under the unique facts of that case, this transaction is distinguishable. Section 54-4-1 by its terms applies only to transactions by Utah public utilities, and it is undisputed that neither Verizon nor MCI (both of which are Delaware holding companies) are Utah public utilities within the meaning of the statute. Covad has cited no precedent in which the Commission has nonetheless asserted jurisdiction over a transaction on facts similar to those at issue here.

Second, even if the Commission were to assert approval jurisdiction over this transaction pursuant to the *Qwest-US West* precedent, it should approve the transaction without further

wireline and interoffice transport service in Utah. (*See id.* at 2.)

process because there is no factual basis for the unsubstantiated allegations proffered by Covad. Covad fails to provide any support for its bald assertion that Verizon has a “long tradition” of “avoiding competition with its RBOC brethren,” (Opp. at 1),² or for its claim that this transaction will “shutter” or “eliminate” MCI’s provision of certain retail (residential wireline) and wholesale (interoffice transport) services in Utah. (*See id.* at 1-3.) Instead, Covad seeks to distract from the unsubstantiated nature of its allegations by falsely accusing Verizon and MCI of downplaying the transaction’s competitive impact in the State as “irrelevant.” (Opp. at 2.)

This tactic is unavailing. The Parties *never* stated that the “significance of their merger to competition in the State” is “irrelevant.” (*Id.*) They said only that *Covad’s claims* regarding the acquisition’s significance were irrelevant to the Commission’s jurisdiction given the plain language of Section 54-4-1 and the *lack* of any competitive concerns associated with the transaction. (*See Mot. to Strike* at 3.) In tacit acknowledgment of the weakness of its position, Covad offers to “withdraw its request that the Commission scrutinize the proposed transaction if Verizon and MCI provide written assurances to the Commission that MCI will continue to compete vigorously in both the wholesale and retail markets of Utah and . . . assure the Commission that the merged company will continue to provide competitive transport services.” (Opp. at 3-4.) No such conditions on the acquisition (or on Covad’s continued, improper participation in this proceeding) are warranted.

The Parties’ initial notice filing already provides the Commission with a written assurance that the proposed transaction will not harm competition in Utah. It expressly states that the “acquisition will not change the MCI subsidiaries’ relationship with the Commission,

² Verizon and MCI have already rebutted Covad’s claims and provided ample evidence of competition among RBOCs in the proceeding at the Federal Communications Commission. *See Joint Opp. of Verizon and MCI to Petitions to Deny and Reply to Comments*, WC Docket 05-75, at 22 *et seq.* (Public Version).

and will not interfere with the Commission's jurisdiction or with the quality of service that MCI's subsidiaries are able to offer Utah customers." (Notice Filing at 2 (Mar. 9, 2005.)) In addition, it specifically states that the transaction will not just maintain, but enhance, the Parties' ability to "provide a comprehensive suite of services to consumers, businesses and government customers" in the State, and specifically to provide "competitively priced wireline services, broadband services, wireless services and IP-based services." (*Id.*) Covad has demonstrated no basis for requiring assurances beyond these, and has certainly failed to demonstrate any basis for imposing any conditions on the Parties' provision of competitive transport services. Accordingly, Covad's comments on the transaction, if considered by the Commission, do not require any further action.

CONCLUSION

For the reasons set forth above and in the Parties' prior filings, Covad's pending motion to intervene should be denied and, accordingly, Covad's comments on the Parties' transaction should be struck. Alternatively, if the Commission grants Covad's petition to intervene or otherwise elects to consider Covad's comments, Covad's request for a "probing inquiry" into the transaction and/or for conditions on its approval should be rejected.

Respectfully submitted this 13th day of June, 2005,

MCI, INC.

By: _____
William Evans
Parsons Behle & Latimer
201 South Maine Street, #1800
Salt Lake City, UT 84145-0898
(801) 536-6817 (tel)
(801) 536-6111 (fax)

Richard Severy
MCI, Inc.
Director, State Regulatory
201 Spear Street, 9th Floor
San Francisco, CA 94105
(415) 228-1121 (tel)
(415) 228-1094 (fax)

VERIZON COMMUNICATIONS INC.

By: _____
Andrew B. Clubok
Kirkland & Ellis LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, DC 20005
(202) 879-5000 (tel)
(202) 879-5200 (fax)

Robert P. Slevin
Associate General Counsel
Verizon Communications Inc.
1095 Avenue of the Americas, Room 3824
New York, New York 10036
(212) 395-6390 (tel)
(212) 764-2739 (fax)

Sherry F. Bellamy
Vice President & Associate General Counsel
Verizon Communications Inc.
1515 North Courthouse Road, Suite 500
Arlington, VA 22201
(703) 351-3011 (tel)
(703) 351-3655 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2005, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing Reply on the following parties:

Julie Orchard
UTAH PUBLIC SERVICE COMMISSION
Heber M. Wells Building
4th Floor
160 East 300 South
Salt Lake City, Utah 84111

Gregory Diamond
COVAD COMMUNICATIONS COMPANY
7901 Lowry Boulevard
Denver, Colorado 80230

Stephen F. Mecham
CALLISTER NEBEKER & McCULLOUGH
10 East Temple, Suite 900
Salt Lake City, Utah 84133

Michael Ginsberg
Assistant Attorney General
160 East 300 South
5th Floor
Salt Lake City, Utah 84111

Reed Warnick
Assistant Attorney General
160 East 300 South
5th Floor
Salt Lake City, Utah 84111
