

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application	)	DOCKET NO. UT-050814
of	)	
	)	
VERIZON COMMUNICATIONS	)	ORDER NO. 06 (CORRECTED)
INC. AND MCI, INC.	)	
	)	
For Approval of Agreement and Plan	)	ORDER REGARDING
of Merger	)	TEXT AND PUBLICATION
	)	OF NOTICE
.....	)	

- 1 **NATURE OF PROCEEDING.** Docket No. UT-050814 involves an Agreement and Plan of Merger between Verizon Communications and MCI, Inc.
- 2 **DISPUTE.** A disagreement exists among Public Counsel, Verizon, MCI, and Commission Staff regarding the text of a proposed notice to members of the public about this matter and advising the public of its opportunity to comment on the proposed merger.
- 3 Verizon has prepared a form of notice; Commission Staff has agreed to its text; and Public Counsel asks that certain changes be made in the text and in the manner of its presentation. The parties asked for counsel on their dispute.
- 4 The form of the parties' requested response was not clear, the issues were presented informally, and the nature of the inquiry appeared to involve a procedural as opposed to a substantive matter. Consequently, we responded informally on the day following the request and offered the parties an order, if desired. Public Counsel and Verizon both requested the entry of an order, which we now provide.

5 **LEGAL STATUS OF THE NOTICE AND OUR AUTHORITY TO ACT.** MCI contends that Public Counsel has no right to review the proposed notice (and presumably the Commission should therefore decline review) a) because WAC 480-143-210, requiring notices to the public in some instances, applies only to matters involving public service companies, whereas the merger is between unregulated parent companies; b) because the Commission rule only requires approval by the Commission; and c) because the notice is voluntary in this matter.

6 In response to these arguments, we conclude as follows:

a) The affected entities, whose relationship to the merger renders them part and parcel of its consummation, include both Verizon and MCI subsidiary operating entities that are subject to regulation as public service companies. Jurisdiction over the affected entities requires jurisdiction over the transaction to ensure that its effect on the public of the state of Washington is not adverse. This view is consistent with the Commission's assertion of jurisdiction over the merger petition in analogous prior proceedings<sup>1</sup> and with the decision to defer a decision on jurisdiction until completion of this proceeding.

b) That the rule might require only the approval of the Commission should not foreclose discussions among the parties -- particularly Public Counsel, whose responsibilities include protection of the interests of the members of the public that this notice seeks to inform. Public Counsel is a party to this proceeding and has just as much right to participate in discussions or arguments on these matters as on any other procedural, legal, or factual

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<sup>1</sup> See, e.g., *In re the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981627, Second Supplemental Order (1999); *In re the Application of US WEST, Inc., and Qwest Communications International, Inc.*, Docket No. UT-991358, Ninth Supplemental Order (2000).

matter affecting his clients whose decision rests with the Commission. We perceive no reason to apply a different standard for participation in these matters.

c) Assuming that the notice is offered voluntarily<sup>2</sup> or that the rule does not apply in this setting, the Commission is not thereby foreclosed from independently requiring notice and exercising approval over its form and content when a notice is needed to inform the public adequately about the matter in question and its potential consequences. We agree with the settling parties that the notice is an important element in seeking comment from affected customers before reaching closure, and therefore believe that the notice should be designed as much as possible to achieve that goal.

7 In sum, we exercise our discretion on the matters raised by Public Counsel because the issue is subject to the Commission's jurisdiction. We exercise our discretion because the parties ask us to and because Public Counsel has a right to be heard. Finally, we exercise our discretion because the Commission has the responsibility to govern the course of this proceeding to ensure that the rights of the parties are protected, including the rights of the public, represented by Public Counsel, to a reasonably adequate notice, whether or not a rule might require the notice as a matter of course.

8 **MANNER OF PUBLICATION.** Verizon agrees to publish the notice in newspapers throughout its territory. Public Counsel asks that it be published also in the two metropolitan Seattle daily newspapers (whose coverage does not fully overlap Verizon territory) and that it be mailed to customers of MCI. MCI opposes the proposals, arguing that the Seattle publication would not reach many of the customers who are within the Verizon Northwest in which

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<sup>2</sup> The settlement agreement among Petitioners, Integra, and Commission Staff requires such a notice, so we believe it cannot be said to be voluntary. The agreement is silent on its derivation and on any approval process for its text.

subsidiaries of both merging companies are located. MCI urges that mailed notice is not necessary to provide reasonable notice to affected customers.

9 We agree with MCI as to provision of mailed notice. Considering the timing of the request and the interests at stake, we find that mailed notice is not required and that publication will be an adequate effort to reach the affected customers.

10 We agree with Public Counsel that notice should be published in the two Seattle metropolitan daily newspapers. MCI opposed the request on the basis that to the extent any customers will be affected by the merger, Seattle MCI customers will be less affected than those in Verizon territories whom the published notice via the proposed media will reach, and their numbers are small, so the publication is unwarranted.

11 We believe that MCI too narrowly perceives the value of publication in the metropolitan dailies. In addition to notice to Seattle metro area MCI customers whom Verizon's proposed publication would not reach, the circulation of the Seattle daily newspapers extends into Verizon territory and offers another means of access to customers within that territory. Finally, given the nature of Seattle as a commuter hub, the metropolitan newspapers may provide a principal means of reaching Verizon-territory customers who commute into the metro area.

12 **TEXT OF THE NOTICE.** Public Counsel makes several suggested changes. We review the proposed text independently to ensure that the notice reflects matters clearly and accurately, given the need to express matters simply and tersely. The version attached as Appendix A, shown in legislative style from Verizon's proposed final version,<sup>3</sup> accepts some and rejects some of Public Counsel's

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<sup>3</sup> We understand that the version circulated to us was not Verizon's final draft, which apparently included an electronic mail address for comments to the Commission. We adopt with slight modification Public Counsel's proposed language to achieve that end.

proposed changes. We see no need to detail each change,<sup>4</sup> except to note that in our view that with the changes, the proposed notice more clearly and accurately notifies members of the public of the circumstances, the process, and the opportunity for comment.

13 **FORMAT OF THE NOTICE.** Public Counsel asks that the notice be placed in display advertising rather than classified/legal notice advertising sections. We agree that doing so is more likely to achieve readership of this particular notice, placed for this particular purpose. While there is no indication that Verizon planned otherwise, we offer this direction to be clear.

14 It is so ordered.

Dated at Olympia, Washington, and effective this 9th day of November, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS  
Administrative Law Judge

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<sup>4</sup> Two matters should be addressed: We find it unnecessary to identify Public Counsel as the public's representative because no role is given to Public Counsel in the notice. We find it unnecessary to list possible effects because Public Counsel's proposal is incomplete and does not demonstrate that any such list would be complete.

[Service Date November 10, 2005]

## APPENDIX A