

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Proposed Merger of) Case No. TM-2005-0370
Verizon Communications, Inc. and MCI, Inc.)

CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY

In its order today, the Commission, by a simple majority, voted to close the case before them finding that it did not have jurisdiction to oversee the merger of the parent companies, Verizon Communications, Inc., and MCI, Inc. that are not subject to Commission oversight. The Commission also found that an investigation was duplicative and unnecessary in light of the fact that the Commission did not find, and the Public Counsel failed to allege that the entities which do have jurisdiction over the transaction will be lax in their oversight.¹

While I voted in favor of the order closing the case, I believe the Commission should have addressed the Office of Public Counsel's allegation that the Commission had jurisdiction under section 386.330.1, RSMo 2000, to conduct a formal investigation into the merger of the parent companies and its effect on Missouri consumers. By failing to address this claim in a direct manner, the Commission has left open the question of its authority under this section. The inference now is that the Commission can open investigations under section 386.330.1, RSMo without concern for the threshold requirements established by law, whenever it questions the vigilance of the Federal Communications Commission ("FCC").

¹ The federal agencies with jurisdiction to review the merger between the parent companies are the Federal Communications Commission and the Department of Justice.

In paragraph 7 of its pleading, the Public Counsel stated, "the Commission under its general authority to conduct investigations in Section 386.330.1, RSMo should open a case to conduct an investigation into the impact the merger has on the telecommunications market, the ratepayers, and the public interest." The Public Counsel later makes several allegations that an investigation is needed to study the impact of the merger of the parent companies on the competitive markets of the Missouri-certified subsidiary companies.²

Section 386.330.1, RSMo provides as follows:

"The commission may, of its own motion, investigate or make inquiry, in a manner determined by it, as to any act or thing done or omitted to be done by any telecommunications company subject to its jurisdiction, and the commission shall make such inquiry in regard to any act or thing done or omitted to be done by any such public utility, person or corporation in violation of any provision of law or in violation of any order or decision of the commission."

(emphasis added).

The Public Counsel did not assert that Verizon Communications, Inc. or MCI, Inc., the parent companies involved in the merger, are "subject to [the commission's] jurisdiction" under section 386.330.1, RSMo. Indeed, such an assertion would fail as there is nothing in the Commission's authorizing statutes that confers jurisdiction to investigate two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies.³ Nor does the public counsel allege that the Missouri-regulated subsidiaries of these companies have done or omitted doing an act that is "in violation of any provision of law or in violation of any order or decision of the commission". Without such allegations or independent Commission findings that the

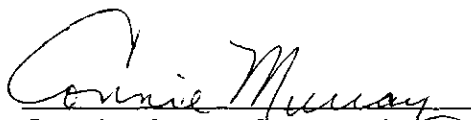
² See Comments of the Office of the Public Counsel, pp. 2-5.

³ See, e.g., *In the Matter of the Merger of SBC Communications Inc. and Ameritech Corporation*, 7 Mo. P.S.C.3d 528 (1998), for an analogous finding regarding the Commission's authority to oversee mergers of parent companies not regulated in Missouri.

Missouri-regulated subsidiaries have violated the law or a Commission order, I believe the Commission has no choice but to dismiss the Public Counsel's request for a hearing pursuant to section 386.330.1, RSMo for lack of jurisdiction.⁴

Despite having reached this conclusion regarding the Public Counsel's request for a formal investigation, I see no reason why the Commission's staff could not review the available information and discuss the impact of the merger on the Missouri-regulated subsidiaries. The staff could then provide a recommendation to the Commission regarding any necessary comments to be forwarded to the FCC and the Department of Justice. Our staff routinely handles matters before the FCC in this way without the expense and time-consuming prospect of opening a formal investigation. It is my opinion that we should continue to handle issues within the FCC's jurisdiction in this same manner.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri
on this 3rd of May, 2005.

⁴ I would note that even if we had jurisdiction to open an investigation under section 386.330.1, RSMo, the timing of the Public Counsel's request would make this a near impossibility. The FCC issued a Public Notice on March 24, 2005, requesting comments from interested parties regarding the merger and setting May 9, 2005 as the deadline for such filings. (See Public Notice in WC Docket No. 05-75). The Public Counsel waited until April 15, 2005 to file its pleading before the Commission requesting an investigation – leaving the Commission little more than three weeks to open a formal investigation into an extremely complex corporate merger in order to file comments with the FCC.