

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI COMMUNICATIONS CORPORATION File No. ISP-95-008

Petition for Declaratory Ruling
Concerning Section 310(b)(4) and (d)
of the Communications Act of 1934,
as amended

DECLARATORY RULING

Adopted: August 4, 1995;

Released: August 14, 1995

By the Chief, International Bureau:

INTRODUCTION

1. On May 30, 1995, MCI Communications Corporation (MCI) filed a petition for declaratory ruling (petition) seeking approval for an increase in the foreign ownership of MCI's capital stock from 28 to 35 percent. Specifically, MCI seeks a ruling that such increased foreign ownership is consistent with the public interest under Section 310(b)(4) of the Communications Act (the Act) and does not constitute a transfer of control under Section 310(d) of the Act.¹ We grant MCI's petition. As the Commission indicated when it approved 28 percent foreign ownership in MCI in 1994, additional foreign equity contributions will enhance MCI's ability to expand and improve network services and products for American consumers, stimulating U.S. economic growth.²

BACKGROUND

2. MCI is a publicly-traded U.S. corporation that owns or controls subsidiaries that hold domestic common carrier microwave licenses, international facility authorizations, cable landing licenses, and miscellaneous other licenses and authorizations.³ MCI is the second largest U.S. carrier of long distance telecommunications services. MCI also provides a broad spectrum of domestic and international voice and data communications services.

3. Last year in the MCI/BT Order, the Commission approved the acquisition of 20 percent of MCI by British Telecommunications plc (BT), the largest telecommunications operator in the United Kingdom. This transaction resulted in a total of 28 percent foreign investment in MCI. The Commission specifically concluded that 28 percent

foreign ownership of MCI was consistent with Section 310(b)(4) of the Act, which gives the Commission discretion to disallow foreign ownership in excess of 25 percent along a vertical ownership chain if it finds the foreign investment is not in the public interest. First, the Commission found that BT's 20 percent investment, in addition to the existing foreign investment in MCI, involved only a potential three percent fluctuation beyond the 25 percent statutory benchmark. Second, the Commission concluded that there was a dominant U.S. presence among MCI's officers, directors, and shareholders: 80 percent U.S. directors and 100 percent U.S. officers in MCI, and 100 percent U.S. officers and directors in MCI's Title III licensee subsidiaries. Third, the Commission found that, since only common carrier radio licenses were involved, no control over the content of transmissions would occur. Finally, the Commission observed that there was a significant public interest reason to permit increased foreign ownership: BT's investment would enable MCI to expand and improve its services to the American public, stimulating economic growth and creating new job opportunities for U.S. citizens.⁴

4. The Commission also concluded that BT's investment in MCI did not result in a transfer of control of MCI to BT under Section 310(d) of the Act. The Commission found that BT's consent rights regarding matters such as issuance of new equity, the sale of assets, certain business combinations, and entry into telecommunications and non-telecommunications businesses, as well as certain voting rights, did not rise to the level of a transfer of control. The Commission further noted BT's expressed intent not to control MCI and the absence of any evidence to the contrary.⁵

5. In its MCI/BT Order approving BT's acquisition, the Commission nonetheless required MCI to conduct periodic surveys of its public shareholders to ensure continuing compliance with the then-approved 28 percent maximum level of foreign ownership in MCI.⁶ MCI filed the instant petition in response to that requirement. MCI's surveys apparently now indicate that its foreign ownership may soon exceed the 28 percent level, although BT's percentage ownership is not expected to change. MCI generally asserts that all of the findings and conclusions reached in the MCI/BT Order are relevant here and are a basis for approval of 35 percent foreign ownership in MCI. MCI also states that no transfer of control would result because the "modest" increase in such foreign ownership would arise from passive investment on a widely dispersed basis and no single foreign investor would own more than one percent of MCI's stock.⁷

6. MCI's petition was placed on public notice on June 22, 1995. American Telephone and Telegraph Corp. (AT&T) and Sprint Communications Co. (Sprint) filed comments in support. MCI and AT&T filed replies. AT&T notes that passive shareholders will not enter into operating agreements with MCI, and do not have the ability to influence or control MCI's operations. Despite its general support of the petition, AT&T urges the Commission to

¹ 47 U.S.C. §310(b)(4), (d) (1994).

² *MCI Communications Corporation and British Telecommunications plc*, 9 FCC Rcd 3960 (1994) 9 FCC Rcd 3960 (1994) (*MCI/BT Order*).

³ *See id.*

⁴ *Id.* at 3964.

⁵ *Id.* at 3963.

⁶ *Id.* at 3963 n.37.

⁷ MCI Petition for Declaratory Ruling at 7 ("*MCI Petition*").

require MCI to report annually any investment it becomes aware of by a foreign "carrier." According to AT&T, foreign carriers have the potential to discriminate among U.S. carriers if they control access to essential facilities. Thus, AT&T asserts, foreign carrier investment cannot necessarily be deemed to be passive in nature and must be closely monitored.⁸

7. Sprint believes that there will be no change in control in MCI, and that the public interest will not be adversely affected.⁹ Sprint also notes that MCI has not disclosed whether the additional investment is held by foreign carriers, but states that even if that were the case, "Sprint does not believe that non-controlling investments of this magnitude could give rise to any serious policy concerns."¹⁰

DISCUSSION

8. Foreign ownership greater than 25 percent in MCI, the parent corporation of Title III common carrier radio licensees, triggers the applicability of Section 310(b)(4) of the Act. Under Section 310(b)(4), "[n]o . . . common carrier . . . license shall be . . . held by . . . any corporation directly or indirectly controlled by any corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens . . . if the Commission finds that the public interest will be served by the . . . revocation of such license."¹¹ As stated above, we have the discretion under Section 310(b)(4) to disallow foreign ownership along a vertical ownership chain that exceeds the 25 percent benchmark.

9. We conclude that permitting MCI to increase its foreign ownership by seven percent from 28 to 35 percent is not inconsistent with the public interest under Section 310(b)(4). The increased foreign ownership will come from passive investors, each of which will own less than one percent of MCI stock.¹² The owners are passive and widely dispersed investors and, as such, will have neither the interest nor the ability to control MCI. BT's ownership in MCI is not expected to change as a result of the proposed increase in MCI's foreign ownership and, in any event, MCI continues to be bound by the requirements of the MCI/BT Order.¹³ Further, the dominant U.S. presence on MCI's Board of Directors and in its management remains unchanged. The licenses at issue are common carrier, which the Commission has traditionally found raise fewer policy concerns in the context of foreign ownership than do broadcast licenses. Allowing an additional seven percent foreign ownership in MCI under these circumstances is consistent with prior Commission and Bureau actions.¹⁴

10. We also find persuasive arguments that increased, widely dispersed foreign ownership in MCI will serve the public interest. MCI states that allowing additional foreign investment in MCI will "assist MCI to expand its domestic and international networks and markets for the benefit of U.S. consumers, and stimulate U.S. economic growth."¹⁵ Sprint observes that such foreign investment provides

capital that "can fuel investment in state-of-the-art infrastructure that leads to economic growth and job formation in the U.S. economy . . . [and] facilitates the strengthening of competition by U.S. carriers both at home and abroad."¹⁶ We agree, and thus conclude that allowing these additional foreign equity contributions is not inconsistent with the public interest under Section 310(b)(4).

11. We decline to require MCI to report annually any foreign carrier investment of which it becomes aware, as requested by AT&T. We find that such a requirement is unnecessary. We do require MCI, however, to report if any foreign investor acquires and accumulates more than a one percent interest in MCI.

12. As to the transfer of control issue, we note that the increased foreign ownership will come from passive investors, no single foreign investor will own more than one percent of MCI's stock, and these investors will not acquire a right to determine MCI policy or to dominate MCI management. Further, MCI's Board of Directors and its manner of conducting business will go unchanged. Under these circumstances, the proposed increased foreign ownership will not result in a transfer of control.

CONCLUSION

13. We conclude that the public interest will be served by the grant of this declaratory ruling. Based on MCI's representations that the increased foreign investment will be passive and no foreign investor (other than BT) will own more than one percent, we find that the proposed increase in foreign ownership of MCI from 28 to 35 percent is not inconsistent with the public interest under Section 310(b)(4) of the Act. We also find that the increased foreign ownership does not constitute a transfer of control under Section 310(d).

ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that the petitioner's request for a declaratory ruling IS GRANTED. The level of 35 percent foreign ownership in MCI, as described in the petition, is not inconsistent with the public interest Section 310(b)(4) of the Act. Prior approval pursuant to Section 310(d) of the Act is not required because the transaction does not involve a transfer of control.

15. IT IS FURTHER ORDERED that MCI shall continue to conduct periodic surveys of its public shareholders to ensure compliance with the 35 percent maximum level of foreign ownership in MCI found to be not inconsistent with the public interest pursuant to Section 310(b)(4) of the Act.

16. IT IS FURTHER ORDERED that MCI shall notify the Bureau if the ownership interest of any foreign investor exceeds one percent.

⁸ AT&T Reply at 2.

⁹ Sprint Comments at 2.

¹⁰ *Id.* at 3.

¹¹ 47 U.S.C. § 310(b)(4).

¹² See MCI Petition at 5.

¹³ MCI/BT Order at 3973.

¹⁴ See, e.g., *GRC Cablevision, Inc.*, 47 F.C.C.2d 467, 30 R.R.2d 827 (1974); *Teleport Transmission Holdings*, 8 FCC Rcd 3063 (Com. Car. Bur. 1993); *IDB Communications Group, Inc.*, 6 FCC Rcd 4652 (Com. Car. Bur. 1991).

¹⁵ MCI Petition at 6.

¹⁶ Sprint Comments at 2.

17. This order is effective upon adoption. Petitions for reconsideration under Section 1.106 may be filed within 30 days of the date of the public notice of this order. (See Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris
Chief, International Bureau