



Kelley Drye Successfully Obtains Dismissal On Behalf of Telecommunications Clients

March 29, 2007

Kelley Drye successfully represented three telecommunications companies, XO Communications Services, Inc., Covad Communications Company, and Cavalier Telephone LLC, in defeating a suit initiated by Verizon against the Virginia State Corporation Commission (VSCC) in the United States District Court for the Eastern District of Virginia, Richmond Division. Verizon's complaint asserted that certain conditions on interstate special access services that the VSCC imposed on Verizon in an order permitting Verizon's merger with MCI were preempted by, among other things, less stringent conditions imposed by the Federal Communications Commission (FCC) in its own subsequent order approving the merger.

Basing its ruling, in part, on arguments made by Kelley Drye, the Court rejected Verizon's preemption argument and granted the motions to dismiss. The Court noted that XO, represented by Kelley Drye, had met with the FCC before the FCC issued its own merger order and had informed the FCC of the conditions imposed by the Virginia Commission. The fact that the FCC was aware of, but did not overrule the VSCC's order, coupled with the FCC's subsequent silence on the VSCC's more stringent conditions, notwithstanding Verizon's lawsuit, was of "considerable significance" in the Court's opinion and led the Court to buttress its conclusion that the FCC's order did not preempt the VSCC's order.

Kelley Drye Partner Thomas Cohen represented XO and others before the FCC and the VSCC. The litigation against Verizon on behalf of XO, Cavalier, and Covad was handled by Partner Ira Kasdan.