

**M e m o r a n d u m**

To : Mrs. Janice Masterton, Chief                      MIC: 81                      Date: November 16, 1998  
Board Proceedings Division

From : Timothy W. Boyer  
Chief Counsel



Subject: **Contribution Disclosure Opinion 98-1**  
**MCI Telecommunications Corporation**

The name of any disqualified Board Member, whether present or not, must be included in the selection by lot. In a matter requiring participation by the Controller rather than her deputy, if the Controller is not present and her name is drawn, the hearing cannot be held due to lack of a quorum.

**Questions**

MCI Telecommunications Corporation (MCI) is scheduled for a hearing for reassessment of state-assessed unitary values on November 19, 1998. The Controller's Deputy may not act on behalf of the Controller in this matter because it involves a constitutional function of the Board. Moreover, since all of the Board Members have received disqualifying contributions pursuant to Government Code section 15626, the following questions have been raised regarding selection by lot:

1. If the Controller, or any other Board Member, is not present, must his or her name be included in the selection by lot?
2. In a matter requiring participation by the Controller rather than her deputy, if the Controller is not present and her name is drawn, can the hearing be held?

**Conclusions**

1. The name of any disqualified Board Member, whether present or not, must be included in the selection by lot.
2. In a matter requiring participation by the Controller rather than her deputy, if the Controller is not present and her name is drawn, the hearing cannot be held due to lack of a quorum.

## **Analysis**

The Attorney General has opined that when a majority of Board Members are disqualified from participating in a governmental decision pursuant to Government Code section 15626, a sufficient number of disqualified members may be brought back to establish a quorum through a process of selection by lot. (78 Ops. Atty. Gen. 332 (1995), a copy of the opinion is available in the Contribution Disclosure Reference binder under 95-10.) In this case, since all of the Board Members are disqualified, three names must be selected to form a quorum.

Although the Attorney General's opinion does not address the situation where a disqualified member is not present at the meeting, it specifically concludes that each disqualified member must participate in the selection process. The Attorney General says that "[r]emoving members before the selection begins would change and reduce the 'randomness' and 'impartiality' of the selection process." Therefore, in order to have a selection process that conforms to the Attorney General's opinion, all disqualified Board Members must be included, whether or not they are present at the meeting.

Since the MCI hearing involves a constitutional function of the Board, if the Controller is one of the Board Members selected by lot to participate in the hearing, she must be present in order to form the quorum necessary to hold the hearing. No other name may be drawn to replace her. If she is not present, the lack of a quorum is no longer due to the disqualifying contribution, but rather the Deputy Controller's lack of authority under Government Code section 7.9 to participate in a hearing for reassessment of state-assessed unitary values.

If you have further questions regarding this matter, please call me at 445-4380 or Assistant Chief Counsel Mary Armstrong at 324-5589.

cc: Honorable Dean F. Andal  
Honorable Johan Klehs  
Honorable Ernest J. Dronenburg, Jr.  
Mr. John Chiang, Acting Member  
Honorable Kathleen Connell  
Mr. E. L. Sorensen, Jr.  
Mr. John Waraas  
Contribution Disclosure Binder Distribution List

# Memorandum

To: Holders of the Contribution Disclosure Binders

Date: December 1, 1998

From: Paul Fearn   
Contribution Disclosure Coordinator

Subject: **CONTRIBUTION DISCLOSURE OPINION 98-1:  
ADDITIONAL MATERIAL**

Attached hereto please find a memorandum dated November 25, 1998 from Timothy W. Boyer to the Board Members re MCI Telecommunications Corporation - SAV 98-013 Petition for Reassessment of State Assessed Unitary Value. Please include the attached in your binders with Contribution Disclosure Opinion No. 98-1.

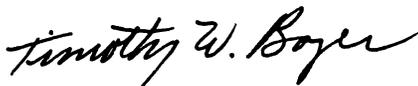
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**M e m o r a n d u m**

To : Honorable Dean F. Andal  
Honorable Johan Klehs  
Honorable Ernest J. Dronenburg, Jr.  
Mr. John Chiang, Acting Member, 4th District  
Honorable Kathleen Connell

Date: November 25, 1998

From : Timothy W. Boyer  
Chief Counsel



Subject: **MCI TELECOMMUNICATIONS CORPORATION - SAV 98-013**  
**PETITION FOR REASSESSMENT OF STATE ASSESSED UNITARY VALUE**  
**HEARING SCHEDULED DECEMBER 10, 1998**  
**CONTRIBUTION DISCLOSURE PROCEDURE**  
**ITEM DD**

The appeal of MCI has been scheduled for Board hearing on December 10, 1998. We have been advised that Board Members Dronenburg and Chiang will not be disqualified from participation under Government Code section 15626. The Controller and Board Members Klehs and Andal have each received disqualifying contributions. Mr. Andal has indicated that he will not be present at the hearing and will not participate in the drawing of lots.

In order to have a quorum, the lottery system described in the Attorney General Opinion dated November 17, 1995 will be utilized (see Contribution Disclosure Opinion 95-10) as follows:

1. The Chief, Board Proceedings Division or her designee will put the name(s) of the disqualified members in an envelope.<sup>1</sup>
2. The Sergeant at Arms will draw the name of one Board Member.
3. The Board Member whose name is called will be seated to make up a quorum for purposes of the hearing.

TWB:pf

cc: Mr. E. L. Sorensen, Jr.  
Mr. John P. Waraas  
Mr. Dick Johnson  
Mr. Lawrence A. Augusta  
Contribution Disclosure List

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<sup>1</sup> As noted above, Mr. Andal has advised that he will not participate in a lottery to determine a quorum. Because this matter must be decided before the December 31, 1998 constitutional deadline, we are of the opinion that the lottery may be held without Mr. Andal's participation. This opinion is limited to those hearings which must be heard and decided by a date certain because the rule of necessity requires the Board to act.

# Memorandum

To : Holders of the Contribution Disclosure Binders

Date: December 4, 1998

From : Paul Fearn  
Contribution Disclosure Coordinator

Subject: **CONTRIBUTION DISCLOSURE OPINION 98-1:  
ADDITIONAL MATERIAL**

Attached hereto please find a memorandum dated December 4, 1998 from Timothy W. Boyer to the Board Members re MCI Telecommunications Corporation - SAV 98-013 Petition for Reassessment of State Assessed Unitary Value. Please include the attached in your binders with Contribution Disclosure Opinion No. 98-1.

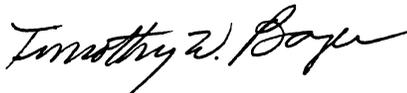
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# Memorandum

To : Honorable Dean F. Andal  
Honorable Johan Klehs  
Honorable Ernest J. Dronenburg, Jr.  
Mr. John Chiang, Acting Member, 4th District  
Honorable Kathleen Connell

Date: December 4, 1998

From : Timothy W. Boyer  
Chief Counsel



Subject: **MCI TELECOMMUNICATIONS CORPORATION - SAV 98-013**  
**PETITION FOR REASSESSMENT OF STATE ASSESSED UNITARY VALUE**  
**HEARING SCHEDULED DECEMBER 10, 1998**  
**VOTING AFTER RANDOM SELECTION**

The Attorney General in 78 Ops. Atty. Gen. 332 (1995) opined that the disqualified member or members chosen to convene the quorum are "authorized" to participate and vote in the governmental decision. However, once chosen to convene the quorum, there is no requirement that the member or members actually participate or vote on the matter. The authorization to vote is permissive. The member or members may elect to abstain from the vote if they so choose.

If a randomly chosen member elects not to vote, the record of the vote and the minutes would show that the member abstained.

cc: Mr. E. L. Sorensen, Jr.  
Mr. John P. Waraas  
Mr. Dick Johnson  
Mr. Lawrence A. Augusta  
Contribution Disclosure List