BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	
	)	DOCKET NO. UT- 041127
THE JOINT PETITION FOR	)	
ENFORCEMENT OF	)	**Joint CLEC Response to**
INTERCONNECTION	)	**Verizon's Motion for Judgment**
AGREEMENTS WITH VERIZON	)	**on the Pleadings**
NORTHWEST, INC.	)	
(a/k/a GTE)		

Advanced TelCom, Inc. ("ATI"), MCImetro Access Transmission Services, LLC. ("MCI"), and United Communications, Inc., d/b/a UNICOM ("UNICOM"), collectively the Joint CLECs, hereby request that the Washington Utilities and Transportation Commission ("WUTC" or "Commission") deny Verizon's Northwest, Inc.'s ("Verizon's") Motion for Judgment on the Pleadings ("Verizon's Motion"). In support therefor, the Joint CLECs state the following.

I. INTRODUCTION

1. WAC 480-07-380 (2) (a) provides that a party may move for summary determination of one or more issues if the "pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

2. The Joint CLEC Petition for Enforcement requests that this Commission require Verizon to comply with its obligations in the interconnection agreements ("ICAs") to provide unbundled switching to enable the Joint CLECs to provide voice grade narrowband service throughout its local service territory in Washington, including

the area served by the Mount Vernon central office. The Joint CLEC ICAs are agnostic as to the underlying technology used by Verizon to provision the voice grade service.

3. Verizon argues in its Motion that it cannot provide unbundled circuit switching since it deployed its new switch, and that it is not required to "unbundle packet switching." Therefore, Verizon argues, this Commission can resolve the Joint CLEC Petition as a matter of law.[1] However, as demonstrated below, should the Commission accept Verizon's interpretation of the law, there are numerous disputed issues of material fact regarding the capabilities of the Nortel switch deployed by Verizon, the nature of local switching required by the Joint CLECs' ICAs, and whether Verizon has in place the Operations Support Systems ("OSS") needed to support unbundled local switching on the Nortel switch.[2]

4. Specifically, disputes of material fact exist relating to all of the following. First, Verizon claims that it is providing "packet switching" as that term has been defined by the Federal Communications Commission ("FCC"), but the Joint CLECs provide evidence herein that Verizon may not be providing packet switching. Second, Verizon claims that the Joint CLECs' ICAs are not technology neutral (i.e., that the ICAs specify that local switching is required to be provided only over circuit switches). However, the Joint CLECs demonstrate below that the ICAs require unbundled local switching regardless of the technology used. Third, Verizon claims that the Joint CLECs are requesting this Commission to require Verizon to "unbundle packet switching," but the

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[1] Verizon's Motion at paras. 1-6.

[2] Should the Commission agree with Joint CLECs that the functionality of the switch is determinative of Verizon's unbundling obligations, then it may be that Verizon does not dispute that its Mount Vernon switch may still provide the local switching function. In that case, the Commission should enter summary judgment in the Joint CLECs' favor.

Joint CLECs provide evidence below that they are not requesting unbundled packet switching. Thus, the law cited by Verizon is inapposite to the issues presented by the Petition for Enforcement.

5. Finally, Verizon claims that even if it were required to "unbundle packet switching," it does not have OSS needed to support such offering on the Nortel switch. However, Joint CLECs provide evidence below that Verizon's existing OSS appear to have the capabilities needed to support unbundled local switching on the Nortel switch, and that Verizon has taken affirmative steps to cause orders for unbundled local switching on the Nortel switch to be rejected.

6. In sum, Verizon has failed to make a prima facie showing of an absence of material issues of fact entitling it to judgment as a matter of law. Accordingly, this Commission should deny Verizon's request that it enter judgment on the pleadings and dismiss the Joint CLEC Petition.

II. DISCUSSION

A. There is a material dispute regarding the requirements in the Joint CLEC ICAs for unbundled local switching, and whether Verizon is technically capable of providing such unbundled local switching.

7. As is clear from the Joint CLEC Petition, the CLECs ask this Commission to enforce the sections of their contracts that require Verizon to continue to provide local switching functionality to the CLECs. The ICAs that are involved in this Petition require Verizon to offer unbundled "local switching," and combinations of UNEs that include "local switching" throughout Verizon's incumbent local exchange territory in Washington. The ICAs generally define "local switching" as providing the basic switching functions to originate, route, and terminate traffic and any signaling deployed

in the switch, without exceptions for the technical functioning of the underlying switch. The following are excerpts from each of the Joint Petitioners' ICAs, where "local switching" is defined.

8. ATI's interconnection agreement requires Verizon to provide local switching without mentioning the type of switch used:

> 10.1.1 The unbundled Local Switching Element includes line side and trunk side facilities (e.g. line and trunk side Ports such as analog and ISDN line side Ports and DSL trunk side Ports) plus the features, functions, and capabilities of the switch. It consists of the line-side Port (including connection between a Loop termination and a switch line card, telephone number assignment, basic intercept, one primary directory listing, presubscription, and access to 911, operator services, and directory assistance), line and line group features (including all vertical features and line blocking options that the switch and its associated deployed switch software is capable of providing and are currently offered to Verizon's local exchange Customers), usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks), and trunk features (including the connection between the trunk termination and a trunk card).

ATI Agreement with Verizon, § 10.1.1. (Exhibit D-1 to the Petition)

9. Similar language is in UNICOM's Agreement:

> 10.1.1 <u>The unbundled Local Switching Element includes line side and trunk side facilities (e.g. line and trunk side Ports such as analog and ISDN line side Ports and DSL trunk side Ports) plus the features, functions, and capabilities of the switch.</u> It consists of the line-side Port (including connection between a Loop termination and a switch line card, telephone number assignment, basic intercept, one primary directory listing, presubscription, and access to 911, operator services, and directory assistance), line and line group features (including all vertical features and line blocking options that the switch and its associated deployed switch software is capable of providing and are currently offered to Verizon's local exchange Customers), usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks), and trunk features (including the connection between the trunk termination and a trunk card).

Section 10.1.1 of the Unbundled Network Element Attachment to UNICOM Interconnection Agreement with Verizon (See Exhibit E to Petition)(emphasis added).

10. MCI's interconnection agreement with Verizon also does not define local switching by referring to the type of switch used:

> Definition: Local Switching is the Network Element that provides the functionality required to connect the appropriate originating lines or trunks wired to the Main Distributing Frame (MDF) or Digital Signal Cross Connect (DSX) panel to a desired terminating line or trunk. Such functionality shall include all of the features, functions, and capabilities of the Verizon switch including but not limited to: line signaling and signaling software, digit reception, dialed number translations, call screening, routing, recording, call supervision, dial tone, switching, telephone number provisioning, announcements, calling features and capabilities (including call processing), CENTRANET, Automatic Call Distributor (ACD), Carrier pre-subscription (e.g., long distance carrier, intraLATA toll), Carrier Identification Code (CIC) portability capabilities, testing and other operational features inherent to the switch and switch software. Local Switching provides access to transport, signaling (ISDN User Part (ISUP) and Transaction Capabilities Application Part (TCAP), and platforms such as adjuncts, Public Safety Systems (911), operator services, directory services and Advanced Intelligent Network (AIN). Remote Switching Module functionality is included in the Local Switching function. The switching capabilities used will be based on the line side features they support where technically feasible.

MCImetro Access Transmission Services, LLC Interconnection Agreement with Verizon, Attachment 2, page 11, Section 47.1 (Exhibit F-1 to Petition)(emphasis added).

11. AT&T's interconnection agreement with Verizon (identified as GTE) contains the same definition of local switching as MCI's:

> Definition: Local Switching is the Network Element that provides the functionality required to connect the appropriate originating lines or trunks wired to the Main Distributing Frame (MDF) or Digital Signal Cross Connect (DSX) panel to a desired terminating line or trunk. Such functionality shall include all of the features, functions, and capabilities of the GTE switch including but not limited to: line signaling an signaling software, digit reception, dialed number translations, call screening, routing, recording, call supervision, dial tone, switching, telephone

> number provisioning, announcements, calling features and capabilities, CENTRANET, Automatic Call Distributor, Carrier pre-subscription, Carrier Identification Code portability capabilities, testing and other operational features inherent to the switch and switch software. Local Switching provide access to transport, signaling, and platforms such as adjuncts, Public Safety Systems, operator services, directory services and Advanced Intelligent Network. Remote Switching Module functionality is included in the Local Switching function. The switching capabilities used will be based on the line side features they support, where technically feasible.

AT&T Interconnection Agreement with Verizon, § 47.1 (Exhibit C-4 to Petition)(emphasis added).

12. Under AT&T's agreement as well as MCI's, Verizon is required to offer local switching regardless of the technology employed to the wholesale customer:

> 32.1 GTE will offer the Network Elements to AT&T on an unbundled basis at rates set forth in Attachment 14.
>
> 32.9 . . . set forth below is a list of Network Elements that AT&T and GTE have identified as of the Effective Date of this Agreement and will be offered by GTE . . . . Descriptions and requirements for each Network Element identified below are set forth in Attachment 2. The Network Elements described in Attachment 2 consist of: . . . Local Switching . . . Tandem Switching . . . .

AT&T Interconnection Agreement with Verizon, § 32 and Attachment 2 (Exhibit C-4 to Petition); MCI Interconnection Agreement with Verizon, section 32 and Attachment 2 (Exhibit F-1 to Petition).

13. The FCC's definition of unbundled local switching is consistent with the ICAs' definitions and supports the Joint Petitioners' argument that the incumbent carriers have an obligation to provide the functionality of traditional, narrowband voice service regardless of the type of technology used.

> 433. We define local circuit switching to encompass line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions and capabilities of the switch include the

> basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. In addition, we conclude that the features functions and capabilities of the local circuit switching UNE also include the same basis capabilities that are available to the incumbent LEC's customers, such as telephone, number, directory listing, dial tone, signaling, and access to 911, and, in the cases described below, operator services and directory assistance. The end office switching element includes all vertical features that the switch is capable of providing, including customer calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions. Thus when a request carriers purchase the unbundled local switching element, it obtains all switching features in a single element on a per-line basis. A requesting carrier will deploy individual vertical features on its customers' lines by designating, via an electronic ordering interface, features which the incumbent LEC must activate for particular customer lines. [3]

14. Verizon has *not* argued that it is technically infeasible to provide UNE-P over its newly installed Nortel Succession switch at the Mount Vernon central office. In fact, in its responses to MCI's data requests, Verizon admits that it is technically feasible to continue to provide unbundled switching over this switch.[4] The attached Affidavit of MCI engineer, Jeff Haltom, Exhibit A, also demonstrates that Verizon is able to provide CLECs with unbundled local circuit switching functionality over Verizon's Mount Vernon Nortel Succession switch.

15. Because the interconnection agreements require Verizon to provide unbundled local switching at the Mount Vernon central office and no dispute exists that Verizon can do so, this Commission should deny Verizon's request to dismiss the Joint CLECs' Petition. At a minimum, as discussed below, the Commission should find that Verizon has failed to demonstrate that no genuine issue of material fact exists as to

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[3] *In re Review of Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers, et al.*, cc Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand (August 21, 2003) (*TRO*) at para. 433 (citations omitted); 47 C.F.R. Section 51.319(c)(1).

[4] See Verizon Response to MCI Data Request No. 21, Attachment 2 to the Affidavit of Jeff Haltom, Exhibit A to this Response.

whether Verizon breached its ICAs with the CLECs by discontinuing unbundled switching in Mount Vernon.

16. Verizon's discussion of the contractual provisions of the Joint CLECs' ICAs is very limited. Nowhere in its Motion For Summary Determination does Verizon assert that any of the Joint CLEC ICAs specifically address packet switching. Rather, Verizon asserts that the CLECs are only entitled to the unbundled switching elements "to the extent required by Applicable Law."[5] Thus, in order to contend that the CLECs' ICAs do not require the unbundling of switching in the Mount Vernon central office, Verizon must argue as a matter of law that the switching services it provides in Mount Vernon are no longer subject to unbundling under applicable law.

17. Throughout the notice process and in its Motion, however, Verizon has merely asserted, without explanation or proof, that the services being provided in Mount Vernon are "packet switching," rather than "local switching" as used in the ICAs and as such, are not required to be unbundled under those agreements. This is a giant leap of faith or, more importantly, a huge gap in logic. Verizon has started in the middle of its argument and left out the critical technical, factual foundation for its argument.

18. Even assuming that Verizon were correct in its legal interpretation, Verizon has failed to provide any facts demonstrating that it is offering "packet switching" rather than "local switching" in Mount Vernon. As the moving party under the standards for a motion for summary determination,[6] Verizon has the burden to make a

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[5] *See for example*, Verizon Motion at para. 25.

[6] Verizon purported to bring the motion under WAC 480-07-650(d)(4), which calls for and order to be entered on the pleadings at the prehearing conference. However, no such order was entered. Accordingly, the CLECs assume that Verizon wants this treated as a motion under WAC 480-07-380 (2)(a). That rule incorporates the standards for summary judgment under the court rules, CR 56.

prima facie showing that there is an absence of material issues of fact. "In a summary judgment motion, the moving party bears the initial burden of showing the absence of an issue of material fact."[7] Likewise, as a party seeking to terminate the provision of local switching in Mount Vernon, Verizon must demonstrate that it is no longer providing local switching there. Verizon has failed to do either.

19. Verizon asserted in its June 8 Notice to the CLECs[8] that it would "replace the existing Mt. Vernon Nortel DMS-100 switch with a Nortel Succession packet switch." Verizon repeatedly refers to the "Nortel Succession packet switch" in its Notice, as though labeling a switch as a packet switch makes it so. This definitional slight of hand continues in Verizon's Motion For Summary Determination. Indeed, by the time of the Motion, the "packet switch" clause in the phrase "Nortel Succession Packet Switch" is capitalized, as though "packet switch" is part of a proper name for the Nortel Succession switch.[9] In reality, the Nortel Succession is a product family that has available multiple modules, providing various capabilities.[10] However, until very recently, after Verizon was threatened with a motion to compel, Verizon refused even to identify the actual name or series number of the new Mount Vernon switch. Instead, Verizon asserted that the identification of the specific switch is not relevant to the issues before this Commission in this proceeding.[11]

20. Focusing on the name of the new switch might be splitting hairs if it were clear that the equipment at issue in Mount Vernon is indeed providing packet switching

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[7] *Young v. Key Pharm., Inc.*, 112 Wash.2d 216, 225, 770 P.2d 182 (1989). *See also*, WAC 480-07-380(2)(a) (incorporating the summary judgment standards from Washington courts).
[8] Exhibit A to the Joint CLEC Petition for Enforcement.
[9] Verizon Motion at para. 30.
[10] See Exhibit A at paras 7, 9.
[11] See Exhibit A Attachment 3, Verizon's Supplemental Responses to MCI's Data Request No. 10.

to Verizon's CLEC and retail plain old telephone service ("POTS") customers. The opposite could also be true, however. As explained by Mr. Haltom in the attached Affidavit, the Nortel Succession switch can support both traditional circuit switching functionality and packet switching functionality.[12]

21. Verizon seems to be claiming that because the Nortel Succession switch is a "packet" switch, then all functionality supported on that switch (even circuit switching functionality) is classified as "packet switching" and need not be provided on an unbundled basis. The other possible explanation is that even though it is technically possible to deploy the Nortel Succession switch in a manner that supports end-to-end TDM circuit switching, Verizon may not have chosen to do so. Although Verizon has now identified the particular switch model that was installed in Mount Vernon, it has yet to provide this Commission with any technical details or a description of the manner in which it was deployed. Consequently, it is impossible for the Commission to verify Verizon's claim that it can no longer unbundle local switching.[13]

22. Factual information is required to determine both whether Verizon is actually providing packet switching, and whether Verizon has or could configure its Nortel switch to support the Joint CLECs' UNE-P traffic as end-to-end circuit switched TDM traffic.[14]

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[12] See Exhibit A at paras. 9-11 and 34-42.

[13] See Exhibit A at paras. 9-11 and 34-42.

[14] Exhibit A at para. 11.

23. The Joint CLEC ICAs state that Verizon shall make available to them the "local switching element" and the "tandem switching element." As demonstrated above, the ICAs, in identifying what must be provisioned to the Joint CLECs, describe capabilities or functionalities, not any particular type of switch architecture.

24. Although Verizon fails to identify the capabilities of its so-called "packet switch," it does not appear there is any dispute that the switch continues to provide all the functionalities described in the local switching provisions in the ICAs. Verizon continues to offer POTS services for resale. Moreover, Verizon's June 8 Notice reflects that Verizon "will use a trunk gateway" to interface with the Nortel soft switch "so that the existing mean of interconnection will be unchanged."[15] Thus there appears to have been no change in terms of technical interfaces between the switch and the outside world either in trunks interconnecting with other carriers or the telephone lines that serve end users existing analog phones.[16]

25. Under these circumstances, the Commission must find that a material factual dispute exists regarding whether Verizon has installed and is utilizing "packet switching functionality" in its Mount Vernon central office. Therefore, the Commission cannot enter judgment as a matter of law as requested by Verizon.

B. There is a material dispute regarding whether the Joint CLECs are requesting Verizon to "unbundle packet switching."

26. Even assuming, for sake of argument, that Verizon has installed and configured the Succession soft switch to include packet switching capabilities (which Verizon has failed to demonstrate), that still does not permit Verizon to discontinue

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[15] Exhibit A to Joint CLEC Petition for Enforcement.
[16] Exhibit A at paras. 27-32.

providing local switching to CLECs in Mount Vernon based on the FCC's Triennial Review Order ("TRO") and the other law cited by Verizon in its Motion.

27. The CLECs are not in this proceeding requesting that this Commission require Verizon to provide "unbundled packet switching." Contrary to Verizon's apparent contention, the FCC does not discuss packet "switch***es.***" Rather, it has stated that ILECs are not required to unbundle "packet switch***ing***." The FCC defines packet switching, not as a piece of hardware, but as a *functionality* by which messages *between network users* are divided into units, commonly referred to as packets, frames, or cells. These individual units are then routed *between network users*.[17] As explained above, the CLECs are not seeking this capability or functionality in this docket. Rather, the CLECs are seeking the capabilities described in the FCC's definition of "local circuit switching."

28. Thus, Verizon's claim that the Joint CLECs are seeking "unbundled packet switching" is incorrect.[18] The only way that the Joint CLECs could fairly be said to be asking for unbundled packet switching is if the CLECs were directing Verizon specifically to convert, switch or route UNE-P traffic as packets, frames or cells.[19]

29. The CLECs are not directing Verizon to use packet technology to accomplish local switching. Rather, the CLECs want Verizon to continue to provide local switching for UNE-P traffic using whatever technology Verizon chooses. As Mr. Haltom's Affidavit explains, from a technical perspective, nothing has changed in the

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[17] UNE Remand Order, ¶ 302 (emphasis added); *see also*, TRO at para. 535.
[18] Verizon Motion, at ¶ ¶ 2, 5, 6, 28, 33.
[19] Exhibit A at para. 17.

CLECs' UNE-P traffic or their request for local switching since the Nortel Succession switch was deployed. For example, the CLECs' end user customers sent, and continue to send, the same analog POTS traffic to the Succession switch that was previously carried on Verizon's circuit switch. The CLEC end user customer UNE-P traffic originates and terminates as analog POTS traffic, just as it had before Verizon installed its new switch.[20]

30. The CLECs are attempting to require only that Verizon continue to provide switching functionality for the same analog voice signals that their UNE-P customers previously handed off to Verizon. The Joint CLECs could fairly be said to be seeking unbundled packet switching only if their customers were handing off digital, packetized bit streams over the loops to the Verizon central office and asking Verizon to switch those packets or, if the CLECs were handing off analog voice signals and directing Verizon to convert the signal to packets for switching through Verizon's network.[21]

31. The issue raised in Mount Vernon is similar to that in the FCC's *AT&T* "VoIP" access charge case and the WUTC's *LocalDial* case. As both this state and the FCC held, the use of "IP in the middle" does not change the communications from a telecommunications service to an information service:

> The facts before us are closely similar in all material respects to those before the FCC in the AT&T matter. LocalDial's customers use ordinary customer premises equipment—the same equipment they use to make

[20] See Exhibit A at paras. 19-25.

[21] See Exhibit A at para. 25.

> other telephone calls—with no enhanced functionality. LocalDial's customers' calls originate and terminate on the public switched telephone network. Protocol conversions take place within LocalDial's network, as in many other companies' networks, but, insofar as LocalDial's service is concerned, there is no *net* protocol conversion from an end-user perspective. LocalDial customers' calls begin as voice on the PSTN and end as voice on the PSTN. [22]

Likewise, here, the internal "packet" architecture of the switch (if there is one) or routing of the call (if there is any) is irrelevant to the question of whether Verizon is providing local switching or packet switching under the definitions of the ICAs and the FCC's rules.[23]

32. Even if Verizon is actually carrying the CLECs' UNE-P traffic as packets for some portion of the call, such approach is entirely Verizon's decision. As discussed above, the ICAs do not dictate the technology that Verizon must use to transmit the traffic, only that the functionality be provided.

33. By describing the functionalities to be unbundled or not unbundled, the FCC's rules do not exempt Verizon from unbundling the local switching in Mount Vernon regardless of the architecture that the Nortel Succession soft switch happens to use. So long as the switch is continuing to provide local switching functions

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[22] Order No. 8, ¶ 56, UT-031472 (June 11, 2004)(footnote omitted).

[23] *See Order, In the Matter of Petition for Declaratory Ruling that AT&T's Phone to Phone Telephony Services are Exempt from Access Charges,* WC Docket No. 02-361 (rel. April 21, 2004). There the FCC highlights its view that special regulatory treatment of information services is to promote the provision of enhanced services and not to create artificial incentives for carriers to sidestep regulatory obligations that apply to traditional narrowband services. See para. 18, ". . . Although AT&T asserts that conversion to IP can produce enormous efficiencies by allowing the integrated provision of voice, data, and enhanced services, exempting from interstate access charges a service such as AT&T's that provides no enhanced functionality would create artificial incentives for carriers to convert to IP networks. Rather than converting at a pace commensurate with the capability to provide enhanced functionality, carriers would convert to IP networks merely to take advantage of the cost advantage afforded to voice traffic that is converted, no matter how briefly, to IP and exempted from access charges. IP technology should be deployed based on its potential to create new services and network efficiencies, not solely as a means to avoid paying access charges."

(i.e., connecting lines to lines),[24] the CLECs are entitled to that element under the TRO and their ICAs. The CLECs are not seeking "unbundled packet switching" under the ICAs. Rather, they are seeking continued access to local switching which Verizon is still capable of and is still providing in Mount Vernon.[25]

34. The law cited by Verizon to support its argument that it is not required to provide unbundled packet switching focuses on whether an ILEC is required to unbundle *broadband services* provided over packet switches. Contrary to Verizon's representation, it does not hold that Verizon may breach its contractual obligations to provide traditional, narrowband voice grade services simply because it has made a decision to remove its existing circuit switch entirely and replace it with a switch that may contain packet switching functionality.[26] Indeed, as Mr. Haltom's Affidavit demonstrates, Verizon could have chosen to leave in place its existing circuit switch, and to add any desired broadband capabilities by deploying the Nortel switch as an upgrade node to the circuit switch. In such instance, it is unlikely that Verizon would have mounted the claim that the existing switch was now a "packet switch" or that it could no longer provide circuit switching capabilities.[27] Verizon must not be allowed to define away its contractual obligations by blurring technical realities.

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[24] This fact appears to be undisputed. As noted above, should Verizon not make this a disputed issued of fact, summary judgment may be entered against Verizon.
[25] See Exhibit A at paras. 13-34.

[26] The Joint CLECs do not attempt in this pleading to address all of the legal arguments raised by Verizon's Motion. Instead, the Joint CLECs focus herein on the factual disputes that prevent this Commission from granting Verizon's request for summary determination. By its silence in this Response, the Joint CLECs do not intend to concede the legal arguments raised therein by Verizon.
[27] Exhibit A at paras. 35-43.

C. There is a material dispute regarding whether Verizon has OSS to support unbundled local switching on its Nortel switch.

35. Verizon states that it replaced its existing Nortel DMS-100 circuit switch with a Nortel Succession "Packet Switch" in its Mt. Vernon central office on September 10, 2004.[28] Verizon claims that because it has deployed the Nortel Succession switch, "unbundled circuit switching is no longer available in the affected wire centers."[29] Verizon further claims that even if the Nortel Succession switch could support unbundled circuit switching, Verizon could not do so because "it [Verizon] has no OSS to allow for the back office functions necessary to provision UNEs from the new packet switches and it is not obligated to build such an OSS under either the [Interconnection] agreements or federal law." [30]

36. Verizon has provided no technical information indicating what OSS it is lacking, or what efforts (if any) it would have to take to modify its existing OSS to support unbundled local switching on the Nortel Succession switch. In fact, Verizon refused to provide any information in discovery regarding any OSS changes that it has, or would need to make, to support unbundled local switching on the Nortel Succession switch. In response to discovery requests issued by MCI, Verizon claimed that "changes to its OSS, if any, relating to the switch replacement" are not relevant to this proceeding. [31] Verizon cannot hide behind its failure to provide specific factual information in

[28] Verizon Motion at paras. 29 and 34.
[29] Verizon Motion at para. 36.
[30] Verizon Motion, at ¶ 56, n.23.
[31] Attachment 1 to Exhibit A, Verizon's Responses to MCI's First Set of Data Requests, at 1-3.

response to reasonable discovery requests to argue that no factual issues exist for purposes of its motion for summary determination.

37. Nevertheless, as discussed in the Affidavit of Sherry Lichtenberg, attached as Exhibit B to this Response, Verizon's claim that it "has no OSS" and would need to "build" an OSS to support UNE-P, is incorrect from a technical standpoint. Ms. Lichtenberg explains that Verizon could support all of the OSS functions (such as ordering and billing) for unbundled local switching on the Nortel Succession switch. Ms. Lichtenberg bases this opinion in part, on the fact that Verizon's OSS currently support resale on the Nortel Succession switch. The OSS needed to support resale is virtually identical to the OSS that would be needed to support UNE-P. Thus, Ms. Lichtenberg opines, at most, Verizon would need only to make minor modifications to its OSS for resale in order to support UNE-P.[32]

38. Specifically, to support UNE-P on the Nortel Succession switch, Verizon would need to make only two minor modifications to its OSS supporting resale. First, if it has not already done so, Verizon would need to create a simple ordering code (known as a USOC) to specify the UNE-P product on the Nortel switch. Second, if Verizon has an existing USOC for UNE-P, it would need only to remove coding that it may have created in its ordering system that causes UNE-P orders for the Nortel switch to be rejected at the initial CLEC/Verizon interface. Ms. Lichtenberg discusses each of these modifications in detail in her Affidavit.[33]

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[32] Exhibit B at paras. 5-13 and 19-22.
[33] Exhibit B at paras. 11-22.

39. Because a material dispute exists as to whether Verizon can support UNE-P ordering on its Nortel Succession switch in Mount Vernon, this Commission should deny Verizon's Motion for Summary Determination and request for dismissal of the Joint CLEC Petition.

D. Verizon has failed to demonstrate that it is entitled to judgment as a matter of law with regard to its provision of local switching over its remote switches connected to the Mount Vernon central office.

40. Another fatal omission in Verizon's argument is that Verizon completely ignores the switching capabilities provided by remote switch sites. Attached to the June 8 Notice is a long list of remote switches which may well be capable of providing the local switching function as defined in the Joint CLEC ICAs. The remote switches may be capable of providing local switching functionality to customers located in the serving areas of the remotes without transiting the new Mount Vernon Succession soft switch and may even provide some vertical features and functions without accessing the host in Mount Vernon.

41. With regard to the remote switches, Verizon has not even alleged that they are based on a packet architecture. As explained above, the Commission should not focus on the architecture, but rather look to the functionality that is provided. However, if any or all of these remote switches involve traditional circuit switch architecture, then even accepting Verizon's unbundled packet switching argument as true, Verizon has no basis to deny access to the remote switching functions as UNEs. Verizon has proposed to convert all CLEC customers served by all of the remotes from UNE-P to resale without even asserting that the remote switches' architectures (let alone their functionality) come within the FCC's definition of packet switching. Thus at a minimum, this Commission

should deny Verizon's Motion with regard to the remote switches connected to the Mount Vernon central office.

III. CONCLUSION

42. In conclusion, for all the reasons set forth in this Response, the Joint CLECs respectfully request that this Commission deny Verizon's Motion for Summary Determination and reject Verizon's request to dismiss the Joint CLEC Petition for Enforcement.

Respectfully submitted this 27th day of October, 2004.

MCI

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