BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of an Amendment to the Interconnection Agreement Between Verizon Northwest Inc. f/k/a GTE Northwest Incorporated and respectively, MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. as Successor to Rhythms Links, Inc.	**)**	**Docket Nos. UT-033062, UT-043008 & UT-033063**

MCI'S RESPONSE
TO COMMENTS OF LEVEL 3 COMMUNICATIONS

WorldCom, Inc., on behalf of its regulated subsidiaries in Washington (n/k/a "MCI") responds to the comments filed by Level 3 Communications ("Level 3"). For the reasons set out below, MCI respectfully requests that the Commission approve the proposed amendment pursuant to Subsections 252(e) of the Federal Telecommunications Act of 1996, decline to address the precedential value that its order in these proceedings will have with respect to any future issues that may arise in future proceedings, and grant any and all other appropriate relief.

I. No party has objected to approval of the amendment.

1. No party that has filed comments opposes the Commission's approval of the proposed amendment to Verizon's Interconnection Agreements with MCI. Level 3's repeated statements that the amendment is "inconsistent with" federal law or "not necessarily in compliance with Section 251" or "clearly diverge[s] from . . . 251" are

simply irrelevant for the purposes of reviewing this voluntary agreement. Federal law permits carriers to negotiate "without regard" to the 251 standards. Carriers thus are free to enter voluntary, negotiated agreements.

2. The two-pronged standard for approving negotiated agreements under the Federal Telecommunications Act of 1996 only permits the Commission to reject this amendment if it (i) discriminates against other carriers, or (ii) is not consistent with the public interest. No party has pointed to one example of where the amendment violates either prong.[1]

3. Far from being inconsistent with the public interest, the amendment is in the public interest because, as Level 3 points out, resolution of disputes through voluntarily-reached arrangements is in the public interest. And, the agreement does not discriminate against other carriers, if for no other reason, because under Section 252(i) other CLECs can avail themselves of the same deal.

4. As the Commission is aware, Section 252(i) serves as a safety mechanism to protect against “sweet-heart deals.” No one is suggesting that parties cannot exercise 252(i) rights with respect to the amendment for which Verizon and MCI seek approval.

5. Moreover, the Commission is not being asked to find that the agreement is "not necessarily" in compliance with federal statutory requirements. In fact, as a matter

[1] While Level 3 states that it is not asking the Commission to reject approval of the Verizon/MCI amendment, it is quite possible to infer that Level 3 is suggesting that the amendment violates the public interest. However, Level 3 supplies no credible basis for such a conclusion.

of law, the Commission can (and must under 251(a)(1)) approve an agreement that imposes terms not *required* by section 251, so long as the agreement in question does not violate the public interest. And again, there is simply no basis to conclude that approval of the amendment violates the public interest.

6. The standard for approving a voluntary interconnection agreements or amendments thereto, does *not* require compliance with the Act or the FCC's rules. Section 252(a) permits carriers to reach arrangements voluntarily notwithstanding the requirements of Sections 251(b) & 251(c), so long as the agreement reached is not inconsistent with the public interest.

7. For the foregoing reasons, MCI respectfully urges the Commission to approve the amendments to the interconnection agreements between MCI and Verizon.

II. Reciprocal Compensation for ISP-Bound Traffic

8. MCI also provides the following input regarding comments filed by parties in this proceeding with respect to the payment of reciprocal compensation.

9. Regarding the FCC's rules on reciprocal compensation, nothing in the FCC order purports to prevent carriers from agreeing voluntarily to a reciprocal compensation rate. In fact, the FCC itself says that federal law does not *require* reciprocal compensation for ISP-bound traffic as a prospective rule. However, via a negotiated, voluntary agreement between MCI and Verizon, Verizon is willing to pay compensation for this traffic. MCI believes there are a multitude of issues still open

with respect to the treatment of reciprocal compensation. However, nothing in the FCC's order precludes Verizon from agreeing to pay reciprocal compensation for ISP-bound traffic.

III. Classification of VOIP Traffic

10. MCI also provides the following comments regarding the proper classification of VOIP traffic. With respect to the issue of charges applicable to VOIP traffic, first, the amendment as Verizon noted, is expressly tied to future federal pronouncements. With respect to the rights and obligations of MCI and/or Verizon, several portions of the amendment may stop short of, while others go beyond, the current requirements of the Act and FCC and state Commission rules. The Commission, however, does not have to determine the level of consistency between the negotiated amendment and Federal/state law. In fact, engaging in that determination is irrelevant and outside the statutorily set standard of review. More importantly, however, under the agreement, the parties are bound by future federal determinations "relating to the regulatory classification of or, compensation for, VOIP Traffic generally or any category of VOIP Traffic." The proposed amendment specifically provides as follows:

> Notwithstanding anything in this Section 2 [addressing VOIP Traffic], if, after the Effective Date, the FCC or Congress promulgates an effective and unstayed law, rule or regulation, or a court of competent jurisdiction issues an effective and unstayed nationally-effective order, decision, ruling, or the like regarding VOIP Traffic, the Parties will adhere to the relevant portions (i.e., those relating to the regulatory classification of or,

compensation for, VOIP Traffic generally or any category of VOIP Traffic) of such legally effective and unstayed rule, regulation, order, decision, ruling or the like as soon as it becomes legally effective. (Amendment, p. 7).

IV. The Issue of the Precedential Value of Approval of the Amendment is Irrelevant.

11. MCI submits that a *negotiated* (i.e., under Section 251(a)(1)) and approved agreement does not have "precedential" value in future arbitrations. The only value of such an agreement is that another CLEC may avail itself of the arrangements contained in such an agreement. Again, no one is disputing that Section 252(i) rights attach here.

V. Conclusion

12. The two-pronged standard for approving negotiated ICAs under the Act only permits the Commission to reject this amendment if it (i) discriminates against other carriers, or (ii) is not consistent with the public interest. The amendment does not violate either of these two prongs. It does not discriminate against other carriers. Far from being inconsistent with the public interest, the amendment is in the public interest because, as Level 3 points out, resolution of disputes through voluntarily-reached arrangements is in the public interest. No party has pointed to one example of where the amendment violates either prong.

13. For the foregoing reasons, MCI respectfully requests that the Commission approve the proposed amendment pursuant to Subsections 252(e), decline to address the precedential value that its order in these proceedings will have with respect to any

future issues that may arise in future proceedings, and grant any and all other appropriate relief.

Dated this 11th day of March 2004.

Respectfully submitted,

MCI

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