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April 27, 2004

VIA HAND DELIVERY

Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transporation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Re: Docket No. UT-043013 –
Response of Verizon Northwest Inc. to Collective Motions to Dismiss

Dear Ms. Washburn:

Enclosed please find an original and six (6) copies of ***Response of Verizon Northwest Inc. to Collective Motions to Dismiss*** along with original and six of ***Affidavit of Stephen A. Kanitra***; ***Affidavit of Anthony M. Black***; ***Affidavit of Stephen C. Hughes***; ***Affidavit of John Peterson***; ***Affidavit of Michael A. Daly*** and ***Certificate of Service*** in the above-referenced matter.

Very truly yours,

Timothy J. O'Connell

Enclosures

cc: Parties of Record

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment for Interconnection Agreements of VERIZON NORTHWEST INC. with COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON Pursuant to 47 U.S.C. Section 252(b), And the *Triennial Review Order*	Docket No. UT-043013 VERIZON'S RESPONSE TO MOTIONS TO DISMISS

Verizon Northwest Inc. ("Verizon") hereby responds to the motions to dismiss filed in this action by the "Competitive Carrier Coalition" (composed of Focal Communications Corp. of Washington, Allegiance Telecom of Washington, Inc., DSLnet Communications, LLC, Integra Telecom of Washington, Inc., ICG Telecom Group, Inc., and McLeod USA Telecommunications Services, Inc.) (the "Coalition"), and Priority One. Verizon also responds to Sprint Communications Company L.P. ("Sprint"), to the extent its Response to Verizon's Petition renews or recasts the arguments for dismissal Sprint made in its earlier Motion to Dismiss (to which Verizon has responded). None of these parties presents any valid reason for delaying or dismissing any aspect of this proceeding.[1]

[1] T-Mobile USA Inc. did not file a motion to dismiss but has asked to be voluntarily dismissed as a party to the case because it does not buy UNEs from Verizon. Verizon has offered T-Mobile a proposed stipulation of dismissal and will file the stipulation with the Commission at such time as it is completed.

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First, Sprint, the Coalition and Priority One argue that the § 252 timetable does not apply here, either because it does not apply to interconnection agreements that have change-in-law provisions, or because Verizon as an incumbent was not allowed to initiate negotiations, or because it should not apply at all. All these arguments fail. The FCC clearly held that the § 252 timetable should apply to negotiations and arbitrations, even where the underlying agreement has a change-in-law provision. It also clearly held that incumbents are allowed to begin this process.

Second, various parties argue that Verizon failed to start negotiations with its October 2, 2003 letter to all competitors. But this letter could not have been clearer that Verizon intended to amend its interconnection agreements to conform to the *Triennial Review Order*.[2] The FCC itself expected no less, and these competitors are simply trying to evade the requirements of federal law.

Third, Sprint and the Coalition argue that Verizon failed to comply with the procedural and formal requirements of § 252(b), or with similar requirements of Washington law. However, Verizon filed its petition within the window established in the *Triennial Review Order*, which is derived from the timetable established for interconnection agreement negotiation and arbitration under § 252(b). Moreover, Verizon's petition conforms to all applicable formal requirements of § 252(b). In any event, the Commission should reject an invitation to apply the provisions of § 252(b) and its procedural rules in an overly rigid manner, in light of the unique circumstances of this case.

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[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part and remanded, United States Telecomm. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

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Fourth, opposing parties argue that Verizon's petition is premature because the Bell Atlantic/GTE merger conditions require Verizon to provide UNEs until the *Triennial Review Order* is final and unappealable. But the merger conditions were effective for only three years, which means they terminated no later than July 2003. Moreover, by their express terms, the specific condition on which the CCC relies applies only to two earlier FCC orders, not to the *Triennial Review Order*. As the Rhode Island arbitrator recently held, these merger conditions expired of their own accord, and have no effect here.

Fifth, the Coalition asks the Commission to dismiss or strike Verizon's update to its Petition in light of the D.C. Circuit's *USTA II* decision. The Coalition fails to recognize that Verizon's updated Amendment will accommodate potential legal developments, including the possibilities that *USTA II* will be stayed or reversed.

Sixth, the Coalition asserts that the Commission should dismiss Verizon's petition to the extent it concerns routine network modifications because this issue is "not a product of a change of law." *See* Coalition Motion to Dismiss at pp. 2, 35 n.39. But, as explained below, the FCC never asserted that its prior rules required incumbents to perform routine network modifications.

Seventh, Sprint and the Coalition assert that this Commission should, in essence, invent a new procedural schedule for resolving this proceeding. These arguments are unfounded, and the parties present no authority that would allow the Commission to impose a brand-new procedural form at the beginning of a proceeding.

For these reasons, and as set forth in greater detail below, the motions to dismiss should be denied.

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I. The Process Established by the FCC in the *Triennial Review Order* Is Mandatory

In Part VIII.D of the *Triennial Review Order*, the FCC established that the timetable set forth in 47 U.S.C. § 252(b) – which governs the arbitration of new interconnection agreements under the Act – also applies to amending interconnection agreements with respect to any of the *TRO*'s unbundling requirements and limitations that are not self-effectuating. Thus, the FCC stated that "incumbent and competitive LECs [should] use section 252(b) as a default timetable for modification of interconnection agreements that are silent concerning change of law and/or transition timing." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703.[3] Contrary to the insistence that § 252 timetable does not apply to agreements with a change-in-law provision, *see* Coalition Motion at p. 2, the FCC made clear that the timing set forth in § 252(b) applies "even in instances where a change of law provision exists." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 704. As a result, the FCC noted that, in all such cases, "a state commission should be able to resolve a dispute over contract language at least within the nine-month timeframe for new contract arbitrations." *Id.* at 17406, ¶ 704.

Although the FCC adopted the section 252(b) timetable for the amendment process, it did not say that all of the procedural requirements that govern the arbitration of *new* interconnection agreements would apply to proceedings to amend *existing* interconnection agreements. The FCC made clear that the Act's timeframe for negotiation and arbitration "would commence immediately" upon the request for a contract change "by either party." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 704. As the FCC explicitly said, "Although section 252(a)(1) and

[3] As the FCC stated, "under the section 252(b) timetable, where a negotiated agreement cannot be reached, parties would submit their requests for state arbitration as soon as 135 days after the effective date of this Order but not longer than 160 days after this Order becomes effective." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. The *TRO* became effective on October 2, 2003; Verizon filed its petition within the 135-160 day window, on February 26, 2004.

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section 252(b)(1) refer to requests that are made *to* incumbent LECs, we find that in the interconnection amendment context, either the incumbent or the competitive LEC may make such a request, consistent with the parties' duty to negotiate in good faith pursuant to section 251(c)(1)." *Id.* at 17405, ¶ 703 n. 2085. No movant cites any authority that would allow this Commission to overturn the FCC on this point.

This makes sense because the FCC *de-listed* several UNEs in the *TRO* in the hope of spurring facilities-based investment,[4] meaning that CLECs using these UNEs might lack an incentive to negotiate promptly in cases where the de-listing is not self-effectuating under an interconnection agreement. If, in such cases, incumbent LECs were forced to wait for CLEC requests to negotiate – which may never come – amendments to reflect the de-listings pursuant to the *TRO* might be delayed for months or even years under any agreements with respect to which such de-listings are not self-effectuating. That result would "have an adverse impact on investment and sustainable competition in the telecommunications industry." *Id.*, ¶ 703.

The process established by the FCC is binding federal law. Because Verizon has complied with the FCC-mandated process, this Commission has the responsibility, under the Act and the *TRO*, to resolve disputed issues presented by Verizon's petition in accordance with that timeline. *See Triennial Review Order*, 18 FCC Rcd at 17405-06, ¶¶ 703-704. Priority One claims the FCC's statements regarding the contract amendment process are "pure dicta" and "ineffective." *See* Priority One Motion at p. 12. But these FCC statements are not just gratuitous remarks—they are clear and specific directions for carriers to follow to amend their

[4] *See, e.g., Triennial Review Order*, 18 FCC Rcd at 17132-33, ¶ 255 (removing the obligation to unbundle the high-frequency portion of the copper loop for competitors desiring to provide broadband services over incumbent LECs' facilities).

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interconnection agreements. The FCC did not attempt to change the Act; rather, it simply opted to use the section 252(b) timetable as an off-the-shelf guide rather than devising a *TRO*-implementation scheme from scratch. Movants have cited no authority for the proposition that this scheme for implementing the *TRO* is unlawful. The Act is silent as to the procedures for arbitrating amendments to existing interconnection agreements, and the FCC's interpretation of the Act is therefore entitled to deference. *See Chevron U.S.A., Inc. v. Natural Res. Defense Council*, 467 U.S. 837, 843 (1984). Moreover, substantive challenges to the lawfulness of FCC orders are foreclosed outside of the context of direct appeals pursuant to the Hobbs Act. *See* 28 U.S.C. §§ 2342, 2344; *ICC v. Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 285-86 (1987) (stating that a claim that the ICC's order was unlawful "should have been sought many months earlier, by an appeal from the original order."); *U.S. West Comm. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1120 (9th Cir. 1999) ("The FCC order is not subject to collateral attack in this proceeding. The Hobbs Act grants exclusive jurisdiction to courts of appeals to determine the validity of all final orders of the FCC. An aggrieved party may invoke this jurisdiction only by filing a petition for review of the FCC's final order in a court of appeals naming the United States as a party"). Thus, even if movants could somehow overcome *Chevron* deference, it is too late in the day to challenge the lawfulness of the *Triennial Review Order*.

II. The FCC's Amendment Process Applies to Contracts With or Without Change-of-Law Provisions

Sprint and the Coalition contend that Verizon's petition should be dismissed because it failed to follow the contractual change-in-law provision. *See, e.g.*, Coalition Motion at pp. 2, 35 n.39.

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First, *USTA II* upheld almost all aspects of the *Triennial Review Order* that cut back on unbundling requirements. Besides, it is black-letter law that a regulation is effective unless and until it is stayed or vacated, and nothing in the Interconnection Agreement prohibits a party from implementing a regulatory order until that order has been upheld on appeal.[5]

Even if the Interconnection Agreement had any such provision, the FCC preempted all such provisions of interconnection agreements. See *Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705 (holding that any change-of-law provision relying on "final and unappealable [judicial] orders" should be deemed satisfied when the original *USTA* decision was final or the *TRO* took effect) (alteration in original). As the Rhode Island arbitrator found, arguments for dismissal for failure to follow change-of-law provisions are "not persuasive," because "the FCC's TRO indicated that an ICA arbitration is appropriate 'even in instances where a change of law provision exists.'"[6]

Second, no CLEC can reasonably deny that it was unaware of Verizon's intent to enter into negotiations for amendments to the Interconnection Agreement, and that such negotiations commenced on October 2, 2003. Verizon provided written notice of the *TRO* and the commencement of negotiations to amend the Interconnection Agreement, when Verizon delivered its October 2, 2003 notice entitled "NOTICE OF DISCONTINUATION OF

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[5] The fact that an appeal is pending provides no grounds for delaying implementation of currently effective FCC regulations. For the very same reasons, the Commission first adopted the total element long run incremental cost ("TELRIC") pricing methodology shortly after the initial 1996 FCC order implementing the Telecommunications Act – despite the pendency of appeals regarding the lawfulness of those TELRIC rates. At no time did the competitive carriers then argue that such TELRIC rates should not be adopted because of the putative "uncertainty" on appeal. Nor did Verizon seek to avoid its obligations under then applicable FCC rules, even though it fundamental disagreed – then and now – with the hypothetical costing principles underlying the TELRIC methodology.

[6] Procedural Arbitration Decision, Petition for Verizon-Rhode Island for Arbitration, Dkt. 3588, Rhode Island Public Utilities Comm'n, at 5 (April 6, 2004) ("*Rhode Island Order*").

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UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT" (the "October 2 Notice")[7]. Once Verizon gave all parties notice that negotiations had commenced, these parties had the obligation to respond to Verizon's proposed amendments.[8]

The movants cannot claim not to have understood that the October 2 Notice was an invitation to engage in negotiations with Verizon to amend the Interconnection Agreement. The October 2 Notice could not have been any clearer in making available an amendment and inviting all parties to engage in negotiations with Verizon by stating that:

> In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment.
>
> **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**
>
> Verizon' proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.
>
> Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@Verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's

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[7] *e.g.*, attached to Peterson Affidavit filed herewith.

[8] Moreover, the FCC specifically held that "a party cannot contend that the negotiation time period did not begin because another party failed to send a request for negotiation." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703 n.2088. This is because the *TRO* states that "negotiations will be deemed to commence upon the effective date of this Order." *Id.* Verizon explained this aspect of the TRO in its October 2, 2003 notice to CLECs.

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> address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.
>
> Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

October 2 Notice at 2 (emphasis in original).

In response to virtually identical notices, some CLECs engaged in negotiations with Verizon regarding the terms of that amendment. Sprint admits that it "contacted Verizon to discuss changes to the draft amendment." *See* Sprint Motion at p. 6. Many CLECs have chosen *not* to respond to Verizon's invitation to negotiate the terms of Verizon's draft amendment. Verizon specifically noted that "*either* party may request the state regulatory commission to arbitrate the terms of the contract amendment." October 2 Notice at 2 (emphasis added). There is nothing more Verizon could have done to make clear its intent both to take advantage of the *TRO*'s changes, and to request arbitration from this Commission in the event that negotiations with the various CLECs left unresolved issues. The Commission should enter an order finding that all of the remaining CLECs failed to negotiate in good faith.

Finally, after the CLECs refused to negotiate an amendment to the Interconnection Agreement during the prescribed statutory period , Verizon had the right to file the Petition with the Commission. Nothing in the Interconnection Agreement requires Verizon (or any party) to use the dispute resolution process *before* filing an appropriate petition with this Commission. In fact, that result would be contrary to the Act and the FCC's procedural instructions in the *TRO*. Neither the interconnection nor anything else required Verizon to undertake any other dispute resolution procedures before doing so.

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III. Verizon's Petition Substantially Complies with the Applicable Requirements of § 252(b) and State Law — Neither of Which Should Be Rigidly Applied in These Unique Circumstances

A. Verizon Complied With Section 252(b)

Sprint and the Coalition also claim that Verizon failed to satisfy the elements of § 252(b)(2)(A), which requires the petitioning party to "provide the State commission all relevant documentation concerning — (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties." *See, e.g.*, Sprint Motion at pp. 7-8; Coalition Motion at pp. 6-10.

As explained above, the requirements that apply to a petition for arbitration of a *new* agreement under § 252(b)(2) do not necessarily apply to Verizon's petition to *amend* existing agreements. The FCC has held that the "section 252(b) *timetable*" and negotiation process applies,[9] but it never held that a petition seeking resolution of disputes over amendments with respect to the *Triennial Review Order* would necessarily have to comply with all of the formal requirements of a petition for arbitration of a brand new agreement.

Even assuming that the technical requirements of § 252(b)(2) do apply, however, Verizon has complied with those requirements in light of the circumstances of this proceeding. Verizon has set forth the issues presented by its draft amendment and has explained its position in detail. Because Verizon has initiated a consolidated proceeding, it has not been possible to describe "the position of each of the parties" on the "unresolved issues." Verizon has generally received little in the way of response to its proposal. As indicated in the attached affidavits, many of the parties did not respond and state their positions regarding Verizon's proposed amendment during the

[9] *Triennial Review Order*, 18 FCC Rcd at 17405-06, ¶¶ 703-704 (emphasis added).

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period of almost five months between the date on which Verizon offered its amendment and the date on which Verizon filed its consolidated arbitration petition in accordance with the TRO-mandated arbitration window.

Of the six Coalition members, for example, *none* offered a counterproposal to Verizon's proposed amendment prior to Verizon's filing of its arbitration petition. Peterson Aff. at ¶ 6; Kanitra Aff. at ¶ 5; Black Aff. at ¶ 6. Integra and Winstar similarly failed to offer any counterproposal. Black Aff. at ¶¶ 7, 12, 15; Peterson Aff. at ¶ 6. Most of the responses that Verizon received did not represent serious efforts at negotiation and arrived very late in the process. For example, two Coalition members – McLeod and ICG – having delayed for more than five months, offered counterproposals *after* Verizon filed its consolidated arbitration petition. Kanitra Aff. at ¶ 5; Black Aff. at ¶ 6. Under these circumstances, Verizon was simply unable to set forth other parties' position on the various issues.[10] The Commission should not reward such parties for an alleged procedural defect in Verizon's petition that is of their own making, or for their failure to negotiate in good faith. As this Commission is aware, each of the parties will have an opportunity in its response to Verizon's petition to set forth its own position on each of the issues in its own words. Indeed, several parties have already responded to Verizon's petition and set forth their positions in detail. Verizon has thus complied with the purpose behind § 252(b)(2), which is to set forth the disputed issues that the Commission may be called upon to resolve.

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[10] *See also*, Affidavit of Anthony M. Black at ¶¶ 8-15 (describing CCG's delay and unreasonableness); Affidavit of John Peterson at ¶¶ 6-7 (describing failures of CCC members to negotiate); Affidavit of Stephen Kanitra at ¶¶ 5-7 (describing McLeod's delay and failure to negotiate during the TRO-mandated arbitration window); Affidavit of Michael A. Daly at ¶ 6 (describing AT&T's failure to negotiate); Affidavit of Stephen Hughes at ¶¶ 6-11 (describing history of negotiations with Sprint).

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IV. The Bell Atlantic/GTE Merger Does Not Prevent Implementation of the *Triennial Review Order*

The Coalition also argues that Verizon's Petition should be dismissed because "Verizon has an independent legal obligation pursuant to the Bell Atlantic/GTE Merger Conditions to offer UNEs." Coalition Motion at p. 2.[11] This argument is wrong. Under the plain terms of the *BA/GTE Merger Order*, Verizon's obligation to provide UNEs in accordance with the terms of the *UNE Remand Order*[12] and *Line Sharing Order*[13] was limited in two ways. First, that obligation expired as soon as there was "a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by [Verizon] in the relevant geographic area." *BA/GTE Merger Order*, 15 FCC Rcd at 14316, App. D ¶ 39. Second, all of the merger conditions expired "36 months after the Merger Closing Date" except "where other termination dates are *specifically established* herein." *Id.* at 14331, App. D ¶ 64 (emphasis added). Any obligations to provide UNEs in accordance with the terms of the *UNE Remand Order* and *Line Sharing Order* have expired under both of these provisions.

A. The Merger Conditions Have Expired Because the D.C. Circuit's Decision in *USTA I* Is Final and Non-Appealable

The Coalition argues that the merger conditions have not expired under the first provision because the *TRO* is a "subsequent proceeding" and, therefore, that because the *TRO* is not yet

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[11] *See* Memorandum Opinion and Order, *GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032 (2000) ("*BA/GTE Merger Order*").

[12] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted, United States Telecomm. Ass'n v. FCC*, 290 F. 3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

[13] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), *vacated and remanded, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), cert. denied, 123 S. Ct. 1571 (2003).

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"final and non-appealable," Verizon still must provide CLECs with access to the UNEs required in the vacated *UNE Remand Order* and *Line Sharing Order*. *See* Coalition Motion at p. 3. In essence, the Coalition argues that Verizon agreed to provide UNEs in accordance with the requirement of the *UNE Remand Order* and the *Line Sharing Order* not only until the requirements of those orders were set aside by a final, non-appealable judicial order, but also until the conclusion of any appeals of any "subsequent proceeding" that might occur after those orders were vacated.

This argument ignores the clear terms of the *BA/GTE Merger Order* and the FCC's holding in the *TRO*. Paragraph 316 of the merger order states that the obligation to provide those UNEs lasts only "until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory." *BA/GTE Merger Order*, 15 FCC Rcd at 14180, ¶ 316. Similarly, the merger condition itself states clearly that "[t]he provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable [FCC] orders in the UNE Remand and Line Sharing proceedings, respectively." *Id.* at 14316, App. D, ¶ 39. Both the *UNE Remand Order* and *Line Sharing Order* were vacated by the D.C. Circuit in the first *USTA* decision: *United States Telecomm. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"), *cert. denied*, 538 U.S. 940 (2003). Because *USTA I* took effect on February 20, 2003 and *certiorari* was denied on March 24, 2003, that decision constitutes a final and non-appealable judicial decision that the prior UNE rules had no force and effect. At that point, as the FCC itself has held, "the legal obligation [to provide access to UNEs and UNE combinations] upon which . . . existing interconnection

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agreements are based . . . no longer exist[ed]." *Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705. That is, when the Supreme Court denied certiorari in *USTA I*, there was a "final and non-appealable judicial decision that determine[d] that [Verizon] [was] not required to provide" UNEs in accordance with the terms of the *UNE Remand Order* or *Line Sharing Order*.

This is precisely what the FCC's Common Carrier Bureau has already ruled in analogous circumstances. It held that, with respect to the same condition on which the CCC relies, "[t]he *Merger Conditions* require Verizon's incumbent local exchange carriers . . . to comply with certain [FCC] rules 'until the date of any final and non-appealable judicial decision' concluding the litigation concerning those rules by invalidating them." Letter Clarification, *BA/GTE Merger Order*, 15 FCC Rcd 18327, 18328 (2000) (footnote omitted). Thus, if the Supreme Court were to vacate the FCC's TELRIC rules, the Bell Atlantic/GTE merger conditions "would not independently impose an obligation to follow any finally invalidated pricing rules." *Id.* Likewise, here, the *UNE Remand Order* and the *Line Sharing Order* have been "finally invalidated," and the *BA/GTE Merger Order* imposes no independent obligation to follow those rules.[14]

Notably, in accordance with the terms of the *BA/GTE Merger Order*, an independent auditor has verified in its report to the Commission that the obligations imposed under paragraph 39 of the merger conditions expired on March 24, 2003.[15] One would think that if the CCC

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[14] Far from over-riding the clear limitation on Verizon's obligations, the reference to "subsequent proceedings" in paragraph 316 provides an *additional limitation* on the potential length of Verizon's obligation. Even if the D.C. Circuit had never vacated the *UNE Remand Order* and *Line Sharing Order*, the Merger Conditions make clear that where a subsequent FCC order on any subject within the scope of paragraph 39 became final, that too would put an end to the corresponding obligation under the Merger condition. The issue is academic, however, because *USTA I* was a final, non-appealable decision that put an end to any obligation under this provision.

[15] *See* Letter from Deloitte and Touche LLP to Marlene H. Dortch, FCC, CC Docket 98-184 (FCC filed Oct. 17, 2003); see also *BA/GTE Merger Order*, 15 FCC Rcd at 14328, ¶¶ 56(d) ("The independent auditor may

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members really believed that their argument is valid, they would have disputed the auditor's determination before the FCC. Yet none of the CCC's members did so.

B. The Merger Conditions Have Expired Pursuant to the Sunset Provision

Second, the merger condition on which the Coalition relies — like virtually *all* of the conditions in the *BA/GTE Merger Order* — expired of its own force in July 2003, 36 months after the Bell Atlantic-GTE merger closed. The merger conditions contain a sunset clause, which provides that, with limited exceptions not relevant here, "*all* Conditions set out in th[e] [Order] . . . *shall cease to be effective and shall no longer bind Bell Atlantic/GTE in any respect* 36 months after the Merger Closing Date." *BA/GTE Merger Order*, 15 FCC Rcd at 14331, ¶ 64 (emphases added). Because the merger closed in July 2000, virtually all of the conditions, including the one on which the movants rely, ceased to be effective no later than July 2003.

The Coalition might believe that the sunset provision is inapplicable because it does not apply "where other termination dates are *specifically established*" by the Merger Order. *BA/GTE Merger Order*, App. D, 15 FCC Rcd at 14331, ¶ 64 (emphasis added). But that exception does not apply here. Paragraph 39 does not establish a "specific" termination date. Instead, that paragraph refers to *events* that could (and did) bring Verizon's obligations to an end before the expiration of the 36-month period. As the arbitrator in the Rhode Island *TRO*-implementation proceeding recently held, the "specific date" exception to the sunset provision does not apply because "a specific future event is not a specific date." Rhode Island Arbitration Order at 19.

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verify [Verizon's] compliance with these Conditions through contacts with the [FCC], state commissions, or [CLECs]"); *id.*, ¶ 56(e) ("The independent auditor's report shall be made publicly available.").

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The Commission should therefore conclude, like the Rhode Island Public Utilities Commission, that "the sun has set on [Verizon's] obligation to provide UNEs under the Bell Atlantic/GTE Merger Order." *Id.*

C. The Argument Advanced by the Movants Is Nonsensical

The argument advanced by the Coalition makes no sense. The Coalition insists that even in the face of a judicial order squarely holding that a UNE obligation is unlawful, the Merger Conditions would require Verizon – and no one else – to continue to provide that UNE indefinitely, so long as the FCC continued to hold proceedings with respect to any issue addressed in the *UNE Remand Order* and *Line Sharing Order*. Moreover, the Coalition insists that this is true even in cases where the FCC itself has repudiated a particular obligation as harmful to consumers, so long as any proceeding or appeal arising from the FCC's efforts to adopt lawful unbundling rules remains pending. *See, e.g.*, Coalition Motion at p. 4. It simply cannot be correct that the Merger Conditions were intended to preserve anti-competitive provisions in earlier FCC orders that were vacated by the courts and subsequently repudiated by the FCC.

Indeed, the pro-consumer benefits of removing certain unbundling obligations are precisely why the FCC made clear that the provisions in the *TRO* must be implemented now. *See Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705 (stating that it would be "unreasonable and contrary to public policy to preserve our prior rules for months or even years pending any reconsideration or appeal of this Order"). The FCC emphasized that *any* delay in implementing the *TRO* would "have an adverse impact on investment and sustainable competition in the telecommunications industry." *Id.* at 17405, ¶ 703. There is no basis for perpetuating a set of

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UNE obligations that were struck down in a final and non-appealable decision nearly two years ago (*USTA I*). Indeed, as the Rhode Island arbitrator found, even if the merger condition at issue had not sunset, it was implicitly repealed by paragraph 705 of the TRO, which preempted interpretations of contract change-of-law provisions that might delay amendment of agreements until all appeals of the TRO were final and non-appealable.[16]

V. The Law Is Not Uncertain, and Prompt Implementation of the *Triennial Review Order* Is Critical

Sprint and the Coalition claim that the law is too uncertain to proceed. The Coalition claims that this proceeding would waste administrative resources, because the "law on which the Petition purports to be based is still undetermined." Coalition Motion at p. 10. It points to the fact that the D.C. Circuit vacated portions of the *Triennial Review Order*, that Verizon has filed a modified version of its *TRO* amendment, and that Verizon has requested state commissions to abate their nine-month *Triennial Review Order* implementation proceedings. *Id.*

But the D.C. Circuit's decision in *USTA II* provides no basis for deferring this proceeding. *USTA II* did not affect the process the FCC expected carriers to use to make appropriate changes to their interconnection agreements in response to the *TRO*. The FCC directed carriers to use the timeline established in § 252(b), and the Commission has the responsibility to resolve disputed issues presented by Verizon's petition in accordance with that timeline. *See Triennial Review Order*, 18 FCC Rcd at 17405-06, ¶¶ 703-704.

Moreover, although the D.C. Circuit vacated certain portions of the *TRO*, many of the FCC's rulings (and, in fact, all or almost all of the FCC's rulings delisting UNEs) were left in place by the court's decision, either because the court upheld the relevant rules or because they

[16] *Rhode Island Arbitration Order*, at 13.

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were not challenged in the first place. There is thus no need to wait for the outcome of the D.C. Circuit's decision before amending interconnection agreements to reflect these rulings, to the extent that they are not self-effectuating. Indeed, the FCC specifically anticipated that some parties might argue that the new rules contained in the *TRO* should not be implemented until all appellate challenges were exhausted, and it rejected that argument. *See id.* at 17406, ¶ 705.

The *TRO* decisions that remain effective under *USTA II* are of critical importance. Those *TRO* decisions include those where the FCC:

- Determined that the broadband capabilities of hybrid copper-fiber loops and fiber-to-the-home facilities are not subject to unbundling.
- Eliminated the obligation to provide line sharing as a UNE and adopted transitional line-sharing rules.
- Eliminated unbundling requirements for OCn loops, OCn transport, entrance facilities, enterprise switching, and packet switching.
- Eliminated unbundling requirements for signaling networks and virtually all call-related databases, except when provisioned in conjunction with unbundled switching.
- Required ILECs to make routine network modifications to unbundled transmission facilities.
- Eliminated unbundled access to the feeder portion of the loop on a stand-alone basis.
- Required ILECs to offer unbundled access to the network interface device (NID) on a stand-alone basis.
- Found that the pricing and UNE combination rules in § 251 do not apply to portions of an incumbent's network that must be unbundled solely pursuant to § 271.

Interconnection agreements should promptly be amended to reflect the *TRO* rulings that remain effective under *USTA II*. The fact that some other aspects of the *TRO* were vacated or remanded (*e.g.*, those concerning mass-market switching and high-capacity facilities) is no reason to dismiss this arbitration. Verizon's proposed Amendment accommodates any further legal developments, including those that may result from the D.C. Circuit's decision and possible subsequent appellate and FCC actions. Thus, there is no need to delay this proceeding as to any aspect of Verizon's proposed Amendment.

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The Coalition's effort to delay the implementation of the requirements of the *TRO* is directly contrary to the FCC's explicit determination that the new unbundling requirements – and particularly the newly enacted *limitations* on unbundling – must be implemented promptly. The FCC held "that delay in the implementation of the new rules we adopt in this Order will have an adverse impact on investment and sustainable competition in the telecommunications industry." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. No party challenged the FCC's determinations in this regard on review. The proceeding that Verizon has initiated is of critical importance to the realization of the 1996 Act's pro-competitive purposes. Given this Commission's strong endorsement of those pro-competitive goals, this proceeding should be of the highest priority.

Although both Sprint and the Coalition refer to an order of the North Carolina Utilities Commission ("NCUC") holding in abeyance the proceeding that Verizon initiated in that state, and to aletter of the Maryland PSC rejecting Verizon's proceeding in that state, *see, e.g.*, Sprint Motion at p. 9; Coalition Motion at p. 9, 11, the determinations of those two state commissions do not support the motions to dismiss. First, these parties fail to acknowledge that, in approximately twenty other states, proceedings to amend existing interconnection agreements are underway and have not been dismissed. Second, both the NCUC and the Maryland PSC acted as they did in large measure because they erroneously concluded that the D.C. Circuit's decision in *USTA II*, which vacated the *TRO* in part, warranted at least a delay in acting on Verizon's petition. As discussed above, however, the fact that certain aspects of the *TRO* (in particular, that state commissions would make impairment determinations) have been vacated provides no basis to postpone the task of amending interconnection agreements to reflect the *TRO*'s

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limitations on unbundling, which were upheld essentially in their entirety in *USTA II*. To be clear, through this Amendment, Verizon seeks to memorialize the portions of the *TRO* that were *upheld* by the D.C. Circuit. Verizon is therefore seeking reconsideration of the Maryland PSC's decision and asking to lift the NCUC's stay.

VII. The Commission Should Not Dismiss the Petition as to Routine Network Modifications

The Coalition argues that Verizon should not be able to recover its costs for routine network modifications and that Verizon should not be able to recover any amounts for modifications previously performed even after Verizon's proposed rates (or any other rates) are approved by the Commission. *See* Coalition Motion at pp. 14-15. It claims that the *TRO* "did not establish new law," but rather "clarified that Verizon's refusal to perform such modifications violated existing law." *Id.* at 14 (citing *Triennial Review Order*, 18 FCC Rcd at 17377, ¶ 639 n.1940). But the *TRO*'s requirement that incumbent LECs undertake routine network modifications to UNEs is a *new* legal requirement.[17] Under the old rule, Verizon did not have to undertake these modifications *at all*, much less provide these services for free. The CLECs therefore must amend their interconnection agreements to incorporate the terms, conditions, and rates upon which Verizon will provide these services.[18]

---

[17] Verizon, of course, was previously required to remove bridge taps and load coils from loops to facilitate line sharing, and some interconnection agreements already contain the terms, conditions, and rates upon which Verizon is required to perform these limited activities. The *TRO*, however, significantly expanded the list of activities that Verizon is required to perform, so as to include installation activities, modifications to interoffice transport facilities, modifications to dark fiber facilities, and other activities.

[18] To the extent that CLECs may claim that they are entitled to routine network modifications under their existing interconnection agreements, this proceeding is not the proper vehicle for a Commission decision on such issues. Moreover, the Commission may not issue a generic interpretation of the different change-of-law provisions in various interconnection agreements. *Pacific Bell v. Pac-West Telecomm., Inc.*, 325 F.3d 1114, 1125-26 (9th Cir. 2003).

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Until such time as both parties are contractually bound by such terms, conditions, and rates, Verizon should not be required to provide these services. And in no event may Verizon be required to provide these services free of charge. If the Commission were inclined to require Verizon to perform these services in the absence of final rates, then the Commission should apply Verizon's proposed rates until any such time as the Commission may determine that a different rate should apply.

VIII. The Commission Should Not Alter the FCC's Mandatory Procedures

The Coalition has asked the Commission to enter a "standstill order," which would compel Verizon to provide access to its network elements under the FCC's prior unbundling rules until the FCC's new unbundling rules are eventually memorialized in Commission-approved interconnection agreements. Coalition Answer at p. 4. The Coalition essentially asks that the Commission render a blanket determination that the UNEs de-listed in the *TRO* must be provided under existing interconnection agreements until the conclusion of this proceeding – even if existing interconnection agreements might permit Verizon to cease providing the de-listed UNEs.

This argument must be rejected. The 1996 Act precludes the Commission from issuing a blanket determination that de-listed UNEs must be provided under existing interconnection agreements. "By promulgating a generic order binding on existing interconnection agreements without reference to a specific agreement or agreements," the Ninth Circuit held, the Commission would be "act[ing] contrary to the Act's requirement that interconnection agreements are binding on the parties." *Pacific Bell*, 325 F.3d at 1125-26. A standstill order – which would be tantamount to a determination in a generic order that change-of-law provisions

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may not be utilized to implement the new unbundling rules – would fly in the face of this decision.

IX. CLEC Claims Regarding Their Individual Negotiations with Verizon Are Wrong.

In its Petition, Verizon pointed out that "virtually none" of the CLECs provided a timely response to Verizon's October 2, 2003 notice initiating negotiations. Yet some CLECs allege that Verizon failed to negotiate, and argue for dismissal on that basis. These arguments are wrong, and the Commission should not dismiss this proceeding based on false statements or slanted views of the facts.

In its Response to Verizon's Petition, Sprint again claims, as it did in its Motion to Dismiss, that Verizon did not negotiate in good faith. Sprint attempts to support this claim with the Affidavit of John S. Weyforth, attached to Sprint's Response. Verizon incorporates herein the arguments and responses made in Verizon's Response to Sprint's Motion to Dismiss, and provides a definitive rebuttal to Mr. Weyforth's affidavit with the attached Affidavit of Stephen Hughes, Verizon's lead negotiator with Sprint. Sprint's allegation that Verizon did not negotiate in good faith is nothing more than a complaint that Verizon did not accept Sprint's proposed changes to its Amendment. But a party's refusal to make concessions does not demonstrate anything other than a disagreement, not a refusal to bargain. *NLRB v. McClatchy Newspapers, Inc.*, 964 F.2d 1153, 1165 (D.C. Cir. 1992); *Barry-Wehmiller Co.,* 271 NLRB 471, 472 (1984)(the NLRA's obligation to bargain in good faith does not "compel either party to agree to a proposal or require the making of a concession.").

The Coalition claims that "members of the Coalition in this state. . . were timely in providing redlines of Verizon's amendment back to Verizon." This claim is false. Verizon has

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reviewed all available records, including a TRO-specific spreadsheet (which summarizes the status of requests for negotiation) and our contract database (which houses all requests for negotiation that Verizon has received). As stated in the affidavit of John Peterson, the following CLECs did not provide Verizon with a counterproposal to Verizon's draft TRO Amendment: Focal Communications Corp. of Washington, Allegiance Telecom of Washington Inc., DSLnet Communications, LLC, Adelphia Business Solutions Operations, Inc. d/b/a Telcove, Centel Communications, Inc., and Pac-West Telecomm, Inc. Indeed, Verizon's records reveal that these CLECs have not engaged in any effort to negotiate the terms and conditions of a TRO Amendment. Affidavit of John Peterson at ¶¶ 6-7. The affidavit of Anthony Black shows that Winstar Communications, LLC similarly failed to offer any counterproposal to Verizon's proposed amendment. Affidavit of Anthony Black at ¶ 15. As to McLeodUSA Telecommunications Services, Inc. (McLeod), Stephen Kanitra has stated under oath that McLeod made no counterproposal until March 8, 2004, more than five months after Verizon's initial October 2 Notice, and that McLeod initially refused to negotiate over the *Triennial Review Order* in subsequent conversations. Affidavit of Stephen Kanitra at ¶¶ 5-7. ICG similarly failed to engage in negotiations until *after* Verizon filed its consolidated arbitration petition. Black Aff. at ¶ 6.

While Verizon disagrees with these parties' accounts of the discussions with respect to the *TRO* amendment, those kinds of arguments will not advance the process of promptly concluding the amendment process. It makes no sense for the Commission to dismiss the Petition in general or with regard to particular movants, and order Verizon to re-initiate negotiations, just because these parties failed to reach agreement on a *TRO* amendment,

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particularly since doing so would only reward many parties for failing to respond timely to Verizon's amendment proposal and to negotiate in good faith. Dismissing any of these parties from the proceeding would mean only that Verizon – after another round of posturing and delay tactics by CLECs who have no desire to implement the TRO – would have to file individual arbitration petitions, raising the same issues as those presented in this consolidated arbitration. It is unlikely that, after conducting a consolidated arbitration, the Commission will make different decisions on the same issues in a party-specific arbitration. This inefficient approach makes no sense, either for the Commission or the parties.

XI. Verizon's Updated Petition Does Not Render This Arbitration Untimely.

Priority One argues that Verizon's petition should be rejected as untimely, based on the filing of the updated petition on March 19, 2004. Such an argument should be rejected out of hand. There is no dispute that Verizon's original petition was timely filed, and that this arbitration proceeding was therefore initiated within the window called for by Section 252. The fact that Verizon sought to amend its petition does not obviate the timely initiation of this arbitration; amendments to pleadings are ordinarily presumed to relate back to the initiation of the proceeding. *See, e.g.,* CR 15(c). The Commission's rules prescribe that the amendment of pleadings should be permitted on such terms "as promote fair and just results." WAC 480-07-395(5). Verizon sought to promote fairness by proposing that opposing parties be given additional time to respond to the update to the petition, and the ALJ agreed. Priority One's argument is without basis.

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CONCLUSION

The Commission should deny the motions to dismiss.

Respectfully submitted,

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April 27, 2004

BEFORE THE
UTILITIES AND TRANSPORTATION COMMISSION OF
THE STATE OF WASHINGTON

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	UT-043013

AFFIDAVIT OF ANTHONY M. BLACK

STATE OF VIRGINIA)
)
COUNTY OF ARLINGTON)

I, Anthony M. Black, being duly sworn upon oath, state as follows:

1. I am a fulltime employee of Verizon. My job title is Assistant General Counsel. Prior to assuming this position with Verizon on January 26, 2004, I represented Verizon as outside counsel at the law firm Tobin, O'Connor & Ewing.

2. As part of my job responsibilities as an attorney for Verizon, I assist with the negotiation of interconnection agreements with CLECs, including many CLECs that operate in Washington.

3. On August 21, 2003, the FCC issued its *Triennial Review Order* ("TRO"), which required incumbent LECs and competitive LECs to amend their interconnection agreements to reflect new unbundling rules. I am knowledgeable about the efforts made by Verizon and CLECs in to negotiate TRO-related amendments to their Washington interconnection agreements.

4. On October 2, 2003, when the TRO became effective, Verizon sent a letter to CLECs in Washington, including the CLECs identified in the paragraphs below, according to Verizon's business records. This letter proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the letter. The letter invited CLECs to review the draft amendment and to contact Verizon to proceed with completion of the contracting process. The letter further advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract amendment

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negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date.

5. I have reviewed available records, including (but not limited to) my personal correspondence with several CLECs. To the best of my knowledge, the following paragraphs accurately describe the course of negotiations with the specific CLECs discussed herein.

6. According to Verizon's business records, ICG Telecom Group ("ICG") did not respond to Verizon's October 2, 2003 amendment offer until February 26, 2004, after Verizon had filed arbitration petitions in certain states where ICG has interconnection agreements with Verizon. In its February 26 email, ICG raised questions regarding certain provisions of Verizon's draft amendment. Representatives of the parties subsequently held a conference call on which the parties discussed those questions. ICG did not provide a redline of its proposed changes to Verizon's amendment until March 25, 2004, after Verizon filed its arbitration petition in Texas. On April 2 and 8, 2004, the parties held conference calls on which they discussed ICG's proposed changes. The parties resolved some issues, but were unable to agree on a resolution of others.

7. On December 18, 2003, I sent to Mr. Dave Bennett of Integra Telecom the letter attached hereto as Exhibit A. My December 18 letter was in response to a letter dated October 27, 2003 from Mr. Bennett to Verizon in which he stated, *inter alia*, that Integra was reviewing Verizon's draft TRO amendment and that Integra would "shortly" provide its responses to the amendment. In my December 18 letter I noted that, as of that date, Verizon had not received any further response from Integra. I further stated that, upon receipt of Integra's response, Verizon stood ready to engage in negotiations aimed at promptly concluding an amendment. To the best of my knowledge, Integra has not responded further regarding Verizon's proposed amendment.

8. Many other CLECs failed to respond to Verizon's October 2 amendment offer, delayed in responding until shortly before the TRO-mandated arbitration window opened, or failed to engage in meaningful negotiations regarding an amendment. These CLECs include the members of the "Competitive Carrier Group," or "CCG," which is represented by the law firm of Kelley, Drye & Warren ("Kelley Drye"). I understand that in Washington, this group includes: Advanced Telecom Group Inc., BullsEye Telecom, Inc., Comcast Phone Co. of Washington LLC, Covad Communications Company, Global Crossing Local Services Inc., KMC Telecom V, Inc., and Winstar Communications LLC.

9. On October 31, 2003, Kelley Drye sent a letter to Jeffrey Masoner of Verizon in response to Verizon's October 2, 2003 TRO amendment offer. The letter was on behalf of several entities, including three entities who appear to be members of the coalition that Kelley Drye represents in this proceeding: Covad

Communications, Global Crossing North America, and KMC Telecom. The October 31 letter acknowledged that those CCG members were obligated to negotiate a TRO amendment, but did not offer a counterproposal to the TRO amendment that Verizon had offered on October 2, 2003.

10. On November 21, 2003, I, on behalf of Verizon, sent a letter to Kelley Drye responding to its October 31, 2003 letter. A copy of that letter is attached hereto as Exhibit B. In my November 21 letter I noted that more than 50 days had elapsed since Verizon had offered its TRO amendment, and that Verizon still had not received any input from the Kelley Drye coalition regarding that amendment. I requested that those CLECs respond as soon as possible, proposing any specific changes they wished to make to the draft amendment. On December 3, 2003, I sent a separate letter to in-house counsel for Covad Communications Company and DIECA Communications, Inc. in which I noted that, as of that date, Verizon still had not received any input from them regarding Verizon's draft amendment, and urged them to respond as soon as possible with any changes that they proposed.

11. On December 16, 2003, I received a letter from Kelley Drye in response to my letter of November 21, 2003. Kelley Drye's December 16 letter stated, *inter alia*, that it anticipated forwarding to Verizon "in the next two or three weeks" a TRO amendment counterproposal.

12. At 6:59 p.m. on Friday, January 30, 2004 – nearly four months after Verizon offered its TRO amendment and only 10 business days prior to the date on which the TRO-mandated arbitration window opened – I received from Kelley Drye a letter and amendment that Kelley Drye offered as a counterproposal to Verizon's TRO amendment. Kelley Drye's counterproposal consisted of essentially an entire rewrite of Verizon's draft amendment, and included numerous provisions that are contrary to applicable law. Kelley Drye indicated that it submitted the counterproposal on behalf of various entities including the following entities who appear to be members of the coalition that Kelley Drye represents in this proceeding: Advanced TelCom Group, Inc., Bullseye Telecom, Inc., Covad Communications Corporation, Global Crossing Local Services, Inc., and KMC Telecom V, Inc. Kelley Drye did not offer its proposal on behalf of Winstar Communications, LLC, nor, to my knowledge, did Winstar separately offer any TRO amendment proposal (I describe further communications with Winstar in paragraph 15 below). Kelley Drye also offered its amendment on behalf of XO Communications Inc. (which is not a party in this proceeding), but not on behalf of XO Washington Inc. (which is a party in this proceeding, but is not represented by Kelley Drye). Also, Kelley Drye offered its amendment on behalf of various Comcast entities in other states, but not Comcast Phone Co. of Washington, LLC.

13. Thus, the Kelley Drye coalition, to the they responded at all to Verizon's TRO amendment proposal, delayed for nearly four months, only then to produce an unreasonable rewrite with little time remaining in the TRO-mandated negotiation

period. In paragraph 705 of the TRO, the FCC stated that "any refusal to negotiate or cooperate with the contractual dispute resolution process, including taking actions that unreasonably delay these processes, could be considered a failure to negotiate in good faith and a violation of section 251(c)(1)." Verizon concluded that Kelley Drye's counterproposal represented not a sincere effort to negotiate, but rather a procedural gambit indicating that Kelley Drye's clients were unwilling to implement the TRO despite their obligation to do so. Verizon included those CLECs in the consolidated arbitration petitions that it filed with the applicable Public Utility Commissions in accordance with the TRO-mandated arbitration window. Verizon, during the period since it filed its arbitration petitions, has negotiated with CLECs that have been willing to do so.

14. On March 15, 2004, I, on behalf of Verizon, attempted to advance negotiations with the CCG by sending a letter to Kelley Drye asking that those CLECs, upon receipt of the then-forthcoming amendment as revised to reflect the March 2, 2004 decision of the U.S. Court of Appeals for the District of Columbia Circuit (Verizon filed such revisions on March 19, 2004 and April 2, 2004 and served copies on the Kelley Drye coalition members), demonstrate good faith by submitting promptly, in red-line format, any changes to that document that those CLECs contend in good faith are consistent with the parties' rights and obligations under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. A copy of that letter is attached hereto as Exhibit C. I stated in my letter that this approach would bring the Kelley Drye coalition into the mainstream with other CLECs that have either executed Verizon's amendment with no changes or, at minimum, found it to be a reasonable starting point for negotiations. I further suggested that this approach would assist the various State Commissions in their efforts to resolve on a consolidated basis issues that are common to numerous parties. The Kelley Drye coalition, however, has not responded to that March 15 request.

15. Winstar Communications, LLC. On March 11, 2004 representatives of Verizon and Winstar held a conference call regarding negotiations for agreements to replace Winstar's existing interconnection agreements in numerous states. On that call the parties discussed the fact that Winstar had never provided a counterproposal to Verizon's October 2, 2003 offer of a TRO amendment to Winstar's existing agreements. Winstar's representative indicated that Winstar would provide its counterproposal by way of a response to Verizon's TRO arbitration petition.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: Anthony M. Black
Anthony M. Black

Dated: April 26, 2004

Subscribed and sworn to me, a Notary Public, this 26 day of April, 2004.

Notary Public

My Commission Expires:

JENNIFER LYNN HOH
Notary Public
Commonwealth of Virginia
My Commission Expires February 28, 2007

Exhibit A

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December 18, 2003

Via Facsimile and First Class Mail

Mr. Dave Bennett
Integra Telecom
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Beaverton, OR 97006-6902

Re: Implementation of FCC *Triennial Review Order*

Dear Mr. Bennett:

This letter responds to your letter dated October 27, 2003 to Jeffrey A. Masoner of Verizon regarding implementation of the FCC's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "TRO"), with respect to Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc. (individually and collectively, as applicable, "Integra"). I respond below to certain points in your letter.

First, you state in your letter that Integra's interconnection agreements in Oregon and Washington (the "Agreements") do not allow Verizon to "unilaterally discontinue the provision of UNEs." You assert that Verizon, until such time as the parties agree on terms to implement the TRO, must continue to provide to Integra all UNEs that Verizon is currently providing. Verizon disagrees. Pursuant to the TRO, whether Verizon may cease providing a delisted UNE is to be addressed under the terms of individual interconnection agreements. Pertinent terms of the Oregon Agreement are set forth in Article II, Section 1.2, which provides in relevant part:

> The terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time this Agreement was produced, and shall be subject to any and all applicable statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings that

> subsequently may be prescribed by any federal, state or local governmental authority having appropriate jurisdiction. Except as otherwise expressly provided herein, such subsequently prescribed statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings will be deemed to automatically supersede any conflicting terms and conditions of this Agreement. In addition, subject to the requirements and limitations set forth in Section 1.3, to the extent required or reasonably necessary, the Parties shall modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such statute, regulation, rule, ordinance, judicial decision, or and administrative ruling.

Pursuant to the above provision, the TRO (as a subsequently prescribed FCC ruling) automatically superseded any provisions of the Oregon Agreement that required Verizon to provide a UNE that has been delisted. Although Article II, Section 1.2 contemplates a negotiated modification to implement aspects of changes of law (such as the TRO) that will govern the parties' ongoing rights and obligations as to services (such as UNEs) that Verizon must provide prospectively, no such negotiations are "required or reasonably necessary" for Verizon simply to cease providing a delisted UNE. Section 32 of the Washington Agreement contains terms substantially similar to Article II, Section 1.2 of the Oregon Agreement, and further addresses, in Section 32.2, Verizon's right to discontinue delisted UNEs.[1] Accordingly, Verizon's October 2, 2003 notice satisfied the sole condition for Verizon to cease providing a delisted UNE under the Washington Agreement (and no such notice was required under the Oregon Agreement, but Verizon nonetheless provided notice to Integra).

Second, you state that even if the Agreements do not prohibit Verizon from ceasing to provide certain UNEs, the TRO still prohibits Verizon from doing so. You appear to interpret the TRO as requiring carriers, in all cases and without regard to applicable contract terms, to negotiate terms upon which an incumbent LEC such as Verizon may cease providing delisted UNEs. Verizon disagrees with that interpretation. The FCC recognized that at least some aspects of the TRO would be self-executing.[2] Although some parties had asked the FCC to adopt a mandatory transition period, the FCC specifically declined to do so (except as to those UNEs for which the TRO established a specific transition mechanism).[3] Thus (as noted above),

---

[1] Section 32.2 of the Washington Agreement provides:

> In the event [Verizon] is permitted or required to discontinue any Unbundled Network Element provided to [Integra] pursuant to this Agreement during the term of this Agreement or any extensions thereto, [Verizon] shall provide [Integra] 30 days advance written notice of such discontinuance, except as may be otherwise provided herein or required by applicable law. This provision will not alter either Party's right to any notification required by applicable law.

[2] TRO at ¶ 700 ("We recognize that many of our decisions in this Order will not be self-executing.").

[3] *Id.* at ¶ 701 ("Except as expressly provided above in Parts VI.A.4.a.(v).(a) and VI.D.4.c.(iii).(d), we decline to establish such a transition period and find, instead, that contract arrangements should govern.").

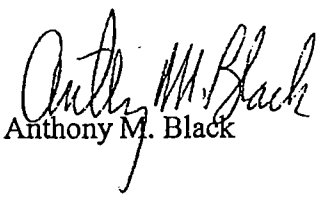
Verizon's October 2, 2003 notice satisfied the sole condition for Verizon to cease providing a delisted UNE under the Washington Agreement (and no such condition exists under the Oregon Agreement). In any case, no amendment is required for that purpose under either Agreement.

Please note that to the extent Integra is currently using a delisted UNE provisioned by Verizon, Integra should have begun seeking any alternative service it may need immediately upon receiving notice from the FCC, earlier this year, as to the terms of its then soon to be released TRO and, in any case, not later than upon receiving Verizon's October 2 notice. Any failure of Integra to arrange for a replacement service that it may need does not affect Verizon's right to cease providing a delisted UNE.

Finally, please note that, although (as set forth above) Verizon's ability to cease providing delisted UNEs is already addressed by the Agreements, the Agreements require negotiations to implement aspects of changes of law (such as the TRO) that will govern the parties' ongoing rights and obligations as to services (such as UNEs) that Verizon must provide prospectively. Verizon, in its October 2 notice to Integra, made available a draft amendment for that purpose. In your letter, you stated that you were reviewing Verizon's draft amendment, and that you would provide a response to it. My understanding is that, as of today's date, Verizon has not received any further response from Integra. Upon receipt of Integra's response, Verizon stands ready to engage in negotiations aimed at promptly concluding an amendment for each of the Agreements.

Verizon looks forward to receiving as soon as possible from Integra its response regarding Verizon's draft contract amendment. Please do not hesitate to call me if you wish to discuss this matter further.

Sincerely,



Anthony M. Black

cc: Mr. Jeffrey A. Masoner

Exhibit B

TOBIN, O'CONNOR & EWING

ATTORNEYS AT LAW
A Partnership of Professional Corporations

Reply to:

Anthony M. Black
AMBLACK@DSTLAW.COM

908 King Street, Suite 200
Alexandria, VA 22314
Tel. (703) 836-7071
Fax (703) 836-7099

Washington, D.C. Office:
5335 Wisconsin Avenue, N.W.
Suite 700
Washington, D.C. 20015
Tel. (202) 362-5900
Fax (202) 362-5901

November 21, 2003

Via Facsimile and First Class Mail

Andrew M. Klein, Esq.
Steven A. Augustino, Esq.
Kelley Drye & Warren
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Re: Implementation of FCC *Triennial Review Order*

Dear Messrs. Klein and Augustino:

This letter responds to your letter dated October 31, 2003 to Jeffrey A. Masoner of Verizon regarding implementation of the FCC's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "TRO"). You indicated in your letter that you wrote on behalf of the following carriers: AboveNet, Inc., ATX Communications, BridgeCom International, Broadview Networks, Covad Communications, DSCI Corporation, Focal Communications, Global Crossing North America, Infohighway Communications Corporation, KMC Telecom, Lightwave Communications, MetTel, McGraw Communications, and Remi Communications (the "Competitive Carriers"). I respond below to certain points in your letter.

First, you state in your letter that Verizon's October 2, 2003 notice to the Competitive Carriers (the "October 2 Notice") was an attempt to "unilaterally modify" the terms of interconnection agreements between Verizon and the Competitive Carriers. It appears that you may misunderstand Verizon's position. Apparently, you believe that Verizon, under all contracts

with the Competitive Carriers,[1] will "automatically implement" aspects of the TRO that Verizon considers favorable, while "automatically" requiring a negotiated amendment for aspects of the TRO that Verizon considers unfavorable. However, that is not Verizon's intent. Rather, Verizon believes that, pursuant to the TRO, whether a particular aspect of the TRO requires an amendment is to be addressed under the terms of the individual interconnection agreements.

Although you did not cite any specific agreements or agreement provisions in your letter, as a general matter, many (if not all) of Verizon's interconnection agreements with competitive carriers do permit Verizon to cease providing immediately, or with a specified notice period such as 30 days, any UNEs delisted pursuant to the TRO. Indeed, the FCC recognized that at least some aspects of the TRO would be self-executing.[2] Thus, to the extent the Competitive Carriers contend that an amendment is required in order for Verizon to cease providing delisted UNEs under such agreements, Verizon disagrees. On the other hand, Verizon's interconnection agreements typically require negotiations to implement aspects of changes of law (such as the TRO) that will govern the parties' ongoing rights and obligations as to services (such as UNEs) that Verizon must provide prospectively.[3] If any of the Competitive Carriers have questions regarding how the TRO is to be implemented under any particular provisions of an interconnection agreement, please contact me at your earliest convenience so that we can discuss them. In the meantime, and during the pendency of any such discussions, Verizon reserves, and intends to exercise, any rights it may have under a particular agreement and the TRO.

Second, you appear to argue in your letter that, even if a particular interconnection agreement provision allows Verizon to cease providing a delisted UNE without negotiating an amendment in advance, the parties would still have to negotiate amendments or replacement agreements "subject to procedures agreed upon by the parties." In an attempt to support this proposition, you quote selected language from Paragraph 700 of the TRO.[4] The quoted language, however, merely reflects the FCC's intention not to override any *contractual* modification process contained in interconnection agreements. Thus, to the extent that the Competitive

---

[1] Your letter did not specifically identify any particular interconnection agreements between Verizon and any of the Competitive Carriers. Accordingly, Verizon does not necessarily agree that it is a party to an effective interconnection agreement with each and every one of the Competitive Carriers, and/or with any Competitive Carrier in a particular state.

[2] TRO at ¶ 700 ("We recognize that many of our decisions in this Order will not be self-executing.").

[3] In this regard, Verizon disagrees with your assertion that the TRO requirements relating to ILEC performance of routine network modifications are necessarily self-executing.

[4] Your letter states in pertinent part: "The FCC made clear that 'individual carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new agreement language arising from differing interpretations of our rules.'"

Carriers contend that Verizon has an extra-contractual obligation under the TRO to negotiate an amendment prior to discontinuing any delisted UNE, Verizon disagrees.

In relation to the above point, please note that to the extent any Competitive Carrier is currently using a delisted UNE provisioned by Verizon, that Competitive Carrier should have begun seeking any alternative arrangement that it may need upon receiving notice from the FCC, earlier this year, as to the terms of its soon to be released TRO and, in any case, not later than upon receiving Verizon's October 2 notice. Any failure of such a Competitive Carrier to arrange for a replacement service that it may need does not affect any right Verizon may have to cease providing a delisted UNE.

Third, you appear to argue in your letter that Verizon, by offering a draft amendment to implement the TRO, has somehow contradicted its position that a particular interconnection agreement may already allow Verizon to cease providing delisted UNEs. That is incorrect. As discussed above, individual interconnection agreements speak for themselves, and many (if not all) of them contain provisions allowing Verizon to cease providing UNEs without negotiating an amendment in advance. Any amendment to implement the TRO, of course, should also reflect that Verizon must no longer provide delisted UNEs. The amendment thus carries forward, and does not establish in the first instance, any right Verizon may have under an existing agreement to cease providing delisted UNEs pursuant to the TRO.

Fourth, Verizon notes that your letter omitted any specific comments or changes that the Competitive Carriers may suggest to the draft amendment that Verizon made available to them on October 2, 2003. Indeed, my understanding is that Verizon has not received any input on the amendment from any of the Competitive Carriers during the period of more than 50 days that has now elapsed. If a Competitive Carrier would like to put an amendment in place, then I would ask that the Competitive Carrier respond as soon as possible, proposing any specific changes it wishes to the amendment. Upon receipt of such response, Verizon will contact you or the Competitive Carrier, as appropriate, to schedule negotiations aimed at promptly concluding an amendment.

Please note that, while Verizon believes that many (if not all) interconnection agreements between Verizon and competitive carriers permit Verizon to cease providing UNEs without negotiating an amendment, to the extent a particular agreement requires such an amendment the applicable Competitive Carrier's failure to respond promptly to Verizon's draft amendment may constitute a violation of the Competitive Carrier's obligation under 47 U.S.C. § 251(c)(1) to negotiate in good faith, and not to unreasonably delay the negotiations.[5] In any such cases, Verizon will take whatever action Verizon may determine to be appropriate.

---

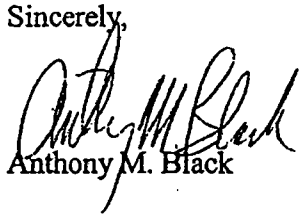
[5] *Id.* at ¶ 704 ("Accordingly, any refusal to negotiate or cooperate with the contractual dispute resolution process, including taking actions that unreasonably delay those processes, could be considered a failure to negotiate in good faith and a violation of section 251(c)(1).").

Finally, your letter indicates that you sent a copy of the letter to certain state commissions whose identities you did not disclose in your letter. I would therefore ask that you immediately identify to me those commissions so that Verizon may take any responsive action that it may deem appropriate.

Your letter also suggests that such state commissions should "consider" initiating mediation sessions or procedures "to address issues pertaining to the appropriate implementation of the [TRO] as it relates to interconnection agreements." As indicated above, the terms of any existing interconnection agreements speak for themselves, and none of the Competitive Carriers has even alleged that Verizon has violated, or that its October 2 Notice indicates an intention to violate, any particular provision of an interconnection agreement. As to Verizon's draft amendment to implement the TRO, again, thus far none of the Competitive Carriers has even indicated that it disagrees with any particular provision of that amendment. Accordingly, Verizon believes it would be premature for any commission to initiate mediation or establish special procedures beyond the procedures that are already contained in the interconnection agreements or addressed in the TRO. Verizon, however, reserves the right to seek relief from state commissions as appropriate, including upon the failure of any Competitive Carrier to negotiate in good faith in a case where a particular agreement may require Verizon to negotiate an amendment prior to discontinuing its provision of a delisted UNE.

I look forward to receiving as soon as possible from the Competitive Carriers their responses regarding Verizon's draft contract amendment. Please do not hesitate to call me if you wish to discuss this matter further.

Sincerely,



Anthony M. Black

cc: Mr. Jeffrey A. Masoner

Exhibit C

Anthony M. Black
Assistant General Counsel

1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Phone: 703 351-3025
Fax: 703 351-3664
anthony.m.black@verizon.com

March 15, 2004

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Andy Klein, Esq.
Kelley Drye and Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

RE: Triennial Review Order Arbitrations

Dear Andy:

This letter is in response to your recent electronic mail messages regarding the FCC's *Triennial Review Order* ("TRO").

As an initial matter, please accept my apology if any copies of Verizon's arbitration petitions were served on outdated counsel. Given the large number of CLECs involved in the various states, Verizon's only practical alternative was to serve individuals that CLECs have identified as their contacts for notices under their interconnection agreements, or individuals that may have been listed on State Commission service lists. I have asked that the service lists be updated as necessary to reflect that you represent the carriers that you listed.[1] Also, my understanding is that Laura Brennan of Kellogg Huber sent you electronic copies of certain filings last week; feel free to contact Laura or me if you need electronic copies of any further filings.

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[1] You have indicated that you submitted your TRO amendment proposal on behalf of Advanced TelCom Group, Inc.; BridgeCom International, Inc.; Broadview Networks, Inc.; Bullseye Telecom, Inc.; Comcast Phone, LLC and its subsidiaries, Comcast Business Communications, Inc., Comcast Phone of Maryland, Inc., Comcast Phone of Northern Virginia, Inc.; Conversent Communications, LLC; Cordia Corporation; Covad Communications Corporation and DIECA Communications, Inc.; DSCI Corporation; FiberNet, LLC; Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc.; InfoHighway Communications Corporation; KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC; Metropolitan Telecommunications, Inc.; VeraNet Solutions; and XO Communications, Inc.

Turning to the TRO amendment proposal that you have submitted on behalf of the foregoing clients, Verizon does not consider that proposal to be a good faith attempt to resolve any areas of disagreement. Verizon made available to your clients a draft TRO amendment on October 2, 2003, the date on which the TRO became effective. I would note that many CLECs have already executed that amendment or indicated that they are prepared to do so, either unchanged or with minor changes. Your clients, however, waited almost four months -- barely two weeks prior to the opening of the arbitration window -- to submit what amounts to almost an entire rewrite of Verizon's draft amendment, including numerous provisions that are plainly contrary to applicable law. We thus did not take your proposal so much as a sincere effort to negotiate but, rather, as a procedural gambit indicating your unwillingness to implement the TRO, despite your obligation to do so.

Nonetheless, Verizon, as indicated in each of the consolidated arbitration petitions it has filed, remains willing to continue with negotiations to resolve any areas of disagreement and thereby to narrow the number of issues that the State Commissions will be required to resolve. By March 19, 2004, Verizon expects to file with a number of State Commissions its draft TRO amendment as revised to reflect changes, if any, that may be appropriate in light of the D.C. Circuit's March 2, 2004 decision. Subject to any alternative procedural format that a particular State Commission may adopt, Verizon requests that, upon receipt of such revised draft amendment, your clients submit either to me, as part of negotiations, or to the State Commissions, as part of your clients' response to Verizon's arbitration petitions, any proposed changes to that document, in red-line format, that your clients contend in good faith are consistent with Verizon's and your clients' respective legal rights and obligations pursuant to Section 251(c)(3) of the Act and 47 C.F.R. Part 51. This approach will bring your clients into the mainstream with the vast majority of responding CLECs that have either executed Verizon's amendment with no changes or, at minimum, found it to be a reasonable starting point for negotiations. It will also assist the various State Commissions in their efforts to resolve on a consolidated basis issues that are common to numerous parties.

Verizon hopes that this approach will be acceptable to you and to your clients, so that the parties and State Commissions may move forward promptly to resolve any disputed issues in a reasonable and efficient manner. It should be in every party's interest to avoid gratuitous procedural wrangling. Please do not hesitate to call if you wish to discuss this matter.

Sincerely,

Anthony M. Black

cc: Mr. Jeffrey A. Masoner

BEFORE THE
UTILITIES AND TRANSPORTATION COMMISSION OF
THE STATE OF WASHINGTON

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	UT-043013

AFFIDAVIT OF STEPHEN A. KANITRA

STATE OF INDIANA)
) ss.:
COUNTY OF HAMILTON)

I, Stephen A. Kanitra, being duly sworn, state as follows:

1. I am a fulltime employee of GTE Southwest Incorporated, d/b/a Verizon Southwest. My business address is 19845 U.S. 31 North, Westfield, IN 46074. My position is Negotiations Manager.

2. As part of my job responsibilities, I am charged with the task of negotiating interconnection agreements with certain CLECs that operate in Washington, including McLeodUSA, Telecommunications Services, Inc. ("McLeod").

3. I understand that McLeod is a member of a group of CLECs called the "Competitive Carrier Coalition," which is currently involved in an arbitration that is pending before the Public Utility Commission of Washington over an Amendment to various interconnection agreements in the wake of the *Triennial Review Order*.

4. The FCC's *Triennial Review Order* became effective on October 2, 2003, which changed the unbundling obligations of Verizon and other incumbent LECs. On that same date, Verizon sent a letter notifying McLeod (and other Washington CLECs) of Verizon's proposed TRO Amendment. This letter proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the letter. The letter invited CLECs to review the draft amendment and to contact Verizon to proceed with completion of the contracting process. The letter further advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract amendment

ORIGINAL

negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date. (The October 2 letter is attached as Exhibit A).

5. McLeod did not respond with a counterproposal until March 8, 2004 – more than five months after Verizon initiated negotiations and two days prior to the closing of the arbitration window established by the Telecommunications Act and the *Triennial Review Order*. This counterproposal was in the form of a "redline" to Verizon's draft Amendment.

6. During an April 2, 2004 negotiation session with McLeod, the company informed Verizon that it did not wish to discuss the TRO Amendment, preferring to negotiate other issues instead.

7. Verizon again attempted to bring up the TRO Amendment during a negotiation call on April 13, 2004. McLeod representatives informed Verizon that the company did not want to negotiate a TRO Amendment. The reason given was that McLeod had already taken a position in the Verizon arbitration that the company would not be willing to change. The parties did, however, spend approximately forty-five minutes discussing the TRO Amendment and agreed to continue TRO discussions.

8. Notwithstanding the previous agreement to continue TRO discussions, McLeod representatives explained on an April 15, 2004 call that the company did not want to negotiate the TRO Amendment. After saying that the McLeod redlines were self-explanatory and that discussion was not warranted, McLeod representatives eventually proceeded (at Verizon's urging) with discussions and offered some explanations as to McLeod's positions. At the conclusion of that call, the parties agreed to continue discussions regarding the TRO Amendment and scheduled a further call for that purpose.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: _____
Stephen A. Kanitra

Dated: April 23, 2004

Subscribed and sworn to me, a Notary Public, this 23rd day of April, 2004.

_____
Notary Public

My Commission Expires:
10/15/2008

Exhibit A

Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Lauraine A. Harding
McLeodUSA Telecommunications Services Inc.
6400 C Street SW
Cedar Rapids, IA 52406

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc., f/k/a GTE Northwest Incorporated and McLeodUSA Telecommunications Services Inc. for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to McLeodUSA Telecommunications Services Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and McLeodUSA Telecommunications Services Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice**.

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

Jeffrey A Masoner

Vice President Interconnection Services

JAM:kar

BEFORE THE
UTILITIES AND TRANSPORTATION COMMISSION OF
THE STATE OF WASHINGTON

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	UT-043013

AFFIDAVIT OF JOHN PETERSON

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, John C. Peterson, being duly sworn upon oath, state as follows:

1. I am a fulltime employee of Verizon Wholesale Markets. My job title is Director, Contract Performance and Administration.

2. As part of my job responsibilities, I serve as a central point of contact for Competitive Local Exchange Carriers ("CLECs") requesting negotiations and tracking the status of those negotiations. My department also manages Verizon's contract database, maintains noticing addresses for all CLECs with effective contracts, and distributes formal notices to CLECs. I am therefore highly knowledgeable about negotiations with CLECs in Washington and the October 2, 2003 notice sent to CLECs regarding the FCC's *Triennial Review Order* ("TRO").

3. On August 21, 2003, the FCC issued the TRO, which required incumbent LECs and competitive LECs to amend their interconnection agreements to reflect new unbundling rules. I am knowledgeable about the efforts made by Verizon to negotiate TRO-related amendments with CLECs to their Washington interconnection agreements.

4. In a October 2, 2003 notice sent to all CLECs with an effective interconnection agreement, Verizon proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the notice. The notice invited CLECs to review the draft amendment and to contact

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Verizon to proceed with completion of the contracting process. The notice advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract amendment negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date. (The October 2, 2003 letters to the carriers mentioned in paragraphs below are attached as Exhibit A).

5. I understand that arbitration for the purpose of implementing a TRO Amendment is currently pending before the Washington Utilities and Transportation Commission, and that certain CLECs have argued (or implied) that Verizon had not negotiated in good faith.

6. I have reviewed all available records, including a TRO-specific spreadsheet (which summarizes the status of requests for negotiation) and our contract database (which houses all requests for negotiation that Verizon has received). To the best of my knowledge, the following CLECs in the CCC have not provided Verizon with a counterproposal to Verizon's draft TRO Amendment at all, or did so only as part of their response to Verizon's consolidated arbitration petition: Focal Communications Corp. of Washington, Allegiance Telecom of Washington Inc., DSLnet Communications, LLC, Adelphia Business Solutions Operations, Inc. d/b/a Telcove, Centel Communications, Inc., and Pac-West Telecomm, Inc.

7. Only one of the CLECs listed above, DSLnet Communications LLC, contacted Verizon and indicated that it intended to send a redline markup of Verizon's draft TRO Amendment. As of today's date, it has not done so.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: _____
John C. Peterson

Subscribed and sworn to me, a Notary Public, this _____ day of April, 2004.

_____
Notary Public

My Commission Expires:

Exhibit A

Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

General Counsel
Focal Communications Corporation of Washington
200 N. LaSalle Street Suite 1100
Chicago, IL 60601

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc., f/k/a GTE Northwest Incorporated and Focal Communications Corporation of Washington for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Focal Communications Corporation of Washington of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

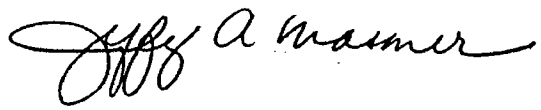
1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Focal Communications Corporation of Washington Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.



Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

verizon

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Mary C. Albert
Esquire
Allegiance Telecom of Washington Inc.
1919 M Street, NW Suite 420
Washington, DC 20036

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc. and Allegiance Telecom of Washington Inc. for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Allegiance Telecom of Washington Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

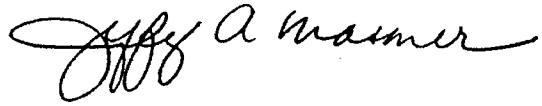
1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Allegiance Telecom of Washington Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.



Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

October 2, 2003

Stephen Zamansky
DSLnet Communications LLC
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc. f/k/a GTE Northwest Incorporated and DSLnet Communications LLC for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to DSLnet Communications LLC of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and DSLnet Communications LLC Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

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Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

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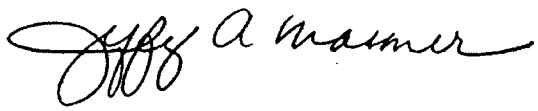

Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Joelle Sinclair
Adelphia Business Solutions Operations Inc.
121 Champion Way
Canonsburg, PA 15317

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc. and Adelphia Business Solutions Operations Inc. for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Adelphia Business Solutions Operations Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

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2. OCn Loops
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4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
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8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

Jeffrey A. Masoner

Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

John B. Glicksman
Vice President, General Counsel
Adelphia Business Solutions Operations Inc.
1 North Main Street
Coudersport, PA 16915

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc. and Adelphia Business Solutions Operations Inc. for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Adelphia Business Solutions Operations Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Adelphia Business Solutions Operations Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

Jeffrey A Masoner

Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

verizon

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

October 2, 2003

Richard Stevens
President
Centel Communications Inc.
P.O. Box 25
Goldendale, WA 98620

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc. and Centel Communications Inc. for the State of Washington.

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Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Centel Communications Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Centel Communications Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

John Sumpter
Pac-West Telecomm Inc.
4210 Coronado Avenue
Stockton, CA 95204

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc., f/k/a GTE Northwest Incorporated and Pac-West Telecomm Inc. for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Pac-West Telecomm Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Pac-West Telecomm Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

Jeffrey A. Masoner

Vice President Interconnection Services

JAM:kar

BEFORE THE
UTILITIES AND TRANSPORTATION COMMISSION OF
THE STATE OF WASHINGTON

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	UT-043013

AFFIDAVIT OF MICHAEL A. DALY

STATE OF VIRGINIA)
) ss.
COUNTY OF ARLINGTON)

I, Michael A. Daly, being duly sworn upon oath, state as follows:

1. I am a full time employee of Verizon Services Corp. ("Verizon"). My position is Director.

2. As part of my job responsibilities, I am charged with negotiating interconnection agreements with AT&T on behalf of Verizon in the state of Washington.

3. I have been involved with efforts to negotiate new language in the AT&T/Verizon interconnection agreement in Washington in response to the *Triennial Review Order* ("TRO"), which became effective on October 2, 2003.

4. Verizon sent AT&T a letter on October 2, 2003, which proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the letter. The letter invited CLECs to review the draft amendment and to contact Verizon to proceed with completion of the contracting process. The letter further advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract amendment negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date. (The October 2 letter is attached as Exhibit A).

ORIGINAL

5. When undertaking contract negotiations, it is standard industry practice for the recipient of a written proposal to "markup" the initial proposal (typically in "redline" format – a function that is available in modern word-processing software) so that the negotiating parties may easily see the alterations and deletions proposed by each other.

6. AT&T did not respond with a markup of Verizon's proposed amendment until February 6, 2004 – over four months from the date of Verizon's initial proposal. This response was just ten days before the "arbitration window" opened pursuant to the *Triennial Review Order*. Moreover, AT&T's response came only after Verizon urged AT&T to make a counterproposal in redline format on November 7, 2003 – three months before AT&T finally responded.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: _____
Michael A. Daly

Dated: April 26, 2004

Subscribed and sworn to me, a Notary Public, this 26th day of April, 2004.

_____
Notary Public

My Commission Expires: 09/30/07

Exhibit A

Jeffrey A. Masoner
Vice President Interconnection Services

verizon

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Bruce W. Cooper
Regional Vice President, AT&T
AT&T Communications of the Pacific Northwest Inc.
3033 Chain Bridge Rd Rm D-325
Oakton, VA 22185

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc., f/k/a GTE Northwest Incorporated and AT&T Communications of the Pacific Northwest Inc. for the State of Washington.

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Accordingly, Verizon is hereby providing formal notice to AT&T Communications of the Pacific Northwest Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

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Jeffrey A. Masoner

Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

G. Ridgley Loux
Regional Counsel
AT&T Communications of the Pacific Northwest Inc.
3033 Chain Bridge Rd Rm D 300
Oakton, VA 22185

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Northwest Inc., f/k/a GTE Northwest Incorporated and AT&T Communications of the Pacific Northwest Inc. for the State of Washington.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to AT&T Communications of the Pacific Northwest Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and AT&T Communications of the Pacific Northwest Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment. **To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

Vice President Interconnection Services

JAM:kar

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Petition of Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. UT-043013

AFFIDAVIT OF STEPHEN C. HUGHES

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Stephen C. Hughes, being duly sworn upon oath, state as follows:

1. My name is Stephen C. Hughes. My business address is 1095 Avenue of the Americas, 17th Floor, New York, New York. I am Negotiations Manager for Verizon Services Corporation.

2. As part of my responsibilities, I was the primary Verizon negotiator with Sprint in the effort to amend the parties' existing interconnection agreement in light of the FCC's *Triennial Review Order* ("TRO").

3. The purpose of this affidavit is to respond to allegations made by Mr. John S. Weyforth in his affidavit in support of Sprint's Motion to Dismiss, filed on March 16, 2004. In particular, I explain that Verizon has negotiated in good faith with Sprint over a TRO amendment to the parties' existing Interconnection Agreement in Washington. Verizon actively communicated with Sprint concerning Verizon's draft TRO amendment,

ORIGINAL

carefully reviewed and considered Sprint's comments to the draft, and provided substantive and meaningful responses to those counterproposals. Although Verizon rejected Sprint's proposed changes to its language, Verizon continues to negotiate with Sprint, notwithstanding the filing of the Petition for Arbitration.

4. The TRO, which was released on August 21, 2003, outlined the procedures for incumbents and CLECs to follow in implementing the new unbundling rules established in the order. In particular, the FCC directed incumbents and CLECs to use the timetable in section 252(b) of the Act for modification of agreements in light of the TRO, and established the commencement date for negotiations for amendments as the effective date of the TRO.

5. On October 2, 2003, the effective date of the TRO, Verizon sent a letter initiating negotiations to each CLEC, including Sprint, in which Verizon proposed a draft TRO amendment. In his affidavit, Mr. Weyforth outlines his version of the negotiations between the parties both before and after Sprint responded to Verizon's draft TRO amendment. His chronology, however, has numerous inaccuracies.

6. For example, after Verizon's request to commence negotiations on October 2, 2003, the first communication that Verizon received from Sprint was an October 7, 2003 e-mail from Shelley Jones of Sprint to me and to Gary Librizzi, another Verizon representative (the email is attached hereto as Exhibit A). Contrary to Mr. Weyforth's claim (Aff. ¶ 6, 10/07/03 entry), Ms. Jones did not "ask[] if it was Verizon's intention to hold up other interconnection agreement amendments for line-splitting and EELs that had been requested by Sprint in August '03 because of the TRO amendment." Rather, her actual question was as follows:

> Other than having an interconnecting company request to amend their agreement and consent to use the Verizon amendment, does Verizon have any plans to incorporate this amendment in with other amendments that are outstanding, such as the EELs and Line Splitting amendments Sprint requested several months ago?

In his affidavit, Mr. Weyforth claims that Ms. Jones "received no response from Verizon" to this question. This is not true. I personally responded to Ms. Jones' question by voicemail on October 10, 2003 (just three days later), informing her that the TRO amendment contained the EEL language that would now be compliant with the TRO. Mr. Weyforth admits this in his affidavit, and therefore I do not understand how he can claim that Verizon did not answer Ms. Jones' question. Moreover, as I explain below, the parties negotiated – and executed – an amendment to incorporate line splitting terms effective November 1, 2003, thus eliminating any concern raised by Ms. Jones with respect to the line splitting amendment.

7. Mr. Weyforth is also wrong that Ms. Jones thereafter "received no response" from Verizon to her request for a conference call to discuss the proposed amendment. Ms. Jones first requested a conference call on October 14, 2003 in a voicemail to Mr. Librizzi, as Mr. Weyforth indicates in his affidavit. (Aff. ¶ 6, 10/14/03 entry) Mr. Librizzi forwarded that voicemail to me, and I responded by email the very next day, requesting that Ms. Jones provide me with the Sprint team's availability for a call during that week and the next. After an exchange of emails, we mutually agreed to a date and time, and on October 17, 2003, Ms. Jones provided me a call-in number for the conference call, at my request. The relevant emails outlining this exchange are attached to this affidavit as Exhibit B.

8. That conference call took place on October 20, 2003. Mr. Librizzi, Mr. Paul Rich (Verizon's attorney) and I participated on behalf of Verizon, and Ms. Jones, Mr. Weyforth, and Joseph Cowin (Sprint's attorney) participated on behalf of Sprint. In his affidavit, Mr. Weyforth complains that "[t]here were no definitive responses from Verizon" to "concerns and questions" presented by Sprint on the conference call. However, at that time, Sprint had not provided Verizon redlined comments on the proposed amendment, and thus it would have been impossible for Verizon to give "definitive" responses to Sprint's generalized concerns and questions. Verizon responded appropriately to the extent that Sprint clearly identified issues on the conference call.

9. Verizon received Sprint's redlined comments on Verizon's draft TRO amendment on October 29, 2003. As soon as we received them, Mr. Librizzi and I forwarded the comments to the various subject matter experts within Verizon for review. That review lasted until mid-December, at which time Verizon conducted an internal legal review of Sprint's proposed language in light of the input from the subject matter experts. During this period, Mr. Librizzi and I responded to all of Sprint's inquiries concerning the status of Verizon's review of the contract language, but could not yet provide substantive comments on Sprint's proposed revisions to the contract language.

10. On February 12, 2004, Mr. Librizzi, Mr. Rich, and I participated on a conference call with Sprint representatives to discuss Sprint's written comments on the draft TRO amendment. Although Mr. Weyforth claims Verizon did not "specifically reject any Sprint proposed change" (Aff. ¶ 6, 2/12/04 entry), that is not true. Verizon informed Sprint that several of the changes were not acceptable and verbally explained the reasons

why Verizon disagreed with Sprint's position, and further asked several clarifying questions in an attempt to understand the reasoning underlying other proposed changes for the purpose of providing a written response to Sprint's proposals. In fact, Verizon indicated to Sprint on that call that a written response would be forthcoming.

11. Thereafter, in a telephone conversation on or about March 9, 2004 between Sprint's attorney Mr. Cowin and Verizon's attorney Mr. Rich, Sprint inquired whether Verizon was accepting or rejecting Sprint's proposed changes. Mr. Rich indicated that Verizon disagreed with Sprint's proposals. On March 11, 2004, Verizon provided a written statement of its objections to Sprint's proposed changes (a copy is attached as Exhibit C).

12. Although Sprint claims that its proposed changes to the TRO amendment "did not materially affect the integrity of the Verizon document" and thus "a quick turn-around time was expected," that is not true either. Several of Sprint's proposed changes did, in fact, materially affect Verizon's TRO amendment and were unacceptable to Verizon for the reasons outlined in Verizon's March 11, 2004 comments. Verizon had valid, substantive reasons for rejecting Sprint's proposals.

13. As Sprint is aware, moreover, the filing of an arbitration petition under section 252(b) does not signal the end of party-to-party negotiations. Verizon has negotiated interconnection agreements with Sprint and its affiliates in numerous states, and some of those negotiations have resulted in arbitrations while the negotiations were still ongoing. In those cases, after the arbitration petition was filed, Verizon and Sprint have successfully resolved issues without commission involvement, thus narrowing the scope of the issues for arbitration. The ongoing nature of the negotiations is apparent, since

Sprint has provided Verizon new redlined comments in response to a more recent version of Verizon's proposed TRO amendment (which Verizon filed in this docket on March 18, 2004 and has posted on its website), which are far more extensive than its October 29, 2003 comments.

14. It should also be noted that Mr. Weyforth is wrong that Verizon did not respond to his March 2, 2004 email request for a "complete list of where consolidated arbitrations had been filed and copies of those documents." (Aff. ¶ 6, 03/02/04 entry) I spoke to Mr. Weyforth by telephone on that same day, and told Mr. Weyforth that Sprint's attorney, Mr. Cowin, had made a similar request to Verizon's attorney, Paul Rich, who was pulling together the materials. Mr. Rich provided the requested documents to Mr. Cowin on March 5, 2004.

15. In addition to these factual inaccuracies relating to the TRO amendment, Mr. Weyforth's chronology of the negotiations includes information that is irrelevant to the parties' negotiation of a TRO amendment in this state. For example, Mr. Weyforth repeatedly refers to Sprint's request to adopt the AT&T agreement in Virginia. This is puzzling, since Verizon honored Sprint's request to adopt that agreement within a reasonable timeframe, and that adoption has nothing to do with the negotiations for a TRO amendment.

16. In addition, Mr. Weyforth refers to the parties' negotiations for an amendment to add line splitting terms. This amendment, however, was negotiated separately, and has already been executed by the parties, effective November 1, 2003. Nevertheless, Mr. Weyforth implies a lack of good faith by Verizon by claiming that on October 27, 2003, Verizon "finally" sent Sprint a draft line splitting amendment that it had requested in

August 2003. (Aff. ¶ 6, 10/27/03 entry.) Mr. Weyforth further claims that Verizon "rais[ed] a possible roadblock that they could decide to change the amendments if they felt the amendments did not conform to the TRO." Mr. Weyforth mischaracterizes what actually occurred. Until August 21, 2003, Verizon had not yet seen the FCC order to determine the extent to which it may have impacted Verizon's line splitting obligations. Nevertheless, Verizon provided draft language to Sprint within a reasonable time frame (less than a month after the FCC's rules became effective). A copy of my October 27, 2003 email to Ms. Jones transmitting draft amendments is attached hereto as Exhibit D. Although in that email, Verizon reserved its right to make changes to that draft language, it certainly was not a "roadblock" to negotiations, since the parties executed the line splitting amendment without ***any*** changes.

17. Finally, Mr. Weyforth makes much of Verizon's rejection of certain UNE loop orders in Texas. As an initial matter, rejection of orders in ***Texas*** has nothing to do with the parties' relationship in Washington. Moreover, as Verizon explained to Sprint on several occasions (by Mr. Librizzi on February 26, 2004 and by Val Perez, Verizon account manager, on March 5, 2004, and on other calls in between), those orders were rejected because certain network modifications – specifically, the purchase and installation of new electronic multiplexing equipment – would have been required. Verizon's existing interconnection agreement with Sprint in Texas does not provide terms and conditions for installation of electronics for the provisioning of unbundled network elements. Moreover, the parties have not yet agreed upon terms and conditions to compensate Verizon for this work. Although Mr. Weyforth claims that this is because Verizon was refusing to negotiate an amendment with Sprint, to the best of my

knowledge, Sprint has never indicated either verbally or in writing to Verizon whether it would be willing to agree to the charges for such network modifications that Verizon has proposed for the TRO amendment (those rates and charges are published on Verizon's website) or otherwise provided any counter-proposal to the rates proposed by Verizon.

I hereby declare under oath and penalty of perjury that the foregoing Affidavit is true and correct to the best of my knowledge.

Stephen C. Hughes

Subscribed and sworn to before me this 26th day of April, 2004.

Notary Public

MIGUEL A. ROSA
Notary Public, State of New York
No. 43-4771951, Qualified in Kings County
Certificate Filed in New York County
Commission Expires Nov. 30, 2006

"Jones, Shelley E [CC]" <sjones37@sprintspectrum.com>

10/07/2003 06:14 PM

To: Stephen Hughes/EMPL/NY/Verizon@VZNotes, Gary Librizzi/EMPL/NY/Verizon@VZNotes
cc: "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject:

Stephen and Gary,

Sprint is reviewing the TRO amendment that appeared on the Verizon website. What are Verizon's intentions for this amendment? Other than having an interconnecting company request to amend their agreement and consent to use the Verizon amendment, does Verizon have any plans to incorporate this amendment in with other amendments that are outstanding, such as the EELs and Line Splitting amendments Sprint requested several months ago?

I am curious as to its intended use and the status of the amendments that were already requested.

Please fill me in. Thanks,

Shelley Jones
Sprint - Carrier & Interconnection Management KSOPHN0214
913-315-9388
913-315-0752 fax

"Jones, Shelley E [CC]" <sjones37@sprintspectrum.com>
10/17/2003 05:01 PM

To: Stephen Hughes/EMPL/NY/Verizon@VZNotes
cc: Gary Librizzi/EMPL/NY/Verizon@VZNotes, "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject: RE: Conference Call

Thank you Stephen. Please call 1-816-650-0612 code 5256637

Shelley Jones
Sprint - Carrier & Interconnection Management
KSOPHN0214-2A562
913-315-9388
913-315-0752 ax
-----Original Message-----
From: stephen.c.hughes@verizon.com [mailto:stephen.c.hughes@verizon.com]
Sent: Friday, October 17, 2003 3:48 PM
To: Jones, Shelley E [CC]
Cc: gary.r.librizzi@verizon.com; Weyforth, Jack S [CC]
Subject: RE: Conference Call

Shelley: Verizon would be available to participate in a conference call on Monday, October 20 from 2:30-3:30 eastern time. If you have a conference bridge available, please forward it to us or we can use one of ours.

Thank you.

Steve Hughes
212-395-2875

To: Stephen Hughes/EMPL/NY/Verizon@VZNotes
cc: Gary Librizzi/EMPL/NY/Verizon@VZNotes, "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject: RE: Conference Call

Stephen,

The timely scheduling of this call is important to Sprint. Please respond with a date/time slot that works for Verizon. Sprint is very concerned that Verizon is attempting to use the recent TRO to hold up Sprint's CLEC activity in Verizon territory.

Shelley Jones
Sprint - Carrier & Interconnection Management
KSOPHN0214-2A562
913-315-9388
913-315-0752 ax

-----Original Message-----
From: Jones, Shelley E [CC]
Sent: Wednesday, October 15, 2003 1:05 PM

To: 'stephen.c.hughes@verizon.com'
Cc: gary.r.librizzi@verizon.com; Weyforth, Jack S [CC]
Subject: RE: Conference Call

Eastern time slots for a 1 hour call:

10/17 2-3
10/20 2-3:30
10/21 10-11 or 2-4

I am out of the office 10/22 until the following week. I'd like to be here for the call but it is not required.

Shelley Jones
Sprint - Carrier & Interconnection Management
KSOPHN0214-2A562
913-315-9388
913-315-0752 ax

-----Original Message-----
From: stephen.c.hughes@verizon.com [mailto:stephen.c.hughes@verizon.com]

Sent: Wednesday, October 15, 2003 12:50 PM
To: Jones, Shelley E [CC]
Cc: gary.r.librizzi@verizon.com
Subject: Conference Call

Shelley, your voice mail to Gary was forwarded to me. In preparation for a conference call between Sprint and Verizon, would you please forward the Sprint team's availability for this week and next week.

Thank you.

Steve Hughes
212-395-2875

Paul A. Rich
03/11/2004 08:51 PM

To: "Cowin, Joseph P [CC]" <Joseph.Cowin@mail.sprint.com>
cc: (bcc: Stephen Hughes/EMPL/NY/Verizon)
Subject: RE: Verizon TRO Amendment

Mr. Cowin,

In our recent discussions, Sprint's representatives have asked for a more detailed explanation of why Verizon has declined to accept Sprint's proposed revisions to the draft TRO amendment. The explanation is attached. If you need more information on Verizon's positions, please call me.

On a related note, Verizon is planning to propose revisions to the draft TRO amendment to address the D.C. Circuit Court of Appeals' March 2, 2004 TRO decision.

Paul Rich

TRO Amend Response.do

Paul A. Rich
Legal Department
Verizon Services Corp.
1515 North Courthouse Road, Suite 500
Arlington, VA 22201
Telephone No.: 703-351-3118
Fax No.: 703-351-3659
Email: paul.a.rich@verizon.com

Verizon Response to Sprint TRO Amendment Issues

1. Section 2.14, "Local Switching." "Verizon switch (as identified in the LERG) that provides local circuit switching." Verizon does not understand how this change in language improves the clarity of Verizon's proposed language: "on a circuit switch in Verizon's network (as identified in the LERG)."

2. Section 2.16 (e). Addition of "[***State Commission TXT***] established multiline end user loop maximum." As a result of the D.C. Circuit Court of Appeals' recent TRO decision, inclusion of this language does not appear to be appropriate. The D.C. Circuit's decision, which vacates both the FCC's impairment finding as to Mass Market Switching and the FCC's delegation of non-impairment findings to the state commissions, means that the state commissions will not be establishing a multiline end user loop maximum. At this time, it is unknown whether on remand the FCC will establish a multiline end user loop maximum.

3. Section 2.16(e). Deletion of reference to the FCC's "Four-Line Carve Out Rule." Since the "Four-Line Carve Out Rule" is prescribed by the FCC's rules, deletion of this provision would not be appropriate.

4. Section 2.16. Deletion of "(g) the Feeder portion of a Loop." Retention of this language would appear appropriate in light of Section 3.1.3.4.

5. Section 2.16(j) and (k). Replacement of "use of" with "purchase of." Verizon does not understand why Sprint believes that this change is needed.

6. Section 2.16(j) and (k). Replacement of "Mass Market Switching" with "UNE Switching." This change is not appropriate. "UNE Switching" could include not only "Mass Market Switching," but also "Enterprise Switching." Verizon does not have a continuing obligation to provide "Enterprise Switching." Because of this, Verizon does not have a continuing obligation to provide "Databases" or "Signaling" for use with "Enterprise Switching," and "Databases" and "Signaling" for use with "Enterprise Switching" therefore are properly classified as "Nonconforming Facilities."

7. Section 2.18, "Qualifying Service." "Once a UNE has been provided subject to the provision of a qualifying service it is permissible to provide a non-qualifying service over the same facility pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." The D.C. Circuit's decision has disapproved the FCC's distinction between "Qualifying Services" and "Non-Qualifying Services." Sprint's proposed sentence is therefore inappropriate. Verizon is considering deletion of this section from the TRO Amendment. Also, Sprint's concern on this point appears to be addressed by Section 1.2 of the TRO Amendment.

8. Section 2.19, "Route." Deletion of the phrase "within a LATA" at the end of the first sentence. This change is not appropriate. (See TRO, Paragraph 365 and Footnote 1111.)

9. Section 2.20, "Service Management Systems." Verizon is concerned that the proposed language, while adopting the text of the FCC's rule, may in actual practice be overly broad. In preparing the TRO Amendment, Verizon did not see a need to expressly address Service Management Systems. If there is a need to expressly address Service Management Systems, more narrowly tailored language should be used.

10. Section 2.20, "Signaling Networks." While the term proposed by Sprint, "Signaling Networks," is the term used in the FCC's rules, the more recent Verizon agreements with Sprint (NY, MA, MD, PA) generally do not use this term on a stand-alone basis. Rather, these agreements typically refer either to "signaling" or to the specific signaling arrangements and signaling networks that will be used by the parties. Thus, use of the term "Signaling," especially since the definition is that adopted by the FCC for "Signaling Networks," is appropriate.

11. Section 3.1.1.3. Verizon does not agree with the addition of the phrase "or at the end of any transition period set forth in the finding." As the term "Nonconforming Facility" is used in the amendment, a facility becomes a "Nonconforming Facility" at the time of a non-impairment determination, even if there is a transition period during which Verizon must continue to provide the facility.

12. Section 3.3.1.1.1. Verizon believes that this section should remain in the amendment. It is substantially the same as the language in Sprint's Massachusetts interconnection agreement on access to House and Riser Cable.

13. Section 3.3.1.2. Sprint has questioned the need for the Parties to "negotiate in good faith an amendment to the Amended Agreement memorializing the terms, conditions and rates under which Verizon will provide a single point of interconnection at a multiunit premises." Verizon believes this approach is necessary because of the potentially differing circumstances at each premises and the consequent difficulty of covering all installations through general language in the Amended Agreement and generally available rates.

14. Section 3.4.1. See 2, above.

15. Section 3.4.3. See 9 and 10, above.

16. Section 3.5.2.3. See 11, above.

17. Section 3.5.3.2. See 11, above.

18. Section 3.6.1, first sentence, third line, ". . . Verizon will not prohibit the commingling by Sprint of an unbundled Network Element . . .". Verizon does not understand why Sprint believes this revision is needed.

19. Section 3.6.1, "but Verizon's performance will conform at parity with how it provisions like service to its own customers, itself, and to its affiliates." Verizon disagrees with the addition of this phrase. First, it is unclear what the term "parity" means. Second, if Verizon has some obligation under applicable law to provide service in a non-discriminatory manner, in light of the general "compliance with applicable law" provisions usually contained in interconnection agreements, there would not seem to be a need to have a special "parity" or "non-discrimination" provision in Section 3.6.1.

20. Section 3.6.2.7, "reimburse Verizon for the entire cost of the audit." Verizon believes that Sprint should bear the entire cost for an audit, since the audit would not have been necessary if Sprint had adhered to applicable FCC rules for use of EELs.

21. Section 3.6.2.7, final sentence. Sprint has questioned the need for it to retain records "for at least eighteen (18) months." Verizon believes this interval is reasonable given the "[o]nce per calendar year" timing of audits.

22. Section 3.7.1. Verizon believes that the language it has proposed accurately reflects the TRO.

23. Section 3.7.2. See 19, above.

24. Rates. The rates that Verizon has proposed are either existing effective state commission approved rates or rates that Verizon will substantiate in the applicable state commission arbitration proceedings.

Stephen Hughes
10/27/2003 02:34 PM

To: "Jones, Shelley E [CC]" <sjones37@sprintspectrum.com>
cc: "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject: Sprint Line Splitting Amendments

Shelley, attached are draft Line Splitting amendments for MA, MD, NJ, NY, PA (East) and PA (West). The amendments are being sent in a draft form for Sprint's comments. Verizon is still reviewing the language of the amendments to assure that it conforms to the FCC's Triennial Review Order and the revisions that Verizon will be making to its template interconnection agreement to conform the template to the Triennial Review Order. Verizon therefore reserves the right to revise the draft amendments.

Please let me know if you have any questions.

Thank you.

Steve Hughes
Verizon Negotiations Manager
1095 Avenue of the Americas, 1705F
New York, NY 10036
212-395-2875

Sprint-MA-Line Split-Amend 102503 sprint-MD-line split-amend 102503 sprint-nj-line split-amend 102503

Sprint-NY-Line Split-Amend 102503 Sprint-PA-Line Split-Amend 102503 sprint-PAw-line split-amend 102503

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of April, 2004, served the true and correct original, along with the correct number of copies, of ***Response of Verizon Northwest Inc. to Collective Motions to Dismiss; Affidavit of Stephen A. Kanitra; Affidavit of Anthony M. Black; Affidavit of Stephen C. Hughes; Affidavit of John Peterson; and Affidavit of Michael A. Daly*** upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98503-7250

__X Hand Delivered
___ U.S. Mail (1st class, postage prepaid)
___ Overnight Mail
___ Facsimile (360) 586-1150
___ Email (records@wutc.wa.gov)

I hereby certify that I have this 27th day of April, 2004, served a true and correct copy of the foregoing document upon parties noted below via E-Mail and U.S. Mail:

On Behalf of Sprint:
William E. Hendricks III
Sprint Communications Co. LP
902 Wasco Street
Hood River, OR 97031-3105
Email: tre.e.hendricks.iii@sprint.com

On Behalf of XO Washington:
Gregory J. Kopta.
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688
Email: gregkopta@dwt.com

On Behalf of Competitive Carriers Coalition
Heather T. Hendrickson
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Washington, D.C. 20036
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On Behalf of Worldcom, Inc. (MCI):
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On Behalf of Covad Communications Co.
Karen Shoresman Frame
Covad Communications Co.
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Email: kframe@covad.com

Presiding Administrative Law Judge
The Honorable Ann E. Rendahl
Washington Utilities & Transportation Committee
1300 S. Evergreen Park Dr SW
Olympia, WA 98504-7250
Email: arendahl@wutc.wa.gov

I hereby certify that I have on the 27th day of April, 2004, served a true and correct copy of the foregoing document upon parties noted below via U.S. Mail:

Dennis Kelley
Director of Operations (Provisioning)
1-800-RECONEX INC.
2500 Industrial Avenue
Hubbard, OR 97032

William E. Braun
Vice President and General Counsel
1-800-RECONEX INC.
2500 Industrial Avenue
Hubbard, OR 97032

Jill Sandford
Senior Attorney
AboveNet Communications Inc.
360 Hamilton Avenue
White Plains, NY 10601

Robert Sokota, Esquire
General Counsel
AboveNet Communications Inc.
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Joelle Sinclair
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John B. Glicksman
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Coudersport, PA 16915

Lon E. Blake
Director of Regulatory Affairs
Advanced TelCom Group Inc.
3723 Fairview Industrial Dr. SE
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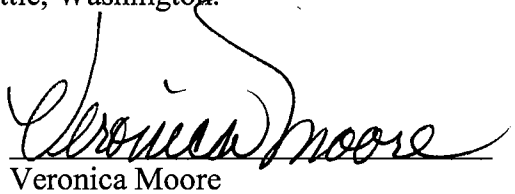
I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 27th day of April, 2004, at Seattle, Washington.



Veronica Moore