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March 19, 2004

VIA OVERNIGHT DELIVERY

Ms. Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
Olympia, Washington 98504

Re: Docket No. UT-043013-Answer of the Competitive Carrier Coalition to Verizon Northwest Inc.'s Petition for Arbitration of an Interconnection Agreement Amendment

Dear Ms. Washburn:

Enclosed please find an original and twelve (12) copies of the Answer and exhibits of Advanced Telecom Group Inc.; BullsEye Telecom Inc.; Comcast Phone of Washington LLC; DIECA Communications, Inc. d/b/a Covad Communications Company; Global Crossing Local Services Inc.; KMC Telecom V Inc.; and Winstar Communications LLC (collectively, "Competitive Carriers Coalition") to Verizon Northwest Inc.'s Petition for consolidated arbitration of an amendment to interconnection agreements with competitive local exchange carriers and commercial mobile radio service providers.

Also enclosed please find a duplicate of this filing and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Should you have any questions concerning this matter, please contact the undersigned counsel at (202) 955-9600.

Respectfully submitted,

Heather Hendrickson

Genevieve Morelli
Andrew M. Klein
Michael B. Hazzard
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Counsel for the Competitive Carrier Coalition

Enclosures

cc: Timothy J. O'Connell, Stoel, Rives, LLP
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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	)	Docket No. UT-043013

ANSWER OF
ADVANCED TELECOM GROUP INC.; BULLSEYE TELECOM INC.; COMCAST PHONE OF WASHINGTON LLC; DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY; GLOBAL CROSSING LOCAL SERVICES INC.; KMC TELECOM V INC.; AND WINSTAR COMMUNICATIONS LLC ("COMPETITIVE CARRIER COALITION")

Advanced Telecom Group Inc.; BullsEye Telecom Inc.; Comcast Phone of Washington LLC; DIECA Communications, Inc. d/b/a Covad Communications Company; Global Crossing Local Services Inc.; KMC Telecom V Inc.; and Winstar Communications LLC ("Competitive Carrier Coalition" or "CCC"), by their attorneys and pursuant to the timelines set forth in section 252 of the Communications Act of 1934, as amended ("Act"),[1] hereby provide their response to Verizon's Petition for Arbitration in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

On February 20, 2004 Verizon hastily petitioned this Commission to "initiate a consolidated arbitration proceeding to amend the interconnection agreement between Verizon" and competitors "to the extent that their current interconnection agreements provide for access to

[1] 47 U.S.C. § 252. As described in more detail below, the CCC notes that it is unclear whether any of the amendments to the existing interconnection agreements between Verizon and members of the CCC incorporate a 270-day interval for dispute resolution related to interconnection agreement amendments, as Verizon assumes. In any event, this response does not represent waiver of any right of any of the individual CLEC either pursuant to the Act or an individual interconnection agreement. Accordingly, each company that comprises the CCC expressly reserves all of its rights, including the right to seek an individual amendment to its individual interconnection agreement.

unbundled network elements ("UNEs")."[2] Verizon filed its petition without describing negotiations (or lack thereof) conducted to date, without regard to the change of law provision(s) of any individual interconnection agreement, and without even describing (yet alone defining) a list of issues for this Commission to consider. Although it laments the timing of certain CLEC responses to its proposed interconnection agreement amendment,[3] Verizon has never responded to the counteroffer amendments put forth by members of the CCC (*see* Tabs A and B),[4] nor has Verizon made any effort to establish a negotiation schedule with CCC members that have provided substantive responses to Verizon despite ample time to do so before the arbitration petition deadline.

In addition to the procedural infirmities described above, Verizon's proposals to date suffer from a number of other material infirmities. For example, in spite of the fact that Verizon has consistently relied on section 252 interconnection agreements to demonstrate compliance with state law and the section 271 checklist, Verizon's new position is that it unilaterally can redline the obligations contained in those agreements by virtue of its misguided reliance on an inapplicable decision of the Fifth Circuit Court of Appeals.[5] Bending this decision well past the breaking point, Verizon attempts to skirt its obligations under state and federal law, including the section 271 checklist in places where Verizon is a Bell Operating Company. Accordingly, in spite of Verizon's incorrect assertion that its draft amendment "tracks the FCC's binding determinations and should be approved," the Commission should reject Verizon's

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2 Verizon Petition at 1 (citation omitted).

3 *See, e.g., id.* at 4.

4 The amendment contained in Tab A initially was prepared by some of the carriers that are joining this Answer. Similarly, Tab B contains a counterproposal provided by NewSouth to Verizon. Just as Verizon's proposal needs to be modified to take account of *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (decided Mar. 2, 2004) ("*USTA II*"), the same is true for the proposals of CCC member companies.

5 Verizon Petition at 4, fn. 5, relying on *Coserv.*

proposal to implement the TRO,[6] and order Verizon to propose a revised amendment that is consistent with its obligations under section 251 (as construed by *USTA II*), section 271, and state law.[7]

In stark contrast to its petition to arbitrate a TRO interconnection agreement amendment, Verizon also has in many instances petitioned state commissions to stay TRO implementation proceedings due to the recent ruling by the United States Court of Appeals for the District of Columbia Circuit in *USTA II*. In the context of many of the TRO impairment proceedings, Verizon has argued that because *USTA II* invalidates both the FCC's delegation of authority to determine whether CLECs are impaired without access to unbundled elements and the substantive tests that the FCC promulgated for making such determinations, continuing TRO proceedings is inefficient for both the parties and the Commission. In contrast to its rush to stay the TRO impairment proceedings, Verizon has been eminently noncommittal with regard to modifying its proposed amendment to implement the TRO in light of *USTA II*.[8]

Despite the numerous procedural and substantive deficiencies noted, and Verizon's attempt to manipulate the Commission's agenda, the Coalition believes that this proceeding would provide an efficient vehicle for the resolution of – in one docket – the many

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6 *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17125-26, ¶ 242 (2003), *corrected by Errata*, 18 FCC Rcd 19020 (2003) (collectively "TRO"), *reversed and remanded, United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (decided Mar. 2, 2004) ("*USTA II*").

7 Because Verizon requested the change of law amendments, and given the complexity of conforming the Amendment to the TRO and *USTA II*, any such amendment submitted by Verizon should be annotated to reference provisions of the TRO or other authority upon which Verizon relies to support its proposals.

8 In its Petition at 5, Verizon suggests that it may modify its proposed amendment (and presumably its Petition) based on any action by the DC Circuit, such as that which occurred in *USTA II*.

outstanding issues that affect so many carriers. Thus, we believe that the Commission should establish procedures for this arbitration that address the TRO, *USTA II*, state law, and other federal law requirements (such as Section 271 obligations) in order to minimize duplication of effort and promote the most efficient use of the Commission's resources.

In light of these factors and circumstances, we respectfully request that the Commission take the following steps. First, the Commission should docket a proceeding (to the extent it has not already done so) and assert its section 252 jurisdiction over all of the issues naturally related to the parties' interconnection agreements.[9] Second, the Commission should issue a standstill order that maintains the *status quo* under existing interconnection agreements until such time as the Commission ultimately approves an interconnection agreement amendment that reflects all applicable law. Third, in order to consider the impact of *USTA II* and determine whether its holdings will be subject to Supreme Court review, the Commission should hold the arbitration proceeding in abeyance and require Verizon to modify its out of date amendment within 60 days. Once Verizon has provided a revised amendment, the Commission should direct the parties to narrow the issues and attempt to reach a negotiated agreement, with oversight by Commission Staff as appropriate, over a subsequent 90-day period. To the extent the parties cannot reach a negotiated agreement, the parties should submit to the Commission a jointly-

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[9] These issues, as noted below, are much broader than the limited subset Verizon has attempted to frame in its Petition. Since the interconnection agreements contain terms and conditions for access to network elements on bases other than section 251(c)(3) (including, for example, access pursuant to state law and sections 251(c)(2) and 271 of the Act), any attempt to amend the terms must likewise include an assessment of those ongoing obligations. As this Commission is well aware, state law as a basis for requiring access to elements was specifically preserved by Congress when it amended the Act in 1996 (*see, e.g.*, 47 U.S.C. 251(d)(3)). Indeed, since one of the primary purposes of section 251 is to mandate access to network elements, it would be nearly impossible for action by this Commission requiring access to network elements to be declared inconsistent with that section. The very fact that this arbitration was brought by Verizon at the state level under the federal Act is tacit recognition of the federal-state partnership woven into the Act.

developed issues list at the end of that 90-day period, which would trigger resumption of the arbitration proceeding.

While the process described above takes place and the parties attempt to reach agreement on the terms of a TRO amendment, the Commission should concurrently take action on two related items that were not affected by *USTA II*. First, the Commission must order Verizon to comply with its preexisting and ongoing obligation to provide access to elements even where routine network modifications are required. While the FCC in the TRO clarified Verizon's obligations in this respect, that clarification can in no way be considered a change in law that must be incorporated into an amendment before it becomes binding. In fact, the FCC's justification for issuing that clarification was to prevent incumbents from delaying competitor access to facilities.[10] Thus, permitting Verizon to shirk its legal obligations by claiming that an amendment is necessary would frustrate the intent of the rule and continue to severely limit competition.

Second, the Commission should assert its authority over access to elements offered by Verizon where it is a Bell Operating Company pursuant to section 271. To the extent the Commission determines that rates of access under section 271 and state law might differ from today's section 251(c)(3) rates, the Commission must define those differences and establish legally adequate rates for the 271 elements and/or the state elements. This may require, for example, the filing of cost studies to set the rates – to the extent the Commission decides not to utilize TELRIC as the appropriate "just and reasonable" pricing standard for 271 elements or state elements. The Coalition encourages the Commission to begin this important process without delay.

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[10] *See, e.g.*, TRO at ¶ 639.

ARGUMENT

Taking the items highlighted in the preceding section in reverse order, the CCC first demonstrates that the Commission should assert its section 252 jurisdiction and commence an arbitration proceeding that will take into account the TRO, *USTA II* and other aspects of state and federal law implicated by the TRO and the terms of the underlying interconnection agreements. Next, the CCC provides its direct answer to Verizon's incomplete and outdated amendment.[11]

I. THE COMMISSION SHOULD COMMENCE AN ARBITRATION PROCEEDING

The CCC submits that the Commission should exercise its authority under section 252 of the Act and concurrent state authority by establishing a schedule to arbitrate a consolidated interconnection agreement amendment that appropriately effectuates the TRO and duly applies applicable law. At the same time, the Commission must issue a standstill order to preserve business arrangements under existing interconnection agreements pending completion of the arbitration and approval by the Commission of a lawful amendment. Such a standstill order would serve to minimize uncertainty and potential disruption, and promote an orderly transition to the new interconnection agreement terms that reflect all applicable law, including the TRO, state law and the section 271 requirements. Furthermore, such a consolidated action would promote administrative efficiency.

Regarding the substance of such an arbitration, the Commission should recognize at the outset that Verizon has failed to engage any of the CCC members in real negotiations –

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11 The proposed interconnection agreement amendments that are attached hereto and incorporated herein provide an additional and substantive point-by-point response to the issues raised in the Verizon Petition.

either individually or collectively.[12] Accordingly, the Commission should hold any arbitration docket in abeyance and require Verizon to redraft and refile a revised amendment consistent with *USTA II* and applicable law within 60 days. Based on Verizon's revised proposal, the Commission should direct the parties to negotiate, potentially with the aid of Commission-sponsored mediation, a revised amendment and within 90 days either submit a negotiated amendment to the Commission for approval or, to the extent the parties cannot reach agreement, submit an issues list for arbitration. Should the parties not reach agreement voluntarily, the arbitration proceeding would resume upon submission to the Commission of a joint issues list.

There can be no doubt that the confluence of issues arising from the implementation of TRO, the DC Circuit's decision in *USTA II*, and the interconnection and access requirements of the Act and state law makes Commission action difficult. The common sense approach presented herein, if adopted, would provide the Commission with a lawful means to resolve rapidly and deliberately the issues presented in a way that minimizes disruption to existing businesses and the consumers that are served by the carriers that comprise the CCC in Washington. Accordingly, the Commission should commence an arbitration proceeding directly.

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12 Indeed, the October 2, 2003 letter on which Verizon relies as the commencement of negotiations did not even contain a proposed amendment. Rather than e-mailing an editable, electronic draft Amendment that invites negotiation, Verizon's generic letter suggested that interested CLECs should contact Verizon to begin the process of negotiations., and ultimately posted a draft Amendment with neither references to provisions of the TRO nor to sections of any CLEC's interconnection agreement Verizon proposed to modify. Verizon's failure to pursue TRO Amendment negotiations at any time thereafter or to remind CLECs of the applicable timetable are inconsistent with diligent negotiations pursued by other Bell Operating Companies, and belie Verizon's assertion that it has sought negotiations in good faith. Verizon did engage in one "negotiation" session with NewSouth during which Verizon rejected essentially every proposal made by NewSouth.

II. VERIZON'S PROPOSED AMENDMENT SUFFERS FROM A VARIETY OF MATERIAL SHORTCOMINGS

The CCC now turns to the material shortcomings of Verizon's proposal, many of which are described below. Although the CCC believes that the Commission should require Verizon to amend its Petition and proposed amendment in accordance with *USTA II*, the CCC nevertheless responds directly to Verizon's current proposal in order to satisfy the requirements of section 252(b)(3) of the Act.[13]

A. General Shortcomings Of Verizon's Petition And Amendment

Notwithstanding the fact that Verizon makes no effort to satisfy the standards set forth by the Commission in previous arbitration proceedings, the CCC notes that it is entirely unclear whether amendments to any of the existing interconnection agreements must be completed within the 270 period proffered by Verizon. Although the TRO set default provisions for modifying interconnection agreements, those provisions only are relevant to the extent an existing interconnection agreement contains no change of law provision.[14] Verizon makes absolutely no effort to discuss or even to consider the change of law provisions in existing agreements because it knows that virtually all of those agreements contain detailed processes – some voluntarily negotiated and others arbitrated – for resolving disputes arising from efforts to amend interconnection agreement to reflect changes in law.

Verizon similarly fails to explain adequately its omission of terms, conditions, and prices for network elements that are "substitute[s] for UNEs"[15] and which Verizon must

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13 47 U.S.C. § 252(b)(3). As noted earlier, the proposed interconnection agreement amendments attached hereto and incorporated herein provide additional and substantive point-by-point responses to the issues raised in the Verizon Petition. They also address, as they must, other requirements of applicable law.

14 *See*, TRO, ¶¶ 700-06.

15 Verizon Petition at 4, fn. 5 and 7, relying on *Coserv.*

continue to provide under interconnection agreements, at least to the extent it wishes to continue to remain in compliance with state and federal law, including section 271 where Verizon is a Bell Operating Company. Verizon's sole defense for this glaring omission is its reliance on a misstatement of the holding in the Fifth Circuit's *Coserv* decision.[16] In a narrow opinion, the *Coserv* court upheld a decision of the Public Utility Commission of Texas to refuse to arbitrate issues that parties previously had not addressed during negotiations, and in so doing held "that where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1)."[17] Thus, the *Coserv* court addressed only voluntarily negotiated items, not those mandated by federal or state law.

If Verizon's view of *Coserv* were correct, then section 252(e)(3) of the Act would be rendered a nullity, and state commissions – including this Commission – would lack the ability to address state law issues in interconnection agreements. This simply is not the case, however. In section 252(e)(3) of the Act, entitled "preservation of authority," Congress expressly provided that, in reviewing interconnection agreements state commission may "establish[] and enforce[] ... requirements of state law ...."[18] In spite of this express Congressional grant of authority to the state commissions – entirely unaddressed by and outside of the scope of the issues in *Coserv* – Verizon would have this Commission believe that it lacks authority to establish and enforce requirements arising under state law in section 252

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16 *Id.*

17 *Id.*, 487.

18 47 U.S.C. § 253(e)(3). The state commissions similarly have express authority to define unbundled network elements pursuant section 251(d)(3) of the Act, 47 U.S.C. § 251(d)(3).

interconnection agreements.[19] Far from supporting Verizon's unsupportable position, Verizon's use of *Coserv* highlights Verizon's penchant for overreaching.

If Verizon's interpretation of *Coserv* were remotely reasonable, then Verizon presently would be out of compliance with its section 271 obligations in jurisdictions where Verizon is a Bell Operating Company. In each of its section 271 applications, Verizon relied on section 252 interconnection agreements as the sole means of demonstrating checklist compliance.[20] This "Track A" approach was reasonable, as section 271 expressly provides that Verizon must demonstrate under that approach checklist compliance through interconnection agreements entered pursuant to section 252.[21] Under section 271, Verizon must continue providing checklist items that no longer are section 251(c)(3) UNEs, such as operator services/directory assistance and unbundled DS-1 switching. If Verizon no longer has section 252 interconnection agreements that provide for those items, then it simply no longer complies with section 271.

On a separate but equally important note, at least one member of the CCC received termination notices under their interconnection agreements on August 20, 2003 – the day before the TRO was released.[22] Under the terms of those agreements, the parties' existing agreement remains in effect while they negotiate a replacement agreement. Verizon, however, sent an ostensibly complete replacement agreement that "ha[d] not been updated to reflect [the

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19 Similarly, if Verizon were correct that it could constrain interconnection agreements to the bare bones requirements of sections 251(b) and (c), the resulting "agreements" would be entirely unworkable. For example, neither section 251(b) nor section 251(c) enumerates basic business terms required by contracts, including terms for dispute resolution, assignment, indemnification, or force majeure.

20 47 U.S.C. § 271(c)(1)(A), commonly referred to as "Track A."

21 *Id.* at § 271 (c)(2)(A(i)(I).

22 *See* correspondence between Verizon and SNiP LiNK, attached hereto at Tab C.

TRO]" and that, according to Verizon "is not an executable agreement."[23] Even to this day, Verizon has not presented this CLEC with a single document that represents a replacement Verizon would sign. Indeed, it offered an unworkable "agreement plus amendment" alternative that creates uncertainty concerning which document applies. Again, this serves to highlight Verizon's utter lack of seriousness regarding TRO interconnection agreement amendment negotiations.

B. Substantive Shortcomings Of Verizon's Petition And Amendment

In its petition, Verizon's primary argument for approval of its one-sided amendment is that CLEC counterproposals were untimely and/or unreasonable. Tellingly, Verizon fails to offer a single fact to support its claim. To the extent it has taken time for CLECs to make counterproposals to Verizon's amendment, the explanation is equally obvious. Verizon has offered CLECs a one-sided amendment that does not comport with the TRO. Due to the patent insufficiency of Verizon's proposal, CLECs were forced to develop counterproposals true to the TRO in a format consistent as much as practicable with Verizon's format. That this effort took the CLECs some time is perfectly understandable given that the TRO spans over 480 single spaced pages and contains nearly 2500 footnotes. Moreover, while Verizon has had the ability to focus its effort on developing a single proposal for its territory, many CLECs have been engaged with similar efforts with other incumbents, including BellSouth and SBC, as well as the various TRO impairment proceedings that have been on-going since August of 2003, if not before.

Equally important, Verizon fails to acknowledge that it never has responded to the counterproposals attached hereto at Tab A and Tab B. Instead of negotiating with CLECs (to at least define if not narrow the issues) Verizon has run to the Commission for arbitration.

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[23] *Id.*

Contrary to Verizon's claims, its amendment does not seek to modify the existing agreements in accordance with the TRO,[24] and following is a high-level summary of some of the major deficiencies contained in Verizon's proposal.

1. General Conditions

In sections 1.1, 1.2, and 1.3 of its proposed General Conditions, Verizon makes no provision for access to network elements ordered by the Commission either under **state law** or pursuant to **section 271**. Section 1.4 preserves Verizon's ability to argue that items should not be unbundled, but makes no reciprocal provision for competitors to argue that items should be unbundled.

Similarly, numerous items contained in Verizon's proposed **"glossary"** do not comport with the definitions set forth by the FCC in its TRO implementation rules. For example, the terms Call-Related Databases, Dark Fiber Transport, DS-1 Dedicated Transport, DS-3 Dedicated Transport, DS-1 Loop, DS-3 Loop, FTTH Loop, Hybrid Loops, Line Sharing, and Local Switching do not square with the definitions set forth by the FCC in the TRO. Other critical terms, such as Commingling, Enhanced Extended Loop, Line Conditioning, Line Splitting, Local Loop, and Nonqualifying Service, go undefined in Verizon's proposal. A number of other terms, including but not limited to Enterprise Switching and Mass Market Switching, are improperly defined as well. These definitional problems not only affect the glossary, but flow through into other areas of Verizon's proposed amendment, including section three, which purports to address UNE TRO Provisions.

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[24] Verizon Petition at 6.

2. UNE TRO Provisions

As noted above, the problems associated with Verizon's proposed glossary items flow through to other portions of Verizon's proposed amendment, including those in section three, styled "UNE TRO Provisions." For example, Verizon's inappropriate definitions of DS-1 and DS-3 loops reappear. These and numerous other definitions, such as "FTTH Loops" and "Overbuilds" need to be modified to track the FCC's rules and the TRO. The same holds true for its proposals regarding access to subloops in section 3.3 of Verizon's proposal. More generally, Verizon's "loop" section makes no provision for on-going access to loops generally and voice grade loops in particular, which are a classic bottleneck facility that Verizon must continue to provide under the TRO. Additionally, Verizon's proposal, contrary to the TRO, proposed to limit the ability of facilities-based carriers to access DS-1 loops to serve enterprise customers. The TRO requires ILECs to provide access to DS-1 loops regardless of the technology the ILEC itself uses to provide such loops, even fiber-based technologies.[25] By contrast, the proposal offered by the CCC provides specific language to address Verizon's on-going loop unbundling obligations under the TRO.

Separately, Verizon's language at section 3.1.1.3 regarding potential findings of nonimpairment makes no provision for a **transition plan**, which suggests Verizon intends a flash cut away from UNEs upon a potential finding of no impairment. Similarly no provisions are made for establishing rates, terms, or conditions for items that no longer are considered section 251(c)(3) UNEs, nor is any provision made for findings under state law or otherwise under the federal Act.

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[25] *See* TRO at n. 956.

Verizon also attempts to wholly foreclose CLECs from obtaining access to **feeder plant** at section 3.1.3.4 of its proposed amendment. The FCC made no such blanket ruling, and instead provided access to the feeder to the extent necessary to provide a complete transmission path between the central office and the customer premises. In addition, the FCC encouraged ILECs to negotiate access with CLECs, yet Verizon has thus far refused to do so, as evidenced by its failure in any way to respond the carriers' proposed amendment.

As for **line sharing and related items**, Verizon's proposed amendment fails to include any language concerning "line splitting," "line conditioning," "maintenance, repair, and testing," "control of the loop and splitter functionality," "dark fiber loops," "retirement of copper loops," and "engineering policies, practices, and procedures" that mirror the language in the FCC's TRO rules. In addition, Verizon's proposed language relating to grandfathering existing line sharing arrangement and transitioning to the new rules also fails to mirror the requirements of the TRO.

Section 3.4 of Verizon's proposal regarding **local circuit switching** similarly does not track the language in the rules and must therefore be revised. The transitional mechanisms triggered by a finding of non-impairment are also deficient. In addition, provisions concerning access to service management systems, shared transport, nondiscriminatory access to OS/DA in the absence of customized routing and section 271 obligations, including rate setting, among other items, are also absent.

The same holds true for section 3.5 of Verizon's proposal, which ostensibly addresses **transport** issues. The entire transport section fails to track the language in the FCC's rules and the language of the TRO, and accordingly should be rejected. For example, Verizon's proposal makes no mention of transport that is provisioned to reverse collocation arrangements,

does not incorporate its existing and ongoing obligations to make "routine network modifications," and excludes unbundled transport that is required under section 271 and state law (including Verizon's effective state tariffs). Moreover, the transitional mechanisms triggered by a finding of no impairment, if any such finding were to occur, are also deficient.

The entire **commingling and combinations** section, labeled as section 3.6, also falls far short of the FCC's rules and the language of the TRO. Moreover, Verizon's proposed provisions contain extraneous requirements that are simply not contemplated by the TRO, such as nonrecurring charges for commingling, restrictions on qualifying collocation arrangements (including the elimination of reverse collocation as an option), written certification requirements that exceed the FCC's architectural criteria, and one-sided audit provisions that defeat the obligation to provide loop transport combinations (*i.e.*, Enhanced Extended Links).

The same holds true in section 3.7 of Verizon's proposal, which allegedly addresses **routine network modifications**. In addition to failing to track the FCC's rules and the TRO, Verizon has attempted to inject a variety of unilateral provisions limiting its obligations. For example, Verizon attempts to exempt from its performance plan obligations any facilities that are involved in routine network modifications, in spite of the fact that the TRO makes no such provision because these modifications are by definition "routine." Further, Verizon proposes substantial discriminatory charges for performing these "routine" modifications.

As previewed above, the "**transition plan**" described at section 3.8 of Verizon's proposal is inconsistent with the language of the new rules, which state, for example, that the 90-day migration period does not commence until the end of the 90-day state commission consideration period, or a longer period if required by the parties' change of law provision. The transition plan for mass market switching similarly is inadequate. Finally, and as noted above,

none of Verizon's transition language makes adequate provision for establishing pricing under section 271 or for otherwise incorporating Verizon's existing and ongoing obligations either under state law or under Commission determinations pursuant to the federal Act.

3. Other Shortcomings of Verizon's Proposal

In addition to the non-exhaustive summary of shortcomings provided above, the CCC notes that Verizon's proposed amendment contains no provision for ongoing CLEC access to **911**, **E911**, or **Operations Support Systems**. Obviously, continued access by CLECs to these items is critical both from a competitive standpoint as well as from a public safety standpoint. Given the importance of these items, the CCC's proposal, unlike Verizon's proposal, expressly provides for continued access to these items. Moreover, support exists in the TRO for the renewed importance of complete, accurate, and timely wholesale billing. Consequently, requirements for wholesale billing (such as meaningful limits on Verizon's ability to backbill, the timely implementation of new pricing for loop conversions, etc.) should be included within the scope of the arbitration proceedings.

On a separate note, although Verizon has a section titled **"pricing,"** Verizon offers no pricing proposal, nor does Verizon offer a process to develop new prices. The development of pricing in any Commission arbitration proceeding addressing TRO issues is a critical piece of the relationship between CLECs and Verizon that simply must be addressed. Accordingly, the Commission must include pricing issues, including section 271 pricing, in any TRO implementation arbitration.

CONCLUSION

Consistent with the foregoing, the CCC requests that the Commission should reject Verizon's amendment and instead:

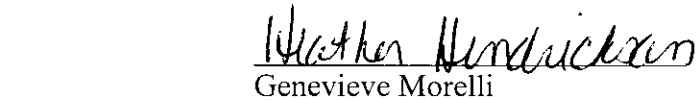
(1) Docket a proceeding, and assert its jurisdiction over the matters at issue;

(2) Issue a standstill order that maintains the *status quo* until such time as the Commission approves an interconnection agreement amendment;

(3) Require Verizon to amend its proposal in light of *USTA II* within 60 days, and hold in abeyance the arbitration docket pending submission of the joint issues list to the Commission; and

(4) Immediately implement the FCC's clarification that Verizon must perform routine network modifications to provision UNE orders and address Verizon's section 271 access and pricing obligations, neither of which were affected by *USTA II*.

Respectfully submitted,



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Date: March 19, 2004