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John C. Peterson, Director  
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June 28, 2004

Ms. Carole J. Washburn, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7254

Re: Docket UT 033062, MCI's Request for Adoption of Interconnection Agreement

Dear Ms. Washburn:

In a letter to you dated May 6, 2004, MCI WORLDCOM Communications, Inc. ("MCI") claims that Verizon Northwest Inc. ("Verizon") is attempting to impose "additional obligations" upon MCI. MCI is wrong – Verizon is simply ensuring that MCI complies with the applicable law.

Verizon objects to MCI's purported adoption of an agreement without a clarification of certain of Verizon's obligations. Quite simply, Verizon is no longer obligated to provide certain network elements on an unbundled basis as a result of the FCC's Triennial Review Order (the "TRO").<sup>1</sup> Verizon's position, as explained in paragraph 2 of its December 31, 2003 letter to MCI (the "Adoption Letter"), filed January 7, 2004 in this docket, is that MCI's purported adoption does not include the adoption of any provision imposing an expired unbundling obligation on Verizon.

Verizon's position is fully consistent with the FCC's rules governing adoption of interconnection agreements. Under FCC Rule 51.809(c), network element arrangements must be made available for adoption "for a reasonable period of time" after an agreement

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<sup>1</sup> Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order" or "TRO").

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Letter to Ms. Carole J. Washburn, Secretary

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is approved. Once the FCC has made a determination that the failure to provide a network element does not impair the ability of a telecommunications carrier to provide the services it seeks to offer, such as pursuant to the TRO, any such "reasonable period of time" for adopting such provision requiring such unbundling has, in our view, passed as of the effective date of such determination. Thus, MCI cannot adopt provisions that require Verizon to make network elements available to MCI on an unbundled basis if they are no longer required by the TRO, since a "reasonable period of time" for such adoption expired on the effective date of the TRO.

In short, the Commission should not approve MCI's adoption without further action. To clarify the relationship of the parties to each other, MCI must execute an adoption letter to ensure that MCI is in contractual privity with Verizon and that MCI understands and acknowledges the scope of Verizon's obligations pursuant to such adoption.

Sincerely,



John C. Peterson, Director  
Contract Performance and Administration  
Wholesale Markets

JCP:kar

Attachments (2)

c: Chief Technology and Network Counsel - MCI  
Director - National Carrier Management & Initiatives - MCI  
Marcel Henry - MCI  
Michel Singer-Nelson - MCI

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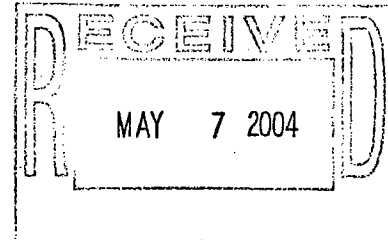
STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

Michel Singer-Nelson  
Senior Attorney  
Western Law and Public Policy

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Suite 4200  
Denver, CO 80202  
Telephone 303 390 6106  
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michel.singer\_nelson@mci.com



May 6, 2004



Ms. Carole J. Washburn, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7254

Re: UT 033062

Dear Ms. Washburn:

This is to notify the Commission of MCI WorldCom Communications, Inc.'s ("MCI") objection to Verizon Northwest Inc.'s ("Verizon's") attempt to impose additional terms and conditions on MCI's adoption of the AT&T/Verizon interconnection agreement, as outlined in the December 31, 2003 attachment to Verizon's January 7, 2004 letter to the Commission in this docket.

On December 19, 2003, pursuant to 47 U.S.C. Section 252(i) and this Commission's *Interpretive and Policy Statement Related to Section 252(i) of the Telecommunications Act of 1996*, Docket No. UT 990355 ("Interpretive and Policy Statement"), MCI filed its intention with this Commission to adopt in its entirety, the interconnection agreement between AT&T Communications of the Pacific Northwest, Inc. and Verizon Northwest, Inc., f/k/a GTE Northwest Incorporated, dated September 8, 1997, and all of its amendments to date, which have been approved by this Commission in Docket No. UT 960307 ("AT&T interconnection agreement"). On December 31, 2003, this Commission allowed the adopted agreement to go into effect.

On January 7, 2003, Verizon filed a letter in this docket with an attachment, attempting to impose multiple conditions on MCI's adoption of the AT&T interconnection agreement, which significantly change material terms of the AT&T interconnection agreement ("Verizon's December 31, 2003 proposal").

Section 252(i) of the Act states, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved

under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

The FCC has interpreted this section in 47 C.F.R. §51.809(a) (1998) to require, in relevant part:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement...

This has become known as the “pick and choose rule.” The Supreme Court specifically found that the FCC’s pick and choose rule is valid. *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999). Courts have subsequently found that incumbents must permit carriers to opt into individual provisions of an interconnection agreement without modifying its terms and conditions, and without unreasonable delay. *AT&T Communications of the Southern States, Inc. v. GTE Florida, Inc.*, 123 F. Supp. 23 1318, 1327 (2000); *Southwestern Bell Telephone Company v. Waller Creek Comm.*, 221 F.3d 812, 814-816 (2000).

Only two exceptions exist to the general rule that carriers may pick and choose individual interconnection agreement provisions. Those exceptions are where the incumbent can prove either that: “(1) the costs of providing a particular interconnection, service or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement; or, (2) the provision of a particular interconnection, service or element to the requesting carrier is not technically feasible.” 47 C.F.R. §51.809(b). Verizon has not submitted any proof to this Commission that either of these exceptions should prevent MCI from adopting AT&T’s interconnection agreement, without additional terms and conditions.

This Commission has also opined on the implementation of Section 252(i) of the Act in its Interpretive and Policy Statement. In its Policy Statement, this Commission adopted principles to guide its implementation of Section 252(i). Principle No. 2 provides:

Except for changes in the names of the parties, internal references, or other minor changes, a requesting carrier that requests an existing agreement in its entirety, or to receive individual arrangements in an agreement, must adopt the original contract language verbatim.

MCI’s adoption is consistent with this principle. Through its adoption, MCI intended to adopt the AT&T interconnection agreement verbatim, with only minor changes including the names of the parties to the agreement and contact references.

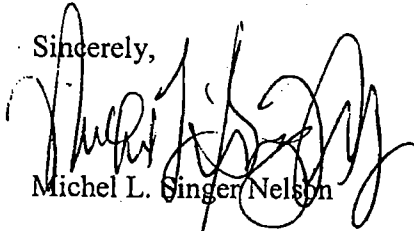
In contrast, Verizon's letter attempts to change and add material terms to the MCI agreement that do not exist in the AT&T interconnection agreement. For example, Verizon sets forth reservations of rights and includes a pricing attachment that is not part of the AT&T interconnection agreement. Requiring MCI to incorporate these additional terms as a condition of its adoption of the AT&T interconnection agreement is contrary to Section 252(i) and Principle No. 2.

Verizon's letter also does not comply with Principle No. 5, which is intended to "allow new entrants to enter the local exchange market quickly by taking interconnection under an already-approved agreement without incurring the costs of negotiation and arbitration. In addition, the pick and choose rule constrains an ILEC's ability to discriminate among CLECs." By imposing different terms on MCI that do not exist in the agreement with AT&T and Verizon, Verizon discriminates between CLECs. The Act requires Verizon to provide MCI with the same terms. To the extent that Verizon desires to modify the agreement, it must do so through a separate process. It cannot force MCI to accept modified terms and conditions of the AT&T interconnection agreement.

Thus, MCI objects to all terms outlined in Verizon's December 31, 2003 proposal other than changes to the names of the parties to the agreement and contact persons for those parties, as outlined in paragraphs 1 and 3 of the proposal.

Please contact me with any questions or concerns you may have about this letter.

Sincerely,



Michel L. Singer Nelson

Cc: Joan Gage (Verizon)  
Director-Contract Performance and Administration (Verizon)  
Vice President and Associate General Counsel (Verizon)

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john.c.peterson@verizon.com

December 31, 2003

Mr. Marcel Henry  
Vice President – National Carrier & Contract Management  
MCI WORLDCOM Communications, Inc.  
5055 North Point Parkway  
Alpharetta, GA 30022

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Henry:

Verizon Northwest Inc., f/k/a GTE Northwest Incorporated (“Verizon”), a Washington corporation, with principal place of business at 1800 41<sup>st</sup>, Everett, Washington 98201, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the “Act”), MCI WORLDCOM Communications, Inc. (“MCIW”), a Delaware corporation, with principal place of business at 22001 Loudoun County Parkway, Ashburn, Virginia 20147, wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) and Verizon that was approved by the Washington Utilities and Transportation Commission (the “Commission”) as an effective agreement in the State of Washington in Docket No. UT-960307, as such agreement exists on the date hereof after giving effect to operation of law (the “Terms”). I understand MCIW has a copy of the Terms. Verizon does not oppose your adoption of the Terms at this time. Please note the following with respect to MCIW’s adoption of the Terms.

1. MCIW adopts (and agrees to be bound by) the Terms of the AT&T/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that MCIW shall be substituted in place of AT&T Communications of the Pacific Northwest, Inc. and AT&T in the Terms wherever appropriate.

2. For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), which became effective on October 2, 2003. In light of the effectiveness of the Triennial Review Order, any reasonable period of time for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act (*see, e.g.*, 47 CFR Section 51.809(c)).
3. Notice to MCIW and Verizon as may be required under the Terms shall be provided as follows:

To: MCI WORLDCOM Communications, Inc.  
Attention: Vice President – National Carrier & Contract  
Management  
5055 North Point Parkway  
Alpharetta, GA 30022  
Telephone Number: 678-259-5456  
Facsimile Number: 678-259-5446  
Internet Address: [Marcel.Henry@mci.com](mailto:Marcel.Henry@mci.com)

with copies to:

MCI WORLDCOM Communications, Inc.  
Attention: Chief Technology & Network Counsel  
1133 19<sup>th</sup> Street, N.W.  
Washington, DC 20036  
Telephone Number: 202-736-6578  
Facsimile Number: 202-736-6903

MCI WORLDCOM Communications, Inc.  
Attention: Senior Manager – Carrier Agreements  
2678 Bishop Drive, Suite 200  
San Ramon, CA 94583  
Telephone Number: 925-824-2078  
Facsimile Number: 925-244-1334  
Internet Address: [Dayna.Garvin@mci.com](mailto:Dayna.Garvin@mci.com)

MCI WORLDCOM Communications, Inc.  
Attention: Counsel – Network & Facilities  
22001 Loudoun County Parkway  
Ashburn, VA 20147  
Telephone Number: 703-886-5302  
Facsimile Number: 703-866-4399

To Verizon:

Director-Contract Performance & Administration  
Verizon Wholesale Markets  
600 Hidden Ridge  
HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972-718-5988  
Facsimile Number: 972-719-1519  
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel  
Verizon Wholesale Markets  
1515 N. Court House Road  
Suite 500  
Arlington, VA 22201  
Facsimile: 703-351-3664

4. MCIW represents and warrants that it is a certified provider of local telecommunications service in the State of Washington, and that its adoption of the Terms will cover services in the State of Washington only.
5. In the event that a voluntary or involuntary petition has been or is in the future filed against MCIW under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and MCIW's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of MCIW resulting from MCIW's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366. In the event that an interconnection agreement between Verizon and MCIW is currently in force in the State of Washington (the "Original ICA"), MCIW's adoption of the Terms (the "Amended and Restated Interconnection Agreement") shall be an amendment and restatement of, and



replace in its entirety, the Original ICA. The Amended and Restated Interconnection Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. All monetary obligations of the parties to one another under the Original ICA shall remain in full force and effect and shall constitute monetary obligations of the parties under the Amended and Restated Interconnection Agreement; provided, however, in the event that MCIW is currently a debtor in an Insolvency Proceeding nothing contained herein shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in MCIW's Insolvency Proceeding into a post-petition claim or debt.

6. Verizon's standard pricing schedule for interconnection agreements in the State of Washington (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to MCIW's adoption of the Terms. MCIW should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.
7. MCIW's adoption of the AT&T Terms shall become effective on January 4, 2004. Verizon shall file this adoption letter with the Commission promptly upon receipt of MCIW's notice of filing under Paragraph 31 of the Washington Utilities and Transportation Commission Interpretive and Policy Statement. The term and termination provisions of the AT&T/Verizon agreement shall govern MCIW's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on January 24, 2004.
8. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. UT-960307, or to seek review in any way of any provisions included in these Terms as a result of MCIW's 252(i) election.
9. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission

in Docket No. UT-960307 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

10. Verizon reserves the right to deny MCIW's adoption and/or application of the Terms, in whole or in part, at any time:
  - (a) when the costs of providing the Terms to MCIW are greater than the costs of providing them to AT&T;
  - (b) if the provision of the Terms to MCIW is not technically feasible; and/or
  - (c) to the extent that Verizon otherwise is not required to make the Terms available to MCIW under applicable law.
  
11. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.<sup>□</sup> Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.<sup>□</sup> Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.<sup>□</sup> In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.<sup>4</sup>

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<sup>□</sup> Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, remanded, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. See *WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

<sup>□</sup> For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL [www.verizon.com/wise](http://www.verizon.com/wise)

(select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

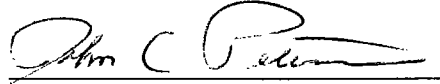
<sup>□</sup> See, e.g., 47 C.F.R. Section 51.809(c).

<sup>4</sup> *FCC Internet Order* ¶ 82.

12. Should MCIW attempt to apply the Terms in a manner that conflicts with paragraphs 1-11 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

Sincerely,

VERIZON NORTHWEST INC.

A handwritten signature in black ink, appearing to read "John C. Peterson", written over a horizontal line.

John C. Peterson, Director  
Contract Performance and Administration  
Wholesale Markets

c: J. Dail – Verizon  
M. Miller - Verizon  
Telecommunications Division - WUTC  
Angelica Murilla – Verizon  
Elaine Duncan – Verizon