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October 12, 2004

VIA E-MAIL AND FEDERAL EXPRESS

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

Re: Docket No. UT-043013 –

Dear Ms. Washburn:

Please find enclosed an original and six copies of a Notice of Appearance for John H. Ridge, Verizon's Reply to Various CLECs' Objection to Its Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties, a letter to Judge Rendahl and a Certificate of Service. Pursuant to Judge Rendahl's oral authorization yesterday, we are filing these documents electronically and by overnight delivery.

Please contact us if you have any questions, and thank you in advance for your assistance.

Very truly yours,

Timothy J. O'Connell

Enclosures

cc: ALJ Ann Rendahl
Parties of Record

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration Of an Amendment to 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 **NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that Verizon Northwest Inc. ("Verizon") hereby appears in the above-entitled action through John H. Ridge of Stoel Rives LLP, in addition to its existing counsel of record. All further papers and communications should also be directed to the undersigned attorney at the address and email below stated.

Dated this 12 day of October, 2004.

Respectfully submitted,

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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 REPLY TO VARIOUS CLECS' OBJECTIONS TO ITS IDENTIFICATION OF SPECIFIED INTERCONNECTION AGREEMENTS AND WITHDRAWAL OF ARBITRATION**

I. INTRODUCTION

1. In its Identification of Specified Interconnection Agreements and Notice of Withdrawal, Verizon Northwest Inc. ("Verizon") withdrew its petition for arbitration as to 70 competitive local exchange carriers ("CLECs") previously named in Verizon's petition. Verizon did so either because these CLECs' agreements had been terminated or do not require Verizon to provide UNEs at all, or because their interconnection agreements already contain clear and specific terms permitting Verizon to stop providing unbundled access to facilities that are no longer subject to an unbundling obligation under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Thus, these CLECs' agreements need not be amended before Verizon may discontinue delisted

UNEs, and Verizon is not seeking arbitration with them. Only seven carriers remain in this arbitration. *See* Verizon's Opening Brief, Ex. B.

2. Most of the CLECs as to which Verizon withdrew its petition did not object to the withdrawal. Verizon replies here to the few sets of objections that were filed. These CLECs argue that their contracts do not permit Verizon to discontinue UNEs that are no longer required under federal law. But that issue is irrelevant to Verizon's withdrawal of its petition as to certain CLECs. This is a proceeding to amend existing agreements, not to interpret them. A contract enforcement proceeding—where a CLEC complains about specific Verizon conduct under specific contract terms—is the appropriate forum for contract interpretation questions. No CLEC has brought any contract enforcement action; indeed, such actions may never arise.

3. It is, therefore, not necessary for the Commission to interpret Verizon's interconnection agreements before ruling on Verizon's withdrawal notice. Whether or not parties are dismissed from this arbitration, contract interpretation should await an actual dispute that a CLEC might have with Verizon's conduct in the future. As other state commissions have recognized, the possibility of future enforcement disputes provides no reason to prevent Verizon from withdrawing its petition for arbitration as to CLECs with which it no longer seeks arbitration. This Commission should likewise confirm that the 70 CLECs identified in Verizon's Notice of Withdrawal are no longer parties to this preceding.

4. If the Commission, however, elects to undertake the task of interpreting the various interconnection agreements at this time, it should reject the miscellaneous grab-bag of arguments that the CLECs have made. As Verizon made clear in its opening brief, the terms of the interconnection agreements of the carriers Verizon has withdrawn from this arbitration are clear: Verizon is permitted to discontinue the provision of UNEs, upon notice, when no longer required to provide such UNEs by federal law.[1]

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[1] Verizon recognizes that its right under these agreements to discontinue provision of mass-market switching, high-capacity loops, and dedicated transport, and to re-price existing

II. ARGUMENT

A. Verizon's Notice of Withdrawal Does Not Require the Commission to Interpret the Interconnection Agreements.

5. The few CLECs that have objected to Verizon's Notice of Withdrawal assert that Verizon should not be permitted to take unilateral action to dismiss the CLECs from the arbitration because allowing Verizon to withdraw its Petition as to the designated CLECs would require those CLECs "to initiate additional duplicative proceedings in order to resolve their disputes with Verizon," Sprint's Response ¶ 10, or otherwise prevent the CLECs from "seeking Commission arbitration of unresolved interconnection issues." Joint CLEC Response ¶ 2; *see also* Response of the Competitive Carrier Group ¶ 30. This is not true; the CLECs are confusing this amendment proceeding with an enforcement proceeding.

6. By dismissing all but 7 of the CLECs from this proceeding, Verizon is not preventing the CLECs from objecting to Verizon's interpretation of the existing ICAs. Verizon is merely asserting that it no longer seeks amendment of their contracts. No interpretation of the existing agreements is necessary in order to approve Verizon's withdrawal notice. In the event that Verizon, in the future, seeks to discontinue providing these CLECs with a UNE or UNEs based on the terms of the parties ICAs, the CLECs, if they believe such discontinuance violates the terms of their ICAs, will have ample opportunity to challenge Verizon's actions and its interpretation of the agreements. Such enforcement disputes are typically governed, in the first

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arrangements, is governed by the various aspects of the FCC's *Interim Order*, to the extent that order remains legally effective. Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order and Notice of Proposed Rulemaking, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004) ("*Interim Order*").

In addition, Verizon reiterates its commitment to provide at least 90 days notice to all CLECs before taking any action with respect to the UNEs eliminated by the *Triennial Review Order* or *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004 ("*USTA II*"), regardless of the fact that some agreements specify a shorter notice period or no notice period at all.

instance, by an ICA's dispute resolution mechanism, and then may go to a decision maker such as the Commission or arbitrator. In short, there is no reason for the Commission to waste its time interpreting scores of interconnection agreements at this point in the absence of any concrete dispute about application of their terms. Indeed, there is no basis for any enforcement dispute at this time. Verizon remains subject to the transitional unbundling obligations imposed by the FCC's *Interim Order*, and has not, in any event, given any notice of discontinuation of the UNEs affected by *USTA II*.

7. Two of the responding CLECs – Focal Communications Corporation and McLeodUSA Telecommunications Services, Inc. (the "Coalition") – also agree that this docket is not the forum to interpret change of law provisions in existing ICAs. These parties openly state that they do not oppose Verizon's withdrawal, and agree with Verizon that any disputes over the interpretation of the ICAs should take place in alternative processes and forums. *See* Coalition Letter to Carole Washburn, dated September 30, 2004.

8. All of the state commissions to consider this issue have also agreed with Verizon that there is no reason to interpret existing contracts in a TRO amendment arbitration. As the Vermont commission held, the "purpose of this proceeding is to arbitrate proposed changes to interconnection agreements, not to interpret language in existing agreements to which no party seeks changes." Order Re: Verizon Motion of Withdrawal, Docket No. 6932, at 4 (Vt. PSB Aug. 25, 2004) ("*Vermont Order*"). Likewise, the Rhode Island arbitrator held that "[r]egardless of who is correct on the merits, the purpose of this arbitration is not to interpret individuals ICAs but to amend ICAs. This issue is not within the scope of this arbitration." Second Procedural Arbitration Decision, Docket No. 3588, at 5 (RI PUC Aug. 18, 2004) ("*RI Arbitration Order*"). And the New York Commission explained that Verizon's petition for arbitration "concerns proposed amendments to Verizon's interconnection agreements," not "whether Verizon has the right, under its current interconnection agreements, to cease providing unbundled network elements." Petition of Verizon New York Inc. for Consolidated Arbitration, Ruling Allowing

Verizon to Withdraw Arbitration, Docket Nos. 04-C-0314 and 04-C-0318, at 6 (NY PSC Sept. 22, 2004) ("*New York Order*").

9. This Commission should rule likewise.

B. Nothing Prevents Verizon from Declining to Arbitrate Amendments with the Designated CLECs.

10. Verizon initiated this docket proceeding to secure specific relief – amendments to certain interconnection agreements. The Joint CLECs argue that Verizon cannot now withdraw its petition because there is no affirmative rule explicitly permitting Verizon to do so. Joint CLEC Response ¶ 2. But this is just wrong. As plainly stated in its opening brief, Verizon, the sole petitioner in this matter, does not seek relief with respect to the designated CLECs. In short, because there is no need to amend the interconnection agreements of the designated CLECs, there is no relief for the Commission to provide in this docket as to those carriers. Verizon cannot be forced to undertake arbitration with them.

11. Sprint argues that it should be entitled to participate in this amendment docket because "even non-parties may participate if it serves the public interest." Sprint's Response ¶ 9. But again, this misses the point. Verizon is not seeking to amend its ICAs with the designated CLECs; thus there is no issue for the Commission to decide as to those CLECs. Because their ICAs do not need to be amended, and Verizon is not seeking arbitration with these carriers, there is no compelling interest in letting the designated CLECs participate in the arbitration. To allow them to participate when there is no affirmative relief to be granted would result in a waste of time and resources.

12. As discussed above, if and when a concrete dispute arises for which relief can be granted, the designated CLECs may seek to resolve the dispute in an appropriate proceeding, in accordance with their agreements' dispute resolution procedures. But here, there is no basis for any Commission action; Verizon is not seeking to amend its interconnection agreements with the designated CLECs.

C. The ICAs Permit Verizon to Discontinue Providing a UNE that Verizon Is Not Required to Provide Under Section 251(c)(3) and 47 U.S.C. Part 51.

13. Although it is not appropriate to rule on the meaning of the parties' existing interconnection agreements in this amendment proceeding, and Verizon is asking the Commission to refrain from doing so, if the Commission were to examine the terms of the agreements at issue it would conclude that they do in fact permit Verizon to cease providing UNEs that are not subject to a federal unbundling obligation. Verizon supplied all of the relevant language in its opening brief and explained why it supports Verizon's interpretation, so it will not reiterate those arguments here.

14. In response to Verizon's arguments, however, the Joint CLECs argue that the "automatically supersedes" language in the their ICAs should apply to benefits for them if it also allows Verizon to discontinue UNEs. *See* Joint CLEC Response ¶ 17. But the Joint CLECs misunderstand the difference between the discontinuation of a service and the addition of new unbundling obligations.

15. In the applicable ICAs, the parties expressly recognized that the provisions of the ICAs were designed "to effectuate" the specific, relevant "legal requirements" – that is, the FCC's regulations implementing § 251, including UNE regulations – that were "in effect at the time this Agreement was produced." The parties recognized that these legal requirements might change, either through subsequently prescribed laws or regulations. In such cases, the parties expressly agreed that those new laws and regulations would "automatically supersede" "any" term or condition of the agreement that conflicted with the new law or regulation. The parties provided that this would occur "automatically."

16. No amendment is required or reasonably necessary in cases where the subsequently prescribed rules eliminate an existing obligation. The obligation is merely stricken from the agreement. In contrast, where the subsequently prescribed rule imposes a new, prospective obligation for Verizon to provide a facility, service, or arrangement, an amendment would be necessary to incorporate the associated terms and conditions into the agreement.

17. The D.C. Circuit decided in *USTA II* that the FCC's regulations requiring incumbent local exchange carriers such as Verizon to provide unbundled mass marketing switching and unbundled high capacity facilities were unlawful. The FCC likewise decided in the *Triennial Review Order* that Verizon is not required under section 251(d)(2) to provide, among other UNEs, enterprise switching, OCn transport, OCn loops, call-related data bases, and line sharing. The result of both the *Triennial Review Order* and *USTA II* is that Verizon is no longer required to provide certain UNEs. Because Verizon's agreements with the Joint CLECs provide that current FCC regulations and laws governing the scope of Verizon's UNE obligations "automatically supercede" any contrary terms or provisions of the agreements, no amendment in necessary for Verizon to cease providing UNEs under those ICAs.

D. Dismissing the Designated CLECs from the Amendment Docket Will Not Circumvent the Status Quo Order.

18. Within the context of this arbitration proceeding, "the CLECs requested a status quo order effective until the Commission ***arbitrates and approves amendments*** to agreements or the FCC adopts final rules." Order No. 8 ¶ 29, Docket No. UT-043013 (August 13, 2004 ("*Status Quo Order*") (emphasis added). Thus, for the parties subject to arbitration, the Commission's order "requires that Verizon not modify the terms or services of interconnection agreements until the conclusion of the arbitration proceeding or the FCC acts to resolve the legal uncertainties arising from *USTA II*." Order No. 8 ¶ 29. Verizon fully intends to comply with this Order.

19. But as stated above, for the designated CLECs, there are no amendments to approve and thus no issues to arbitrate. The language of the ICAs is plain: Verizon may discontinue providing UNEs to the designated CLECs due to changes in the law without arbitration proceedings. Thus, these CLECs are not subject to this arbitration proceeding, and the status quo order does not apply to parties whose agreements are not subject to amendment.

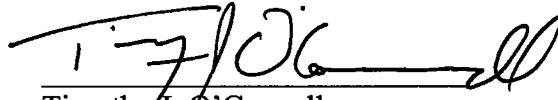
20. Furthermore, as also discussed above, Verizon fully intends to provide at least 90 days' notice to the CLECs if and when it intends to cease providing UNEs. If the CLECs disagree with Verizon that the language of the ICAs allow such action, this will give the CLECs ample opportunity to institute enforcement proceedings and adjudicate the issues in an appropriate forum. Thus the CLECs will in no way be harmed by Verizon's Notice of Withdrawal.

III. CONCLUSION

21. For these reasons, Verizon requests the Commission to permit its Notice of Withdrawal of the CLECs identified in Exhibit A of its opening brief from the arbitration. Whether or not the Commission permits the withdrawal, Verizon asks the Commission to refrain from making any rulings interpreting Verizon's existing interconnection agreements.

Dated: October 12, 2004.

Respectfully submitted,



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October 12, 2004

VIA FACSIMILE, ELECTRONIC, AND U.S. MAIL

The Honorable Ann E. Rendahl
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: UT-043013 – Verizon Arbitration

Dear Judge Rendahl:

MCI requested the Commission to set a date by which the CLECs would file proposals in response to Verizon's proposed interconnection agreement language. MCI, Verizon , and the Competitive Carrier Group have stipulated to October 22, 2004. This agreed date is for the proposed amendment language alone, and not any briefing or other comments which are to be submitted at other scheduled dates.

In an email dated October 5, 2004, your honor gave MCI until 5 p.m. on Friday, October 8, 2004 to submit its request, and the remaining parties until 5 p.m. on Tuesday, October 12, 2004 to file responses. At the time of the filing of this letter, no other parties have provided responses to the above stipulated date.

We request that your honor set October 22, 2004 as the date by which the CLECs should file their proposed amendment language.

Very truly yours,

John H. Ridge

cc: Parties of Record *(via electronic mail)*
Timothy J. O'Connell

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of October, 2004, served the true and correct original, along with the correct number of copies, of ***Notice of Appearance, letter to Judge Ann E. Rendahl, Verizon's Reply to Various CLECs' Objection to Its Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties*** and a ***Certificate of Service*** upon the WUTC, via the method(s) noted below, properly addressed as follows:

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1300 S. Evergreen Park Drive SW	___	Facsimile (360) 586-1150
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I hereby certify that I have this 12th day of October, 2004, served a true and correct copies of the foregoing documents upon parties noted below via E-Mail and U.S. Mail:

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I hereby certify that I have on the 12th day of October, 2004, served true and correct copies of the foregoing documents upon parties noted below via U.S. Mail:

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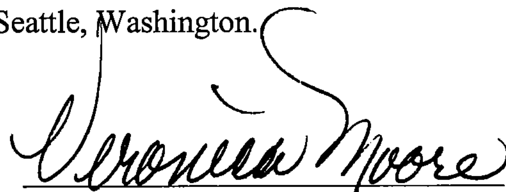
Regional Vice President, AT&T
AT&T Comm.of the Pacific Northwest Inc.
3033 Chain Bridge Rd, Rm D-325
Oakton, VA 22185

I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 12th day of October, 2004, at Seattle, Washington.



Veronica Moore