



2. In its Petition to Vacate Order No. 10, Verizon argues that the administrative law judge's ("ALJ's") decision in Order No. 10 is unlawful because (a) it unlawfully grants emergency injunctive relief; (b) it did not evaluate the likelihood of success on the merits; and (c) the September 9 hearing was not properly noticed. MCI disagrees. The ALJ properly issued an Order enforcing the Commission's previous Orders. In addition, Verizon received adequate notice of the hearing and was not disadvantaged at the hearing as a result of the timing of the notice.

## II. DISCUSSION

### A. **The evidence does not support a finding that MCI is able to initiate new service orders for Verizon's resale service.**

3. During the September 9 hearing, MCI presented testimony of Sherry Lichtenberg. Ms. Lichtenberg is Senior Manager for Operational Support Services Interfaces and Facilities for MCI. Her responsibilities include the management of MCI Local Services for the consumer and small business side of the market, including MCI's UNE-P entry across the country and developing the process as necessary to service and support customers on both UNE-P and UNE loop products. (*Tr. at 231-232*) Ms. Lichtenberg testified repeatedly and consistently that MCI currently purchases Verizon's *UNE-P* product to serve residential and small business customers in Washington. Contrary to Verizon's representation, MCI does not currently provide services to residential and small business customers using Verizon's *resale* service in Washington. (*Tr. at 234-236; 240-241; 249 and 251*)

4. Ms. Lichtenberg also testified repeatedly and consistently that although MCI is able to use Verizon's WISE GUI for maintenance purposes for existing MCI customers who are served using Verizon's *UNE-P* product, MCI's current operational

support systems (“OSS”) are unable to initiate new service orders for Verizon’s *resale* product using the WISE GUI. (*Tr. at 237, 241- 243, 245-249, 253-254, 256-257.*) For example, during direct examination, Ms. Lichtenberg testified:

- Q.** Can you explain in a little bit more detail the point about us not being able to add customers through the total services resale product?
- A.** Yes. MCI as I said uses EDI to address customers, to sell and to manage. *We do not have the capability today to place an EDI order for total services resale.* That would require us to build a new OSS interface, and we certainly wouldn’t be able to build that interface for a single central office, not would we be able to really sell to customers by looking at which specific central office they were in an tailoring that product on a central office by central office basis. We sell The Neighborhood today, which is a product that has a standard set of features and functionality. And frankly, I don’t know whether we would be able to sell that at all once we were – if we were ever forced to do resale. *We do not have a resale ordering capability.*

*Tr. at 236-237 (emphasis added).* The additional above listed references to the transcript support this testimony.

5. In response to cross examination by Verizon’s counsel, Ms. Lichtenberg reiterated this point:

- Q.** Okay, so to be clear, it is technically possible for MCI to provide service via resale, but it has made a business decision not to do so, correct?
- A.** Not exactly. MCI does not have an interface that would allow us to provide resale service. Therefore, should MCI be forced to do so, or should MCI make a different business decision, MCI would need to do system development that would take several months and that would cost a significant amount of money. So MCI technically at this moment is not capable of providing resale service.

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**Q.** Ms. Lichtenberg, is it your testimony that MCI does not today or has not placed orders in Washington with Verizon using our Web GUI or WISE system?

**A.** It is my understanding that MCI's US Sales and Service, the small business and residential part of MCI has not placed orders in Washington using your WISE GUI. I am not aware of any, and I have checked with my sales offices to confirm that as late as this morning.

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**Q.** As I understand your testimony, Ms. Lichtenberg, you stated that MCI has never used Verizon's WISE system to place orders for small business or residential customers in Washington, is that true?

**A.** The only – yes, with one potential exception. Sometimes when the EDI system goes down or a customer is having a specific problem, *we may clear a trouble by using – by doing a GUI order* because it will move more rapidly. Our normal sale process where we sell to customers is a fully EDI based system.

*Tr. at 241-243 (emphasis added).* Ms. Lichtenberg stated in the final passage quoted above that MCI may clear a trouble using the GUI system. This is a repair and maintenance function, not a new service ordering function. Although it may not be entirely clear from this exchange alone, it is clear from the totality of Ms. Lichtenberg's testimony that MCI does not currently place orders using the GUI system. In response to Verizon's counsel's last question, Ms. Lichtenberg clarified this point:

**Q.** Last question, Ms. Lichtenberg, do you know how many user ID's MCI currently has for Verizon for using our WISE or WEB GUI system?

**A.** I understand we have a significant number. I don't have the number. It should be noted that the WISE system is used for us to look at customer service records, to in some cases report trouble, and to do various other tasks *that do not involve the ordering of service.*

*Tr. at 247-248 (emphasis added).*

6. Ms. Lichtenberg later explained at length, in response to Judge Rendahl's questioning, why Verizon's GUI system would not work for MCI for order processing and billing for resale. In sum, MCI would need to create a special team to develop systems to enable MCI to bill resale services. MCI would be required to create a new internal software interface, develop a new product for customers, and change the billing system to bill customers properly. In addition, MCI may be required to reconfigure its billing system with Verizon's billing system to the extent Verizon uses different billing systems for UNE-P and resale services. (*Tr. at 249-250 and 254-255.*)

7. In sum, taken together, this testimony establishes that MCI currently does not have the capability to order resale products from Verizon using either the EDI system or the WISE GUI system. In addition, to the extent MCI uses the WISE GUI to perform maintenance functions, it uses that system for UNE-P services, not resale services. Order No. 10 requires MCI to order resale products from Verizon. This is something MCI's testimony demonstrates that it cannot do.

8. Verizon argues in its Response that the testimony was "unrebutted" that MCI placed hundreds of local service orders with Verizon in Washington using Verizon's WISE GUI interface. (*Verizon's Response at p. 1.*) As is demonstrated by the testimony cited above, however, MCI employee, Ms. Lichtenberg, rebutted this point.

9. In its attempt to downplay Ms. Lichtenberg's testimony, Verizon's Response mischaracterizes and only partially quotes the testimony. (*Response at p. 3*) Verizon then goes on to cite to its own witness, who testified that MCI has processed several hundred orders using the WISE GUI in Washington in 2004. Verizon testified that those orders related to migrations, disconnects, new connects and change activities

for UNE-P services in Washington. (*Verizon Response at p. 4.*) To the extent this testimony attempts to demonstrate that MCI currently places orders for UNE-P for new customers in Washington using Verizon's WISE GUI, it is inconsistent with Ms. Lichtenberg's testimony and should be disregarded. Ms. Lichtenberg is more qualified than a witness from Verizon to testify about MCI's residential and small business local service practices in Washington.

10. More significantly, however, this testimony does not support the argument raised by Verizon in its brief. At pages 3-5 of Verizon's Response, it attempts to demonstrate that MCI has used the WISE GUI to place hundreds of new local service orders for Verizon's *resale* service in Washington. At most, Verizon's testimony demonstrates only that MCI has used the WISE GUI system in Washington with regard to *UNE-P* services. (*Tr. at 311*) Consequently, this argument is irrelevant to the point raised by MCI's Petition for Review where MCI argues that the Order incorrectly concludes that MCI is able to process new service orders for *resale* services in Washington.<sup>1</sup>

**B. MCI neither seeks reconsideration of Order No. 8 nor attempts to litigate the merits of its Petition for Enforcement in Docket No. 041127 in its Petition for Review of Order No. 10.**

11. In its Response, Verizon mischaracterizes MCI's Petition for Review by suggesting that MCI attempts to (1) to seek reconsideration of Order No. 8 and (2) litigate the merits of the Petition for Enforcement proceeding, Docket No. 041127 (*Response at*

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<sup>1</sup> Verizon represents at footnote 3 in its Response that it provided MCI with information in response to MCI's records requisition, asking for the purchase order numbers for the orders referenced in Verizon's testimony. To date, MCI's counsel has not received responsive information. Nor is it apparent from the Commission's website that Verizon has filed responsive information with the Commission. Verizon's counsel has yet to respond to an e-mail from MCI's counsel seeking a response to the records requisition.

pages 7-9). MCI makes neither of these arguments in its Petition for Review. Consequently these two sections of Verizon's Response should be disregarded.

12. Instead, MCI merely argues that while Order No. 10 states that it acts to enforce the status quo mandate of Order Nos. 5 and 8, in fact, Order No. 10 is not consistent with these two Status Quo Orders. To be consistent with those previous Orders, it would have to be modified to prohibit Verizon from discontinuing unbundled switching at the Mount Vernon Central Office until the Commission is able to fully consider the issue on the merits.

13. Order Nos. 5 and 8 mandate that Verizon, continue to provide all of the products and services under existing interconnection agreements with CLECs, at the prices set forth in the agreements, until the Commission approves amendments to these agreements in this arbitration proceeding or the FCC otherwise resolves the legal uncertainties presented by the effect of the mandate in USTA II.

*Order No. 5 para. 55; see also Order No. 8 paras. 1 and 30..*

14. While Order No. 10 states that it enforces this mandate, it does not. As a result of Order No. 10, with regard to the Mount Vernon central office, Verizon is able to discontinue its provision of unbundled switching, UNE-P and other services set forth in the parties' interconnection agreements that rely on unbundled switching before the matter is resolved on the merits by the Commission in Docket No. 041127. For Order No. 10 to be consistent with this Commission's status quo mandate, it must be modified to require Verizon to continue to process orders for Verizon's products that include unbundled switching until the Commission is able to resolve the issue on the merits in the Petition for Enforcement proceeding.

15. For the reasons set forth in the Joint CLECs' August 31, 2004 Petition for Enforcement of Order No. 5 in this proceeding, and MCI's Petition for Review, MCI asks the Commission to so modify Order No. 10 to be consistent with the Commission's previous Orders.

**C. The Commission should reject Verizon's claim that Order No. 10 is unlawful.**

16. Verizon argues that Order No. 10 unlawfully grants emergency injunctive relief to the CLECs. Verizon mischaracterizes Order No. 10 to create this argument. In fact, Order No. 10 does not grant "emergency injunctive relief." The Judge did not base her ruling on RCW 34.05.479.<sup>2</sup>

17. Order No. 10 arose out of a Petition filed by the CLECs with this Commission advising it of Verizon's conduct with regard to the Mount Vernon switch and claiming that discontinuing unbundled switching at that location violates the Commission's Status Quo Orders. As described above, the Status Quo Orders clearly and unequivocally require Verizon to continue to provide all of the products and services under existing interconnection agreements with CLECs at the prices set forth in the agreements for the pendency of the arbitration or until the FCC acts to resolve regulatory uncertainties. Although Verizon redirects the focus of its conduct to the issue of whether it is required to unbundled packet switching, Verizon does not dispute that it discontinued unbundled switching with regard to the area served by the Mount Vernon central office. On its face, this action by Verizon violates the Status Quo Orders. Order No. 10 finds that discontinuing UNE-P rates at the Mount Vernon switch violates the Status Quo

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<sup>2</sup> Order No. 10 cites RCW 34.05.479 in a footnote as authority for the Commission to hold a hearing on short notice. The Judge called the hearing to examine, among other matters, whether customers were at a risk of losing local phone service, which could be classified as a danger to the public health, safety and welfare. She found that not to be the case and did not base her ruling in this matter on that statute.



Orders and prohibits Verizon from charging higher rates for UNE-P service until the Commission is able to resolve the issue on the merits. As the Commission determined in Order Nos. 5 and 8, it is within this Commission's authority to maintain the status quo. *See Order No. 5 at paras. 51-59*

18. For the same reasons, the Commission should reject Verizon's argument that Order No. 10 is unlawful because it did not evaluate the "likelihood of success on the merits." It was not necessary for the Commission to do so since it simply based its decision on a finding that Verizon's conduct with regard to Mount Vernon fell within the scope of the Commission's previous Orders. Moreover, to the extent Verizon intended to charge resale rates to CLECs after the Mt. Vernon switch replacement, Verizon's conduct would violate the Commission's previous Orders. The Commission possesses the authority to enforce its own orders without the need to demonstrate a "likelihood of success on the merits."

19. Verizon finally argues that Order No. 10 is improper because the September 9 hearing was not properly noticed. MCI agrees with the Judge that the hearing was properly noticed pursuant to WAC 480-07-440(2), which does not contain specific timing requirements for providing notice. The September 9 hearing was a continuation of the prehearing conference conducted on September 7, where the parties began to discuss the merits of the Joint CLECs' Petition for Enforcement of Order No. 5. The September 9 hearing was a continuation of that discussion, focusing on the relative harm to the parties resulting from the Commission's resolution of the Petition.

20. Moreover, Verizon suffered no undue harm as a result of the notice process relating to the hearing. All parties to the proceeding, including Verizon, received

the same amount of notice of the September 9 hearing. In addition, Verizon fully participated in the hearing and its due process rights were ably protected.. Verizon presented oral direct testimony, introduced exhibits, cross examined other parties' witnesses, presented opening comments, closing comments and an oral petition for reconsideration. Five attorneys entered their appearances on behalf of Verizon for this hearing, two in the hearing room and three on the bridge line. Under these circumstances, Verizon cannot reasonably claim that it was somehow disadvantaged as a result of the timing of the notice.

21. For these reasons, this Commission should reject Verizon's argument that Order No. 10 should be vacated because Verizon did not receive proper notice of the September 9 hearing.

### **III. CONCLUSION**

For the reasons expressed herein and MCI's Petition for Review, MCI requests that the Commission order the following:

- (1) modify the finding in Order No. 10 that MCI is able to process new service orders to Verizon for resale products at the Mount Vernon switch;
- (2) modify Order No. 10 to enforce the Status Quo Orders fully, including a requirement that Verizon continue to accept orders for UNE-P and other combinations of unbundled switching at the Mount Vernon central office until this Commission resolves the issue on the merits in Docket No. 041127;
- (3) deny Verizon's Petition to Vacate Order No. 10 in its entirety.

Respectfully submitted,

**MCI**

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Michel Singer Nelson  
707 – 17<sup>th</sup> Street, Suite 4200  
Denver, Colorado 80202  
(303) 390-6106 (telephone)  
(303) 390-6333 (facsimile)