BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of	)	**DOCKET NO. UT-043013**
	)	**MCI Initial Brief**
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*.	)	

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I. INTRODUCTION

MCI, Inc., through its regulated subsidiaries in Washington ("MCI"), hereby files its Initial Brief in support of MCI's proposed contract language in this proceeding. This supports the proposed language attached to MCI's October 22, 2004 pleading entitled, "MCI's Changes to Verizon's Proposed Amendments to the Interconnection Agreement Between MCI and Verizon" as well as the language contained in Exhibit 1 to this brief. Exhibit 1 incorporates MCI's positions on the effect of the Federal Communications Commission's ("FCC") Triennial Review Remand Order ("TRRO") on proposed contract language.

II. DISCUSSION

This brief follows the order of the issues contained in the Joint Issues List filed by the parties on January 20, 2005. MCI herein addresses Issue Nos. 1-16 and 21-26.

Issue No. 1. Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law?

MCI Response: Yes. The interconnection agreement between MCI and Verizon should set forth all of Verizon's wholesale obligations to MCI, including those obligations arising from Sections 251 and 252 of the Communications Act, obligations arising under Washington law, as well as obligations arising from voluntary commitments made by Verizon for the benefit of MCI specifically or all CLECs generally. Nothing in federal law precludes MCI from having an interconnection agreement that sets forth in a comprehensive fashion all of the ILEC's wholesale obligations. Such a result facilitates the carrier to carrier relationship by having one source for all aspects of the commercial relationship between MCI, the CLEC, and Verizon.

Issue No. 2: What terms, conditions and/or rates regarding implementing changes in unbundling obligations or changes of law should be included in the Amendment to the parties' interconnection agreements?

MCI Response: In Section 2.1, Verizon has proposed contract language that would nullify the current change of law provision in the parties' interconnection agreements. Under Verizon's proposed language, Verizon's obligations under the agreements would be determined solely by the FCC's unbundling rules. The effect of this language is to eliminate the need to negotiate contract amendments to implement changes in law. Nothing in the FCC's *Triennial Review Order ("TRO"), TRRO, USTA II,* or the FCC's *Interim Order* invalidates change of law provisions in interconnection agreements. Indeed, the FCC has explicitly acknowledged their applicability.[1] Under Verizon's proposed construct, any changes in law that reduce its contract obligations can thus be implemented by giving appropriate notices of discontinuance to carriers affected by the

[1] *TRO*, ¶700.

changes. This approach flies in the face of the scheme created by the Congress in the 1996 Telecommunications Act. Congress explicitly required that the ILECs' interconnection, unbundling and resale obligations be captured in agreements that are negotiated and/or arbitrated, and ultimately approved by state commissions. Under Verizon's approach, interconnection agreements would have no practical significance, a result clearly at odds with the statutory framework created by Congress and set forth in sections 251 and 252 of the Act.

Accordingly, MCI has proposed to delete Verizon's proposed Section 2.1. Verizon's proposed Section 3.1 (as revised by MCI), along with the appropriate definitions, accomplishes the intent of the parties in the change of law provision in their agreements, as they relate to currently effective changes in Verizon's unbundling obligations. There is simply no justification for Verizon's wholesale removal of the change of law provision to address possible future changes in Verizon's unbundling obligations.

Issue No. 3: What obligations, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching (including Four-Line Carve-Out switching), and tandem switching, should be included in the Amendment to the parties' interconnection agreements?

MCI Response: MCI and Verizon's interconnection agreement provides both parties with a process to be followed if either party wants to modify the interconnection agreement in response to any change of law, such as the *TRRO*. The party that wants to effectuate such a change is required to follow the change of law provisions contained in the interconnection agreement. MCI's position regarding Issue 3 is that in light of the *TRRO*, both MCI and Verizon may avail themselves of the provisions provided by change of law language contained in the current agreement. MCI's proposed contract language regarding Issue 3 is contained in Section 8 of Exhibit 1. MCI proposes that

Enterprise Switching be defined and listed as a "discontinued element," which would mean, references throughout the amendment to the 4-line carve out would be unnecessary and could be removed.

Issue No. 4: What obligations, if any, with respect to unbundled access to DS1 loops, unbundled DS3 loops, and unbundled dark fiber loops should be included in the Amendment to the parties' interconnection agreements?

MCI Response: MCI and Verizon's interconnection agreement provides both parties with a process to be followed if either party wants to modify the interconnection agreement in response to any change of law, such as the *TRRO*. The party that wants to effectuate such a change is required to follow the change of law provisions contained in the parties' interconnection agreement. MCI's position regarding Issue 4 is that in light of the *TRRO,* both MCI and Verizon may avail themselves of the provisions provided by change of law language contained in the agreement. MCI's proposed contract language concerning the availability of DS1, DS3 and Dark Fiber loops can be found in Section 9 of Exhibit 1.

Issue No. 5: What obligations under federal law, if any, with respect to unbundled access to dedicated transport, including dark fiber transport, should be included in the Amendment to the parties' interconnection agreements?

MCI Response: MCI and Verizon's interconnection agreement provides both parties with a process to be followed if either party wants to modify the interconnection agreement in response to any change of law, such as the *TRRO*. The party that wants to effectuate such a change is required to follow the change of law provisions contained in the current interconnection agreement. MCI's position regarding Issue 5 is that in light of the *TRRO,* both MCI and Verizon may avail themselves of the provisions provided by

change of law language contained in the current agreement. MCI's proposed interconnection agreement language concerning the availability of Dedicated and Dark Fiber transport can be found in Section 10 of Exhibit 1.

Issue No. 6: Under what conditions, if any, is Verizon permitted to re-price existing arrangements which are no longer subject to unbundling under federal law?

MCI Response: Verizon proposes that any rate increases or new charges that may be established by the FCC may be implemented by Verizon on the effective date of the rate increase or new charge by the mere issuance of a rate schedule to MCI. Again, Verizon offers no justification for not complying with the "change of law" provision in the underlying agreement. Verizon's proposed course would have MCI be liable for charges solely upon Verizon's interpretation of how any new rates or rate increases are to be applied. Were Verizon to follow the change of law process, disputes about the proper application of new rates or rate increases would be the subject of dispute resolution. Verizon's proposed language does not even contain a notice provision, which might in theory allow MCI to seek dispute resolution under the agreement before the new rates go into effect. Accordingly, MCI proposes to delete Section 3.5.

Issue No. 7: Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements? Should the Amendment state that Verizon's obligations to provide notification of discontinuance have been satisfied?

MCI Response: Verizon uses the term "Discontinued Facility" to describe and define UNEs that have been removed from the FCC's rules. The term is misleading as Verizon has offered to maintain existing facilities, but at a higher price. A more appropriate term for so called "de-listed" UNEs would be "Discontinued Elements."

MCI does not object to part of Verizon's proposed section 3.1, namely, that 90 days notice is sufficient to discontinue the provisioning of Discontinued Elements, defined as: 1) enterprise switching; 2) OCn loops and OCn dedicated transport; 3) the Feeder portion of a Loop; 4) Line Sharing (subject to the FCC's transition rules); 5) call related databases (other than 911/E911) not provided in connection with use of Mass Market switching; 6) signaling or shared transport provisioned in connection with enterprise switching; 7) FTTP Loops; and 8) Hybrid Loops (subject to exceptions for narrowband services). These changes in Verizon's unbundling obligations are in effect and not the subject of further appeals or remand proceedings.

Verizon goes one step further, however, and seeks to include contract language on UNEs that *might* be removed from federal unbundling rules in the future. The proposed first sentence of section 4.7.3 would define a "Discontinued Facility" as any UNE or combination that has ceased to be the subject of unbundling requirements under Federal rules. Again, Verizon is seeking to gut the change of law provisions of its interconnection agreements. This amendment should address UNEs and UNE combinations that are no longer the subject of federal unbundling obligations. MCI's revised version of the Verizon language would do just that. There is no justification for addressing speculative, future changes in Verizon's unbundling obligations.

Further, MCI has proposed to delete a sentence that would allow Verizon to give notice of discontinuance in advance of the effective date of removal of unbundling requirements. This provision is not necessary, given MCI's proposed limitation of the scope of the definition of "Discontinued Element."

Finally, in the last sentence of proposed Section 3.1, Verizon attempts to create an exception to the 90-day notice provision by preserving any rights Verizon may have under the agreement, any Verizon tariff or SGAT, to cease providing a facility that becomes a "Discontinued Facility." First, the whole purpose of this section is to define when Verizon may discontinue offering certain UNEs and UNE combinations. Other contract provisions should not override this section. Second, if a party is purchasing UNEs out of the agreement, Verizon tariffs and SGATs have no relevance whatsoever. Finally, as argued above, this amendment should address current changes in law, not future changes in law that may result in additional UNEs becoming "Discontinued Elements." For future changes in Verizon unbundling obligations, transition arrangements may need to be negotiated and arbitrated in the change of law process established by the parties' original interconnection agreements.

Verizon's proposed Section 3.4 provides that Section 3 of this amendment is subordinate to any pre-existing and independent rights that Verizon may have under the original agreement, a Verizon tariff or SGAT, or otherwise, to discontinue providing Discontinued Elements. This proposal, as explained earlier, cannot be justified. The purpose of section 3 is to define the terms of when Verizon may discontinue offering certain UNEs and UNE combinations. Other contract provisions should not override this section. In all other respects, the proposed amendment supersedes inconsistent provisions in the original agreement. In addition, if MCI is purchasing UNEs out of the agreement, Verizon tariffs and SGATs have no relevance whatsoever. Verizon has no legal basis to apply tariff (or SGAT) language to override inconsistent language in an interconnection agreement.

Issue No. 8: Should Verizon be permitted to assess non-recurring charges for the disconnection of a UNE arrangement or the reconnection of service under an alternative arrangement? If so, what charges apply?

MCI Response: Verizon should not be permitted to assess its existing loop disconnect nonrecurring charges on loops that are not disconnected or on loops that are disconnected as part of a group or batch request. The existing nonrecurring loop disconnect charges do not recover costs associated with mass disconnections or conversions o alternative offerings. The existing Verizon loop disconnect charges recover costs associated with random loop disconnects that would have occurred given normal, market driven, customer churn. The changes that can be expected as a result of the TRRO will not be reflective of normal, market driven, customer churn. As such, the existing nonrecurring loop disconnect charges would not be appropriate in this situation because they do not reflect the scale and cope economies of a mass, one-time migration of loops, or a "batch hot cut." The Commission should determine new and lower "batch' hot cut rates that ensure the scope and scale economies of one-time, mass migration of loops are captured by any rates assess on such hot cuts. Further, to the extent unbundled loops need not be disconnected by can be converted to alternative Verizon offerings, no disconnect or reconnect charges should apply. MCI's position regarding Issue 8 is found at Sections 3.2 and 8 of MCI's redlined version of Verizon's proposed contract amendment.

Issue No. 9: What terms should be included in the Amendments' Definitions Section and how should those terms be defined?

MCI Response: MCI has proposed that the Amendment to the parties' interconnection agreement include definitions for a number of terms. Those proposed definitions are set forth in Section 12.7 of MCI's revised proposed contract amendment contained in Exhibit 1. The purposes of MCI's proposed revisions are to ensure that the definitions track

federal law in all respects and to supply definitions for other terms which Verizon omitted.

Issue No. 10: Should Verizon be required to follow the change of law and/or dispute resolution provisions in existing interconnection agreements if it seeks to discontinue the provisioning of UNEs under federal law? Should the establishment of UNE rates, terms and conditions for new UNEs, UNE combinations or commingling be subject to the change of law provisions of the parties' interconnection agreements?

MCI Response: Yes. Verizon should be required to follow the change of law provisions in the existing interconnection agreements if it seeks to discontinue provisioning UNEs for the reasons set forth in response to Issue Nos. 2 and 7.

Issue No. 11: How should any rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented?

MCI Response: MCI and Verizon's interconnection agreement provides both parties with a process to be followed if either party wants to modify the interconnection agreement in response to any change of law, such as the *TRRO*. The party that wants to effectuate such an agreement change is required to follow the change of law provisions contained in the current interconnection agreement. MCI's position regarding Issue 11 is that in light of the *TRRO*, both MCI and Verizon may avail themselves of the provisions provided by change of law language contained in the current agreement. The rates Verizon charges MCI should not change until an amendment to the agreement or a new agreement changing rates becomes effective. MCI's proposed contract language concerning the changes in rates caused by the *TRRO* are found in Sections 8, 9, 10 and 11 of Exhibit 1.

Issue No. 12: Should the interconnection agreements be amended to address changes arising from the TRO with respect to commingling of UNEs with wholesale services, EELs, and other combinations? If so, how?

MCI Response: MCI's position on Issue No. 12 is set forth in detail in Section 4 of Exhibit 1.

Issue No. 13: Should the interconnection agreements be amended to address changes arising from the TRO with respect to conversion of wholesale services to UNEs/UNE combinations? If so, how?

MCI's Response: MCI's position on Issue 13 is set forth in detail in Section 5 of Exhibit 1.

Issue No. 14: Should the ICAs be amended to address changes, if any, arising from the TRO with respect to:

a) Line splitting;
b) Newly built FTTP, FTTH, or FTTC loops;
c) Overbuilt FTTP, FTTH or FTTC loops;
d) Access to hybrid loops for the provision of broadband services;
e) Access to hybrid loops for the provision of narrowband services;
f) Retirement of copper loops;
g) Line conditioning;
h) Packet switching;
i) Network Interface Devices (NIDs);
j) Line sharing?

If so how?

MCI Response: MCI's position on Issue 14(a) is set forth in Section 6 of Exhibit 1.

MCI's position on Issues 14(b) and (c) is set forth in Section 7 of Exhibit 1.

MCI's position on Issues 14(d) and (e) is set forth in Section 7.2 and 9.7.5 of Exhibit 1.

MCI's position on Issue 14(f) is set forth in Section 7.3 of Exhibit 1.

MCI's position on Issue 14(g) is set forth in Section 7.4 of Exhibit 1.

MCI's position on Issue 14(j) is set forth in Section 9.7.5 of Exhibit 1.

Issue No. 15: What should be the effective date of the Amendment to the parties' agreements?

MCI Response: Generally, the practice of the Commission has been to issue an order approving its decision regarding disputed issues and require the parties to submit a signed

agreement that complies with its decision. The effective date of the agreement should be the date the Commission issues its final order approving the signed amendment.

Issue No. 16: How should CLEC requests to provide narrowband services through unbundled access to a loop where the end user is served via Integrated Digital Loop Carrier (IDLC) be implemented?

MCI Response: MCI's position on Issue 16 is set forth in Section 7.2 of Exhibit 1.

Issue No. 21: What obligations, if any, with respect to EELs should be included in the Amendment to the parties' interconnection agreements?

a) What information should a CLEC be required to provide to Verizon as certification to satisfy the FCC's service eligibility criteria to (1) convert existing circuits/services to EELs or (2) order new EELs?

b) Conversion of existing circuits/services to EELs:

(1) Should Verizon be prohibited from physically disconnecting, separating or physically altering the existing facilities when a CLEC requests a conversion of existing circuits/services to an EEL unless the CLEC requests such facilities alteration**?**

(2) What type of charges, if any, and under what conditions, if any, can Verizon impose when CLECs convert existing access circuits/services to UNE loop and transport combinations?

(3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the TRO's service eligibility criteria?

(4) For conversion requests submitted by a CLEC prior to the effective date of the amendment, should CLECs be entitled to EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?

c) What are Verizon's rights to obtain audits of CLEC compliance with the FCC's service eligibility criteria?

MCI Response: MCI's position on Issue 21 is set forth in detail in Sections 4, 5, 8 and 9 of Exhibit 1.

Issue No. 22: How should the Amendment reflect an obligation that Verizon perform routine network modifications necessary to permit access to loops, dedicated transport, or

dark fiber transport facilities where Verizon is required to provide unbundled access to those facilities under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51?

MCI Response: MCI has not provided contract language regarding Issue No. 22 because an amendment is unnecessary on this issue because FCC rules have not been changed in this regard.

Issue No. 23: Should the parties retain their pre-Amendment rights arising under the Agreement, tariffs, and SGATs?

MCI's Response: The Agreement, as changed by the proposed Amendment, will be the exclusive source for determining the parties' contract rights. Verizon's proposed Section 3.4 provides that Section 3 of the Amendment is subordinate to any pre-existing and independent rights that Verizon may have under the original agreement, a Verizon tariff or SGAT, or otherwise, to discontinue providing Discontinued Elements. This proposal cannot be justified. The purpose of Section 3 is to define the terms of when Verizon may discontinue offering certain UNEs and UNE combinations. Other contract provisions should not override this section. In all other respects, the proposed amendment supersedes inconsistent provisions in the original agreement. In addition, if MCI is purchasing UNEs out of the agreement, Verizon tariffs and SGATs have no relevance whatsoever.

Issue No. 24: Should the Amendment set forth a process to address the potential effect on the CLECs' customers' services when a UNE is discontinued?

MCI Response: Yes. In Section 8, MCI has proposed contract language to be included in the Amendment to address the potential effect on MCI customers in the event that Verizon discontinues the provisioning of certain UNEs and UNE combinations, including mass market switching. MCI's proposed language, with some exceptions, is the same language proposed by MCI in its initial responsive filing. The proposed transition

arrangements for mass market switching, set forth in Section 8.1, are a default arrangement; they would apply in the absence of a transition process established by the FCC or the Commission. In addition, the transition arrangements for Mass Market Switching would use the timelines set forth in the *TRO*, and would be triggered by Verizon's implementation of both a batch hot cut process and an individual hot cut process.

MCI and Verizon's interconnection agreement provides both parties with a process to be followed if either party wants to modify the interconnection agreement in response to any change of law, such as the *TRRO*. The party that wants to effectuate such a change is required to follow the change of law provisions contained in the current interconnection agreement. MCI's position regarding Issue 24 is that in light of the *TRRO*, both MCI and Verizon may avail themselves of the provisions provided by change of law language contained in the current agreement. In Section 11 of Exhibit 1, MCI has proposed contract language to address the potential affect on MCI customers in the event that Verizon discontinues the provisioning of certain UNEs and UNE combinations, including mass market switching. MCI's proposed language, with some exceptions, is the same language proposed by MCI in its initial responsive filing. The proposed transition arrangements for mass market switching, set forth in Section 11, are a default arrangement: they would apply in the absence of a transition process established by the FCC or the Commission. In addition, the transition arrangements for Mass Market Switching would use the timelines set forth in the FCC's Triennial Review Order, and would be triggered by Verizon's implementation of both a batch hot cut process and an individual hot cut process.

Issue No. 25: How should the Amendment implement the FCC's service eligibility criteria for combinations and commingled facilities and services that may be required under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51?

MCI Response: MCI's position on Issue 25 is set forth in detail in Section 4 of Exhibit 1.

Issue No. 26: Should the Commission adopt the new rates specified in Verizon's Pricing Attachment on an interim basis?

MCI Response: No. A significant issue with respect to Verizon's proposed rates for performing routine network modifications is the extent to which the costs purportedly being recovered are already recovered in recurring UNE rates. It would not be appropriate, on even an interim basis, to allow Verizon to double recover its costs. If the double recovery issue cannot be fully litigated as part of this proceeding, the Commission should set a zero rate for these proposed rate elements.

III. CONCLUSION

For all the reasons set forth herein, as well as in MCI's October 22, 2004 Changes to Verizon's Proposed Amendments to the Interconnection Agreement between MCI and Verizon and the documents containing MCI's edits to Verizon's proposed language, MCI asks the Commission to adopt the language it proposes in Exhibit 1 to this brief.

RESPECTFULLY SUBMITTED this 11th day of March, 2005.

MCI

By _____

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