BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of	)	
VERIZON NORTHWEST, INC.	)	DOCKET NO. UT- 04313
with	)	
	)	**AT&T'S REPLY BRIEF**
COMPETITIVE LOCAL EXCHANGE CARRIERS AND MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON	)	**REGARDING DISPUTED ISSUES**
Pursuant to 47 U.S.C. 252(b), and the *Triennial Review Order*	)	

Pursuant to Order No. 15, AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit their Reply Brief Regarding Disputed Issued that addresses the Opening Brief filed by Verizon Northwest, Inc. ("Verizon") on March 11, 2005 as well as the disputed issues identified by the Commission for resolution in this arbitration proceeding.

REPLY

1. There is a fundamental disagreement between AT&T and Verizon that pervades the parties' positions as laid out in the Opening Briefs. AT&T objective in this arbitration is simply to obtain an Amendment to its existing interconnection agreement with Verizon that reflects the material changes in the parties' unbundling and other obligations that resulted from intervening FCC's rulings, particularly the *Triennial*

Review Order ("*TRO*") and *Triennial Review Remand Order* ("*TRRO*"). Verizon's objective, in contrast, is an Amendment – or, as its multiple proposals would indicate, Amendments – that would change the way in which the underlying interconnection agreement itself operates. Specifically, Verizon wants an Amendment that will change the existing ICA to permit Verizon – and Verizon alone --to determine what its obligations are under the 1996 federal Telecommunications Act ("Act") to provide interconnection and access to its network, without mutual agreement by the parties concerning what those obligations or prior Commission review in the case of disputes between the parties as to Verizon's interpretation.

2. Verizon's Opening Brief makes this objective quite clear. As described by Verizon in its Opening Brief, Verizon's proposed Amendment 1 provides for the "automatic implementation" of any changes in its unbundling obligations. "When the FCC eliminates an unbundling obligation, that decision can and should be implemented through the parties' interconnection agreements as well, without the need for any amendment to the agreement's language … ."(Opening Brief, Par. 17). In other words, Verizon wants the ability to change the contractual obligations of the parties' to a contract going forward on its own initiative, and <u>without actually changing the contract itself to reflect those new interpretations.</u>

3. There is no basis for this approach in either the FCC's decisions at issue in this case, or in fundamental principles of basic contract law. As to the first point, this proceeding arises out of and is designed to address changes in law from the *TRO/TRRO*. But neither of those orders makes reference to, much less requires, the substantial modifications to existing ICA change of law provisions proposed by Verizon. To the

contrary, as AT&T demonstrated in its Opening Brief, both orders reinforce the importance of those provisions, requiring the use of the Section 252 negotiation and arbitration process as the proper mechanism for implementing the rule changes adopted by the FCC.

4. Verizon's approach also runs afoul of the basic contract law principle that the obligations of the parties' to a contract should be spelled out in that contract in order for the contract to be binding and enforceable. The parties' interconnection contracts today typically contain standard provisions that state that the document represents the "Entire Agreement" between the parties concerning the subject matters contained in the contract notwithstanding any prior agreements, representations, statements, etc. with respect to that subject matter. Similarly, these interconnection contracts also typically contain provisions that provide that the obligations of the parties are spelled out within the "four corners" of the contract and that any change to those obligations must be contained in a written amendment to the contract executed by the parties.

5. Neither representation would hold true if Verizon's approach were to be adopted. Instead of reflecting the "entire agreement" between the parties, the ICA would be subject to change at the instigation of just one party, who would not then be required to even reflect that new interpretation in the ICA itself. And the four corners of the contract would provide no assurance to the CLEC that the obligations spelled out within them could not be changed altogether at Verizon's whim.

6. It almost goes without saying that, were the shoe on the other foot, Verizon would never voluntarily submit to such a one-way process. Yet it seeks to defend it here with a parade of rhetoric and irrelevancies. Indeed, Verizon's Opening

Brief is replete with vitriolic rhetoric concerning its dealings with the "CLECs" in implementing contract amendments to change its obligations under its interconnection contracts to implement the unbundling provisions of the FCC's TRO.[1] Verizon variously alleges the "pitched resistance of CLECs, intent on perpetuating unauthorized regulatory arbitrage at the expense of real competition" (Opening Brief, Par. 3); "the CLEC's relentless efforts [since the issuance of the TRO] to avoid implementation of binding federal law." (Opening Brief, Par. 40) and the "CLEC's procedural wrangling and delaying tactics". (Opening Brief, Par. 156).

7. However, as this Commission is aware, the FCC's efforts to define Verizon's federal unbundling obligations in the *TRO*, which was released in August 2003 and effective in October 2003, has had a tortured and unstable history. After the FCC's issued its *TRO* and the parties began the state proceedings that were required by that order in early 2004, the Order was vacated by the D.C. Circuit Court of Appeals in March 2004.[2] Subsequently, the FCC issued its "Interim Rules Order" in August 2004 "in order to avoid disruption in the telecommunications industry" while new permanent unbundling rules were being promulgated. Finally, in February 2005, the FCC released its TRRO, which provides for the final unbundling rules applicable to Verizon.

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[1] Verizon also tries to support its Amendment 1 approach by pointing to interconnection agreements with other CLECs – apparently not parties to this arbitration – that Verizon claims include terms that allow it to discontinue unbundled network elements without amendment. See Verizon Opening Brief at ¶18. However, the fact that Verizon may have negotiated such contracts with other parties does not give it the right to graft such provisions on to AT&T's ICA, which in fact requires amendment.

[2] In its *TRO* the FCC clearly stated that the parties' were to utilize the nine-month negotiation and arbitration process to make amendments to their interconnection contracts to reflect the changed obligations of the parties. *(See, e.g. TRO* ¶¶700-706). Verizon concedes in its Opening Brief that the FCC directed that changes to its federal unbundling obligations be incorporated into contract amendments (Opening Brief, Par. 9) although it complains that it has been "over 17 months" since the issuance of the *TRO* and the contract amendments have not been put in place. Of course, at the time of the issuance of the *TRO* the FCC could not have anticipated that its Order would be vacated nor that it would have to issue Interim Rules eleven months later and final rules six months after that.

8. The negotiations between AT&T and Verizon regarding a contract amendment have had a similar tortured and unstable history, due in part to this changing legal landscape, but also due to Verizon's backing off in midstream from its original Amendment proposal and replacing it with the two proposals at issue now.. However, none of this provides any basis for the alterations in the ICAs approach to implementing changes in the rules. Notwithstanding the tortured and unstable history of the FCC's attempts to define Verizon's federal unbundling obligations and the similar history of AT&T's negotiations with Verizon and Verizon's attempts to initiate arbitrations to develop contract amendments to reflect those changing obligations, it is now clear that Verizon's federal unbundling obligations have stabilized and are provided for in the *TRO* and the *TRRO*. It is those decisions that properly must be addressed and implemented through this arbitration.

9. This Commission now has before it a properly framed arbitration and an Issues list for resolution, which provide the parties' position on the changes in Verizon's federal unbundling obligations as reflected in the *TRO* and *TRRO*. Verizon's federal unbundling obligations under these Orders are now known and the Commission can proceed to render its decision in this arbitration – the results of which can be incorporated into an interconnection contract between the parties. There is no need to radically depart from the basic contract principle that the obligations of parties to a contract should be specified in writing in that contract. As a result, Verizon's Amendment 1 proposal, which would permit one party to a contract to unilaterally implement any changes to its contractual obligations without the need for a contract amendment, while perhaps born

out of its frustration and its perception of the "pitched resistance" of the CLECs to implementing those changes, is now moot and should be rejected.

10. Rather, the Commission should proceed to rule on the Issues set up for resolution in this arbitration and thereafter direct the parties' to incorporate the results of the Commission's arbitration Order into the parties' interconnection contract, consistent with the directives of the FCC in the *TRO* and *TRRO*. To that end, the Commission has before it AT&T's proposed Amendment, which, unlike Verizon's multifarious proposals, has been updated to explicitly incorporate the FCC's findings in the *TRRO*. In fact, and based on the parties Opening Briefs, there does not appear to be a fundamental disagreement as to the unbundled network elements (UNEs) that Verizon is no longer obligated to provide or the new obligations that Verizon has under the Act and the FCC's *TRO* and *TRRO*. Rather the disagreements appear to be more related to how the parties will amend their interconnection contract to "operationalize" the discontinuation of those UNEs and the new obligations (i.e. the requirements to permit conversions of existing special access circuits to UNEs and EELs; commingling of UNEs with tariffed special access services and other facilities arrangements; the ordering of EELs and the requirements to perform Routine Network Modifications) imposed on Verizon.

11. For example, both AT&T and Verizon agree that Verizon is no longer obligated, as a result of the *TRO*, to provide enterprise switching; OCN loops; access to fiber loops in a "Greenfield" situation; access to the broadband capabilities of a fiber loop in a "Brownfield"; Packet switching or new Line sharing arrangements. Both AT&T and Verizon also appear to be in agreement that, as a result of the *TRRO*, Verizon is no longer obligated, after March 11, 2005, to provide new mass market switching (unbundled

network element – platform or "UNE-P") arrangements, along with the associated UNEs; DS1 and DS3 loops in certain wire centers (although Verizon has identified no wire centers in the State of Washington where these high capacity loop facilities would not be made available); Dark Fiber Loops; DS1 and DS3 dedicated interoffice transport in certain wire centers and Dark Fiber transport. Furthermore, both AT&T and Verizon appear to agree on the "Transition" provided for in the *TRRO* for these elements.

12. Again, the main difference between AT&T and Verizon on these matters is that AT&T proposes that the parties changed contractual obligations be incorporated into an interconnection contract amendment. Verizon would propose, through its Amendment 1, that it be permitted to modify its obligations without changing the parties' interconnection contract. AT&T's course is plainly the one most consistent with the law and the FCC's directives.

13. AT&T and Verizon also continue to have disagreements and differences as to how to "operationalize" (notice, time periods, pricing changes, facility rearrangements, etc.) the discontinuation of these UNEs and certain definitional issues. As this Commission is aware, "the devil is often in the details". AT&T's positions on the specifics are contained in its Opening Brief, and AT&T would incorporate those positions and arguments by reference so as not to repeat them in this Reply Brief. However, those disagreements are properly resolved through this arbitration proceeding, the results of which should be incorporated into the parties' interconnection contracts.

14. Accordingly, for the reasons set forth above and in AT&T's Opening Brief, the Commission should reject Verizon's proposed Amendments 1 and 2, and adopt AT&T's resolution of the disputed issues through its proposed Amendment.

Respectfully submitted this 1st day of April, 2005.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

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