EXHIBIT A

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms,
Conditions and Rates for Unbundled
Network Elements and Interconnection
(PUC 20) and Resold Services (PUC 21)

March 17, 2005

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we deny MCImetro Access Transmission Services LLC's (MCI) Petition for Emergency Declaratory Relief and the CLEC Coalition's[1] Motion for Temporary Order. We also remind Verizon of its obligation to follow federal law concerning certification of wire centers for purposes of ordering certain loop and transport unbundled network elements (UNEs). Finally, we put Verizon on notice that we may pursue the imposition of penalties for any failure to comply with our September 3, 2004 Order in this Docket, which requires Verizon to include all of its wholesale offerings in its wholesale tariff, including UNEs provided pursuant to section 271 of the Telecommunications Act of 1996 (TelAct), and to continue provisioning 271 UNEs at "Total Element Long Run Incremental Cost (TELRIC)" rates until we, or the Federal Communications Commission (FCC), approve new rates.

II. BACKGROUND

On February 4, 2005, the FCC issued its *Triennial Review Order Remand Order (TRRO).*[2] In the *TRRO*, the FCC eliminated certain unbundling requirements pursuant to section 251 of the TelAct and established new criteria for access to certain loop and transport UNEs. *TRRO* at ¶ 5. The effective date of the *TRRO* is March 11, 2005. On February 10, 2005, in a letter posted on its website (UNE Industry Letter), Verizon announced that on March 11, 2005, it would stop accepting orders for those UNEs which the FCC had de-listed in the *TRRO*.

On March 2, 2005, MCI filed a Petition for Emergency Declaratory Relief (Petition), asserting the need for injunctive relief to prevent Verizon from rejecting orders for de-listed UNEs, including UNE-Ps. In MCI's view, Verizon is obligated to provide

---

[1] A coalition comprised of Mid-Maine Communications, Oxford Networks and Pine Tree Network.

[2] *Triennial Review Remand Order, Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers ("TRRO"),* FCC Docket Nos. 04-313, 01-338 *Order on Remand*, FCC 04-290, issued Feb. 4, 2005, effective Mar. 11, 2005.

access to the de-listed UNEs pursuant to the September 2, 1997 Interconnection Agreement between MCI and Verizon and, by announcing its intent to stop accepting orders for such UNEs on March 11, 2005, Verizon is in anticipatory breach of the agreement.

On March 2, 2005, Verizon issued a second Industry Letter (Wire Center Industry Letter) attaching a list of rate centers it asserted met the FCC's new business line/fiber collocator criteria related to submission of orders for DS1 and DS3 loops and transport. Verizon further stated that by issuing its letter it was placing CLECs "on notice of the Wire Center classifications" thereby providing them with "actual or constructive knowledge" of the wire center classification. Finally, Verizon informed CLECs that if they should "attempt to submit an order for any of the aforementioned network elements notwithstanding your actual or constructive knowledge . . . Verizon will treat each such order as a separate act of bad faith carried out in violation of federal regulations and a breach of your interconnection agreements, and will pursue any and all remedies available to it."

On March 4, 2005, the CLEC Coalition joined in MCI's request by filing a Motion for Temporary Order (Motion). On March 7, 2005, A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation (InfoHighway) filed a Petition to Intervene and Comments in Support of MCI's Petition.[3]

Verizon responded to MCI's Petition by filing opposition papers on March 8, 2005, (Ver. Opp.) arguing that the FCC's *TRRO* takes precedence over any provisions of the Interconnection Agreement that are contrary to it. Verizon also claims that we lack the authority to provide the relief sought by MCI's Petition.

On March 10, 2005, MCI withdrew its Petition, explaining that it had entered into an interim commercial agreement for UNE-P replacement services. Later that same day, the CLEC Coalition filed a letter-brief in which it addressed Verizon's response to the MCI Petition, and urged that its own request for injunctive relief be granted despite the fact that the party first seeking such relief (MCI) had withdrawn its request. Finally, in a series of e-mail messages sent on March 10 and 11, 2005, Verizon, the CLEC Coalition, and InfoHighway described the rulings of several regulatory agencies in other states that have recently confronted the same issues raised by the MCI Petition.

A special deliberative session was held on March 11, 2005, to consider the pending motions.

---

[3] We grant InfoHighway's petition to intervene.

III. POSITIONS OF THE PARTIES

A. The CLECs

According to the CLECs,[4] Verizon's obligation to provide UNEs derives from their interconnection agreements with Verizon. The *TRRO* triggered the so-called "change of law" provisions in the interconnection agreements – provisions which require the parties to "arrive at mutually acceptable modifications or cancellations," of the interconnection agreement whenever such changes are "required by a regulatory authority or court in the exercise of its lawful jurisdiction." In the view of the CLECs, Verizon cannot unilaterally impose its understanding of what the *TRRO* requires. Instead, the parties must negotiate changes to the interconnection agreement in light of the *TRRO*. Injunctive relief is necessary to prevent Verizon from implementing its plan to discontinue the provision of certain UNEs, as described in Verizon's February 10, 2005, Industry Letter, and thereby disrupting the status quo during the negotiation period.

The CLECs also argue that while the *TRRO* removes certain UNEs from the list of those which must be offered pursuant to section 251(c)(3) of the TelAct, it has no bearing on Verizon's separate and continuing obligation to provide those UNEs pursuant to section 271 of the TelAct. Thus, the CLECs request that we enforce our September 3, 2004 Order requiring Verizon to meet its commitment to us in our 271 Proceeding[5] to file a wholesale tariff and to continue to provide 271 UNEs at TELRIC rates until the wholesale tariff is approved.

B. Verizon

Verizon takes issue with the CLECs' characterization of the "change of law" provisions of the interconnection agreements. According to Verizon, those provisions are meant merely to ensure that the language of interconnection agreements is updated to reflect new rules issued by the FCC – rules that Verizon insists are binding on the parties as soon as they are pronounced. The request for emergency injunctive relief is misguided, claims Verizon, because the *TRRO* changed the status quo, effective March 11, 2005, and subsequent changes to interconnection agreements will serve only to acknowledge the new state of affairs.

---

[4] The CLEC Coalition and InfoHighway explicitly adopted the arguments of MCI before MCI withdrew its Petition, and also articulated their own arguments. For the purposes of this Order, we will treat the arguments of these parties collectively as those of the "CLECs."

[5] *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849.

Verizon also claims that its obligation to provide UNEs, as memorialized in the interconnection agreements, derives solely from section 251 of the TelAct, and "not state law, section 271, or anything else." Verizon Opp. at 4. Even if section 271 did form the basis for such obligations, Verizon adds, the Commission is powerless to act because the FCC is "solely responsible for interpretation and enforcement of any section 271 obligations." *Id.* Thus, Verizon contends not only that we should deny the petitions for emergency injunctive relief but also that we lack the authority, under concepts of federal preemption, to impose the relief sought by the CLECs and enforce our September 3, 2004 Order.

IV. DECISION

A. Implementation of the *TRRO*

We have considered the arguments of all parties, the language of the *TRRO*, decisions reached by other state commissions, and the practical implications of our decision. We find that the FCC intended that its new rules de-listing certain UNEs be implemented immediately rather than be the subject of interconnection agreement amendment negotiations before becoming effective. We further find that it is in the best interests of all parties to implement the changes required by the *TRRO* immediately and move forward on the pending litigation of other contested issues. The decisions set forth in the *TRRO* come after years of seemingly endless litigation involving the FCC and federal courts; delaying the implementation of the new rules will only delay the inevitable.

As a practical matter, it is not obvious to us what issues would remain to be negotiated concerning the section 251 UNEs de-listed by the FCC; the FCC has been clear that these UNEs are no longer required to be unbundled under section 251. The end result after going through the step of amending the interconnection agreements will be the same as enforcing the March 11th deadline immediately, *albeit* with some delay. We recognize that there may be other provisions in the *TRRO* which require negotiations before the interconnection agreements can be amended. We encourage parties to move forward swiftly with those negotiations and stand ready to address any disputes that may be brought before us.

In addition, we reject the reasoning of the Georgia Public Service Commission in its March 8, 2005 Order (Docket No. 19341-U) regarding the applicability of the *Mobile Sierra*[6] doctrine because the contracts at issue here contain change of law provisions and therefore already contemplate regulatory changes. Further, the Georgia PSC seems to be saying that, without a showing of heightened public interest, the FCC cannot unilaterally override an interconnection agreement but can, without a showing of

[6] The *Mobile Sierra* doctrine allows the government to modify the terms of a private contract upon a finding that such modification will serve the public need. *United States Gas Pipeline Co. v. Mobile Gas Service Corp.,* 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pac. Power Co.,* 350 U.S. 348 (1956).

heightened public interest, order parties to amend their agreements to be consistent with the FCC's new rules. We do not find this distinction persuasive.

Finally, as Verizon correctly noted, the FCC stated repeatedly throughout its Order that ILECs would have no obligation to provide CLECs with access to the de-listed UNEs and that the transition plan does not permit CLECs to add new de-listed UNEs. We find the FCC's specificity regarding these issues to be clear and thus, we do not believe it to be appropriate or necessary to ascribe anything but their plain meaning to the FCC's directives. Accordingly, we deny the requests of MCI and the CLEC Coalition for an order staying implementation of the FCC's rules pending interconnection agreement negotiations.

B. Self-Certification of Wire Centers

As stated above, the FCC's new rules place limitations on a CLEC's ability to order certain loops and transport UNEs, depending upon the number of business lines and/or fiber collocators associated with the particular wire center in which it would like to purchase the UNE. The FCC, however, clearly found that CLECs, after a diligent inquiry, could self-certify that a particular wire center does not meet the FCC's criteria. *TRRO* at ¶ 234. Further, upon submission of an order involving self-certification, an ILEC must provision the order first and then dispute the classification of the wire center in front of a state commission pursuant to the dispute resolution procedures of most interconnection agreements. *Id.*

While the March 2, 2005 Industry Letter posted by Verizon on its website does not explicitly state that it will not follow the FCC's rules, i.e. that it will reject a CLEC order involving a rate center contained on Verizon's list, it comes very close. Indeed, apart from appearing unnecessarily hostile, the language is inconsistent with the spirit of the *TRRO* and with the specific findings in paragraph 234. Thus, we remind Verizon of its obligation to comply with the FCC's rules and paragraph 234 of the *TRRO*. We also remind CLECs that they must make a good faith inquiry concerning the characteristics of any wire center that might be implicated by the FCC's criteria. If necessary, we will investigate the factual underpinnings of Verizon and/or CLEC assertions concerning the characteristics of wire centers in Maine which may meet the FCC's criteria.

C. Enforcement of Verizon's 271 Obligations

Having resolved the motions pending before us, we need go no further. Nonetheless, prompted by certain comments made by Verizon in its Brief in Opposition to the motions, we remind Verizon of its continuing obligation to comply with both the standing orders of this Commission, including our Order of September 3, 2004, and section 271 of the TelAct. The following discussion is intended to summarize, but not in any way to supplant or modify, our findings of September 3, 2004. In our view, this summary is sufficient to put Verizon on notice that any failure on its part to comply with

our September 3rd Order may lead to the imposition of penalties pursuant to 35-A M.R.S.A. § 1508-A.

On September 3, 2004, we issued an order in this proceeding requiring Verizon to include all of its wholesale offerings in its state wholesale tariff, including UNEs provided pursuant to section 271 of the TelAct. We further specified that Verizon must file prices for all offerings contained in the wholesale tariff for our review for compliance with federal pricing standards, i.e. TELRIC for section 251 UNEs and "just and reasonable" rates pursuant to sections 201 and 202 of the Communications Act of 1934 for section 271 UNEs. Finally, we held that Verizon must continue to provision 271 UNEs at TELRIC prices pending approval of the wholesale tariff and/or new rates. Verizon did not seek reconsideration of the Order nor did it appeal the Order pursuant to 35-A M.R.S.A. § 1320.

Now, some six months after we issued our Order, Verizon asserts that the Order has no force and that Verizon has no obligation to comply with its requirements. We find Verizon's assertions both troubling and procedurally improper. Unless and until a Commission order is amended, vacated, or otherwise modified pursuant to the requirements of Title 35-A or other applicable law, the order retains the force of law and must be obeyed. Accordingly, our September 3, 2004 Order in this proceeding stands and Verizon must comply with it or risk being found in contempt of a Commission order and subject to the fining provisions of 35-A M.R.S.A. § 1508-A. Verizon remains free, as it has been since September 3rd, to request that the Commission alter or amend its September 3rd Order. It is not free, however, to unilaterally determine that it does not have to comply.

We take very seriously the commitments Verizon made to us during our 271 proceeding and expect that Verizon will honor those commitments. We will not repeat the reasoning and rationale supporting our assertion of jurisdiction to enforce Verizon's 271 commitments. We laid that reasoning out quite clearly in our September 3rd Order and find that there has been no intervening change in law that would impact our analysis.[7]

---

[7]The cases cited by Verizon can, and have been, distinguished. First, in both *Verizon North Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002) and *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003), the state commissions ordered the incumbent local exchange carrier (ILEC) to file a state wholesale tariff pursuant to state authority, which is entirely different from Verizon voluntarily agreeing to file a wholesale tariff in exchange for this Commission's support of its federal 271 application. Further, this Commission has never stated that the wholesale tariff would replace the obligation of parties to enter into interconnection agreements. Second, *Indiana Bell Telephone Company, Inc. v. Indiana Utility Regulatory Commission*, 359 F.3d 493 (7th Cir. 2004), involved a state commission's assertion of authority to order a performance assurance remedy plan under state law. Again, this is clearly distinguishable from the situation here in Maine where Verizon agreed to file a wholesale tariff.

Verizon has had over six months since our September 3rd Order to submit a tariff for its 271 obligations and/or obtain FCC approval of the specific rates it intends to charge for 271 UNEs. Verizon has taken no action. Thus, the interim provisions that we put in place, i.e. the requirement that Verizon continue to provision 271 UNEs at TELRIC rates until other rates are approved, continues to govern. To the extent that there is legitimate disagreement concerning which UNEs qualify as 271 UNEs, we encourage the parties to bring those issues to us as soon as possible. We note that the Hearing Examiner in this proceeding recently issued a procedural order with an attached matrix outlining the status of all UNEs and requesting legal argument from the parties concerning their correct categorization. Thus, we expect that in the absence of particular disagreements, we will have an opportunity to resolve the issue of which UNEs are considered 271 UNEs within the next couple of months.

A decision by Verizon to ignore the requirements of our September 3rd Order may trigger application 35-A M.S.A. §1508-A. Indeed, to the extent that Verizon fails to comply with the September 3rd Order by refusing to provision uncontested 271 UNEs, such as unbundled switching, on the grounds that our September 3rd Order is not enforceable, it is suspect to an enforcement proceeding pursuant to 35-A M.R.S.A. §1508-A(1)(B). If Verizon refuses to provision a 271 UNE based on a good faith disagreement concerning whether the UNE qualifies as a 271 UNE, we will conduct a proceeding to determine whether the UNE qualifies. If Verizon continues to refuse to provision the UNE after we find that it does qualify, it risks the initiation of enforcement and penalty proceedings.

Dated at Augusta, Maine, this 17th day of March, 2005.

BY ORDER OF THE COMMISSION

____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

EXHIBIT B

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of competitive local exchange carriers to initiate a Commission investigation of issues related to the obligation of incumbent local exchange carriers in Michigan to maintain terms and conditions for access to unbundled network elements or other facilities used to provide basic local exchange and other telecommunications services in tariffs and interconnection agreements approved by the Commission, pursuant to the Michigan Telecommunications Act, the Telecommunications Act of 1996, and other relevant authority.	Case No. U-14303
In the matter of the application of **SBC MICHIGAN** for a consolidated change of law proceeding to conform 251/252 interconnection agreements to governing law pursuant to Section 252 of the Communications Act of 1934, as amended.	Case No. U-14305
In the matter of the application of **VERIZON NORTH INC. and CONTEL OF THE SOUTH, INC., d/b/a VERIZON NORTH SYSTEMS**, for a consolidated change-of-law proceeding to conform interconnection agreements to governing law.	Case No. U-14327
In the matter on the Commission's own motion, to resolve certain issues regarding hot cuts.	Case No. U-14463

At the March 29, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER

On September 30, 2004, the Competitive Local Exchange Carriers Association of Michigan (CLEC Association), LDMI Telecommunications, Inc. (LDMI), MCImetro Access Transmission Services LLC (MCI), XO Michigan, Inc. (XO), AT&T Communications of Michigan, Inc. (AT&T), TCG Detroit, TDS Metrocom, LLC (TDS), Talk America Inc., TelNet Worldwide, Inc., Quick Communications, Inc., d/b/a Quick Connect USA, Superior Technologies, Inc., d/b/a Superior Spectrum, Inc., Grid 4 Communications, Inc., CMC Telecom, Inc., C.L.Y.K. Inc., d/b/a Affinity Telecom, Inc., JAS Networks, Inc., Climax Telephone Company, and ACD Telecom, Inc. (ACD), (collectively, the CLEC coalition), petitioned the Commission to conduct an investigation pursuant to its authority under the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2101 *et seq*., to investigate the effect, if any, in Michigan of the *vacatur* of the rules promulgated by the Federal Communications Commission (FCC) in its Triennial Review Order[1] and the effect of the FCC's August 20, 2004 interim order on remand.[2] To the extent that these developments are determined by the Commission to constitute a change of law, the CLEC coalition seeks a decision from the Commission on the appropriate procedures for modification of the terms in current tariffs and interconnection agreements. The CLEC coalition also requests the Commission to order SBC Michigan (SBC) and Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon), to show cause why the Commission should not order

---

[1]Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 16984 (2003) (*TRO*), vacated in part, *United States Telecom Assn* v *FCC*, 359 F3d 554 (DC Cir 2004) (*USTA* II).

[2]In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel'd August 20, 2004).

them to continue to provide competitive local exchange carriers (CLECs) with nondiscriminatory access to network elements and facilities as currently required by tariffs and interconnection agreements approved by the Commission pursuant to the MTA and Sections 251 and 252 of the federal Telecommunications Act of 1996 (FTA), 47 USC 251 *et seq.*, at cost-based rates.

On the same day, SBC filed an application requesting that the Commission convene a proceeding to ensure that SBC's interconnection agreements adopted under Sections 251 and 252 of the FTA remain consistent with federal law. In so doing, SBC alleged that its existing interconnection agreements continue to include network elements that the FCC previously required incumbent local exchange carriers (ILECs) to provide on an unbundled basis, but which are no longer required to be unbundled by FCC order or judicial decision. SBC asserted that, by addressing all out-of-compliance interconnection agreements in a single proceeding, the Commission could fulfill the FCC's goal of a speedy transition, while preserving the scarce resources of the Commission, SBC, and the CLECs.

On October 26, 2004, Verizon petitioned the Commission to approve amendments to the interconnection agreements between itself and certain CLECs. According to Verizon, the agreements of these CLECs could be interpreted to require amendment before Verizon may cease providing unbundled network elements (UNEs) eliminated by the TRO or *USTA II*. Verizon insisted that absent the Commission's intervention, "the CLECs will not conform their agreements to governing law, despite the FCC's directives to do so and contractual requirements to undertake good faith negotiation of contract amendments." Verizon application, ¶ 16, p. 7. Verizon also maintained that a number of CLECs have sought to impede and delay the process by asking this Commission to investigate the legal effect of the *USTA II* mandate and the FCC's interim order. Verizon contended that its proposed interconnection amendment makes clear that Verizon's

unbundling obligations will be governed exclusively by Section 251(c)(3) of the FTA, 47 CFR Part 51, and the FCC's interim order. Further, the proposed language indicates that, when federal law no longer requires unbundled access to particular elements, Verizon may cease providing such access upon appropriate notice.

Given the commonality of the issues raised by these three applications, in an order dated November 9, 2004, the Commission consolidated these matters and set a schedule for the filing of comments and reply comments by December 22, 2004 and January 18, 2005, respectively.

On December 22, 2004, the Commission received initial comments from SBC, Sprint Communications Company, L.P., Allegiance Telecom of Michigan, Inc., MCI, the CLEC Association, ACD Telecom, Inc., Talk America, TDS and XO, the Commission Staff (Staff), and Verizon.

On January 18, 2005, the Commission received reply comments from SBC, Verizon, the CLEC Coalition, Talk America, TDS, and XO, and the Staff.

On February 4, 2005, the FCC issued its order on remand[3] adopting new rules governing the network unbundling obligations of ILECs in response to *USTA II*, which overturned portions of the FCC's UNE rules announced in the *TRO*. Because the new rules issued by the FCC in the *TRRO* appeared to significantly affect the outcome of this proceeding, the Commission provided that all interested persons should be given an additional opportunity to submit comments and reply comments by February 24, 2005 and March 3, 2005, respectively. Those parties filing such additional comments or replies include: SBC, Verizon, the CLEC Coalition, MCI, AT&T and TCG Detroit, Clear Rate Communications, Inc., and the Staff.

[3]In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313 and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, rel'd February 4, 2005. (*TRRO*)

Thereafter, the Commission determined in an order dated February 24, 2005, that the parties should be given an opportunity to present oral argument directly before the Commission. It therefore scheduled a public hearing for March 17, 2005, at which the parties were invited to present their positions and respond to questions posed by the Commission. The Commission stated its intent to issue an order in these proceedings by March 29, 2005.

On March 15, 2005, Attorney General Michael A. Cox (Attorney General) filed comments.[4]

On March 17, 2005, the Commission was present for a public hearing during which the following parties acted on the opportunity to present oral argument and to respond to the Commission's questions: SBC, Verizon, the CLEC Coalition, LDMI, Talk America, TDS and XO, the CLEC Association, MCI, AT&T, CIMCO Communications, Inc., CoreComm Michigan, Inc., and PNG Telecommunications Inc., and the Attorney General.

Discussion

Certain critical issues arise in these proceedings. First, the parties dispute whether the Commission may or should require the ILECs to continue providing unbundled network element platform (UNE-P) or other elements for which the FCC has found no impairment. A finding of impairment is necessary to require provision of any UNE pursuant to Sections 251 and 252 of the FTA. Second, they do not agree on the appropriate method for transitioning ILEC/CLEC contractual relations from where the Michigan industry is now and where it must be by the FCC's deadline of March 11, 2006. Third, MCI raises issues regarding the availability and process of hot cuts to transition UNE-P customers to other service platforms.

---

[4]SBC initially objected to the filing of those comments as untimely, but withdrew the objection at the March 17, 2005 public hearing.

Provision of UNEs

The CLECs argue that the Commission has the authority and the responsibility to require that the ILECs continue to provide UNEs pursuant to state law, which authority, they argue, is expressly preserved by the FTA. They argue that, pursuant to Section 355 of the MTA, MCL 484.2355, at a minimum, the ILECs must unbundle the loop and the port of all telecommunications services. The Commission's authority to require this unbundling, they argue, is preserved by §§251(d)(3), 252(e)(3), and 261(c) of the FTA. They quote the United States Court of Appeals for the Sixth Circuit (Sixth Circuit), as follows:

> When Congress enacted the federal Act, it did not expressly preempt state regulation of interconnection. In fact, it expressly *preserved* existing state laws that furthered Congress's goals and authorized states to implement additional requirements that would foster local interconnection and competition, stating that the Act does not prohibit state commission regulations "if such regulations are not inconsistent with the provisions of the [FTA]." 47 USC 261. Additionally, Section 251(d)(3) of the Act states that the [FCC] shall not preclude enforcement of state regulations that establish interconnection and are consistent with the Act.
>
> The Act permits a great deal of state commission involvement in the new regime it sets up for the operation of local telecommunications markets, "as long as state commission regulations are consistent with the Act."

Michigan Bell v MCIMetro Access Transmission Services Inc, 323 F3d 348, 358 (CA 6, 2003).

Further, they argue, the Sixth Circuit expressly rejected SBC's argument that a requirement would be inconsistent with federal law if it merely were different. They state that the Court determined that a state commission may enforce state law regulations "even where those regulations differ from the terms of the Act." *Id.* at 359. The CLECs take the position that as long as the disputed state regulation promotes competition, it is not inconsistent with the federal Act. Therefore, they argue, the Commission is not preempted by the FCC's orders from requiring the ILECs to provision UNEs pursuant to the terms and conditions in the Commission-approved interconnection agreements. They urge the Commission to take prompt action to prevent SBC

from acting unilaterally to either withdraw its wholesale tariffs for UNEs or to alter the interconnection agreements to exclude these UNEs.

Moreover, the CLECs argue, SBC has a duty to provide unbundled loops, transport, and switching pursuant to Section 271 of the FTA. MCI and AT&T agree and argue that irrespective of the ILECs' duties under Section 251, SBC must comply with the conditions required for the FCC's approval of its application pursuant to Section 271. Thus, these parties argue, SBC may not unilaterally remove local switching, loops, or transport from its interconnection agreements or its tariffs. Rather, it must negotiate pursuant to the provisions of its interconnection agreements any amendments, including pricing. Although the FCC provided a procedure for SBC to request forbearance from enforcement of its Section 271 obligations, MCI argues, SBC has not yet taken any of the steps laid out to obtain such a ruling.

Further, MCI argues, if a carrier believes a state law requirement is inconsistent with the federal Act, it must seek a declaratory ruling to that effect from the FCC. It argues that the FCC's brief to the United States Supreme Court in opposition to the petitions for *certiorari* from *USTA II* reflects that the FCC has not preempted any state law on unbundling. In that brief, the FCC denied that it had preempted any state unbundling rule, and stated that it "is uncertain whether the FCC ever will issue a preemptive order of this sort in response to a request for declaratory ruling." Brief at 20.

Verizon and SBC argue that the Commission is preempted from requiring the ILECs to provide any UNE for which the FCC has found there is no impairment. They argue that the Commission should promptly approve their respective proposed amendments to bring interconnection agreements into conformity with the FCC's *TRO* and *TRRO.* Because the FCC's orders preempt the Commission, they argue, there is no reason to waste time considering whether the

Commission may re-impose unbundling obligations that the FCC has eliminated. Therefore, they argue, the Commission should dismiss the CLECs' application and approve the ILECs' proposed amendments.

SBC and Verizon further argue that the Commission's authority under state law may be lawfully exercised only in a manner that is consistent with the federal Act and FCC rules and regulations. MCL 484.2201. In their view, the Commission may not require the ILECs to provide UNEs that the FCC has found are not required to alleviate impairment.

SBC adds that the FCC is the sole enforcer of any obligations pursuant to Section 271 of the federal Act. Thus, it argues, this proceeding is not an appropriate forum for a Commission determination as to whether SBC is required to provide certain UNEs solely under Section 271, without reference to the duties imposed under Sections 251 and 252 of the FTA.

The Commission is not persuaded that it is preempted by either the federal Act or the FCC's orders from requiring the ILECs to provide UNEs under authority granted by the MTA and preserved in the FTA. The Commission's authority to impose requirements on telecommunications carriers in addition to, but consistent with, those prescribed by the FCC is preserved in the FTA sections cited by the CLECs. Moreover, that authority has been affirmed by the Sixth Circuit as argued by the CLECs. Thus, the Commission finds that it also possesses the authority necessary to appropriately direct the resolution of the method of industry transition as addressed in the following section. However, the Commission notes that Section 201(2) of the MTA, MCL 484.2201(2), requires Commission action to be consistent with the FTA and the FCC's rules and orders. Requiring the continued provision of UNE-P would be inconsistent with the FCC's detailed findings and plan for transition in the *TRO* and *TRRO*.

Moreover, at this time, the Commission is not persuaded that competition would be advanced by exercising its authority to require the provision of UNEs in addition to those that the FCC has found must be provided pursuant to 47 USC 251(c)(3). Such a finding likely would lead to further litigation and promote confusion rather than competition, which would be inconsistent with the intent of the MTA as well as the FTA. If a CLEC believes that the FCC has erroneously found no impairment on a particular UNE, it may take steps provided by law to seek a change in that ruling.

The *TRRO* provides a period of transition to the UNEs available under its new final rules from the UNEs now available pursuant to the current interconnection agreements, which were negotiated and arbitrated under previous determinations concerning what elements must be provided by the ILECs pursuant to Section 251(c)(3) of the FTA. For most of the UNEs that were available, but are no longer under that subsection, the *TRRO* provides a 12-month transition period. For dark fiber related elements, the FCC provided 18 months. During the transition, the FCC directed that ILECs must permit CLECs to serve their embedded customer base with UNEs available under their interconnection agreements, but with an increased price. However, the FCC stated that CLECs would not be permitted to expand the use of UNE-P or the use of other UNEs no longer required to be made available pursuant to Section 251(c)(3).

In the March 9, 2005 order in Case No. U-14447, the Commission found that ILECs must honor new orders to serve a CLEC's embedded customer base. The Commission stopped short of stating that CLECs were not entitled to new orders of UNEs for new customers. At this time, the Commission affirmatively finds that the CLECs no longer have a right under Section 251(c)(3) to order UNE-P and other UNEs that have been removed from the list that must be offered to serve new customers. This does not, however, foreclose any right that may exist pursuant to Section 271 for a CLEC to order these UNEs. Moreover, the Commission notes that although certain UNEs

are no longer required to be provided pursuant to Section 251(c)(3), parties may negotiate for provision of those same facilities and functions on a commercial market basis.

Transition

SBC and Verizon propose that the Commission review and approve their respective proposed amendments to the interconnection agreements and then impose those amendments on the CLECs where necessary.[5] These parties point to the provisions in the *TRO* and *TRRO* that indicate the FCC's intent that the transition away from the provision of the elements no longer required should be swift.

Verizon notes that the Commission has already initiated a collaborative to address the transition issues concerning the amendments of interconnection agreements to conform to federal law. It argues that the Commission need not consider those same transitional questions here.

In its reply comments, Verizon recognizes that many of the changes wrought by the *TRO* and the *TRRO* require the parties to negotiate amendments, which are being addressed in the Case No. U-14447 collaborative process. However, it argues, the prohibition on CLECs obtaining new UNE-Ps or high-capacity facilities no longer subject to unbundling does not depend on the particular terms of any interconnection agreement and should be implemented immediately. Verizon argues that the transition rules bar CLECs from ordering new UNEs that are no longer subject to unbundling under section 251(c)(3), without regard to the terms of any agreement.

SBC argues that the Commission is legally bound to implement the FCC's determinations, consistent with the pertinent court rulings including *USTA II* for all ILECs and CLECs. It argues that the Commission should move quickly to ensure that the unbundling rights and obligations of

[5]Verizon asserts that only the interconnection agreements with the CLECs named in Verizon's application are at issue here. The remaining agreements, according to Verizon, need no amendment to comply with federal law.

all carriers operating in Michigan comport with governing law and mandates of the FCC. It argues that it is appropriate for the Commission to ensure compliance with the federal unbundling regime in a single consolidated proceeding, pursuant to Section 252(g) of the FTA, 47 USC 252(g), instead of on a carrier-by-carrier basis.

The CLECs argue that the FCC explicitly contemplated that parties would negotiate amendments to their interconnection agreements pursuant to their change of law or dispute resolution provisions. They argue that the FCC could not and did not order a unilateral change to contracts that the parties currently have in place. They argue that the Commission should dismiss the applications by SBC and Verizon to approve their proposed amendments, and require instead that the parties negotiate in good faith in light of the change in law that the *TRO* and *TRRO* represent. The CLECs propose that the Commission adopt a process that allows parties initially to attempt to negotiate implementation of the *TRRO* and the resulting new unbundling rules. However, if negotiations fail on some issues, consistent with the terms and conditions for dispute resolution, the Commission should resolve disputes that arise in the most efficient manner available.

AT&T recommends the following steps to preserve the CLEC's right to negotiate under the FTA, and to promote uniformity and efficiency:

1. Consistent with the terms of their respective interconnection agreements, following the effective date of the FCC's rules (March 11, 2005) carriers shall attempt to negotiate any required changes to their interconnection agreements. As required by the *TRRO*, these negotiations should proceed without "unreasonable delay."[6]

2. At the end of such negotiations, the parties should submit amendments to their interconnection agreements for Commission approval or file petitions identifying their individual dispute. To the extent necessary, and consistent with any notice and due process requirements, the Commission may entertain any filed disputes in party-to-party and or consolidated proceedings.

[6] *TRRO*, ¶ 233.

3. To the extent the Commission believes necessary, it should schedule collaboratives to identify the common and unique issues in the individual petitions for dispute resolutions. At that time, the Commission should also establish an efficient framework for resolving the identified issues.

4. Nothing in this proposal should be construed to prohibit individual parties from requiring that the individual terms and conditions of the change of law and/or dispute resolution provisions of their respective interconnection agreements continue to apply, including any right to seek bilateral arbitration of disputes by the Commission. Similarly, nothing in this proposal should be construed to prohibit individual parties from negotiating amendments to an interconnection agreement in a time frame shorter than what is proposed herein, and the Commission should make this statement in any order issued.

AT&T Supplemental Comments, pp. 7-8.

In its initial comments, the CLEC coalition proposed a framework that contemplated significantly more time. It argued that the CLECs should be given 45 days after March 11, 2005 to study the new rules and prepare proposed amendments to their interconnection agreements. Thereafter, the CLEC coalition noted that most interconnection agreements have a 60- or 90-day time frame for negotiations before dispute resolution procedures begin. Then, according to the CLEC coalition, the parties should have a two-week window to either submit an amendment or file petitions identifying their individual disputes. Finally, the CLEC coalition proposed that the Commission should entertain any filed disputes in a consolidated docket, with time limits for submitting those disputes.

The Commission finds that the most appropriate process for moving the industry through the transition period provided in the *TRRO* is to close these three cases and open up the interconnection agreements for negotiation, within the collaborative initiated in Case No. U-14447. The parties will be provided 60 days from the date of this order[7] to complete the requirements of their change of law and dispute resolution provisions, and to negotiate for and submit a joint application

[7]The 45-day period established for the collaborative is, therefore, extended.

for approval of an amendment to their interconnection agreements to bring their contracts into compliance with the requirements of the *TRO* and the *TRRO.* During that same 60-day period, the parties in the collaborative shall work to establish no more than four versions of an amendment to the interconnection agreements. All parties to the collaborative that have not otherwise agreed to an amendment, must agree to one of the four or fewer versions established in the collaborative. If the parties to a single contract do not agree which of the versions should be included in the inter-connection agreement, the parties shall submit that disagreement to the Commission, which will determine the appropriate amendment through baseball-style arbitration.

Hot Cuts

MCI argues that in the *TRRO*, the FCC ruled that for purposes of Section 251, there is no impairment without unbundled local switching. That ruling, according to MCI, was based on the availability of batch hot cut processes. See, *TRRO*, ¶¶ 211, 217. Thus, MCI argues, batch hot cuts must be included in any amendments to the interconnection agreement to comply with the FCC's recent rulings. Moreover, MCI argues, the FCC explicitly indicated that forums to address concerns about the sufficiency of batch hot cut processes include state commission enforcement processes and Section 208, 47 USC 208, complaints to the FCC.

MCI acknowledges the January 6, 2005 order in *Michigan Bell* v *Lark et al.*(ED MI, Southern Division, Case No. 04-60128, Hon Marianne O. Battanni) prevents the Commission from enforcing the Commission's June 28, 2004 order in Case No. U-13891 regarding batch hot cuts. However, it insists that Judge Battanni's order does not prevent the Commission from addressing and resolving disputes about batch hot cuts as part of the amendment process to interconnection agreements. It says that the basis of Judge Battanni's ruling was that the Commission was acting on unlawfully delegated authority from the FCC in determining whether impairment existed with

respect to unbundled switching. Because the FCC has now made its determination concerning impairment, the Commission is free to act on batch hot cut issues. It says that the exact process to be used and the rates will need to be addressed in the interconnection agreement amendments.

SBC responds that, in the *TRRO*, the FCC approved the hot cut processes presented by SBC as adequate to avoid a finding of impairment. It argues that parties are free to negotiate mutually acceptable "refinements" in batch hot cut processes. However, SBC argues, batch hot cut processes have nothing to do with conforming the parties' interconnection agreements to the requirements of federal law.

Verizon responds that it has not named MCI as a party to its application to conform its contracts to federal law, and MCI does not mention Verizon in its hot cuts discussion. However, Verizon argues that the FCC did not instruct states to address hot cuts in *TRRO* amendments (or elsewhere). It argues that the FCC expressly found that the ILECs' hot cut processes—pointing in particular to Verizon's—were sufficient and that the concerns about the ILECs' ability to convert the embedded base of UNE-P customers in a timely manner are rendered moot by the transition period. *TRRO* ¶ 216. Verizon argues that no authority cited by MCI permits the Commission to ignore a federal court decision forbidding it to pursue adoption of batch hot cut processes.

The Commission is persuaded that it should promote settlement of hot cut process issues and doing so does not contravene Judge Battani's order. To that end, the Commission opens a new docket for resolving those issues, Case No. U-14463, in which all filings and actions related to hot cuts will be determined. The Commission finds that within 14 days of the date of this order, the CLECs shall submit to the ILECs the number of lines that need to be moved via hot cut and a plan for those moves, i.e., from and to what configuration and the process desired. Within 14 days after receipt of the plan, if the parties cannot agree on the process or price, they shall submit their last

best offer to Orjiakor Isiogu, Director of the Commission's Telecommunications Division, who will act as mediator. Within 30 days of receipt of those last best offers, Mr. Isiogu shall submit his recommended plan to the Commission. The parties will have seven days to object. However, any objection must in good faith assert that the recommendation is technically infeasible or unlawful. Without timely objections, the mediator's recommendation will be final. If the parties are able to agree, no filing need be made.

The Commission has selected Case No. U-14463 for participation in its Electronic Filings Program. The Commission recognizes that all filers may not have the computer equipment or access to the Internet necessary to submit documents electronically. Therefore, filers may submit documents in the traditional paper format and mail them to the: Executive Secretary, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909. Otherwise, all documents filed in this case must be submitted in both paper and electronic versions. An original and four paper copies and an electronic copy in the portable document format (PDF) should be filed with the Commission. Requirements and instructions for filing electronic documents can be found in the Electronic Filings Users Manual at: http://efile.mpsc.cis.state.mi.us/efile/usersmanual.pdf. The application for account and letter of assurance are located at http://efile.mpsc.cis.state.mi.us/efile/help. You may contact Commission staff at (517) 241-6170 or by e-mail at mpscefilecases@michigan.gov with questions and to obtain access privileges prior to filing.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151

et seq.; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. Case No. U-14303, Case No. U-14305, and Case No. U-14327 should be closed.

c. The parties should be directed to negotiate amendments to their interconnection agreements consistent with the discussion in this order, within the Commission-initiated collaborative proceeding in Case No. U-14447.

d. Case No. U-14463 should be opened for the purpose of resolving issues concerning hot cuts.

THEREFORE, IT IS ORDERED that:

A. Case No. U-14303, Case No. U-14305, and Case No. U-14327 are closed.

B. The parties are directed to negotiate amendments to their interconnection agreements consistent with the discussion in this order, within the Commission-initiated collaborative proceeding in Case No. U-14447.

C. Case No. U-14463 is opened for the purpose of resolving issues concerning hot cuts, as discussed in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Robert B. Nelson
Commissioner

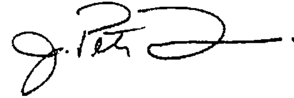
/s/ Laura Chappelle
Commissioner

By its action of March 29, 2005.

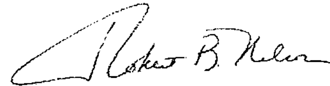
/s/ Mary Jo Kunkle
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

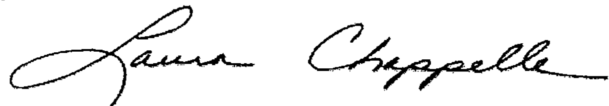
MICHIGAN PUBLIC SERVICE COMMISSION



Chairman

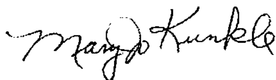


Commissioner



Commissioner

By its action of March 29, 2005.



Its Executive Secretary

EXHIBIT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)))	CC Docket No. 01-338

PETITION FOR RECONSIDERATION OF CTC COMMUNICATIONS CORP. GILLETTE GLOBAL NETWORK, INC. D/B/A EUREKA NETWORKS GLOBALCOM, INC. LIGHTWAVE COMMUNICATIONS, LLC MCLEODUSA, INC. MPOWER COMMUNICATIONS CORP. PACWEST TELECOMM, INC. TDS METROCOM, LLC US LEC CORP.

Andrew D. Lipman
Russell M. Blau
Patrick J. Donovan
Edward W. Kirsch
Joshua M. Bobeck

SWIDLER BERLIN LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Their Attorneys

March 28, 2005

Table of Contents

SUMMARY iii

I. THE SBC/AT&T AND VERIZON/MCI MERGERS REQUIRE A NEW IMPAIRMENT ANALYSIS 2

II. THE MERGER AGREEMENTS MAKE AT&T AFFILIATED WITH SBC AND MCI AFFILIATED WITH VERIZON FOR THE PURPOSES OF IMPAIRMENT ANALYSIS 5

III. THE COMMISSION SHOULD REQUIRE RECLASSIFICATION OF WIRE CENTERS WHERE THE FACTS UNDERLYING ITS IMPAIRMENT ANALYSIS MATERIALLY CHANGE 6

IV. THE COMMISSION SHOULD ABANDON EEL CRITERIA OR, AT A MINIMUM, ESTABLISH A CARVE-OUT FOR DATA SERVICES 8

A. EEL Criteria Should be Rescinded. 8

B. If the EEL Criteria Are Retained, a Carve-Out for Local Data Services Is Necessary 11

V. THE COMMISSION SHOULD MODIFY AND CLARIFY IN CERTAIN RESPECTS THE METHODOLOGY FOR COUNTING BUSINESS LINES IN A WIRE CENTER 11

A. The Commission's Definition of Business Line Erroneously Uses Voice Grade Equivalents 12

B. The Commission Erroneously Assumes that Competitors' UNE-L lines are Used to Serve Business Lines 14

C. The Commission Should Require ILECs to Employ a Uniform Methodology for Determining UNE-P Business Lines 15

VI. THE COMMISSION SHOULD CLARIFY ASPECTS OF ITS TRANSITION PLAN THAT ILECS HAVE MISCONSTRUED 16

A. The Commission Must Clarify that the Transition Plan Does Not Preempt Existing Contractual Arrangements 16

1. Text of the *Triennial Review Remand Order* Shows that The Commission did not Intend to Supersede Existing Interconnection Agreements 17

2. The Commission Lacks Authority to Supersede Binding Interconnection Agreements 19

B. The Commission Should Clarify That True Ups Do Not Apply Except Where Parties Have Specifically Addressed True Up In Their Existing Change Of Law Provisions 21

C. The Commission Should Clarify that the Transition Plan Allows CLECs to Continue Serving Existing Customers 21

VII. THE COMMISSION SHOULD ELIMINATE OR MODIFY THE 10 DS1 TRANSPORT CAP 23

VIII. THE COMMISSION SHOULD CLARIFY THAT ILEC FACILITIES AT REVERSE COLLOCATIONS AT CLEC PREMISES ARE DEDICATED TRANSPORT, NOT ENTRANCE FACILITIES 23

IX. CONCLUSION 25

SUMMARY

The Commission should reconsider the *Triennial Review Remand Order* in a number of respects. The proposed mergers of SBC with AT&T and Verizon with MCI create substantial new barriers to entry. The Commission must evaluate whether the alleged economies of scale as well as the concentration of ownership that these proposed mergers would produce, require a significantly increased scope of unbundled access to network elements. In addition, in light of the these proposed mergers, the Commission should clarify that AT&T and Verizon must be considered affiliates of SBC and Verizon, respectively, for purposes of counting unaffiliated collocators. At a minimum, the Commission should modify its rules so that ILECs have an obligation to update the classification of wire centers and expand the scope of unbundling of high capacity loops and transport where the Commission's proxies are no longer met because of changed circumstances.

The Commission should also rescind the current EEL eligibility criteria. The fact that SBC and Verizon will each own one of the two largest long distance providers and two largest purchasers of its access services, undermines the Commission's rationale for the EEL eligibility criteria, if they ever had any validity. If these criteria are not rescinded, the Commission at least should establish a carve-out from the EEL criteria for the provision of local data services.

The Commission should modify and clarify the methodology for counting business lines in an ILEC wire center. The Commission's definition of business line does not accurately capture the business opportunities available to CLECs in a wire center. For example, the use of voice grade equivalents vastly overstates the revenue associated with DS1 and DS3 services

described elsewhere in the order. The Commission also should prohibit BOCs from counting residential UNE-L lines as "business lines."

The Commission should further clarify aspects of its transition plan that ILECs have misconstrued. While the text of the *Triennial Review Remand Order* demonstrates that the Commission required the parties to implement the FCC's new rules using the processes established in Section 252 and parties' existing interconnection agreements, the ILECs claim that the Commission intended to supersede existing contractual arrangements. The Commission should reiterate that the new UNE rules must be implemented through the change of law process.

The Commission should also clarify that dedicated transport includes ILEC reverse collocations in any non-ILEC premises where an ILEC collocates equipment.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
	)	

PETITION FOR RECONSIDERATION
OF
CTC COMMUNICATIONS CORP.
GILLETTE GLOBAL NETWORK, INC. D/B/A EUREKA NETWORKS
GLOBALCOM, INC.
LIGHTWAVE COMMUNICATIONS, LLC
MCLEODUSA, INC.
MPOWER COMMUNICATIONS CORP.
PACWEST TELECOMM, INC.
TDS METROCOM, LLC
US LEC CORP.

CTC Communications Corp.; Gilette Global Network, Inc. d/b/a Eureka Networks; GlobalCom, Inc.; Lightwave Communications, LLC; McLeodUSA, Inc.; Mpower Communications Corp.; PacWest Telecomm, Inc.; TDS Metrocom, LLC; and US LEC Corp. (collectively "Petitioners"), by their undersigned counsel, pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. Section 1.429, submit this petition for reconsideration of the *Triennial Review Remand Order*.[1] The Commission should promptly reconsider and/or clarify the *Triennial Review Remand Order* in a number of respects as described, and for the reasons stated, herein.

---

[1] *Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313 and CC Docket No. 01-338, F.C.C. 04-290 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order* ").

I. THE SBC/AT&T AND VERIZON/MCI MERGERS REQUIRE A NEW IMPAIRMENT ANALYSIS

In the *Triennial Review Order*,[2] the Commission explained that scale economies, particularly when combined with sunk costs and first-mover advantages, can pose a powerful barrier to entry.[3] If new entrants are able to achieve only a smaller level of sales than the incumbent, which is the case, then ILEC scale economies imply that the new entrant's average costs will be higher than those of the ILEC, putting them at a significant cost disadvantage to the ILEC.[4] The Commission retained this approach to evaluating impairment in the *Triennial Review Remand Order* with the clarification that the Commission would analyze impairment with respect to a reasonably efficient competitor.[5]

The proposed mergers of AT&T with SBC and MCI with either Verizon or Qwest, however, create potential economies of scale vastly beyond those contemplated by the Commission in its impairment analysis. This change very likely fundamentally invalidates the Commission's previous conclusions that CLECs are not impaired in certain markets, even taking into account ILECs' economies of scale. While SBC and Verizon grossly overstate the possible benefits of the mergers, their central justification for the mergers is the increased efficiencies that they will

---

[2] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*").

[3] *Triennial Review Order* ¶ 87.

[4] *Id.*

[5] *Triennial Review Remand Order* ¶¶ 24-26.

allegedly produce.[6] SBC claims that its merger with AT&T will save $15 billion dollars.[7] It says that the merger involves the combination of "firms that are recognized leaders in both enterprise and mass market services" and that the "combined company will be better able to offer a portfolio of services suitable for any customer."[8] SBC asserts that the "combined company's increased scale also affords it considerably increased latitude to raise capital while maintaining any particular debt level."[9] Verizon makes similar claims and one would assume Qwest would as well. Assuming there is any merit to these claims at all, they require the Commission to reassess the extent to which CLECs, who maintain miniscule market share in comparison to the BOCs, will face substantial barriers to entry in light of the greatly increased post-merger scale economies that SBC and Verizon will realize.

Even a superficial examination of the mergers reveals that they constitute a serious threat to competition. The mergers of AT&T/SBC and MCI/Verizon (or MCI/Qwest) would combine the two largest purchasers of access services with two of the largest access providers. Moreover, these mergers combine the two largest providers of wholesale long distance service with two of the largest customers of it, transfer ownership of two dominant providers of Internet

---

[6] Griff Witte & Yuki Noguchi, *End of the Line for Ma Bell, Mother of All Telecom Losing Independence,* Washington Post, at E01 (Feb. 1, 2005).

[7] Witte & Noguchi, at E01 (Feb. 1, 2005) ("Combining Operations should save the companies more than $15 billion, as they merge networks and personnel"); SBC Press Release, http://sbc.merger-news.com/materials/am.html.

[8] Merger of SBC Communications, Inc. and AT&T Corp., Description of the Transaction, Public Interest Showing, and Related Demonstrations, at 15 (filed Feb. 21, 2005) ("SBC Public Interest Showing").

[9] SBC Public Interest Showing, at 33.

backbone services to RBOCs, and substantially consolidate the interexchange market. In addition, the mergers would concentrate the in-region local exchange market.

Even Qwest, itself an RBOC, points out that "[n]othing in these pending transactions suggests either Verizon or SBC will be encouraged to compete" with each other.[10] It is also worth noting that since 1998 SBC has been fined "nearly $1.2 billion" for anti-competitive practices, [11] and these fines have had little impact on SBC's or any ILEC's behavior. Rather, the finds are simply a cost of doing business while negatively impacting the business of their competitors. As such, these mergers would serve only to increase SBC's and Verizon's market power and to provide additional incentives for them to engage in discriminatory and anti-competitive practices.

The proposed mergers profoundly alter the Commission's analysis of the competitive landscape, and undermine its analysis supporting the existing unbundling rules. Thus, these mergers are not in the public interest. In fact, many of the relevant structural barriers that the Commission employed to assess impairment, including economies of scale, first-mover advantages, absolute cost advantages, and barriers within control of the ILEC, are exacerbated by the overwhelming concentration of market power that will be wrought by these mergers.[12] Accordingly, the Commission must reevaluate its impairment analysis in light of the mergers, and establish a considerably wider scope of unbundling than that embodied in the new unbundling rules.

---

[10] Seidenberg Rips Qwest's Proposal to Buy MCI, TR Daily, at 13, March 16, 2005.

[11] CLEC Group Launched to Counter Verizon, SBC Mergers, Communications Daily, at 5 (March 16, 2005).

[12] *See e.g. Triennial Review Order*, at ¶¶ 87-91; *Triennial Review Remand Order*, at ¶ 10.

II. THE MERGER AGREEMENTS MAKE AT&T AFFILIATED WITH SBC AND MCI AFFILIATED WITH VERIZON FOR THE PURPOSES OF IMPAIRMENT ANALYSIS

The Commission's new rules governing access to UNE loops and transport rely in part of the presence of *unaffiliated* fiber collocators in ILEC wire centers.[13] In light of the proposed mergers, the Commission should promptly clarify that any merger agreements would make AT&T and MCI affiliated with SBC and Verizon, respectively, for purposes of counting fiber collocators. Precedent shows agreements to merge create affiliation due to a change in equitable ownership.[14] A company that is about to be acquired has no economic incentive to compete vigorously with its acquirer. Further, even if this were not the case, as a practical matter these companies are already evidencing affiliation. Both AT&T and MCI are muting effectively their advocacy of pro-competitive positions. MCI has recently withdrawn its Petitions for Emergency Declaratory Relief regarding UNEs in many states[15] and AT&T has pulled back from its aggressive litigation posture with respect to its former rivals.

More broadly, the Commission cannot simply pretend that these watershed mergers have no impact on its loop and transport tests. In fact, the Commission has made predictive judgments regarding the evolution of the competitive marketplace and it would be unlawful, arbitrary and capricious to ignore an event with such a profound impact on the competitive landscape as these

---

[13] *Triennial Review Remand Order*, at ¶¶ 96-102, 113, 118, 130.

[14] *See, e.g., Wolfe Organization, Inc. v. Oles,* 705 A.2d 40, 45 (1998) (a bona fide executory contract "vests equitable ownership of the property in the contract purchaser"); *York Rubing, Inc. v. Adcock,* 634 A.2d 39 (1993).

[15] *See, e.g.*, MCI Letter to Honorable Jaclyn Brilling, Case No. 04-C-0314, Petition of Verizon New York for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order, at 1 (March 10, 2005); James Laskey Letter to Ms. Kristi Izzo, Docket No. TO03090705, In the Matter of Implementation of the FCC's Triennial Review Order, at 1 (March 10, 2005).

two mergers.[16] The mergers must be considered in determining the number of fiber-based collocators in a wire center since the FCC rules state that collocators affiliated with the ILEC are not counted, and collocators affiliated with each other are counted as a single entity. The Commission should provide for rate true-ups insofar as SBC or Verizon have treated AT&T and MCI as unaffiliated when denying any CLEC orders for UNEs during the pendency of their respective mergers.

III. THE COMMISSION SHOULD REQUIRE RECLASSIFICATION OF WIRE CENTERS WHERE THE FACTS UNDERLYING ITS IMPAIRMENT ANALYSIS MATERIALLY CHANGE

The proposed mergers of SBC/AT&T and Verizon/MCI highlight the Commission's error in providing that wire centers may not be reclassified to restore unbundling obligations once thresholds have been met. The FCC's new UNE loop rules provide that once a wire center exceeds the specified thresholds, no future unbundling for the loop network element will be required from that wire center.[17] The transport rules likewise state that once a wire center meets the definition of a Tier 1 or 2, it may not later be reclassified to a lower threshold Tier.[18] By contrast, however, nothing in the rules prohibits reclassification of wire centers where this would result in a reduction in unbundling obligations.

Even if the Commission does not treat AT&T and MCI collocations as affiliated with their respective merger partners because of their merger agreements, they will clearly be affiliated once the mergers are completed. Nothing could be less justifiable than permitting

---

[16] *Triennial Review Remand Order*, at ¶¶ 41-43.

[17] 47 C.F.R. § 51.319(a)(4)-(5).

[18] 47 C.F.R. § 51.319(e)(3).

some unbundling obligations to lapse from certain wire centers based on counting AT&T and MCI collocations as unaffiliated even though they will undeniably become affiliated if the mergers are approved.

Assuming that business line density and unaffiliated fiber collocators are valid proxies for when it is feasible for CLECs to construct or lease loops and transport, it is not reasonable to depart from that approach when economic conditions in a particular market change so that the Commission's proxy thresholds are no longer met. If business lines and/or fiber based collocators drop, the only reasonable conclusion is that it is no longer feasible to CLECs to construct or lease facilities for all the reasons that the Commission gave in the *Triennial Review Remand Order* for establishing the validity of the proxies in the first place.

In the particular case of ILEC acquisitions of competitors that could cause fiber-based collocators to become affiliates of an ILEC, such as the proposed RBOC mergers with AT&T and MCI, the Commission should presume that such acquisitions, insofar as they result in thresholds no longer being met, would make it unfeasible for CLECs to build or lease loop and transport facilities. The Commission must modify its rules so that BOCs have an obligation to update thresholds and expand the scope of their unbundling obligations where proxies are not longer met. In a related vein, the Commission should separately clarify that any mergers between unaffiliated fiber-based collocators will cause their collocations in one wire center to be counted as one collocation.

IV. THE COMMISSION SHOULD ABANDON EEL CRITERIA OR, AT A MINIMUM, ESTABLISH A CARVE-OUT FOR DATA SERVICES

A. EEL Criteria Should be Rescinded.

As noted elsewhere in these comments, the proposed mergers of SBC and AT&T and Verizon (or Qwest) with MCI require a fundamental reevaluation of the scope of unbundling established by the *Triennial Review Remand Order*. The mergers require a determination that CLECs are impaired in a far greater range of circumstances because CLECs will be unable to match the efficiencies and economies of scale and scope that the merger partners claim will be achieved by the mergers.

The impact of the mergers on the Commission's previous analysis is perhaps most acute in connection with its determination that UNEs may not be used exclusively for long distance service and its determination to retain EEL criteria.[19] In the *Triennial Review Remand Order*, the Commission determined that UNEs are not available where the requesting carrier seeks to provide service in a market that is sufficiently competitive without UNEs.[20] The Commission found that the long distance market was competitive, that competition had evolved in that market without UNEs, and that whatever benefits could be achieved by requiring unbundling exclusively for long distance service were outweighed by the costs, specifically the potential for lost switched access revenues by the ILEC attributable to the IXC's increased reliance on UNEs and EELs to bypass switched access.

The proposed mergers, however, abrogate the Commission's analysis, assuming it were otherwise valid. If approved, the mergers will mean that SBC and Verizon willown the two

---

[19] *Triennial Review Remand Order* ¶¶ 29, 34-35.

[20] *Triennial Review Remand Order* ¶ 34.

largest long distance providers and each will own one of the two largest purchasers of its own access services. This alone eviscerates the Commission's concern, and the ILECs' fear (unfounded in any case), that IXCs would rush to convert special access to UNEs leading to a precipitous decline in access revenues. Given that access payments for these companies will be no more than intra-corporate family transfers, the concern about special access to UNE conversion is eliminated or substantially eliminated. The Commission should rescind the EEL restrictions for this reason alone.

Further, the Commission's one sentence cost/benefit analysis, such as it was, is fundamentally altered. While AT&T and MCI in theory might have had incentives to build their own innovative local exchange facilities in the absence of UNEs, they will not have any incentive to do so in competition with their parent ILEC. Nor is it likely that AT&T and MCI will build out-of-region because the experience with the previous SBC and Verizon mergers shows that these ILECs will not compete out-of-region.[21] More importantly, SBC and Verizon no longer face the same risk of lost revenue due to conversion of special access to UNEs, because they will each control one of their largest purchasers of their special access services.

Moreover, permitting UNEs to be used exclusively for long distance service is a necessary counterbalance to the proposed mergers and will likely be necessary to reestablish any significant level of competition in the long distance industry. Certainly, an environment in which the major IXCs are acquired by the RBOCs, who in their own right maintain significant long distance market share, is not a recipe for competition. Accordingly, on reconsideration, the

---

[21] *See, e.g., In re Application of GTE Corp. Transferor and Bell Atlantic Corp. For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations,* CC Docket No. 98-184, FCC 00-221, Memorandum Opinion and Order, at ¶ 319 (June 16, 200).

Commission should rescind its cost benefit analysis on this issue and permit UNEs to be used exclusively for long distance service and without any qualifying service standards for EELs.

The Commission should also rescind its determination that UNEs may not be used exclusively for long distance service and eliminate EEL criteria because that determination is inconsistent with *USTA II*. That decision correctly found that there was no statutory basis whatsoever for restricting, as established in the *Triennial Review Order*, use of UNEs to "qualifying services," *i.e.* those that compete with core ILEC services. Rather, as the Court found, the Act provides that UNEs may be used for all telecommunications services subject to the Section 251(d)(2) impairment test.[22] In other words, UNEs may be used to provide any telecommunications service, including exclusively long distance service, unless the requesting carrier is unimpaired.

The *Triennial Review Remand Order*, however, although purporting to abandon the qualifying services approach, effectively reestablishes it without any impairment analysis at all. Instead, in an unprecedented extension of its authority, the Commission relied exclusively on the "at a minimum" language of Section 251(d)(2) without any consideration of whether IXCs are impaired without access to UNEs. Although *USTA II* approved the Commission's use of "at a minimum" in the context of establishing broadband relief, in that case the Commission considered impairment in addition to its broadband goals. There is no basis for interpreting the Court's decision as simply permitting the Commission to deny access to UNEs solely on the basis of a cost benefit analysis, which in any event, has since been rendered invalid in light of the proposed SBC/AT&T and Verizon/MCI mergers. Therefore, in effect, the Commission has simply

[22] *USTA II* at 591-592.

reestablished the previous and now unlawful qualifying services standard by a new unlawful means. Accordingly, the Commission must rescind its EEL qualifying standards and the determination that UNEs may not be used exclusively for long distance service.

B. If the EEL Criteria Are Retained, a Carve-Out for Local Data Services Is Necessary

The Commission's EEL eligibility criteria are overly broad and have the unintended effect of preventing competitive carriers that provide facilities-based local data services from using EELs unless they also provide local voice services. These rules are designed to ensure that local voice traffic is carried, but this precludes facilities-based CLECs from providing stand-alone local data services that are advanced services. Rather, the EEL eligibility rules, absent a carve-out for local data services, conflict with the goals of the Act of encouraging innovation and the deployment of advanced services.[23] The Commission should modify its eligibility criteria so that, as an alternative to the existing EEL criteria, a requesting carrier may access EELs if it certifies that it will use the EEL in part to provide local data service. Such a carve-out for local data services is entirely consistent with the Commission's conclusion that "the local services market," including the local data market, "does not share the competitive conditions" of the mobile wireless and long distance voice markets.[24]

V. THE COMMISSION SHOULD MODIFY AND CLARIFY THE METHODOLOGY FOR COUNTING BUSINESS LINES IN A WIRE CENTER

In the *Triennial Review Remand Order,* the Commission uses business line density as a "proxy for determining where significant revenues are available sufficient for competitors to

---

[23] Preamble to the 1996 Act; 47 U.S.C. § 157 nt ("The Commission ... shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.").

[24] *Triennial Review Remand Order*, at ¶ 38.

deploy transport facilities."[25] The Commission believed it had defined the term "business line" in a way that "fairly represents the business opportunities in a wire center." However, the Commission's definition of business line is not in fact rationally related to revenue opportunities. The *Triennial Review Remand Order*'s shortcomings in this regard are: 1) assuming that counting voice grade equivalents "fairly represents the business opportunities in a wire center"; 2) failing to prohibit BOCs from counting residential UNE-L lines as "business lines"; and 3) allowing different ILECs to determine UNE-P business lines using inconsistent methodologies.

Indeed, BellSouth filed a letter with the Commission on March 23, 2005 in which BellSouth states that the wire center data previously submitted to the Commission and the industry was flawed, and that a third party auditor had been hired to validate the data and the collection methodology. BellSouth's error not only delays the implementation of the new UNE rules but may also raise questions about the accuracy of data and methodology used by other ILECs.

A. The Commission's Definition of Business Line Erroneously Uses Voice Grade Equivalents

Even assuming that business line density is a valid proxy for revenue opportunities in the dedicated transport market, counting "business lines" based on the voice grade equivalents ("VGEs") of each CLEC UNE loop is seriously flawed.

In the *Triennial Review Remand Order*, the Commission explains the relationship between revenues CLECs typically obtain from DS1 services and revenue from DS3s. The Commission found that DS3 transport revenues typically fall between 8-11 times the revenue for a

[25] *Triennial Review Remand Order* ¶ 103.

similarly configured DS1 transport link.[26] However, the Commission's business line definition assumes that every DS3 is worth 28 times the revenue available for a DS1, in stark contradiction to its own findings on the evidence. Thus, the Commission's intended correlation between business lines and "significant revenues ... available sufficient for competitors to deploy transport facilities" is unsupported and erroneously skewed to overstate revenue opportunities.

Nor is there any basis in the record for the Commission's assumption that each DS1 is 24 VGEs in terms of revenue opportunities. The record shows that the DS1 capacity is the new standard for provisioning service to business customers. CLECs do and are likely to continue to provide business customers with DS1 pipes that will provide integrated voice and data services. The rates for such services are declining rapidly and are approaching the rates for typical voice grade services available from the incumbents. Thus, on reconsideration, the Commission should find that for purposes of the unbundling rules, a DS1 counts as one (1) business line. This would allow the Commission to harmonize its definition of business line with the evidence and analyses in the *Triennial Review Remand Order* and amend the business line definition to count each DS3 as 10 business lines and each DS1 as one business line. Otherwise, the thresholds for non-impairment based on wire center business line density will bear no relationship to the "business opportunities in a wire center."

In fact, most CLECs do not use DS1s or DS3s to offer voice grade services exclusively and apportion such circuits to offer a mixture of voice and data services. On reconsideration, the Commission should establish a basis for counting DS1 and DS3s based on how CLECs actually

---

[26] *Triennial Review Remand Order* ¶ 128 n. 358.

use these facilities, which would also provide a correlation (where none currently exists) between the definition of business line and the revenue opportunities available to competitors.

B. Failing to Prohibit BOCs from Counting Residential UNE-L lines As Business Lines

In the *Triennial Review Remand Order*, the Commission chose to use business lines as a proxy for revenue opportunities concluding, "business lines are a more accurate predictor than total lines because transport deployment largely has been driven by the high bandwidth and service demands of businesses, particularly in areas where business locations are highly concentrated."[27] Because the Commission chose to use business lines rather than residential lines or total lines in its transport impairment analysis, it is obvious that the Commission intended to exclude residential UNE-L lines from the definition of business line.

However, while the definition of business line in 47 C.F.R. § 51.5 specifically excludes UNE-P residential lines, the RBOCs contend that they may count all UNE-L lines, even those serving residential customers, as a "business line." The RBOCs' assertion is inconsistent with the Commission's conclusion to focus the impairment analysis on the relevant market—the business market.[28] There is no dispute that CLECs use UNE-L to serve residential customers, as the RBOCs claim that CLECs serve approximately 3 million customers using UNE-L.[29]

Because BOCs are choosing to flout the Commission's reliance on business lines, the Commission should on reconsideration prohibit inclusion of UNE-L arrangements used to serve

---

[27] *Triennial Review Remand Order* ¶ 103.

[28] *See Triennial Review Remand Order* ¶ 103.

[29] RBOC UNE Fact Report at II-41 (attached to Letter from Evan T. Leo, Kellogg, Huber, Hansen, Todd, & Evans to Marlene H. Dortch, FCC, Oct. 4, 2004).

residential customers in business line counts. In this connection, the Commission should recall that as part of the conditions imposed on its approval of the SBC/Ameritech merger, it required those companies to provide a discount on UNE loops used to serve residential customers.[30] Therefore, BOCs may feasibly identify UNE loops used to serve residential customers.

C. The Commission Should Require ILECs to Employ a Uniform Methodology for Determining UNE-P Business Lines

While the Commission set forth in the *Triennial Review Remand Order* a definition of business line that it claims is based on objective criteria, there is at least one aspect of the definition that lacks that objective quality—the method ILECs should use to count UNE-P business lines. The lack of a clear and consistent methodology means that the ILECs are applying the Commission's rules unevenly, which creates additional uncertainty for CLECs that operate in the territories of multiple ILECs.

Qwest, for instance, derived its UNE-P business line estimate "based on the percentage of white page listings" that are business, rather than residential.[31] This methodology, in addition to being ripe for abuse and error, is inconsistent with the rationale for counting business lines. The *Triennial Review Remand Order* employs business line density as a proxy for the business opportunities for CLECs in particular wire center. Simply assuming a level of UNE-P business lines, rather than actually *counting* them, reflects neither the existing level of competitive entry nor the potential for further entry. Other ILECs apparently collect UNE-P data disaggregated by

---

[30] *Application of Ameritech Corp and SBC Communications, Inc.*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, released October 8, 1999, ¶ 391.

[31] Ex Parte Letter from Gary R. Lytle, Qwest, to Jeffrey J. Carlisle, FCC, Feb. 18, 2005 at 2.

customer type,[32] and the Commission should make sure the ILECs are counting lines consistent with the Commission's rules.

VI. THE COMMISSION SHOULD CLARIFY ASPECTS OF ITS TRANSITION PLAN THAT ILECS HAVE MISCONSTRUED

Although the Commission prematurely eliminated CLEC access to some ILEC bottleneck facilities, it also sought to ensure an "orderly transition" that allowed sufficient time for CLECs and ILECs to "complete[] any change of law processes."[33] The text of the *Triennial Review Remand Order* demonstrates that the Commission required the parties to implement the FCC's new rules using the processes established in Section 252 and parties' existing interconnection agreements. Nonetheless, the ILECs have pressed their meritless claims that the Commission intended to supersede existing contractual arrangements and bind CLECs without the need to amend existing interconnection agreements. The Commission should not allow these gross mischaracterizations of the Commission's order, its intent and its legal authority to stand.

A. The Commission Must Clarify that the Transition Plan Does Not Preempt Existing Contractual Arrangements

The FCC should promptly clarify that its new rules do not govern ILEC UNE provisioning until the parties implement changes to their existing interconnection agreements consistent with the rules established in the *Triennial Review Remand Order*. The Commission should clarify that ILECs must continue to provide UNEs after March 11 in accordance with existing agreements and must provide true-ups back to March 11 for any UNE orders they refused to fill before amending those agreements to apply the Commission's new rules. ILECs and some state

---

[32] *See* SBC Accessible Letter CLECALL 05-044, March 17, 2005 at 3, available at https://clec.sbc.com/clec/accletters/home.cfm.

[33] *Triennial Review Remand Order*, ¶ 143.

commissions have mistakenly interpreted the Commission's order as allowing immediate implementation of the Commission's rules, notwithstanding the existence of a bilateral mutually agreed contract that provides otherwise.

1. The *Triennial Review Remand Order* Shows that the Commission Did Not Intend to Supersede Existing Interconnection Agreements

The text of the *Triennial Review Remand Order* convincingly demonstrates that the Commission expects parties to implement the Commission's new rules under the interconnection agreement amendment process and that the *Triennial Review Remand Order* is not self-effectuating in any part. [34] The *Triennial Review Remand Order* explains the process by which carriers should implement its order in the marketplace:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order.[35]

This is simply a logical extension of the Commission's explanation in the TRO that its "decisions ... will not be self executing.[36] Recognizing that "the unbundling provisions of section 251 are implemented ... through interconnection agreements between individual carriers," id., the

---

[34] Several state commissions have erroneously ruled that the *Triennial Review Remand Order* is self-executing. The Indiana Commission, for instance, concluded that that while parties may amend existing agreements to incorporate the new rules, the Commission's elimination of a particular UNE eliminates the availability of the UNE even under an existing agreement that specifically requires provision of that element. *Complaint of Indiana Bell Telephone Company d/b/a SBC Indiana For Expedited Review of a Dispute with Certain CLECs Regarding Adoption of an Amendment to Commission Approved Interconnection Agreements*, Cause No. 42749, Order, Mar. 9, 2005 at 6.

[35] *Triennial Review Remand Order*, ¶ 233.

[36] *Triennial Review Order*, ¶ 700.

Commission noted that its transition regime was a default process and that parties, under section 252(a)(1) were free to negotiate alternative transitional arrangements.[37]

Moreover, the Commission has explained that "voluntary negotiations for binding interconnection agreements is the very essence of section 251 and section 252."[38] The Commission's decision in the *TRO* to "decline the request of several BOCs [to] override the section 252 process and unilaterally change all interconnection agreements," was unchallenged and unchanged in *USTA II* and remains valid law.[39]

Nonetheless, this clarity in the law has not prevented the RBOCs from urging upon state commissions a different interpretation. The RBOCs have brazenly claimed that the Commission in the *Triennial Review Remand Order* took the "extraordinary step of ... interfering with the contract process."[40] BellSouth, for instance, claims that the Commission:

> clearly intended the provisions of the *Triennial Review Remand Order* related to "new adds" to be self-effectuating. ... Consequently, in order to have any meaning, the *Triennial Review Remand Order*'s provisions regarding "new adds" must be effective March 11, 2005, without the necessity of formal amendment to any existing interconnection agreements.[41]

---

[37] *See Triennial Review Remand Order*, ¶ 145.

[38] *Triennial Review Order*, ¶ 701.

[39] *Id.*

[40] *Id.*

[41] BellSouth Carrier Notification SN91085039, dated Feb. 11, 2005, at 2.

BellSouth thus argues that the Commission actually established two transition plans; one that requires amendment of the interconnection agreements and one that is self-executing.[42] But nowhere in the text of the *Triennial Review Remand Order* is there evidence of any intent to override existing agreements.[43]

2. The Commission Lacks Authority to Supersede Binding Interconnection Agreements

Even if the Commission had intended to create self-executing unbundling rules, despite its consistent refusal to do in the past, those rules would be invalid because it lacks the authority to "interfere" with existing interconnection agreements.

As a preliminary matter, to the extent the Commission were to reverse its interpretation of section 252, it would need to do explicitly and explain its departure from its earlier interpretations.[44] The Commission has not done so. There is no such explicit change of policy in the *Triennial Review Remand Order*. However, any such analysis would necessary fail, because the Commission lacks the authority under the Act to interfere with contracts negotiated and arbitrated under sections 251 and 252 of the Act.

In the *Triennial Review Order,* the Commission rejected the RBOC call to interfere with the parties' existing interconnection agreements. In reaching that decision, the Commission

---

[42] Ex Parte Letter from Bennett L. Ross, BellSouth to Jeffrey J. Carlisle, FCC, at 2 (filed Feb. 24, 2005).

[43] SBC echoes BellSouth's bizarre construction of the *Triennial Review Remand Order*. *See* Ex Parte Letter from Gary L. Phillips, SBC to Jeffrey J. Carlisle, FCC, at 3-4 (filed March 4, 2005).

[44] *See e.g. Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42, 103 S.Ct. 2856 (1983) (agency may not "chang[e] its course" as to the interpretation of a statute without explaining rationale for change and basing interpretation on record evidence.).

acknowledged the force of the argument that the Commission may not employ the *Mobile-Sierra* doctrine to negate terms of State commission-approved interconnection agreements.[45] Nonetheless, Bellsouth continues to assert that the *Mobile-Sierra* doctrine provides the Commission with legal authority to abrogate existing interconnection agreements.[46] BellSouth is wrong. The *Mobile Sierra* doctrine does *not* give the Commission "power to set aside any contract which it determines to be 'unjust, unreasonable, unduly discriminatory, or preferential.'"[47] Nor has the Commission attempted to do so.

The *Mobile Sierra* doctrine stands as an effective check on the ability of an agency to abrogate private contracts, and allowed such abrogation only in limited instances where the agency determined that the contractual *rate* was unlawful or contrary to the public interest.[48] Under the Act, the Commission has limited authority to override rates in contracts but only in those "filed with the FCC."[49] This doctrine does not authorize the Commission to dictate which services will or will not be offered under a contract, nor provide the Commission legal authority to abrogate existing contractual provisions that are the province of state commissions charged under the Act with the duty of approving such provisions.[50]

---

[45] *TRO*, ¶ 701 n. 2085.

[46] *See* BellSouth Feb 24, 2005 ex parte at p. 3, n. 8, *citing Sierra* and *Mobile* cases.

[47] *See id.*

[48] *See Federal Power Comm'n v. Sierra Pacific Power Co.,* 350 U.S. 348, 353-55 (1956); *United Gas Pipe Line Co., v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 344 (1956). (utilities could not impose new rates to supersede private contractual rate even where FPC approved new rate.)

[49] *Cable & Wireless, P.L.C. v. F.C.C.*, 166 F.3d 1224, 1231-1232 (D.C. Cir. 1999).

[50] *See* Ex Parte Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, FCC, CC Docket 01-338 at 5-9, (filed Jan. 30, 2003).

Thus, the only reasonable interpretation of the *Triennial Review Remand Order* is that consistent with the Commission's intent and previous orders implementing Sections 251 and 252, namely that no part of *Triennial Review Remand Order* supersedes existing interconnection agreements and that implementation of the *Triennial Review Remand Order* must follow the terms set forth in those agreements. Apart from being required under Section 252, this interpretation is reasonable given that the Commission has not examined each interconnection agreement, each of which may have been individually negotiated and must be modified in accordance with its own terms and conditions.

B. The Commission Should Clarify That True-Ups Do Not Apply Except Where Specifically Required In Existing Change Of Law Provisions.

Because the Commission lacks the legal authority to abrogate existing contracts, as well as the language and structure of sections 251 and 252, it has consistently maintained that its unbundling rules are a default mechanism that leaves parties free to negotiate alternative arrangements in their interconnection agreements. The Commission therefore should disavow the *dictum* in the *Triennial Review Remand Order* suggesting that a true-up between UNE rates and transition period rates should apply in all instances.[51] Under the *Mobile-Sierra* doctrine, the only time true-ups should apply, even after the *Triennial Review Remand Order*, is when the parties' agreement specifically provides for it.

C. The Commission Should Clarify that the Transition Plan Allows CLECs to Continue Serving Existing Customers

While carriers negotiate amendments to their interconnection agreements implementing the *Triennial Review Remand Order*, the Commission should clarify that its transition plan

---

[51] *See Triennial Review Remand Order*, ¶228 n.630.

allows CLECs to continue serving their existing customers using UNEs and UNE combinations to the extent those customers order additional lines at an existing location or new lines at a new location, including UNE-P.

The Commission's transition analysis is logically focused on avoiding disruption, recognizing that the relationships that CLECs have with their existing customers could be jeopardized by a flash cut from UNEs to other arrangements and that the resulting disruption to consumers' telecommunications services would be exponentially disruptive to the American economy.[52] The Commission thus adopted rules governing the transition that protected CLECs' customer relationships by ensuring a level of continuity for CLEC service to those customers. Thus, for dedicated transport, high capacity loops, and mass market switching, the Commission applied the transition to "the embedded customer base."[53] The Commission further explained that the transition rules did not allow CLECs to "add new customers" using UNEs.[54]

The Commission's focus on *customers* rather than facilities or UNE arrangements in the context of its transition rules is both significant and logically related to the purpose of the transition rules. Consistent with that focus, the Commission should clarify that CLECs can obtain additional UNEs, billed at the applicable transition rate, to serve existing customers at both existing and new locations. Because the UNE would be billed at the applicable transition rate it would be consistent with the Commission's treatment of existing UNEs serving the CLECs embedded customer base.

---

[52] *Triennial Review Remand Order*, ¶¶ 226, 228, 236.

[53] *Id.* ¶ 5.

[54] *Id.* ¶ 199.

VII. THE COMMISSION SHOULD ELIMINATE OR MODIFY THE 10 DS1 TRANSPORT CAP

The *Triennial Review Remand Order*, with little if any analysis, limits CLECs to 10 DS1 transport circuits on routes where there is no impairment for DS3 transport. In addition to lacking any basis in the record, this restriction makes little sense. Further, it complicates CLEC use of EELs. This cap effectively would limit CLECs using EELs to 10 DS1 UNE EELs per wire center, because an EEL is a combination of a loop and a transport element. If the CLEC cannot obtain more than 10 DS1 transport UNEs on a route terminating in a particular central office, it cannot combine those transport circuits with more than 10 DS1 loop UNEs serving customers anywhere in the wire center. This seems to contradict the rule permitting a CLEC to obtain up to 10 DS1 UNE Loops per building, as provided for in ¶ 181.

On reconsideration, the Commission should eliminate the cap, or at a minimum clarify that the 10 DS1 cap per transport route only applies when a CLEC is collocated on both ends of the route and not when a CLEC is using EELs. Unless the CLEC is collocated at both ends, it requires a loop-transport combination to serve customers. The Commission should eliminate the 10 DS1 transport cap to avoid frustrating the goals sought to be achieved by requiring ILECs to provide UNE combinations.

VIII. THE COMMISSION SHOULD CLARIFY THAT ILEC FACILITIES AT REVERSE COLLOCATIONS AT CLEC PREMISES ARE DEDICATED TRANSPORT, NOT ENTRANCE FACILITIES

The Commission should reiterate that ILEC transmission facilities that terminate at reverse collocations at *any* CLEC premises are dedicated interoffice transport eligible for UNE status, not entrance facilities. The Commission recognized in the *Triennial Review Order* that ILECs "may 'reverse collocate' in some instances by collocating equipment at a competing

carrier's premises, or may place equipment in a common location, for purposes of interconnection."[55] The Commission expressly incorporated into the definition of "reverse collocation" all of the specific examples raised by SNiP LiNK in its comments[56] and found that these examples, among others, fell within the definition of dedicated transport that was eligible for unbundling. SNiP LiNK's examples included situations where "Verizon installed its own fiber to reach SNiP LiNK and activated OC-48 transmission electronics in SNiP LiNK's headquarters" on "a rack located in SNiP LiNK's switch room," and other interconnection methodologies, including methodologies not involving the collocation of an ILEC switch.[57] The Commission held that to the extent an ILEC has equipment "'reverse collocated' in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers to the extent specified."[58]

The Commission should reaffirm its holding that ILEC transmission facilities that are reverse collocated at *any* CLEC premises are transport facilities, and must be unbundled unless the application of the tier classifications set forth in rule 51.319(e) establish that an exception to this general rule applies.[59] The *Triennial Review Remand Order* states that "wire center" includes any ILEC "switches with line-side functionality that terminate loops that are 'reverse collocated'

---

[55] *Triennial Review Order*, at ¶ 369, n. 1126 (emphasis added).

[56] *Id.*, at ¶¶ 605, n. 1842 ("We recognize that the collocation must be within the incumbent LEC network ... a requesting carrier can satisfy this prong through reverse collocation. For the purposes of this test, we adopt SNiP LiNK's definition of all mutually-agreeable interconnection methodologies.").

[57] SNiP LiNK ex parte CC Docket Nos. 01-338, 96-98, 98-147, at 1-2 (Feb. 5, 2003); Triennial Review Order, at ¶¶ 369, n. 1126, 605, n. 1842.

[58] *Triennial Review Order*, at ¶ 369, n. 1126.

[59] 47 C.F.R. § 51.319(e).

in non-incumbent LEC collocation hotels."[60] This statement is being misconstrued by Verizon to *limit* the concept of reverse collocation to situations where the ILEC collocates local switching equipment in a collocation hotel. The Commission should clarify that for the purpose of defining dedicated transport, a reverse collocation can include "all mutually agreeable interconnection methodologies" in any non-ILEC premises regardless of whether a local switch or cage is present.

IX. CONCLUSION

Petitioners request that the Commission reconsider and clarify the *Triennial Review Remand Order*, in accordance with the recommendations herein, at the earliest possible date.

Respectfully submitted,

/s/ Patrick J. Donovan

Andrew D. Lipman
Russell M. Blau
Patrick J. Donovan
Edward W. Kirsch
Joshua M. Bobeck

SWIDLER BERLIN LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7647

March 28, 2005

[60] *Triennial Review Remand Order*, at ¶ 87, n. 251.

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of April, 2005, served the true and correct original, along with the correct number of copies, of ***Verizon's Reply Brief*** and ***Certificate of Service*** upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn, Executive Secretary Washington Utilities & Transportation Commission 1300 S. Evergreen Park Drive SW Olympia, WA 98503-7250	___ Hand Delivered ___ U.S. Mail (1st class, postage prepaid) _X_ Overnight Mail ___ Facsimile (360) 586-1150 _X_ Email (records@wutc.wa.gov)

I hereby certify that I have this 1st day of April, 2005, served a true and correct copies of the foregoing documents upon parties noted below via E-Mail and Overnight Mail:

The Honorable Ann E. Rendahl
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Dr SW
Olympia, WA 98504-7250
Email: arendahl@wutc.wa.gov

Brooks E. Harlow
David Rice
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352
Email: brooks.harlow@millernash.com
Email: david.rice@millernash.com

Edward W. Kirsch
Swidler Berlin Shereff Friedman LLP
300 K Street NW, Suite 300
Washington, DC 20007-5116
Email: ewkirsch@swidlaw.com

Genevieve Morelli
A. Edmonds
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
Email: aedmonds@kelleydrye.com
Email: gmorelli@kelleydrye.com

Letty Friesen
Michelle Bourianoff
AT&T Communications
919 Congress Avenue, Suite 900
Austin, TX 78701-2444
Email: lsfriesen@att.com
Email: mbourianoff.com

Gregory J. Kopta
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688
Email: gregkopta@dwt.com

Tre E. Hendricks III
United Telephone Co. of the NW
902 Wasco Street
Hood River, OR 97031-3105
Email: tre.e.hendricks.iii@mail.sprint.com

Michel L. Singer Nelson
Worldcom, Inc.
707 17th Street, Suite 4200
Denver, CO 80202-3432
Email: michel.singer_nelson@mci.com

I hereby certify that I have on the 1st day of April, 2005, served true and correct copies of the foregoing documents upon parties noted below via U.S. Mail.

Gregory Diamond, Senior Counsel
Covad Communications Co.
7901 Lowry Boulevard
Denver, CO 80230
Email: gdiamond@covad.com

Rex Knowles
XO Washington, Inc.
1111 East Broadway
Salt Lake City, UT 84111

Dennis Kelley, Director of Operations
(Provisioning)
1-800-RECONEX INC.
2500 Industrial Avenue
Hubbard, OR 97032
Email: dennis.kelley@reconex.com

Barbara Fillinger
Regulatory Manager
Ionex Communication North, Inc.
2020 Baltimore
Kansas City, MO 64108
E-mail: bfillinger@birch.com

William P. Hunt, III, V.P., Public Policy
Level 3 Communications, LLC
1025 El Dorado Blvd.
Broomfield, CO 80021
E-mail: bill.hunt@level3.com

Schula Hobbs
Director of Regulatory Affairs
DSLNet Communications LLC
545 Long Wharf Drive FL 5
New Haven, CT 06511
E-mail: wbluemling@dsl.net

Arthur L. Magee, Comptroller
Budget Phone, Inc.
PO Box 19360
Shreveport, LA 71149
E-mail: amagee@budgetphone.com

Sam G. Maropis
Associate Director – Regulatory
SBC Telecom, Inc.
Regulatory/Municipal Affairs
1010 N. St. Mary's, Room 13K
San Antonio, TX 78215
E-mail: sm3745@SBC.com

Paul Masters
Ernest Communications Inc.
5275 Triangle Parkway, Suite 150
Norcross, GA 30092-6511
Email: pmasters@ernestgroup.com

Richard A. Finnigan
2405 Evergreen Park Drive SW, Suite B-1
Olympia, WA 98502
Email: rickfinn@ywave.com

Lance Tade
Electric Lightwave, Inc.
4 Triad Center, Suite 200
Salt Lake City, UT 84180

Rowena Hardin
Nos Communications, Inc.
Tariff and Regulatory Affairs
4380 Boulder Highway
Las Vegas, NV 89121-3002
E-mail: hardin@nos.com

Karen Johnson
Corporate Regulatory Attorney
Integra Telecom of Washington, Inc.
1201 NE Loyd Blvd., Suite 500
Portland, OR 97232
E-mail: karen.johnson@integratelecom.com

Joanne Lyons, Director of Accounting
ICG Telecom Group, Inc.
Government and External Affairs
161 Inverness Drive West
Englewood, CO 80112
E-mail: donna-mozina@cgcomm.com

Dimitri Mandelis, President
Computers 5*, Inc., d/b/a Localtel
341 Grant Road
East Wenatchee, WA 98802
E-mail: dimitri@clandt.com

Randall C. Meacham
Senior Manager – Government Affairs
KMC Telecom V, Inc.
1755 N. Brown Road
Lawrenceville, GA 30043
E-mail: rmeach@kmctelecom.com

David M. Pikoff, Vice President
DPI-Teleconnect, L.L.C.
2997 LBJ Freeway, Ste 225
Dallas, TX 75234

Daniel Meldazis
Senior Manager Regulatory Affairs
Focal Communications Corporation of Wash
200 North Lasalle Street, Suite 1100
Chicago, IL 60601
E-mail: dmeldazis@focal.com

Brian Thomas
Time Warner Telecom of Washington LLC
223 Taylor Avenue N.
Seattle, WA 98109

William Oberlin
Bullseye Telecom, Inc.
25900 Greenfield Road, Suite 330
Oak Park, MI 48237
E-mail: sloney@bullseyetelecom.com

John Coonan
Washington RSA No. 8 Ltd. Partnership
C/o Inland Cellular Telephone Company
P. O. Box 171
Rosland, WA 98941

Jill Sanford, Senior Attorney
Robert Sokota, General Counsel
Abovenet Communications, Inc.
360 Hamilton Avenue
White Plains, NY 10601
E-mail: knations@mmfn.com

David L. Starr
Director, Regulatory Compliance
Allegiance Telecom of Washington, Inc.
9201 North Central Expressway
Dallas, TX 75231
E-mail: david.starr@algx.com

Felicia Mayo, Point Of Contact
Comm South Companies, Inc.
Regulatory Affairs
8035 East R.L. Thornton Freeway, Suite 410
Dallas, TX 75228

Becki Merkel, Cost Accountant II
McLeodUSA Telecommunications Services
6400 C Street SW
PO Box 3177
Cedar Rapids, IA 52405-3177
E-mail: bmerkel@mcleodusa.com

Sara Howell, Regulatory Analyst II
Vartec Telecom, Inc.
2440 Marsh Lane
Carrollton, TX 75006

Jon Pesnell, Controller
Preferred Carrier Services, Inc. (T953)
14681 Midway Road, Suite 105
Addison, TX 75001
E-mail: alex.valencia@phonesforall.com

Teresa S. Reff, Senior Financial Analyst
Global Crossing Local Services, Inc.
Regulatory Affairs
1080 Pittsford Victor Road
Pittsford, NY 14534
E-mail: teresa.reff@globalcrossing.com

Timothy M. Seat
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602
E-mail: tseat@z-tel.com

Karine Hellwig
Sprint Communications Company LP
6390 Spring Parkway
MS: KSOPHT010-z2400
Overland Park, KS 66251-2400
E-mail: glenn.harris@mail.sprint.com

Sultan Weatherspoon
Weatherspoon Telephone, LLC
16410 NE 32nd Street
Vancouver, WA 98682
Email: sultan@wttel.com

Rhonda Weaver
Director of Government Affairs & Telephone
Comcast Phone of Washington, LLC
440 Yauger Way SW
Olympia, WA 98502-8153
Email: rhonda_weaver@cable.comcast.com

Arthur Butler
Ater Wynne LLP
Representing Us Cellular
601 Union Street, Suite 5450
Seattle, WA 98101-2327
Email: aab@aterwynne.com

Sally Johnston, Assistant Attorney General
Attorney General Office
Representing WUTC
State Mail Stop 40128
Email: ajohnston@wutc.wa.gov

Simon Ffitch
Office of the Attorney General
Public Counsel
Representing Public Counsel
900 4th Avenue, Suite 2000
Seattle, WA 98164
Email: simonf@atg.wa.gov

Marathon Communications, Inc.
1550 N. 34th Street, #200
Seattle, WA 98109-2904
E-mail: ageorge@marathon.net

Donald Taylor, President
Tel West Communications, LLC
3701 S. Norfolk Street, Suite 300
Seattle, WA 98118
E-mail: dtaylor@telwestservices.com

Tax Department
International Telcom, Ltd.
417 2nd Avenue West
Seattle, WA 98119
E-mail: yvette@ms.kallback.com

John P. Andrist, President
NCI Data.Com, Inc.
700 B Okoma Drive
Omak, WA 98841
E-mail: jandrist@ncidata.com

Penny H. Bewick
New Edge Network, Inc.
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661
E-mail: pbewick@newedgenetworks.com

Bob McCoy
General Counsel
Williams Local Network, Inc.
4100 One Williams Center
Tulsa, Oklahoma

Michael J. Bradshaw
Powertelnet Communications, Inc.
Po Box 1150
Prosser, WA 99350
E-mail: asstmanager@bentonrea.org

Steven C. Clay, President
New Access Communications, Llc
801 Nicollet Mall, Suite 350
Minneapolis, MN 55042
E-mail: sclay@newaccess.com

Chris Crowe
Pac-West Telecomm, Inc.
1776 March Lane, Suite 250
Stockton, CA 95207
E-mail: ccrowe@pacwest.com

Richard A. Pitt
12119 Jacqueline Drive
P. O. Box 667
Burlington, WA 98233
Email: rapitt98232@msn.com

Dudley Upton
Cellco Partnership
1300 I Street, NW, Suite 400W
Washington, DC 20005

Jill Mounsey
Director - External Affairs
AT&T Wireless Services Inc.
7277 164th Avenue NE
Redmond, WA 98052

Richard Stevens
President
Centel Communications Inc.
P.O. Box 25
Goldendale, WA 98620

Deanne Laidler
US Cellular
8410 W. Bryn Mawr, Suite 700
Chicago, IL 60631

Thomas Sawatzki
HighSpeed.Com LLC
6 W. Rose Street, Suite 500
Walla Walla, WA 99362

John B. Glicksman
Vice President, General Counsel
Adelphia Business Solutions
1 North Main Street
Coudersport, PA 16915

Ken Goldstein
Metrocall Inc.
6677 Richmond Highway
Alexandria, VA 22306

Robert T. Hale, President/CEO
Granite Telecommunications, LLC
234 Copeland Street
Quincy, MA 02169

General Counsel
T-Mobile USA Inc.
12990 SE 38th Street
Bellevue, WA 98006

Robert Benson, Tariff Support
Fox Communications Corp.
5210 Carillon Point
Kirkland, WA 98033

Tom Cook
Cook Telecom Inc.
2963 Kerner Blvd.
San Rafael, CA 94901

Robert E. Heath, Vice President
American Fiber Network Inc.
9401 Indian Creek Parkway, Suite 140
Overland Park, KS 66210

Rudolph J. Geist
Executive Vice President
O 1 Communications of Washington, LLC
770 L Street, Suite 960
Sacramento, CA 95814

Catherine Murray, Manager
Eschelon Telecom of Washington, Inc.
730 Second Avenue South, Suite 900
Minneapolis, MN 55402-2489

Rick Weaver, Regulatory Contact
Westgate Communications, LLC
PO Box 2937
Chelan, WA 98816

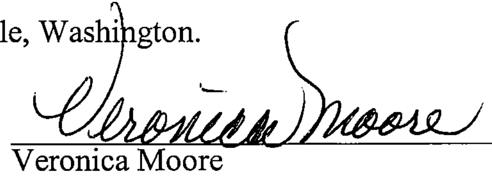
Karen Shoresman Frame
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80320
E-mail: kframe@covad.com

Irina Armstrong, Regulatory Contact
Metropolitan Telecomm. of Washington
44 Wall Street, Floor 14
New York, NY 10005

Dale Crouse, President
Premiere Communications Systems, Inc.
4509 Interlake Ave. N, #110
Seattle, WA 98103

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

DATED this 1st day of April, 2005, at Seattle, Washington.



Veronica Moore