BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of VERIZON NORTHWEST INC. with COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON Pursuant to 47 U.S.C. Section 252(b), and the *Triennial Review Order*.	)	Docket No. UT-043013

RESPONSE BRIEF OF

INTEGRA TELECOM OF WASHINGTON, INC., PAC-WEST TELECOMM, INC., XO WASHINGTON, INC., ADVANCED TELCOM, INC., BULLSEYE TELECOM, INC., AND COVAD COMMUNICATIONS COMPANY

April 1, 2005

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I. INTRODUCTION

1. Integra Telecom of Washington, Inc., Pac-West Telecomm, Inc., and XO Washington, Inc., including affiliate Allegiance Telecom of Washington, Inc. (collectively "Joint CLECs"), and Advanced TelCom, Inc., BullsEye Telecom, Inc., and Covad Communications Company (collectively, the "Competitive Carrier Group" or "CCG"), provide the following Response Brief.

2. The primary theme of the Initial Brief filed by Verizon Northwest Inc. ("Verizon") is, "I don't want to unbundle my network and you can't make me." There is scarcely an issue discussed in its brief in which Verizon does not reiterate its position that any and all reductions in Verizon's unbundling obligations are self-effectuating, including the provisions of the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO")[1] and Triennial Review Remand Order ("TRRO").[2] Verizon, of course, takes no such position with respect to other FCC requirements, including commingling, conversions, and routine network modifications. Federal law does not support Verizon's position either selectively to implement the TRRO unilaterally or to continue to avoid compliance with TRO provisions that benefit CLECs by employing extensive delay and attempting to impose burdensome and unreasonable conditions that severely limit Verizon's obligations.

3. The other consistent theme of Verizon's brief is that the competing local exchange carriers ("CLECs") have engaged in procedural gamesmanship to delay the resolution of this arbitration. Nothing could be farther from the truth. *Verizon* moved to extend the

[1] *In re Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al*., CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand (rel. Aug. 21, 2003).

[2] *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 & CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005).

procedural schedule shortly after filing its Petition for Arbitration, which the Commission granted. Order No. 2. *Verizon* then filed a Motion to Hold the Proceedings in Abeyance, which the Arbitrator granted over the Joint CLECs' opposition. Order No. 4. *Verizon* filed a subsequent Motion for Further Extension of Time, which the Arbitrator granted without providing any opportunity for opposition. Notice of Cancellation of Procedural Schedule (July 7, 2004). *Verizon* then proposed a revised procedural schedule that required initial briefs to be filed on December 21, 2004. Not until December 9, 2004, did any CLEC request an extension of the procedural schedule, which the Arbitrator granted to enable the parties to address the impact of the TRRO. Order Nos. 13 & 14. *Verizon* then sought reconsideration of Order No. 14 and proposed what is now the current briefing schedule. Order No. 15.

4. The Joint CLECs either opposed or did not support *any* request for delay in the procedural schedule. Some CLECs requested an extension of less than three months to accommodate a significant change in the governing law. Verizon, on the other hand, requested delays of over *six* months to accommodate other changes of law but also to enable Verizon to revise its Petition, to review its interconnection agreements ("ICAs") apparently for the first time, and to file a motion to withdraw its Petition as to the vast majority of the carriers Verizon named in the Petition. Verizon, therefore, is the only party that has engaged in procedural gamesmanship to delay these proceedings, and its accusations against CLECs are as offensive as they are inaccurate.

5. The law and the facts similarly do not support Verizon's other policy arguments. The United States Supreme Court has already rejected Verizon's argument that the result of unbundling and pricing requirements in the Telecommunications Act of 1996 ("Act") as interpreted by the FCC "will be, not competition, but a sort of parasitic free riding, leaving

TELRIC incapable of stimulating the facilities-based competition intended by Congress."[3] As the Court found, "At the end of the day, theory aside, the claim that TELRIC is unreasonable as a matter of law because it simulates but does not produce facilities-based competition founders on fact."[4] The Court's finding is equally applicable in Washington.

6. As the Joint CLECs noted in their Initial Brief, Commission Staff has calculated that Verizon serves 97% of the local exchange market in its service territory in Washington. In paragraph 2 of its June 2, 2004, Response to Joint CLECs' Motion to maintain the status quo, Verizon asserted based on its records that each of the facilities-based CLECs who filed that motion "currently obtains from Verizon *no* or *virtually no* UNE-P arrangements, high-capacity UNE loops and transport, or UNE dark fiber." (Emphasis in original.) Verizon, moreover, has identified only two central offices in Washington that are either Tier 1 or Tier 2 Wire Centers as those terms are defined in the TRRO, which means that virtually all of Verizon's wire centers in Washington have less than 3 fiber-based collocators.[5] Fiber-based collocators are the only CLECs who could even access Verizon's loop, transport, and dark fiber UNEs. The requirement that Verizon provide UNEs at cost-based rates in Washington thus has had virtually no impact on the development of *any* effective local exchange competition in Verizon's service territory and certainly has done nothing to dissuade CLECs from building their own facilities.

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[3] *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 504, 122 S. Ct. 1646, 152 L. Ed. 2d 701 (2002). Nor did the Court characterize the prices for unbundled network elements "as all-but-confiscatory," as Verizon asserts. Rather, the Court stated only that the Act establishes a "novel ratesetting designed to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents' property." *Id*. at 489.

[4] *Id*. at 516.

[5] Even the current minimal number of fiber-based collocators in Verizon's central offices likely will drop substantially if Verizon acquires MCI.

7. Verizon's proposed ICA Amendments threaten to make a bad situation even worse. Verizon seeks Commission approval, on one hand, immediately to eliminate the few UNEs Verizon currently provides, but on the other hand, to delay as long as possible if the FCC adopts any additional unbundling requirements. The unauthorized limitations and additional burdens that Verizon has proposed for implementing commingling, conversions, and routine network modifications should tell the Commission all it needs to know about the basis of Verizon's proposals. Unless the Commission seeks to further solidify Verizon's *de facto* monopoly on local exchange service where Verizon operates as an incumbent local exchange carrier ("ILEC") in Washington, the Commission will reject Verizon's proposed contract language and adopt the CLEC proposals.

II. DISCUSSION

Issue 1: Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. §§ 251 and 252, including issues arising under state law?

8. Verizon begins its overreaching with the very first issue. Verizon proposes language that effectively would require the Commission to abdicate its authority under state law to regulate intrastate telecommunications services with respect to providing wholesale service to competitors. Verizon devotes its discussion of this issue to arguments that federal unbundling law preempts any ability whatsoever of this Commission to require Verizon under state law to provide facilities when federal law does not contain such a requirement. Verizon largely misses the point. Nothing in the language proposed by the CLECs would preclude Verizon from making these same arguments in a proceeding that addresses a specific unbundling requirement. That language simply leaves open the possibility that the Commission may exercise its authority under state law at some future point in time.

9. Verizon, however, proposes to preclude the Commission from exercising that authority at *any* time or under *any* circumstances. Even the FCC has not gone so far, as AT&T accurately points out. AT&T Initial Brief ¶¶ 12-14. The FCC rejected the very argument that Verizon makes here: "We do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law. If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act." TRO ¶ 192. The FCC concluded that whether a particular state law is inconsistent with federal law is more properly decided on a case-by-case basis. *Id*. ¶ 195. Verizon lost this issue at the FCC and should have no more success here.

10. This Commission, not the FCC, is ultimately responsible for fostering the development of effective local exchange competition in Washington. Toward that end, the Commission should retain all of the authority granted by the Legislature to determine and regulate the services and facilities that Verizon must make available to competitors. The Commission, therefore, should reject Verizon's proposal in favor of the contract language the CLECs propose.

Issue 2: What terms and conditions and/or rates regarding implementing changes in unbundling obligations or changes of law should be included in the Amendment to the parties' interconnection agreements?

11. The Joint CLECs, the CCG, and other CLEC parties thoroughly explained in their initial briefs why Verizon's attempt to eviscerate the change of law provisions in its existing ICAs conflicts with both the TRO and TRRO, and the Joint CLECs and CCG will not repeat that discussion. The Joint CLECs and CCG address only Verizon's new – but nevertheless flawed – purported justification for its proposal automatically to implement Verizon's interpretation of changes of law with which Verizon agrees while requiring a Verizon tariff filing or written amendment for changes with which Verizon does not agree.

12. Verizon contends that "[w]hen an incumbent's obligation to provide access to an element under section 251(c)(3) is eliminated, the details of any subsequent arrangements are no longer within the scope of interconnection agreements," while "if a new unbundling obligation arises under section 251, the parties need to negotiate (and to arbitrate, if necessary) the operational details." Verizon Initial Brief ¶ 49. The FCC disagrees. The TRRO expressly provides that "subsequent arrangements," such as transition periods, are to be incorporated into the parties' ICAs through the change of law process. TRRO ¶¶ 145, 198 & 233. Verizon ignores the TRRO in arguing to the contrary.

13. "Operational details," moreover, must be negotiated or arbitrated regardless of whether a new UNE is added or an existing UNE declassified. There would not be over 30 issues in this arbitration if FCC orders could be implemented as they are. The TRRO is no exception. ILECs and CLECs, for example, disagree on what the FCC intended by limiting orders for declassified UNEs under the transition plans to a CLEC's "embedded customer base." CLECs contend that the FCC meant what it said, *i.e.*, that CLECs could continue to order these UNEs to serve customers existing as of March 11, 2005. The ILECs, on the other hand, claim that they can reject all orders for discontinued UNEs, even to the CLECs' existing customers. This "operational detail" potentially affects hundreds, if not thousands, of CLEC customers. These and other disputed interpretations of FCC orders and rules should be resolved *before* Verizon begins to reject orders for newly declassified UNEs. Such disputes underscore the need for the Commission to be involved in arbitrating disagreements arising from the removal of Verizon's unbundling obligations.

14. The Commission, therefore, should limit the ICA Amendment to incorporating the requirements of the TRO and TRRO and should not give Verizon authority unilaterally to implement Verizon's interpretation of future changes of law.

Issue 3: What obligations, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching (including Four-Line Carve-Out switching), and tandem switching, should be included in the Amendment to the parties' interconnection agreements?

15. See discussion of Issue 4, *infra*.

Issue 4: What obligations, if any, with respect to unbundled access to DS1 loops, DS3 loops and dark fiber loops should be included in the Amendment to the parties' interconnection agreements?

16. The CLECs and the FCC agree that the provisions of both the TRO and TRRO need to be incorporated into the ICAs. Verizon disagrees, contending that the automatic incorporation language it has proposed already does so. As discussed above and in the CLECs' initial briefs, the Commission will reject Verizon's proposal unless the Commission wants to disregard FCC orders and to encourage the inevitable disputes that will arise between Verizon's and the CLECs' interpretation of the law.

17. Verizon also claims that the CLEC language on unbundling obligations does not reflect the TRRO but that Verizon "remains willing to discuss potentially desirable modifications in ongoing negotiations with interested CLECs." Verizon Initial Brief ¶ 54. Of course, that statement rings hollow in light of Verizon's position that no such modifications are necessary, much less "desirable." Verizon, moreover, presumably refers to a negotiation process that is outside this arbitration and is conducted in the context of Verizon already having implemented its interpretation of the TRRO. The Arbitrator has consistently required that the most recent state of the law be reflected in the proposed amendment(s) resulting from this proceeding and should continue to do so. The Commission should not approve an ICA Amendment in this arbitration that does not *expressly* incorporate the requirements of the TRRO, as well as the TRO.

18. Toward that end, various CLECs have proposed TRRO contract language to Verizon in company-to-company negotiations. XO, for example, proposed a TRO/TRRO

Amendment to Verizon in all states in which the companies have ICAs shortly after the initial briefs in this case were filed. The parties should be given at least a brief opportunity to negotiate appropriate TRRO language, if for no other reason than to identify and brief disputed issues that need to be resolved by the Commission. Only then should the Commission resolve this issue.

Issue 5: What obligations, if any, with respect to unbundled access to dedicated transport, including dark fiber transport, should be included in the Amendment to the parties' interconnection agreements?

19. See discussion of Issue 4, *supra*.

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

20. The Joint CLECs and CCG do not have additional discussion on this issue.

Issue 7: Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements? Should the Amendment state that Verizon's obligations to provide notification of discontinuance have been satisfied?

21. This issue reflects Verizon's proposal to discontinue UNEs as quickly as it possibly can – far too quickly in this instance. Verizon contends that it should be able to provide notice of discontinuance of a UNE, if Verizon provides any notice at all, before an FCC order or rule becomes effective so that Verizon can discontinue that UNE immediately after the new rule takes effect. According to Verizon, CLECs effectively will be on notice once the FCC announces its decision, which generally is "at least several weeks, if not several months, before the regulation becomes effective." Verizon Initial Brief ¶ 65. Verizon asks the Commission to permit Verizon to treat rules reducing Verizon's unbundling obligations as immediately effective, without negotiation, without regard for the impact on CLECs' end-user customers, and without consideration of the details of the FCC order or rules, including any transition requirements for declassified UNEs. Such a proposal is unreasonable on its face.

22. Once again, moreover, Verizon proposes a double standard. In the Joint CLECs' and CCG's experience, Verizon *never* has been willing even to discuss implementation of changes in federal law that are beneficial to CLECs before the rules are effective. Verizon then consistently drags its feet in implementing all such changes, as demonstrated by the 18-month delay for which Verizon is primarily responsible in implementing commingling, conversions, and routine network modifications. Indeed, Verizon long ago should have been undertaking routine network modifications under the federal law that was in existence prior to the TRO. All of Verizon's arguments concerning the need for prompt implementation of reductions to Verizon's unbundling obligations are equally applicable to all changes of law. Verizon is not entitled to a faster implementation of certain FCC rules that benefit Verizon – rules that, in this case, were promulgated long *after* the rules that the Joint CLECs and CCG have been trying to get Verizon to implement since October 2, 2003.

23. The Commission, therefore, should reject Verizon's proposed notice language.

Issues 8-20

24. The Joint CLECs and CCG do not have additional discussion on these issues.

Issue 21: What obligations, if any, with respect to EELs should be included in the Amendment to the parties' interconnection agreements?

- **a) What information should a CLEC be required to provide to Verizon as certification to satisfy the FCC's service eligibility criteria to (1) convert existing circuits/services to EELs or (2) order new EELs?**
- **b) Conversion of existing circuits/services to EELs:**
  - **(1) Should Verizon be prohibited from physically disconnecting, separating or physically altering the existing facilities when a CLEC requests a conversion of existing circuits/services to an EEL unless the CLEC requests such facilities alteration?**
  - **(2) What type of charges, if any, and under what conditions, if any, can Verizon impose when CLECs convert existing access circuits/services to UNE loop and transport combinations?**
  - **(3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC's service eligibility criteria?**

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

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

25. Subsection a).[6] The TRO and FCC Rule 51.318 establish service eligibility criteria for the combination of high-capacity loops and transport known as enhanced extended links ("EELs") and authorize CLECs to self-certify that the EELs they obtain from Verizon comply with these criteria. Verizon, however, proposes to require CLECs to provide all documentation supporting their self-certification. According to Verizon, "Because a CLEC is required to have in its possession all of the information necessary to certify its compliance with the EEL eligibility criteria at the time it provides its self-certification, it would impose no meaningful burden on that CLEC to require it to provide the same information to Verizon." Verizon Initial Brief ¶ 218. Verizon's proposal is fundamentally inconsistent with federal law.

26. The FCC authorized CLECs to "self-certify" compliance with the EEL eligibility criteria. Self-certify means *self*-certify. Verizon proposes to deny CLEC the ability to self-certify compliance and to require the CLEC to prove such compliance *to Verizon*. The FCC rejected that position, stating "an incumbent LEC that questions the competitor's certification may do so by initiating the audit procedures." TRO ¶ 623, n.1900. As the FCC found, "A critical component of nondiscriminatory access is preventing the imposition of any undue gating

[6] The Joint CLECs overlooked footnote 659 in paragraph 234 of the TRRO in which the FCC states that it is retaining its EEL certification requirements. Accordingly, there is no issue as to the continued viability of FCC Rule 51.318, at least for now, and the interpretation and implementation of these requirements is properly presented to the Commission for resolution in this arbitration.

mechanisms that could delay the initiation of the ordering or conversion process." *Id*. Verizon proposes just such an undue gating mechanism, which the Commission should reject.[7]

27. Subsection b)(1). Verizon should be prohibited from physically disconnecting, separating or physically altering existing facilities when a CLEC requests a conversion of existing circuits/services to an EEL unless the CLEC requests such facilities alteration. Verizon "would not expect a standard conversion to require any physical alteration of the facilities," but contends that "[r]emoving the parties' flexibility to address situations that depart from the norm would likely just delay requested conversions." Verizon Initial Brief ¶ 220. Verizon, however, fails to provide even one example of such a situation. The "flexibility" that Verizon proposes thus would be a source of future disagreement at best, and at worse, would provide Verizon with the opportunity to delay or burden requests for conversions. The Commission should adopt the CLECs' proposed language on this issue.

28. Subsection b)(2). The only charge, if any, that Verizon should be authorized to impose for conversions is the order processing charge that the Commission previously established. Verizon proposes several non-recurring charges "for each UNE circuit that is part of a commingled arrangement," but Verizon has produced no evidence whatsoever to support any such charges. Nor is any of the cost recovery Verizon proposes even theoretically appropriate. The charge the Commission previously authorized Verizon to impose to recover the costs associated with its systems modifications already compensates Verizon for any system adjustments required to accommodate conversions. In addition, charging to "validate CLEC's

[7] Nor would proving compliance to Verizon be a simple matter of providing Verizon with the same information that the CLEC is retaining, as Verizon contends. This information is part of individual customer records, not stand-alone documentation that a CLEC could effortlessly share with Verizon. Extracting such information in a form that could be provided to Verizon would require substantial resources to accomplish and would be a significant burden on CLECs.

self-certifications for every commingled circuit requested," Verizon Initial Brief ¶ 224, adds insult to Verizon's unlawful proposal to require CLECs to prove the accuracy of their self-certifications as part of the ordering process. The Commission should reject Verizon's proposed charges.

29. Subsection b)(3). Verizon again seeks to impose requirements beyond those authorized in the TRO by proposing that CLECs be required to certify compliance with the new service eligibility requirements for all existing EELs, not just those that are now being ordered. The FCC expressly stated that these criteria were to be used in conjunction *only* with new orders, conversions, and commingling: "we make clear that the service eligibility criteria must be satisfied (1) to ***convert*** a special access circuit to a high-capacity EEL; (2) to obtain a ***new*** high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (***commingled*** EEL)." TRO ¶ 593 (emphasis added). Verizon contends that "the FCC did not suggest that those examples were the only such instances," Verizon Initial Brief ¶ 227, but the FCC was not merely listing "examples." Rather, the FCC was enumerating the three circumstances in which the service eligibility criteria apply. Had the FCC intended to include existing EELs, it would have done so. Indeed, the entire discussion of these criteria in the TRO consistently refers to a "requesting carrier," solidifying the FCC's intent to apply the criteria only to new orders, not existing facilities. The Commission should reject Verizon's proposal to exceed the authority granted in the TRO and to impose additional burdens on CLECs' use of high-capacity EELs.

30. Subsection b)(4). The Joint CLECs and CCG do not have any additional discussion of this sub issue.

31. Subsection c). The Joint CLECs and CCG agree with the other CLECs who have taken issue with Verizon's proposed audit language. A CLEC should be responsible for the costs

of the audit only if the CLEC has *materially* failed to comply with the service eligibility criteria. The FCC adopted just such a standard, requiring that "to the extent the independent auditor's report concludes that the competitive LEC failed to comply in all *material* respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor." TRO ¶ 627 (emphasis added). The ICA Amendment should reflect this well-accepted concept of materiality, rather than Verizon's arbitrary and self-serving view that a single error on a single DS1 circuit should result in liability for an audit of potentially hundreds of high-capacity EEL circuits.

32. Verizon also fails to justify its proposal to be able to conduct an audit more frequently than once every twelve months. The FCC expressly limited Verizon's rights to one audit per year, finding that "an annual audit right strikes the appropriate balance between the incumbent LECs' need for usage information and risk of illegitimate audits that impose costs on qualifying carriers." TRO ¶ 626. The FCC has already determined that Verizon is not entitled to conduct an audit more frequently than once every twelve months, and that limitation should be reflected in the Amendment.

33. Finally, nothing in the TRO supports Verizon's proposal to require CLECs to retain records on each specific circuit for 18 months after the circuit has been disconnected. Verizon contends that such extraordinary record retention is necessary in case Verizon initiates an audit and in case the audit takes as long as 18 months to complete. Such remote contingencies do not justify the costs and the burden associated with CLECs undertaking special recordkeeping for circuits that are no longer in service.

34. The Commission should reject Verizon's proposed language on these issues.

Issue 22: How should the Amendment reflect an obligation that Verizon perform routine network modifications necessary to permit access to loops, dedicated transport, or dark fiber transport facilities where Verizon is required to provide

unbundled access to those facilities under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51?

35. Verizon has provided no basis on which it is entitled to impose additional charges to CLECs to undertake routine network modifications. Verizon states that it "is not true" that its UNE rates include the costs of routine network modifications, Verizon Initial Brief ¶ 244, but Verizon does not even attempt to explain why Verizon believes it is not true. Rather, Verizon discusses only the alleged difficulties in developing an appropriate cost study, which Verizon claims justifies imposing Verizon's proposed charges pending consideration of these issues in a later "phase" of this proceeding. *Id*. ¶ 245. No cost study is appropriate, much less required.

36. The Commission has already addressed this issue in the context of Qwest Corporation's ("Qwest's") Statement of Generally Available Terms ("SGAT"). Qwest, like Verizon in this case, complained that it was not obligated to increase the capacity of existing facilities to fill CLEC UNE orders without compensation. The Commission rejected that position and required Qwest to recover its costs in the same way it recovers the costs incurred to undertake the same work for its retail customers:

> In requiring Qwest to provide facilities to CLECs in areas already served by facilities that are used to full capacity, we do not ask Qwest to do anything different for CLECs from what it would do for a retail customer requesting like facilities. We do not require Qwest to provide such facilities "for free." Our requirement neither limits nor prevents Qwest from recovering its investment in the same way it would recover the investment it makes for a retail customer requesting a similar facility.

In re Investigation Into U S WEST Communications, Inc.'s Compliance with Section 271, et al., Docket Nos. UT003022 & UT-003040, Twenty-Fourth Supp. Order, ¶ 19 (December 20, 2001); *accord id.*, Twenty-Eighth Supp. Order, ¶ 22.[8]

37. The Joint CLECs and CCG are not aware of any charges that Verizon imposes on its retail customers in Washington to undertake routine network modifications. Even if such charges exist, however, and are not already included in Verizon's UNE rates, those charges would apply, not the new and wholly unsubstantiated charges that Verizon seeks to impose on CLECs. No subsequent proceeding is necessary or appropriate. The Commission can, and should, reject any such charges based on applicable law and the current record in this proceeding.

Issue 23: Should the parties retain their pre-Amendment rights arising under the Agreement, tariffs, and SGATs?

38. This issue unfortunately is not as straight-forward as it appears. The question should be inapplicable in Washington because Verizon does not have an SGAT, nor is Verizon supposed to have a tariff with substantive UNE provisions that have any applicability to carriers with ICAs. Within the last year, however, Verizon has proposed two substantive revisions to its tariff WN U-21, which the Commission required Verizon to maintain with UNE rates ordered by the Commission. The latest proposal, pending before the Commission in Docket No. UT-050313, includes substantive terms and conditions derived from Verizon's interpretation of the TRRO. The Joint CLECs and other CLECs protested this tariff filing, but it raises the concern that Verizon's proposed language would serve to reinforce Verizon's position that it may file tariffs that supercede or amend provisions of its ICAs. The phrase "notwithstanding any other

[8] These Orders also demonstrate that the Commission has interpreted federal and state law prior to the TRO to require ILECs to undertake routine network modifications. Verizon, therefore, has been unlawfully rejecting orders that require such modifications even before October 2, 2003.

provision of the Agreement, this Amendment, or any Verizon tariff or SGAT" is superfluous at best and should not be included in the Amendment.

Issues 24-32

39. The Joint CLECs and CCG do not have additional discussion on these issues.

III. CONCLUSION

40. For the reasons discussed above and in the Joint CLECs' and CCG's Initial Briefs, the Commission should reject Verizon's proposed ICA Amendment and should adopt the CLEC proposed language, as supplemented by TRRO implementation language to be negotiated, and if necessary arbitrated, by the parties in this proceeding.

RESPECTFULLY SUBMITTED this 1st day of April, 2005.

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