

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

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

MCImetro Access Transmission Services, LLC (“MCI”) hereby responds to the Initial Brief filed by Verizon Northwest, Inc. (“Verizon”). Specifically, this addresses (i) the appropriate resolution for commingling, conversions and routine network modifications; and (ii) the appropriate method under which Verizon and MCI should proceed with the arbitration of issues that arose from the *Triennial Review Order* (“TRO”) and *Triennial Review Remand Order* (“TRRP”). Although these topics are addressed throughout the issues list, MCI believes they are primarily addressed in Issue Nos. 2, 7, 10, 11, 12, 22, 24, 25 and 26.

DISCUSSION

A. COMMINGLING, CONVERSIONS AND ROUTINE NETWORK MODIFICATIONS (Issue Nos. 10, 11, 12, 22, 25 and 26)

1. Verizon proposes to charge the new and additional rates contained in its pricing attachment to its Amendment 2 for activities related to commingling, conversions and routine network modifications. Verizon proposes to charge those rates on an interim basis pending the completion of a cost case. The Commission should reject this proposal.

2. Verizon fails to provide any support for the new and additional rates it has proposed, despite the fact that it had approximately nineteen months to develop such studies. The changes of law concerning commingling and conversions were created by the TRO and were not appealed or affected by the ruling in USTA II. Also, the law concerning routine network modifications (RNMs) was not changed by the TRO or TRRO. The FCC merely clarified its previous decision on RNMs in the TRO. As such, the law on these issues has not changed since August, 2003.

3. Additional charges for commingling, conversions and routine network modifications are not warranted. This Commission has already determined the *total* element long run incremental cost ("TELRIC") of the network and processes necessary to provide telecommunications services in Verizon's territory. To determine UNEs rates for Verizon, the Commission took its calculation of TELRIC, and divided it by total retail and wholesale demand, in

accordance with 47 C.F.R. 51.511(a). The current Verizon UNE rates are therefore set to recover the *total* forward looking cost of an efficient carrier operating in Verizon territory as determined by the Commission. The creation of new UNE rates without commensurate reductions to existing UNE rates would result in revenues that exceed this Commission's calculation of TELRIC. Therefore, the creation of new UNE rates without commensurate reductions to existing UNE rates would fail to comply with the Commission's calculation of TELRIC and would violate 47 C.F.R. 51.511(a).

4. Initially in Massachusetts, as in Washington, Verizon proposed charges for network modifications. The Massachusetts Department of Telecommunications and Energy (Department) said that it would consider in its case whether the RNM costs for which Verizon MA sought recovery were already being recovered in existing loop rates. It also provided that in order to approve any charges for routine modifications, Verizon MA not only would it have to demonstrate that the proposed charges were just and reasonable, but also that there is no double recovery of costs in any charges it seeks to impose. In that case, Verizon MA was supposed to file a non-recurring cost study for the RNMs for which rates have not already been set. By letter dated March 1, 2005, Verizon MA stated that it has been unable to complete a cost study because a number of difficulties arose associated with gathering the necessary data for the base period

used in the last TELRIC study to address fully the double recovery issue. Verizon MA also stated that it will address the issue of those charges with its next TELRIC cost study for both recurring and non-recurring UNE costs are examined in a comprehensive manner. Significantly, Verizon MA stated in the letter that it:

will not seek through this arbitration to litigate charges for the non-recurring rate elements identified in Exhibit A for which the Department has not already approved rates. Until such rates for those elements are approved by the Department, Verizon MA will not charge for the activities when provisioning new loops once interconnection agreements are appropriately amended. (emphasis added).

5. Double recovery of cost is a concern in this proceeding as well. For example, Verizon UNE loop rates were established with an assumption that no copper loops are greater than 18,000 feet long. This assumption, done in the name of forward-looking requirements, was a divergence from reality and increased network loop investment and thus increased recurring loop rates. This assumption also decreased the forward looking expense that was used to calculate the rates for routine network modifications, such as loop conditioning. This is valid because if one assumes there are no loops longer than 18,000 feet, and recurring rates are increased, one must also assume there are no costs associated with modifying loops longer than 18,000 feet. Further, as stated in paragraph 640 of the TRO, “[t]he Commission’s rules make clear that there may not be any

double recovery of these costs (i.e. if costs are recovered through recurring charges, the incumbent LEC may not also recover these costs through a NRC)."

6. Verizon fails to demonstrate that any new or additional charges are appropriate and compliant with TELRIC rules. If Verizon's position is that such charges are appropriate, it should be required to file a cost study to support its position. Although Verizon has had nineteen months in which to develop a cost study, Verizon has not filed one in this proceeding.

B. CHANGE OF LAW LANGUAGE (Issue Nos. 2, 7, 10 and 24)

7. The existing "change of law" language in the interconnection agreement should not be changed. Verizon makes the unreasonable proposal that in the future, Verizon should be permitted to decide unilaterally which changes of law should be automatically incorporated in the interconnection agreement, how the change of law should be interpreted and which changes of law should not be automatically incorporated in the interconnection agreement. The Commission should reject this proposal.

8. Verizon's position essentially is that for FCC actions that eliminate unbundling requirements or raise UNE rates, Verizon should be permitted to interpret the change of law and incorporate it into the interconnection agreement as Verizon deems necessary. In contrast, Verizon's position is that for FCC actions

that increase unbundling requirements, such actions should be subject to change of law negotiations.

9. Verizon wants it both ways. Under its approach, when a change of law benefits Verizon, Verizon wants the ability to unilaterally implement the change immediately without going through an established process for negotiations. It is only when changes of law do not benefit Verizon that it believes it should be obligated to proceed through the established process to negotiate contract language. Having a process that allows one party to decide to implement immediately changes of law that benefit itself, and to require all other changes of law to proceed through a negotiated process is unreasonable. The interconnection agreement should give both parties that same protection and this is exactly what the current interconnection agreement change of law language provides.

10. Nothing in the FCC's TRO, TRRO, USTA II or the FCC's Interim Order invalidates the change of law provisions contained in interconnection agreements. Indeed, the FCC has explicitly acknowledged their applicability (TRO, ¶700). Verizon's proposal is inconsistent with the scheme created by Congress to implement the Telecommunications Act of 1996. Congress explicitly required that Verizon's interconnection, unbundling and resale obligations be captured in agreements that are negotiated or arbitrated and ultimately approved

by state commissions. Under Verizon's approach, interconnection agreements would have no practical significance, a result clearly at odds with the 1996 Act.

11. MCI proposes simply to maintain the change of law language that exists in its interconnection agreement with Verizon. There is no legitimate reason why Verizon should not be required to follow it nor is there a legitimate reason to modify it as Verizon proposes.

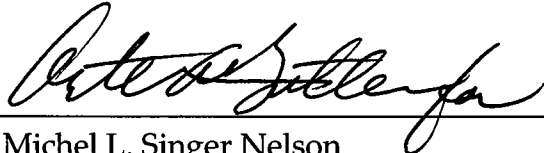
C. MCI'S PROPOSED LANGUAGE FOR THE ICA AMENDMENT

12. Attached as Exhibits 1 and 2 are a clean and a redline version, respectively, of MCI most up-to-date proposed language for the amendment to its interconnection agreement with Verizon to reflect all requirements of the TRO and TRRO.

Dated this 1st day of April 2005.

Respectfully Submitted,

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

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