BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of	)	
VERIZON NORTHWEST, INC.	)	DOCKET NO. UT- 043013
with	)	**RESPONSE TO VERIZON'S PETITION FOR COMMISSION REVIEW OF ARBITRATOR'S REPORT AND DECISION**
COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON	)	
Pursuant to 47 U.S.C. § 252(b), and the *Triennial Review Order*	)	

Pursuant to Order No. 17, AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle, TCG Oregon (collectively "AT&T") hereby submits this Response to Verizon's Petition for Commission Review of Arbitrator's Report and Decision in the above-captioned matter, and in support whereof, would show as follows.

I. Generic Wire Center Proceeding (Issues 4 and 5)

1. The first issue on which Verizon petitions the Commission for review involves the arbitrator's recommendation that a generic proceeding be held to develop and update Verizon's exempt wire center list. Verizon claims that such a generic inquiry would be "inconsistent with the TRRO." Verizon Petition at p. 5. While AT&T disputes that claim and contends that the Arbitrator's decision on this issue was consistent with the TRRO and represents a good utilization of both the parties' and the Commission's resources, AT&T does not disagree with Verizon that *given the specific facts present in*

Washington, there is no need for a generic proceeding to be initiated at this time. Those specific facts include Verizon's acknowledgement that none of its wire centers in Washington are de-listed for loops or DS1 transport, and only one route is de-listed for DS3 or dark fiber transport. *See* Petition at p. 4.

II. Definitions of "Business Switched Access Line," "Dedicated Transport," and "Dark Fiber Transport" (Issues 9 and 19)

2. Verizon also complains that the definitions of business switched access line, dedicated transport, and dark fiber transport are inconsistent with the FCC's definitions of these same terms. In an apparent about face from its earlier position, Verizon now no longer opposes the inclusion of these definitions, but simply requests that the definitions adopted by the Arbitrator be modified to more precisely track the FCC's definitions.[1] AT&T does not oppose the modifications to the definitions requested by Verizon.

III. Definition of EELs (Issue 9)

3. Verizon contends that the Arbitrator erred in adopting the definition of EEL proposed by AT&T. Specifically, Verizon claims that because the definition refers to "transmission functionality such as concentration and multiplexing," that the definition would somehow enable AT&T to obtain multiplexing as a stand-alone UNE. Verizon Petition at p. 12. The definition adopted by the Arbitrator does nothing of the sort. Nowhere does the definition of EEL, or anywhere else in the contract language ordered by the Arbitrator, provide that AT&T can order multiplexing on a stand-alone basis, nor is AT&T seeking that ability. Instead, the language about which Verizon complains

[1] With regard to "business line", Verizon requests that the definition track the definition found in the FCC's rule, "47 U.S.C. § 51.5." AT&T believes that Verizon meant to refer to the Code of Federal Regulations, the repository for the FCC's rules, and not the United States Code.

simply clarifies that AT&T has the right to order an EEL with or without multiplexing. That is clearly contemplated by the FCC. *See* TRO at ¶ 575. The Arbitrator's recommendation should be affirmed.

IV. Conversions (Issue 21)

4. Verizon petitions for review of two separate recommendations by the Arbitrator associated with conversions of existing services or circuits to EELs. The first issue involves the timing of the conversion: when the conversion should be deemed effective and when billing changes should be made. The second issue involves whether Verizon can disconnect or change facilities without a CLEC consent. Verizon's complaints regarding the Arbitrator's resolution of both of these issues are without merit.

5. First, with regard to the timing of the conversion, the Arbitrator correctly determined that a conversion should be deemed effective upon receipt of the conversion request, and thus that billing changes should be reflected in the next billing cycle. These related determinations are consistent with the FCC's findings in the TRO. In paragraph 588 of the TRO, the FCC noted that because conversions are "largely a billing function," they "should be performed in an expeditious manner." Verizon implies in its Petition for Review that the FCC rejected a CLEC proposal to require completion of billing changes within 10 days of a conversion request because that was too short a time period. See Verizon Petition at p. ¶ 34.

6. However, and contrary to Verizon's claim, the TRO indicates that the FCC rejected ALTS' suggested 10 day period because it was *too long*. Indeed, the FCC specifically blessed the next billing cycle standard for pricing changes that AT&T proposed and that the Arbitrator recommended: "We therefore expect carriers to

establish appropriate mechanisms to remit the correct payment after the conversion request, **such as providing that any pricing changes start the next billing cycle following the conversion request**." TRO ¶ 588 (emphasis added). AT&T is unaware (as apparently was the FCC) of any industry standard that would provide that conversions are effective for billing purposes when the actual work is completed, or thirty days after the conversion, both of which Verizon suggests as a "more reasonable standard."

7. With regard to the issue of disconnecting or changing facilities during a conversion, Verizon also attempts to raise error where none exists. The Arbitrator adopted language stating that "Verizon shall not physically disconnect, separate, alter or change in any other fashion equipment and facilities employed to provide the wholesale service, except at the request of AT&T." Verizon contends that this language does not reflect the Arbitrator's recognition that Verizon may notify a CLEC of a potential problem with a conversion requiring disconnection or alteration, but cannot take action without the consent of the CLEC. Arbitrator's Report ¶ 416. But the language recommended by the Arbitrator does allow for this possibility. If Verizon encounters a potential problem with the conversion requiring disconnection or alteration, it can and should notify AT&T of the problem. After being notified of the problem, AT&T will take appropriate action to protect the interests of its customer, including requesting disconnection, separation, alteration or change, if AT&T deems that necessary. The Commission should approve the language recommended by the Arbitrator.

V. Entrance Facilities (Issues 9 and 20)

8. Verizon claims that the Arbitrator erred by including AT&T's proposed language in the definition of entrance facilities. The specific language at issue provides

that an "entrance facility" excludes "any facilities used for interconnection or reciprocal compensation purposes provided pursuant to 47 U.S.C. § 251(c)(2)." Verizon complains that this language is inappropriate because "neither the TRO nor the TRRO changed Verizon's obligations with respect to interconnection facilities," and thus the language is not necessary to implement any changes of law resulting from the TRO or the TRRO. Verizon Petition at pp. 18-19.

9. What Verizon conveniently overlooks, however, is the fact that while the TRO and TRRO did not modify interconnection obligations, they did modify obligations as to dedicated transport and entrance facilities. This issue arises in connection with the definition of entrance facilities to be contained in the ICA. In defining something, it is frequently useful to state not only what a thing is, but also what it is not. Indeed, that is the main reason that entrance facilities are at issue in this proceeding, because the FCC has excluded them from the definition of dedicated transport: "In the *Triennial Review Order*, we revised the definition of dedicated transport **to exclude entrance facilities**." TRRO at ¶ 136. The Arbitrator took a similar approach in the instance case by adopting AT&T's definition of entrance facilities: she excluded interconnection facilities from that definition. Even Verizon appears to acknowledge that eliminating entrance facilities as UNEs did not affect CLEC access to interconnection facilities. *See, e.g.,* Verizon Petition at fn 17.

10. Verizon concedes that the Arbitrator's recommended language addressing interconnection facilities "might not be cause for much concern if the language were merely unnecessary, but benign." Verizon Petition at p. 19. Verizon then proceeds to discuss infirmities with **MCI's** proposed language vis-à-vis certain negotiated

interconnection agreements that Verizon has with CLECs like Level 3 or Bullseye. Verizon points to no infirmity with the AT&T language adopted by the Arbitrator either in connection with the AT&T or any other CLEC's ICA. Apparently, the AT&T language is simply, in Verizon's view, unnecessary (but benign). The Commission should affirm the Arbitrator's recommendation that the language is indeed necessary to clarify and avoid potential future disputes.

VI. Materiality Standard for Audits

11. Verizon complains that the Arbitrator erred in failing to adopt Verizon's proposed language regarding audits, instead adopting the CLEC proposed language. Verizon claims that in reaching this conclusion, the Arbitrator failed to correctly interpret and apply the standard of materiality established by the FCC. Verizon quotes its proposed audit language, and claims that it correctly incorporates the FCC's findings that the CLEC must comply "in all material respects" with the service eligibility criteria, and that any audit be performed "in accordance with the standards established by the American Institute for Certified Public Accountants." Verizon suggests that by failing to adopt its proposed language, the Arbitrator established her own materiality standard, rather than the governing AICPA standards, and that the "Commission cannot override the FCC's directive that the audit must be performed in accordance with the AICPA Standards, including the materiality concept in those standards." Verizon Petition at p. 30.

12. Verizon completely misses the point. With regard to the issue of materiality, the Arbitrator adopted the CLECs' language. Report at ¶ 470. AT&T's language contains the exact phrases "in all material respects" and "in accordance with the

standards established by the American Institute for Certified Public Accountants" that Verizon claims the Arbitrator's recommendation omits:

> On an annual basis (i.e., one 12-month period), Verizon may, pursuant to the terms and conditions of this section, obtain and pay for an independent auditor to audit AT&T's compliance **in all material respects** with the service eligibility criteria applicable to EELs. Such annual audit will be initiated only to the extent reasonably necessary to determine AT&T's compliance with Applicable Law. AT&T and the FCC shall each be given thirty (30) days' written notice of a scheduled audit. **Any such audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants** and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment.[2]

13. The distinction between AT&T's and Verizon's language occurs later and was not discussed or even identified by Verizon in its petition for review. Specifically, Verizon's language provides that if "the independent auditor's report concludes that [CLEC] failed to comply with the service eligibility criteria **for any DS1 or DS1 equivalent circuit**," then the CLEC must pay for the cost of the audit. AT&T's language, in contrast, provides that the CLEC must pay for the cost of the audit if "the independent auditor's report concludes that AT&T failed to comply **in all material respects** with the service eligibility criteria." It was this portion of Verizon's proposed language that concerned the Arbitrator, and caused her to conclude that "Verizon's language does not sufficiently address the FCC's concern with material compliance." Arbitrator's Report at ¶ 470.

14. The Arbitrator's concern with Verizon's proposed language is valid. The *TRO* provides that once an audit is initiated for cause it would be conducted by an "independent auditor"; that there be an "examination engagement"; and that the concept

[2] AT&T proposed amendment at § 3.7.2.8 (emphasis added).

of materiality governs.[3] But these standards would effectively be eliminated under Verizon's approach. Instead, Verizon's proposed Amendment would require *perfect* performance by the CLEC, defining *any* non-compliance, even a single circuit among thousands, to constitute material non-compliance.[4] This substitution of a "perfection" instead of a "materiality" standard is designed to foist the cost of the audit improperly onto the CLEC. It is Verizon, not the Arbitrator, which is attempting to establish its own materiality standard and displace the standards explicitly established by the FCC. The Commission should reject that attempt and affirm the recommendation of the Arbitrator.

VII. Disconnect Rates (Issue 8)

15. Verizon claims that the Arbitrator erred in finding that "Verizon must file a tariff or propose a change to Exhibit A prior to charging disconnection or other charges, and must allow CLECs and the Commission an opportunity to address the proposal." Report at ¶ 149. Specifically, Verizon claims that the Arbitrator "overlooked" the fact that Verizon already has disconnect charges contained in its Commission approved UNE tariff. It is apparent from reviewing the Arbitrator's Report, however, that the Arbitrator did not overlook anything. The Arbitrator specifically indicated that it was not appropriate for Verizon to use previously established disconnect charges in this context, without Commission review: "Verizon may not, however, charge the disconnect fee

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[3] *TRO* ¶ 626-628, nn. 1904 and 1905.

[4] *See* Verizon Amendment 2, at 3.4.2.7. As AT&T discussed in its Initial brief, Verizon's proposed Amendment also overstates its right under the *TRO* to seek reimbursement from CLECs for audit expenses. Contrary to Verizon's assertion (at 117), the *TRO* does not "clearly impose" on CLECs an obligation to reimburse Verizon for all audit expenses in the event that it fails to meet the service eligibility criteria for any DS1 circuit. Rather, the order provides that Verizon is permitted to pass along the cost of an audit *only* if the independent auditor concludes that AT&T failed to comply with the service eligibility criteria "in all material respects." *TRO* ¶ 627. Even then, the costs to be borne by the CLECs are the "cost of the independent auditor." *Id.* The *TRO* thus does not support Verizon's effort to impose the entire cost of an audit on a CLEC in the event of a few inadvertent mistakes, or something less than a material misrepresentation that affects more than a *de minimis* number of circuits.

established in Docket Nos. UT-960369, UT-960370, and 960371, without further demonstration that the disconnect fee is applicable to the present situation." *Id.*

16. Verizon's argument challenging the Arbitrator's determination amounts to nothing more than its assertion that "The process of disconnecting a UNE because it has been de-listed is no different from disconnecting it for any other reason" is unsubstantiated and without support, and provides no basis for disturbing the Arbitrator's recommendation. But there is in fact a fundamental distinction between a disconnection that is voluntarily ordered by a CLEC, and one, such as is at issue here, which results from the involuntary de-listing of the UNE. In that latter case, it is not the CLEC that can reasonably be described as the cost-causer – if indeed, there are any costs incurred in this process at all. If anything, it is Verizon, with its unrelenting animus to any competitive entry, which has prompted the change. Thus, the Arbitrator's concern that the current rates may not in fact be applicable to this type of "disconnection" – which in reality is more likely to be a billing change – is well-founded, and the Commission should affirm the Arbitrator's recommendation.

WHEREFORE, AT&T respectfully requests that the Commission deny Verizon's Petition for Review, and the relief requested therein.

Submitted this 18th day of August, 2005.

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

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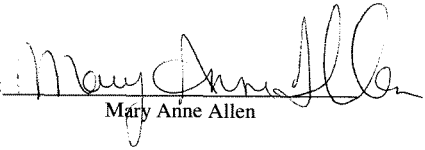
DATED this 18th day of August, 2005.

By: 
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