

LAW OFFICES  
**Messer, Caparello & Self**  
A Professional Association

Post Office Box 1876  
Tallahassee, Florida 32302-1876  
Internet: www.lawfla.com

May 19, 2004

**HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 040156-TP

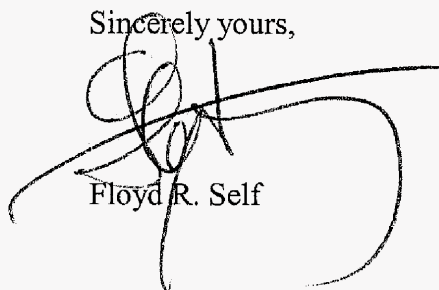
Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services, LLC, MCI WORLDCOM Communications, Inc., Metropolitan Fiber Systems of Florida, Inc., and Intermedia Communications Inc., (collectively, "MCI"), are an original and fifteen copies of MCI's Response in Partial Opposition to Verizon's Motion to Hold Proceeding in Abeyance Until June 15, 2004 in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb  
Enclosures  
cc: Parties of Record

DOCUMENT NUMBER-DATE

05762 MAY 19 04

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Arbitration of Amendment to )  
Interconnection Agreements with Certain )  
Competitive Local Exchange Carriers and )  
**Commercial Mobile Radio Service Providers in** )  
Florida by Verizon Florida Inc. )  
\_\_\_\_\_ )

Docket No. 040156-TP

Filed: May 19, 2004

**MCI's RESPONSE IN PARTIAL OPPOSITION TO VERIZON's MOTION TO HOLD PROCEEDING IN ABEYANCE UNTIL JUNE 15, 2004**

On February 20, 2004, Verizon Florida, Inc. ("Verizon") filed a petition with the Florida Public Service Commission ("Commission") seeking arbitration of unresolved issues associated with Verizon's proposal to amend its interconnection agreement with MCI and other CLECs and CMRS providers in Florida, to implement changes in law resulting from the FCC's *Triennial Review Order* ("TRO"). Portions of the new FCC rules adopted in the *TRO* were vacated on March 2, 2004 by the U.S. Court of Appeals for the D.C. Circuit in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"). Verizon now seeks to put this arbitration "on hold" while negotiations between Verizon and CLECs with respect to the vacated and remanded portions of the *TRO* take place. These negotiations were requested by the FCC and have been facilitated by the extension of the D.C. Circuit's issuance of the Court's mandate in *USTA II* until June 15, 2004.

MCI opposes Verizon's request with respect to issues that are ripe for arbitration. First, as Verizon has acknowledged, several changes of law are ripe for arbitration, notwithstanding the *USTA II* decision. These changes should be incorporated into CLEC interconnection agreements as expeditiously as possible. The *USTA II* Court's remand of some of the *TRO* rules back to the FCC and the attempt by the industry to resolve these issues in commercial negotiations does not alter the fact that other *TRO* provisions create obligations and confer rights

that must and should be implemented without regard to the uncertain status of other portions of the *TRO*. For example, issues relating to the conversion of services to UNEs and the commingling of access and UNE traffic are not affected by the ongoing commercial negotiations. Yet, under Verizon's proposal, MCI and other CLECs will be denied the benefits of those new FCC rules until later than they otherwise would obtain them, on account of the extension of the *USTA II* mandate and negotiations over the future pricing of unbundled local switching for mass market customers.

As noted above, MCI's opposition to Verizon's motion pertains only to those TRO issues that are not affected by the *USTA II* decision, and that can be immediately incorporated into amendments to existing interconnection agreements. With respect to those TRO issues that are affected by the *USTA II* decision, including the availability of switching (UNE-P) and transport as UNEs,<sup>1</sup> MCI urges the Commission, at a minimum, to order Verizon to continue to honor all of its obligations surrounding those issues in its existing interconnection agreements until all issues affecting Verizon's obligations are addressed and resolved in this global arbitration. Stated differently, the Commission should order Verizon to continue to provide switching and transport as UNEs, under existing rates, terms and conditions, until all issues surrounding Verizon's obligations are resolved by the Commission in this global arbitration.

By filing this global TRO arbitration, Verizon acknowledges that its obligations to provide unbundled local switching (including UNE-P), transport and other UNEs at rates consistent with Section 252(d) of the Telecommunications Act are governed by its interconnection agreements with CLECs. Verizon further acknowledges by its arbitration filing

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<sup>1</sup> To the extent that Verizon argues that hi-capacity loop rules are vacated by *USTA II*, any changes to such rules would need to be addressed via the interconnection agreements' change of law provisions and dealt with in this proceeding.

that its obligations in CLEC interconnection agreements continue unless and until those interconnection agreements are amended pursuant to the change of law provisions. Thus, should the *USTA II* decision become effective on June 15 or some other date, it is clear that this global arbitration is the appropriate proceeding to resolve all issues surrounding the impact of that decision on Verizon's obligations to provide UNEs including switching and transport under existing interconnection agreements. Until all of those issues are resolved by the Commission, Verizon should be ordered to continue to provide cost-based UNEs including switching and transport until further order of the Commission.

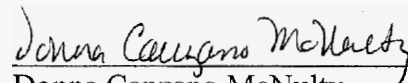
Moreover, even if *USTA II* takes effect on June 15 and the TRO no longer obligates Verizon to provide cost-based UNE switching and UNE-P to competitors, there would still be no flash cut to a regime in which Verizon has no obligation to provide switching or transport as UNEs. That is so because there are independent sources of authority -- such as interconnection agreements, merger commitments and state law -- by which Verizon would still be required to provide cost-based switching and transport.

Verizon suggests that the delay in this proceeding is warranted to allow the parties to conserve resources and to avoid "the distraction of simultaneous litigation." These justifications for delay are disingenuous. First, Verizon has to date declined to participate in open, mediated negotiations with MCI and other CLECs, so it is hard to fathom how Verizon is unable to find the resources needed to conduct this arbitration. Second, simultaneous litigation has been the rule, not the exception, since passage of the Telecommunications Act of 1996, with countless cost cases, arbitrations, section 271 proceedings, performance measures dockets, and other cases, proceeding concurrently across multiple jurisdictions. MCI is prepared to move forward without delay and there is no reason that Verizon should not also be prepared to do so.

MCI will withdraw its partial opposition to Verizon's motion if Verizon agrees to negotiate separately and file for approval interconnection agreement amendments that give immediate effect to the conversion and commingling provisions of the proposed TRO Amendment. In the alternative, MCI will withdraw its opposition to Verizon's motion if Verizon agrees to begin charging MCI UNE loop rates for special access circuits that are currently combined with special access multiplexers as well as future orders for such arrangements. MCI requests that, if Verizon does not agree to either of these alternatives,, the Commission proceed with the issues that are ripe for arbitration without delay, and establish procedural dates, such as an issue identification meeting for mid-June, so that time is used efficiently to reach resolution of these important, pending matters.

In summary, the Commission should deny Verizon's motion to hold this proceeding in abeyance with respect to issues that are not affected by *USTA II* and are ripe for arbitration. In addition, the Commission should exercise authority in this proceeding to require Verizon to continue to provide unbundled local switching and transport at existing rates, terms and conditions, as set forth in CLEC interconnection agreements. The Commission should not permit the potential vacatur of portions of the TRO to negate the ability of Florida consumers to have an effective choice of local service providers.

Respectfully submitted this 19<sup>th</sup> day of May, 2004.



Donna Canzano McNulty

MCI

1203 Governors Square Boulevard, Ste. 201

Tallahassee, FL 32301

Phone: (850) 219-1008

Fax: (850) 219-1018

Dulaney O'Roark, III

MCI

6 Concourse Parkway, Ste. 600

Atlanta, GA 30328

Phone: (770) 284-5498

Fax: (770) 284-5499

and

Floyd R. Self

Messer, Caparello & Self, P.A.

215 S. Monroe Street, Suite 701

Tallahassee, FL 32302

(850) 222-0720

Attorneys for

MCImetro Access Transmission Services,

LLC, MCI WORLDCOM Communications,

Inc., Metropolitan Fiber Systems of Florida,

Inc., and Intermedia Communications Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (\*) and/or U.S. Mail on this 19<sup>th</sup> day of May, 2004.

Lee Fordham, Esq.\*  
Office of General Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Richard A. Chapkis, Esq.  
Verizon Florida Inc.  
P.O. Box 110, FLTC0717  
Tampa, FL 33601-0110

Aaron M. Panner, Esq.  
Scott H. Angstreich, Esq.  
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.  
Sumner Square  
1615 M Street, N.W., Suite 400  
Washington, DC 20036

Vicki Kaufman, Esq.  
Joe McGlothlin, Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
117 S. Gadsden Street  
Tallahassee, FL. 32301

Eagle Telecommunications, Inc.  
5020 Central Avenue  
St. Petersburg, FL 33707-1942

Mr. Michael E. Britt  
LecStar Telecom, Inc.  
4501 Circle 75 Parkway, Suite D-4200  
Atlanta, GA 30339-3025

Donna McNulty, Esq.  
MCI  
1203 Governors Square Boulevard, Suite 201  
Tallahassee, FL 32301-2960

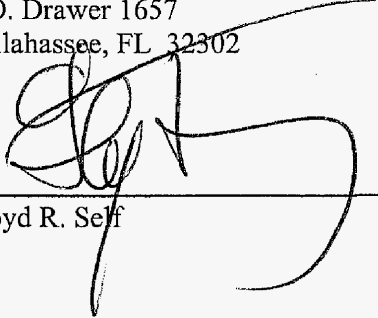
De O'Roark, Esq.  
MCI  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328

Ms. Martine Cadet  
Myatel Corporation  
P.O. Box 100106  
Ft. Lauderdale, FL 33310-0106

Susan Masterton, Esq.  
Sprint Communications Company Limited  
Partnership  
P.O. Box 2214  
Tallahassee, Florida 32316-2214

W. Scott McCollough  
David Bolduc  
Stumpf, Craddock Law Firm  
1250 Capital of Texas Highway South  
Building One, Suite 420  
Austin, TX 78746

Patrick Wiggins, Esq.  
Wiggins Law Firm  
P.O. Drawer 1657  
Tallahassee, FL 32302

  
\_\_\_\_\_  
Floyd R. Self