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March 25, 2005

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BY 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

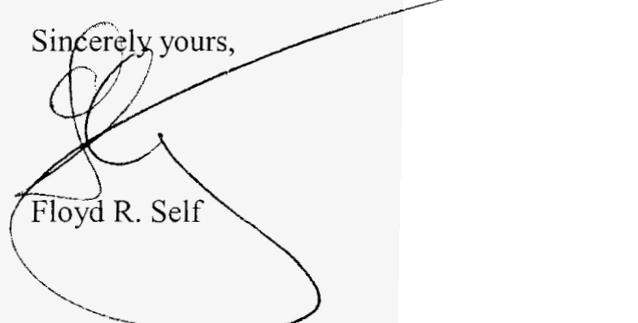
Dear Ms. Bayó:

Enclosed for filing on behalf of MCI, Inc. are an original and fifteen copies of the Rebuttal Testimony of Greg J. Darnell on behalf of MCI, Inc. 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.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

CMP
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CTR org
ECR _____
GCL 1 ERS/amb
OPC _____ Enclosures
cc: Parties of Record
MMS _____
RCA _____
SCR _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DA
02965 MAR 25

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

REBUTTAL TESTIMONY OF

GREG J. DARNELL

ON BEHALF OF MCI, INC.

MARCH 25, 2005

DOCUMENT NUMBER-DATE

32965 MAR 25 05

FPSC-COMMISSION CLERK

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Greg Darnell, and my business address is 6 Concourse Parkway,
3 Atlanta, Georgia, 30328.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by MCI, Inc. ("MCI") as Senior Manager – Regulatory Economics.

6 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**

7 A. Yes.

8

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A: The purpose of my rebuttal testimony is to respond on behalf of MCImetro Access
11 Transmission services, LLC, MCI WorldCom Communications, Inc., Metropolitan
12 Fiber Systems of Florida, Inc., and Intermedia Communications, Inc. (collectively,
13 "MCI") to the direct testimony filed by Alan F. Ciamporcero on behalf of Verizon
14 Florida, Inc in this proceeding. Specifically, I will address (i) the appropriate
15 resolution for commingling, conversions and routine network modifications; and
16 (ii) the appropriate method under which Verizon and MCI should proceed with the
17 arbitration of issues that arose from the TRO and TRRO.

18 **I. COMMINGLING, CONVERSIONS AND ROUTINE NETWORK**
19 **MODIFICATIONS**

20
21 **Q. WHAT DOES VERIZON PROPOSE FOR COMMINGLING,**
22 **CONVERSIONS AND ROUTINE NETWORK MODIFICATIONS?**

23 A. Verizon proposes to charge the new and additional rates contained in its pricing
24 attachment to its Amendment 2 for activities related to commingling, conversions
25 and routine network modifications. Verizon proposes to charge those rates on an
26 interim basis pending the completion of a cost case. (Ciamporcero Direct, p. 14).

1 **Q. DID VERIZON FILE ANY SUPPORT FOR THE NEW AND ADDITIONAL**
2 **RATES IT HAS PROPOSED IN ATTACHMENT 2?**

3 **A.** No, it did not even though it had approximately nineteen months to develop such
4 studies. The changes of law concerning commingling and conversions were created
5 by the TRO and were not appealed or affected by the ruling in USTA II. Also, the
6 law concerning routine network modifications (RNMs) was not changed by the
7 TRO or TRRO. The FCC merely clarified its previous decision on RNMs in the
8 TRO. As such, the law on these issues has not changed since August, 2003.

9 **Q. ARE ADDITIONAL CHARGES FOR COMMINGLING, CONVERSIONS**
10 **AND ROUTINE NETWORK MODIFICATIONS REASONABLE?**

11 **A.** No. Additional charges are not warranted. The Florida Commission already
12 determined the *total* element long run incremental cost (“TELRIC”) of the network
13 and processes necessary to provide telecommunications services in Verizon
14 Florida’s territory. To determine UNEs rates for Verizon Florida, the Commission
15 took its calculation of TELRIC, and divided it by total retail and wholesale
16 demand, in accordance with 47 C.F.R. 51.511(a). **The current Verizon Florida**
17 **UNE rates are therefore set to recover the *total* forward looking cost of an efficient**
18 **carrier operating in Verizon Florida territory as determined by the Commission.**
19 **The creation of new UNE rates without commensurate reductions to existing UNE**
20 **rates would result in revenues that exceed this Commission’s calculation of**
21 **TELRIC. Therefore, the creation of new UNE rates without commensurate**
22 **reductions to existing UNE rates would fail to comply with the Commission’s**
23 **calculation of TELRIC and would violate 47 C.F.R. 51.511(a).**

1 Initially in Massachusetts, as in Florida, Verizon proposed charges for
2 network modifications. The Massachusetts Department of Telecommunications
3 and Energy (Department) said that it would consider in its case whether the RNM
4 costs for which Verizon MA sought recovery were already being recovered in
5 existing loop rates. It also provided that in order to approve any charges for routine
6 modifications, Verizon MA not only would it have to demonstrate that the
7 proposed charges were just and reasonable, but also that there is no double recovery
8 of costs in any charges it seeks to impose. In that case, Verizon MA was supposed
9 to file a non-recurring cost study for the RNMs for which rates have not already
10 been set. By letter dated March 1, 2005, Verizon MA stated that it has been unable
11 to complete a cost study because a number of difficulties arose associated with
12 gathering the necessary data for the base period used in the last TELRIC study to
13 address fully the double recovery issue. (Exhibit GJD-5). Verizon MA also stated
14 that it will address the issue of those charges with its next TELRIC cost study for
15 both recurring and non-recurring UNE costs are examined in a comprehensive
16 manner. Significantly, Verizon MA stated in the letter that it:

17 will not seek through this arbitration to litigate charges for the non-
18 recurring rate elements identified in Exhibit A for which the
19 Department has not already approved rates. *Until such rates for*
20 *those elements are approved by the Department, Verizon MA will*
21 *not charge for the activities when provisioning new loops once*
22 *interconnection agreements are appropriately amended.* (emphasis
23 added).
24

25 **Q. IS THE DOUBLE RECOVERY OF COST A CONCERN IN THIS FLORIDA**
26 **PROCEEDING?**

1 A. Yes. For example, Verizon Florida’s UNE loop rates were established with an
2 assumption that no copper loops are greater than 18,000 feet long. This
3 assumption, done in the name of forward-looking requirements, was a divergence
4 from reality and increased network loop investment and thus increased recurring
5 loop rates. This assumption also decreased the forward looking expense that was
6 used to calculate the rates for routine network modifications, such as loop
7 conditioning. This is valid because if one assumes there are no loops longer than
8 18,000 feet, and recurring rates are increased, one must also assume there are no
9 costs associated with modifying loops longer than 18,000 feet. (See, Florida Public
10 Service Commission, Order, PSC-02-1574-FOF-TP, Docket No. 990649B-TP, pp.
11 260-270). Further, as stated in paragraph 640 of the TRO, “[t]he Commission’s
12 rules make clear that there may not be any double recovery of these costs (i.e. if
13 costs are recovered through recurring charges, the incumbent LEC may not also
14 recover these costs through a NRC).”

15 **Q. SHOULD ANY NEW OR ADDITIONAL CHARGES APPLY TO**
16 **COMMINGLING, CONVERSIONS OR ROUTINE NETWORK**
17 **MODIFICATIONS?**

18 A. No. Verizon has not shown that any such new or additional charges are appropriate
19 and compliant with TELRIC rules. If Verizon’s position is that such charges are
20 appropriate, it should be required to file a cost study to support its position.
21 Although Verizon has had nineteen months in which to develop a cost study,
22 Verizon has not filed one in this proceeding.

23

1

2 **II. CHANGE OF LAW LANGUAGE**

3

4 **Q. SHOULD THE EXISTING CHANGE OF LAW LANGUAGE IN THE**

5 **CONTRACT BE CHANGED?**

6

7 A. No. Verizon makes the unreasonable proposal that in the future Verizon should be

8 permitted to decide unilaterally which changes of law should be automatically

9 incorporated in the interconnection agreement, how the change of law should be

10 interpreted and which changes of law should not be automatically incorporated in

11 the interconnection agreement. (Ciamporcero, Direct, pp. 7 and 12). Verizon's

12 position essentially is that for FCC actions that eliminate unbundling requirements

13 or raise UNE rates, Verizon should be permitted to interpret the change of law and

14 incorporate it into the interconnection agreement as Verizon deems necessary. In

15 contrast, Verizon's position is that for FCC actions that increase unbundling

16 requirements, such actions should be subject to change of law negotiations.

17 Verizon wants it both ways. Under its approach, when a change of law

18 benefits Verizon, Verizon wants the ability to unilaterally implement the change

19 immediately without going through an established process for negotiations. It is

20 only when changes of law do not benefit Verizon that it believes it should be

21 obligated to proceed through the established process to negotiate contract language.

22 Having a process that allows one party to decide to implement immediately

23 changes of law that benefit itself, and to require all other changes of law to proceed

24 through a negotiated process is unreasonable. The interconnection agreement

1 should give both parties that same protection and this is exactly what the current
2 interconnection agreement change of law language provides.

3 Nothing in the FCC's TRO, TRRO, USTA II or the FCC's Interim Order
4 invalidates the change of law provisions contained in interconnection agreements.
5 Indeed, the FCC has explicitly acknowledged their applicability (TRO, ¶700).
6 Verizon's proposal is inconsistent with the scheme created by Congress to
7 implement the Telecommunications Act of 1996. Congress explicitly required that
8 Verizon's interconnection, unbundling and resale obligations be captured in
9 agreements that are negotiated or arbitrated and ultimately approved by state
10 commissions. Under Verizon's approach, interconnection agreements would have
11 no practical significance, a result clearly at odds with the 1996 Act.

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

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 A. Yes.

Bruce P. Beausejour

Vice President and General Counsel – New England

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March 1, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, MA 02110

**Re: D.T.E. 04-33 - Petition of Verizon New England, Inc. d/b/a
Verizon Massachusetts for Arbitration of Interconnection
Agreements**

Dear Secretary Cottrell:

In its December 15, 2004, *Procedural Order* in this proceeding, the Department found that the FCC's *Triennial Review Order* imposed a new obligation on Incumbent Local Exchange Carriers ("ILECs"), like Verizon Massachusetts ("Verizon MA"), to undertake certain modifications to their networks to provision UNE loops requested by CLECs. Prior to the FCC's ruling, Verizon MA did not add equipment or otherwise modify its loop facilities when doing so would be required to provision a UNE loop for a CLEC on a requested route. *Procedural Order* at 30. In the *Triennial Review Order*, the FCC resolved what it recognized was a controversial issue by obligating ILECs to perform activities on existing facilities, including adding certain equipment, to provision UNE loop orders that the ILECs would routinely undertake when provisioning orders for their own customers. *Triennial Review Order* at ¶ 32. The FCC explained that the obligation extended to "routine network modification" which meant that "incumbent LECs must perform those activities that incumbent LECs *regularly undertake for their own customers.*" *Id.*

Mary L. Cottrell, Secretary
March 1, 2005
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The Department also concluded that it would consider in this case whether the routine network modification costs for which Verizon MA sought recovery were already being recovered in existing loop rates. The Department thus found that in order for it to approve any charges for routine modifications, it required Verizon MA not only to demonstrate that the proposed charges for routine modifications are just and reasonable, but also that there is no double recovery of costs in any charges it seeks to impose for routine modifications. *Procedural Order* at 31.

Under the schedule set by the Department for this arbitration, Verizon MA was to file today its non-recurring cost study for the routine network modifications for which rates have not already been set by the Department as identified on Exhibit A of Verizon MA's Amendment No. 2 filed on December 22, 2004. Verizon MA has not, however, been able to complete that study because a number of difficulties arose associated with gathering necessary data for the base period used in the last TELRIC study to address fully the double-recovery issue. Verizon MA will address the issue of charges for network modifications with its next TELRIC study when both the recurring and non-recurring cost elements for particular UNEs are examined in a comprehensive manner. Consequently, Verizon MA 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 set approved rates. Until 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.

Sincerely,

/s/Bruce P. Beausejour

Bruce P. Beausejour

cc: Tina Chin, Hearing Officer
Michael Isenberg, Director—Telecommunications Division
Paula Foley, Esquire
Service Lists (D.T.E. 04-33)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail (*) and/or U.S. Mail on this 25th day of March, 2005.

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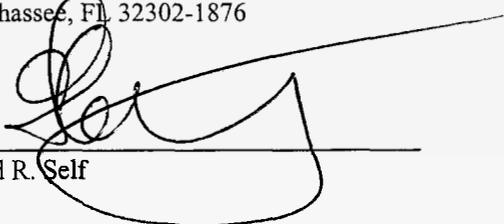
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