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June 13, 2005

**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 MCImetro Access Transmission Services, LLC are an original and fifteen copies of the Posthearing Brief of MCI in the above referenced docket. Also enclosed is a 3 ½" diskette with the document on it in MS Word 2003 format.

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,

Norman H. Horton, Jr.

for Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record



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**BEFORE THE PUBLIC SERVICE COMMISSION**

| | |
|---|---|
| In re: Petition for arbitration of amendment to interconnection agreement with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc. | Docket No. 040156-TP<br><br>Filed: June 13, 2005 |

# POST-HEARING BRIEF OF MCI

Comes Now MCImetro Access Transmission Services LLC, which is certificated to provide local exchange and long distance services in Florida and which is the successor in interest to MCI WORLDCOM Communications, Inc., Metropolitan Fiber Systems of Florida, Inc., and Intermedia Communications, Inc. (MCI), pursuant to Rule 28-106.205, Florida Administrative Code, and Order No. PSC-05-0463-PHO-TP, issued April 29, 2005, and by and through its undersigned counsel, hereby files this Post-Hearing Brief.

## INTRODUCTION

Verizon proposes to modify the existing change of law process so that *it* would be permitted to decide unilaterally which changes of law should be automatically incorporated into the interconnection agreements, how the change of law should be interpreted and which changes of law should not be automatically incorporated. 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 the same protection as exists in the current MCI/Verizon interconnection agreement.

Verizon has proposed numerous revisions to the MCI/Verizon interconnection agreement. MCI has a number of concerns regarding Verizon's specific language and positions, and MCI has set forth in detail its proposed revisions to Verizon's proposals in this proceeding. The most recent MCI proposal admitted into the record of this proceeding has been identified as Exhibit 4, Deposition Exhibit 1.

Further, the parties have stipulated that Issues 1 and 26 will be deleted from the list of issues to be resolved in this proceeding.

## ARGUMENT

**ISSUE 1: Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger Conditions?**

**MCI POSITION:** *** The parties have stipulated that Issue 1 will be deleted from the list of issues to be resolved in this proceeding. A copy of the stipulation is attached to this brief. ***

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

**MCI POSITION:** *** The Commission should maintain the change of law language that exists in MCI's current interconnection agreement with Verizon. The FCC has not invalidated change of law provisions in interconnection agreements. The effect of Verizon's proposal is to eliminate the need to negotiate contract amendments to implement changes in law that reduce its contract obligations and to implement those changes by giving notices of discontinuance to carriers. The Commission should deny Verizon's proposal. ***

The parties should negotiate (and arbitrate as necessary) any proposed changes to Verizon's unbundling obligations before Verizon may cease providing unbundled access to a UNE that was eliminated by the *TRO* or *TRRO* (or that may be eliminated by a future FCC order). The process to be used is set forth in the change of law language in MCI's interconnection agreement with Verizon and in the direct testimony of Mr. Darnell. (Tr. 197 - 198).

Verizon's proposed contract language fails to implement in detail the specific changes made by the FCC to the unbundling obligations found in Part 51 of the FCC's rules. Instead, Verizon's proposed contract language simply nullifies the current change of law provision in the parties' interconnection agreement.

Verizon makes the unreasonable proposal that in the future, Verizon should be permitted to decide unilaterally which changes of law should be automatically incorporated into the interconnection agreement, how the changes of law should be interpreted, and which changes of law should not be automatically incorporated into the interconnection agreement. (Tr. 40, 45, and 355).

Verizon's proposed "end run" around the parties' interconnection agreement is clearly inappropriate. Verizon's proposal goes well beyond implementing the changes in law mandated by the FCC in the *TRO* and *TRRO.* Verizon's proposed Amendment No. 1 would completely gut the change of law procedures established by the parties in their original agreement. Verizon basically wants the Commission to sanction a procedure that would allow Verizon, and only Verizon, to interpret federal law with respect to its obligations and then proceed to take action based on its unilateral interpretation of any changes in the law. Such a procedure would, in essence, eviscerate the contract.

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 the established process for negotiations. In contrast, when changes of law do not benefit Verizon, Verizon believes it should be obligated to proceed through the established process to negotiate contract language. (Tr. 355). Such action is unreasonable and generally inconsistent with fundamental principles of contract law.

Nothing in the *TRO, USTA II,* or the *TRRO,* invalidates change of law provisions in interconnection agreements nor mandates that the change of law provisions be modified.[1] Indeed, the FCC has explicitly acknowledged their applicability. (*TRO* Par. 700-701, *TRRO* Par. 233). Under Verizon's proposed construct, any changes in law that reduce its contract obligations can thus be implemented by giving appropriate notices of discontinuance to carriers affected by the changes. This approach flies in the face of the scheme created by Congress in the 1996 Telecommunications Act. Congress explicitly required that the ILECs' 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 statutory framework created by Congress and set forth in sections 251 and 252 of the Act.

Accordingly, the Commission should reject Verizon's proposal to modify the change of law provision which would allow it to unilaterally implement changes in federal law. The Commission should maintain the change of law language that exists in MCI's current interconnection agreement with Verizon.

[1] The Commission's decision in Order No. PSC-05-0492-FOF-TP regarding no new adds is limited to the *TRRO* March 11, 2005 delisted UNEs. The FCC did not speak to future changes of law with respect to unbundling obligations which is the disagreement with Verizon's proposed language.

**ISSUE 3: What obligations under federal law, 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?**

**MCI POSITION:** *** If the Commission accepts the stipulation and the scope of the Amendment is limited to include only Verizon's obligations under section 251 of the Act, then MCI submits that language should be included in the Amendment listing unbundled local switching, unbundled high cap loops, and unbundled dedicated transport as "de-listed" UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the *TRRO*. ***

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

**MCI POSITION:** *** The Commission should identify the wire centers where CLECs no longer have access to loops and dedicated transport. Assuming the stipulation is accepted, the Amendment should list unbundled local switching, unbundled high cap loops, and unbundled dedicated transport as "de-listed" UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the *TRRO*.***

See discussion under Issue 5.

**ISSUE 5: What obligations under federal law, 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?**

**MCI POSITION:** *** The Commission should identify the wire centers where CLECs no longer have access to loops and dedicated transport. Assuming the stipulation is accepted, the Amendment should list unbundled local switching, unbundled high cap loops, and unbundled

dedicated transport as "de-listed" UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the *TRRO.****

With respect to loops and dedicated transport, MCI has proposed contract language to implement the applicable provisions of the *TRRO* relative to the identification of wire centers where Verizon no longer has obligations to provide unbundled access to high capacity loops or dedicated transport. This language is set forth in Sections 9.3 (loops) and 10.4 (dedicated transport). (Exhibit 4, Depo. Exh. 1). MCI's proposal would have the wire centers satisfying the FCC's criteria listed in an exhibit to the Amendment. The Commission should decide in this proceeding which wire centers should be included in the list. MCI's proposed language would also provide for a process for updating the list, granting MCI reasonable discovery rights and submitting disputes over the updates to the Commission for resolution.

**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?**

**MCI POSITION:** *** If Verizon seeks to re-price existing arrangements that will no longer be subject to unbundling requirements under federal law, Verizon is required to follow the existing change of law provisions in the parties' interconnection agreement. Nothing in the FCC's recent orders, specifically the *TRO* and *TRRO*, gives Verizon license to amend the change of law provisions of the current interconnection agreement. ***.

**ISSUE 7: Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements?**

**MCI POSITION:** *** The effective date of removal of unbundling requirements should be the effective date of the amendment to the parties' interconnection agreement that is produced at the

conclusion of the change of law process mandated by the interconnection agreements as discussed in Issue 2. ***

**ISSUE 8: Should Verizon be permitted to assess non-recurring charges for the disconnection of a UNE arrangement or the reconnection of service under an alternative arrangement? If so, what charges apply?**

**MCI POSITION:** *** Verizon should not be permitted to assess its existing loop disconnect nonrecurring charges on loops that are not disconnected or on loops that are disconnected as part of a group of batch request. ***

Verizon should not be permitted to assess its existing loop disconnect nonrecurring charges on loops that are not disconnected or on loops that are disconnected as part of a group or batch request. The existing nonrecurring loop disconnect charges determined by the Commission for Verizon do not recover costs associated with mass disconnections or conversions to alternative offerings. The changes that can be expected as a result of the *TRRO* will not reflect normal, market-driven customer churn. Thus, the existing nonrecurring loop disconnect charges would be inappropriate because they do not reflect the scale and scope economies of a mass, one-time migration of loops. (Tr. 204).

The Commission should determine new and lower "batch" hot cut rates that ensure the scope and scale economies of one-time, mass migration of loops are captured by any rates assessed on such hot cuts. To the extent unbundled loops need not be disconnected by can be converted to alternative Verizon offerings, such as commercial offerings or resale, no disconnect or reconnect charges should apply. (Tr. 205, Exhibit 4, Deposition Exhibit 1, Sections 3.2 and 8).

**ISSUE 9: What terms should be included in the Amendments' Definitions Section and how should those terms be defined?**

**MCI POSITION:** *** MCI has proposed that the Amendment to the parties' interconnection agreement include definitions for a number of terms to ensure that they track federal law and to supply definitions for other terms which were omitted by Verizon. MCI's proposed definitions are found in Section 12.7 of Exhibit 4, Deposition Exhibit 1. ***

MCI has proposed that the Amendment to the parties' interconnection agreement include definitions for a number of terms. Those proposed definitions are set forth in Section 12.7 of Exhibit 4, Deposition Exhibit 1 of MCI's redlined version of Verizon's proposed contract amendment. The purposes of MCI's proposed revisions are 1) to ensure that the definitions track federal law in all respects; and 2) to supply definitions of other terms where Verizon's original draft omits a definition for a term. (Tr. 205).

**ISSUE 10: Should Verizon be required to follow the change of law and/or dispute resolution provisions in existing interconnection agreements if it seeks to discontinue the provisioning of UNEs?**

**MCI POSITION:** *** Yes. Verizon should be required to follow the change of law provisions in the existing interconnection agreements if it seeks to discontinue provisioning UNEs. ***

Verizon must be required to comply with the change of law provisions in its interconnection agreements if it seeks to discontinue the provisioning of UNEs.

Nothing in the *TRO, USTA II,* or the *TRRO* invalidates change of law provisions in interconnection agreements. Indeed, the FCC, in both the *TRO* and *TRRO* has acknowledged the continued applicability of the change of law provisions. (*TRO*, ¶700-701, *TRRO* ¶233).

This issue is also discussed in greater detail in Issues 2 and 7.

**ISSUE 11: How should any rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented?**

**MCI POSITION:** *** The interconnection agreement between Verizon and MCI provides both parties with a specific process to follow if either wants to modify the agreement in response to any change of law. The rates Verizon charges MCI should not change until an amendment to the agreement or a new agreement changing the rates becomes effective. ***

Rate changes and new charges should be implemented by the parties by negotiating (and, if necessary, arbitrating) an amendment to the parties' interconnection agreement. The party that wants to effectuate such an agreement change is required to follow the change of law provisions contained in the current interconnection agreement. (Tr. 218)

Verizon proposes that any rate increases or new charges that may be established or permitted by the FCC may be implemented by Verizon on the effective date of the rate increase or new charge by the mere issuance of a rate schedule to MCI. Verizon offers no justification for not complying with the "change of law" provision in the underlying agreement. Verizon's proposed course would have MCI be liable for charges solely upon Verizon's interpretation of how any new rates or rate increases are to be applied. Were Verizon to follow the change of law process, disputes about the proper application of new rates and rate increases would be the subject of dispute resolution.

Accordingly, if Verizon wants to effectuate changes to the rates it charges MCI, Verizon should be required to follow the existing change of law process and the rates should not change until an amendment to the agreement or a new agreement changing the rates become effective.

**ISSUE 12: Should the interconnection agreements be amended to address changes arising from the TRO with respect to commingling of UNEs with wholesale services, EELs, and other combinations? If so, how?**

**MCI POSITION:** *** MCI's position on this issue is set forth in detail in Section 4 of Exhibit 4, Deposition Exhibit 1. ***

See discussion under Issue 13.

**ISSUE 13: Should the interconnection agreements be amended to address changes arising from the TRO with respect to conversion of wholesale services to UNEs/UNE combinations? If so, how?**

**MCI POSITION:** *** MCI's position is set forth in detail in Section 5 of its redlined edits to Verizon's proposed interconnection agreement amendment found in Exhibit 4, Deposition Exhibit 1.***

The *TRO* eliminated certain restrictions that the FCC previously had placed on the ability of competitors to "commingle" or combine "loops or loop-transport combinations with tariffed special access services." The FCC modified those rules to "affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g. switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request." *TRO*, ¶ 579. Thus, Verizon is now required to permit CLECs like MCI to commingle UNEs or UNE combinations it obtains from Verizon with other wholesale facilities.

Accordingly to the *TRO,* Verizon must permit commingling and conversion *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria. *Id.,* ¶ 589; 47 CFR § 51.318. Section 4 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment sets forth MCI's proposed language for implementing these new FCC rules. (Exh. 4, Depo Exh. 1).

**ISSUE 14: Should the ICAs be amended to address changes, if any, arising from the TRO with respect to:**

**a) Line splitting;**
**b) Newly built FTTP loops;**
**c) Overbuilt FTTP loops;**
**d) Access to hybrid loops for the provision of broadband services;**
**e) Access to hybrid loops for the provision of narrowband services;**
**f) Retirement of copper loops;**
**g) Line conditioning;**
**h) Packet switching;**
**i) Network Interface Devices (NIDs);**
**j) Line sharing?**

**If so how?**

**MCI POSITION:** *** MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1. MCI takes no position regarding Issues 14(h-i). ***

MCI's proposed edits of Verizon's proposed amendment are designed to ensure that the language of the amendment tracks, in all respects, the language of the FCC's rules. MCI's proposed edits are found in Exhibit 4, Deposition Exhibit 1.

MCI's position on Issue 14(a) is set forth in Section 6 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment contained in Exhibit 4, Deposition Exhibit 1.

MCI's position on Issues 14(b) and (c) is set forth in Section 7 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment contained in Exhibit 4, Deposition Exhibit 1.

MCI's position on Issues 14(d) and (e) is set forth in Section 7.2 and 9.7.5 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment contained in Exhibit 4, Deposition Exhibit 1.

MCI's position on Issue 14(f) is set forth in Section 7.3 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment contained in Exhibit 4, Deposition Exhibit 1.

MCI's position on Issue 14(g) is set forth in Section 7.4 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment contained in Exhibit 4, Deposition Exhibit 1.

MCI's position on Issue 14(j) is set forth in Section 9.7.5 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment contained in Exhibit 4, Deposition Exhibit 1.

**ISSUE 15: What should be the effective date of the Amendment to the parties' agreements?**

**MCI POSITION:** *** The effective date of the Amendment to the parties' agreements should be the date the Commission issues a final order approving the signed amendments. ***

Generally, the practice of the Commission has been to issue an order setting forth its decision regarding disputed issues and require the parties to submit a signed agreement that complies with its decision within 30 days of the issuance of the order. The effective date of the

Amendment to the parties' interconnection agreements should be the date the Commission issues its final order approving the signed amendments.

**ISSUE 16: How should CLEC requests to provide narrowband services through unbundled access to a loop where the end user is served via Integrated Digital Loop Carrier (IDLC) be implemented?**

**MCI POSITION:** *** MCI's position is set forth in Section 7.2 of Exhibit 4, Deposition Exhibit 1. MCI believes this language is necessary to precisely track the language of the FCC's rules. ***

**ISSUE 17: Should Verizon be subject to standard provisioning intervals or performance measurements and potential remedy payments, if any, in the underlying Agreement or elsewhere, in connection with its provision of**

a) **unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;**
b) **Commingled arrangements;**
c) **Conversion of access circuits to UNEs; and**
d) **Loops or Transport (including Dark Fiber Transport and Loops) for which Routine Network Modifications are required?**

**MCI POSITION:** *** MCI takes no position on this issue. ***

**ISSUE 18: How should sub-loop access be provided under the TRO?**

**MCI POSITION:** *** MCI takes no position on this issue. ***

**ISSUE 19: Where Verizon collocates local circuit switching equipment (as defined by the FCC's rules) in a CLEC facility/premises, should the transmission path between that equipment and the Verizon serving wire center be treated as unbundled transport? If so, what revisions to the Amendment are needed?**

**MCI POSITION:** *** MCI takes no position on this issue. ***

**ISSUE 20: Are interconnection trunks between a Verizon wire center and a CLEC wire center, interconnection facilities under section 251(c)(2) that must be provided at TELRIC?**

**MCI POSITION:** *** MCI takes no position on this issue. ***

**ISSUE 21: What obligations under federal law, 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 service eligibility criteria (47 C.F.R. Sec. 51.318) of the TRO in order 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. **In the absence of a CLEC request for conversion of existing access circuits/services to UNE loops and transport combinations, what types of charges, if any, can Verizon impose?**

3. **Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the TRO'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 service eligibility criteria in 47 C.F.R. 51.318?**

**MCI POSITION:** *** MCI's position is set forth in detail in Sections 4, 5, 8, and 9 of Exhibit 4, Deposition Exhibit 1. MCI's proposal is necessary to make the Amendment precisely conform to the language of the FCC's rules. ***

With respect to Issue 20(a), Verizon has proposed language that would greatly expand upon the FCC's requirement that a CLEC self-certify compliance with the EELs eligibility criteria. (Verizon's proposed Amendment 2, § 3.4.2.3). Verizon's proposal is much more onerous than required by the FCC's rules, because Verizon would require CLECs to provide the *specific* telephone number assigned to each DS1 circuit or DS1-equivalent, the *date* each circuit was established in the 911/E911 database; the specific collocation termination facility assignment for each circuit and a "showing" that the particular collocation arrangement was established pursuant to the provisions of the Act dealing with local collocation and interconnection trunk circuit identification number that services each DS1 circuit. (Tr. 126).

Verizon clearly seeks to expand the reach of the FCC's rules. In the *TRO*, the FCC explicitly stated that "we do not establish detailed recordkeeping requirements in this Order," and further stated that "we do not adopt any of the specific documentation requirements proposed by some carriers in this proceeding." *TRO*, ¶629. Verizon clearly cannot sustain its argument that its proposed contract language on this issue is grounded in the FCC's rules or in the test of the *TRO* or the *TRRO*. The Commission should deny Verizon's proposal.

**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?**

**MCI POSITION:** *** Routine network modifications should be defined in the Amendment in the same manner as the FCC did in the *TRO*. See 47 CFR §51.319(a)(8), (e)(8).

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

**MCI POSITION:** *** The interconnection agreement, as changed by the proposed Amendment, will be the exclusive source of the parties' contract rights. ***

The interconnection agreement, as changed by the proposed Amendment, will be the exclusive source of the parties' contract rights. Verizon's proposed Section 3.4 provides that Section 3 of the Amendment is subordinate to any pre-existing and independent rights that Verizon may have under the original agreement, a Verizon tariff or SGAT, or otherwise to discontinue providing Discontinued Elements. Verizon's proposal is inappropriate. In all other respects, the proposed amendment supersedes inconsistent provisions in the original agreement. If MCI purchases UNEs out of the agreement, Verizon tariffs and SGATs are irrelevant. (Tr. 211).

**ISSUE 24: Should the Amendment set forth a process to address the potential effect on the CLECs' customers' services when a UNE is discontinued?**

**MCI POSITION:** *** MCI has proposed several contract provisions to implement the detailed requirements set forth in the FCC's new unbundling rules to govern the transition from UNE arrangements to replacement arrangements. These provisions are set forth in Exhibit 4, Deposition Exhibit 1. ***

MCI has proposed several contract provisions to implement the detailed requirements set forth in the FCC's new unbundling rules to govern the transition from UNE arrangements to replacement arrangements. (Exh. 4, Depo. Exh. 1). The section numbers for each element affected by the *TRRO* are set forth as follows:

a) Mass Market Switching MCI Redline, §8.1.1 through 8.1.4

| | |
|---|---|
| b) DS1 Loops | §9.1.2 |
| c) DS3 Loops | §9.2.2 |
| d) Dedicated DS1 Transport | §10.1.3 |
| e) Dedicated DS3 Transport | §10.2.3 |
| f) Dark Fiber Transport | §10.3.2 |

**ISSUE 25: How should the Amendment implement the FCC's service eligibility criteria for combinations and commingled facilities and services that may be required under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51?**

**MCI POSITION:** *** MCI's position is set forth in detail in Section 4 of Exhibit 4, Deposition Exhibit 1. ***

**ISSUE 26: Should the Commission adopt the new rates specified in Verizon's Pricing Attachment on an interim basis?**

**MCI POSITION:** *** The parties have stipulated that Issue 26 will be deleted from the list of issues to be resolved in this proceeding. A copy of the stipulation is attached to this brief. ***

## CONCLUSION

The Commission should reject Verizon's proposal to modify the change of law provisions in the current MCI/Verizon interconnection agreement. The law does not require it nor is it reasonable to make such a modification. Further, regarding the numerous issues identified above, MCI respectfully requests that the Commission adopt MCI's proposals.

RESPECTFULLY SUBMITTED this 13th day of June, 2005.

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April 26, 2005

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Re: Docket No. 040156-TP
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.

Dear Ms. Bayó:

The parties in the above referenced docket have reached agreement on the disposition of certain issues in the proceeding as well as a means to minimize the amount of time spent at the hearing to be held in this proceeding. Accordingly, the parties agree as follows:

1. AT&T Communications of the Southern States Inc. and TCG South Florida (together, "AT&T"); Intermedia Communications, Inc. and, MCImetro Access Transmission Services, LLC (on its behalf and as successor in interest to Metropolitan Fiber Systems of Florida, Inc. and MCI WORLDCOM Communications, Inc.) ("Intermedia and MCImetro," together, "MCI"); Sprint Communications Company Limited Partnership ("Sprint"); Florida Digital Network Inc. d/b/a FDN Communications ("FDN"); DIECA Communications, Inc. d/b/a Covad Communications Company, IDT America Corp., KMC Data LLC, KMC Telecom III LLC, KMC Telecom V, Inc. NewSouth Communications Corp., The Ultimate Connection, Inc. d/b/a DayStar Communication, Xspedius Management Co. Switched Services, LLC, Xspedius Management of Jacksonville, LLC and XO Communications Services, Inc. (formerly XO Florida, Inc. and Allegiance Telecom of Florida, Inc.) (together, the "Competitive Carrier Group" or "CCG") and Verizon Florida Inc. ("Verizon") (individually, a "Party" and collectively, the "Parties") agree that Verizon will withdraw from this arbitration its request for the

Commission to adopt the new rates proposed in Verizon's Pricing Attachment to its Amendment 2. This means that Issue 26 ("Should the Commission adopt the new rates specified in Verizon's Pricing Attachment on an interim basis?") will be deleted from the list of issues to be resolved in this proceeding. Verizon reserves its right to initiate a separate proceeding asking the Commission to set rates for any or all of the items in the Pricing Attachment. Therefore, Verizon maintains its position that the Amendment should not foreclose Verizon from advocating these new rates in such a future proceeding. This stipulation does not affect Verizon's right to continue to apply any rates the Commission has already established, including those adopted in Docket No. 990649B-TP, Order No. PSC-02-1574-FOF-TP, or where such order has not established a particular rate, the rates set forth in particular interconnection agreements. Verizon agrees that, upon the effective date of an amendment, Verizon will provide the services, elements, and arrangements covered by Verizon's proposed Pricing Attachment that are not already covered by rates the Commission has established or rates set forth in particular interconnection agreements (including routine network modifications, commingling, and conversions), to the extent required by section 251(c)(3) of the Telecommunications Act of 1996 and 47 C.F.R. Part 51 and the Commission's determinations in this arbitration, even though this arbitration will not establish itemized rates for the new services, elements, or arrangements. AT&T, MCI, FDN, Sprint, and CCG maintain their right to assert in any subsequent proceeding that Verizon is not entitled to impose the proposed, new charges in Verizon's Pricing Attachment, that the charges proposed are not reasonable, and/or that an interconnection agreement amendment is not required to implement any obligation Verizon may have to provide the service, elements and arrangements covered by Verizon's proposed Pricing Attachment (including network modifications, commingling and conversions). Verizon will not ask the Commission, in this arbitration, to order a true-up to any new rates the Commission may establish in the future for the new items covered in the Pricing Attachment, but Verizon does not waive its right to advocate such a true-up in any future proceeding to set rates for these items.

2. AT&T, MCI, FDN, and CCG agree that they will withdraw from this arbitration their request for this Commission to adopt in their arbitrated amendments rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger Conditions. This means that Issue 1 ("Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger Conditions?") will be deleted from the list of issues to be resolved in this proceeding. AT&T, MCI, FDN, Sprint, and CCG agree that they will defer any arguments they might have that Verizon has unbundling obligations, independent of sections 251 and 252, including under state law or the Bell Atlantic/GTE merger conditions, to a proceeding that may be initiated outside of this arbitration.

3. The Parties agree to stipulate all of the pre-filed testimony, exhibits, and discovery responses described in the Staff's Exhibit List into the record, without cross-examination, and also agree that the Parties' counsel will make opening statements in accordance with the criteria established by the Prehearing Officer at the Prehearing Conference on April 18, 2005.

4. No Party waives, by this Stipulation, any rights to arbitrate and/or litigate the issues and positions referenced herein, in any other proceeding, before the FCC, any state or local regulatory authority, any court having proper jurisdiction over the subject matter, or otherwise. Further, the parties agree that this Stipulation is entered only for purposes of Docket No. 040156-TP before the Florida Public Service Commission, on the basis of circumstances unique to that proceeding. Therefore, the Parties to this Stipulation may not disclose or reference it as precedent or otherwise, in a proceeding before any body of competent jurisdiction, other than the Florida Public Service Commission, for purposes related to arbitration of Verizon's unbundling rights and obligations.

Respectfully submitted,

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3. The Parties agree to stipulate all of the pre-filed testimony, exhibits, and discovery responses described in the Staff's Exhibit List into the record, without cross-examination, and also agree that the Parties' counsel will make opening statements in accordance with the criteria established by the Prehearing Officer at the Prehearing Conference on April 18, 2005.

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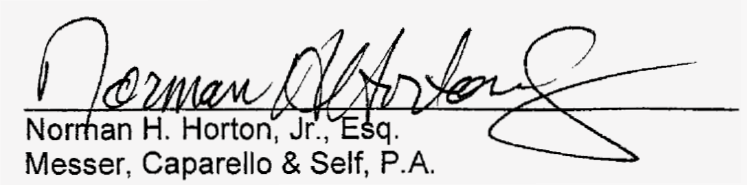

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by electronic mail on this 13th day of June, 2005.

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