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March 18, 2005

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

Re: **Docket Nos. 041269-TL; 050170-TP; 050171-TP**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of what BellSouth respectfully requests that the Commission take official recognition of the following decisions as additional support for its March 15, 2005, Motion to Consolidate and Response in Opposition to Emergency Petitions filed in the above-listed dockets; this letter serves as BellSouth's Motion for Official Recognition, pursuant to Florida Statutes, Section 120.569(2)(i). These decisions are enclosed as Exhibits A through C:

- *Ordinary Tariff Filing of Verizon New York Inc. to Comply with the FCC's Triennial Review Order on Remand, New York Public Service Commission Case No. 05-C-0203 (March 15, 2005) ("New York Order") (Attachment A).*
- *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Public Utilities Commission of California, Rulemaking No. 95-04-043 (DRAFT – March 17, 2005; Assigned Commissioner Ruling March 11, 2005) (collectively, "California Order") (Attachment B). BellSouth understands that the California Commission voted on March 17, 2005 to adopt the Assigned Commissioner Ruling of Susan P. Kennedy dated March 11, 2005.*

DOCUMENT NUMBER-DATE

02694 MAR 18 2005

COMMISSION CLERK

Ms. Blanca S. Bayo

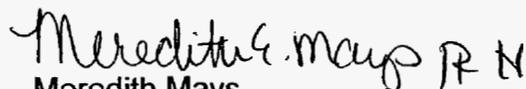
March 18, 2005

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- *Order of Dismissal and Dissolution of Preliminary Injunction, United States District Court, Eastern District of Michigan, Civil Action No. 05-70885 (March 15, 2005) ("Dissolution Order") (Attachment C).* The Dissolution Order replaces an order dated March 11, 2005, which order was attached as Exhibit 11, and referred to in n. 43 to BellSouth's March 15, 2005, Motion to Consolidate and Response in Opposition to Petitions for Emergency Relief filed in these dockets.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Meredith Mays

Enclosures

cc: Parties of Record
Nancy White

577606

**CERTIFICATE OF SERVICE
Docket No. 050170-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Federal Express this 18th day of March, 2005 to the
following:

Adam Teitzman
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Meredith E. Mays

EXHIBITS A

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on March 16, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 05-C-0203 – Ordinary Tariff Filing of Verizon New York Inc. to Comply
with the FCC'S Triennial Review Order on Remand.

ORDER IMPLEMENTING TRRO CHANGES

(Issued and Effective March 16, 2005)

BY THE COMMISSION:

INTRODUCTION

On February 10, 2005, Verizon New York Inc. (Verizon) filed proposed revisions to its P.S.C. No. 10 – Communications tariff. The changes, designed to implement the Federal Communications Commission's (FCC) Triennial Review Order on Remand (TRRO),¹ allow Verizon to discontinue providing various unbundled network elements and establish transition periods and price structures for existing services. Additionally, these tariff revisions incorporate previous Verizon commitments regarding

¹ In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 2005 FCC Lexis 912 (released February 4, 2005) (TRRO). This action stems from the D.C. Circuit's March 2, 2004 decision which remanded and vacated several components of the FCC's earlier Triennial Review Order.

unbundled network switching which were made to the Commission in the April 5, 1998 Pre-Filing Statement of Bell Atlantic- New York in Case 97-C-0271 (PFS) in connection with Verizon's application to the FCC for relief from restrictions on providing long distance services. The tariff changes had an effective date of March 12, 2005. Inasmuch as they were not suspended, they are now in effect.

The TRRO addressed several impairment standards: mass market local circuit switching, DS1, DS3, and dark fiber transport, and high-capacity loops. Mass market local switching, and therefore the unbundled network element platform (UNE-P), was eliminated as a network element with no prospective obligation by ILECs to provide new UNE-P arrangements to competitive local exchange carriers (CLECs). In addition, a transition period for migration of CLECs' embedded customer base to new arrangements was established. During the transition period, the price for existing UNE-P lines would rise to TELRIC plus one dollar or the state commission approved rate as of June 16, 2004, plus one dollar, whichever was higher. In addition, the FCC found that CLECs are impaired without unbundled access to DS1 loops unless there are four or more fiber-based collocators and at least 60,000 business lines in the wire center. CLECs are impaired without unbundled access to DS3 loops unless there are four or more fiber-based collocators and at least 38,000 business lines in the wire center. Finally, CLECs are impaired without unbundled access to DS1 transport, except on routes connecting a pair of wire centers that both contain at least four fiber-based collocators or at least 38,000 business lines. The impairment standard for DS3 and dark fiber transport between wire centers was at least three fiber-based collocators or at least 24,000 business access lines. Transition periods were set for CLECs losing unbundled access to DS1 and DS3 and dark fiber transport and loops. The FCC also found no impairment as to dark fiber loops.

In addition to the tariff filing, on February 10, 2005, Verizon posted an industry notice on its website informing CLECs of its planned TRRO implementation and advising CLECs that no orders for new facilities or arrangements delisted as unbundled network elements by the FCC would be processed on or after March 11, 2005. CLECs

without alternative arrangements in place before March 11, 2005 would pay transitional rate increases allowed by the FCC for existing lines for delisted network elements. Verizon also offered an interim UNE-P replacement services agreement and, in its tariff, described below, committed to continue providing UNE-P in Zone 2 in New York pursuant to the PFS.

On February 25, 2005, comments were filed on the revised tariff, and related matters, by a coalition of CLECs: Allegiance of New York; A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation; BridgeCom International, Inc.; Broadview Network, Inc.; Trinsic Communications, Inc.; and XO New York, Inc. (Joint CLECs). A petition for emergency declaratory relief was filed on February 28, 2005 by MCI Metro Access Transmission Services (MCI Petition), which was subsequently withdrawn on March 10, 2005.² Comments on the tariff filing were also filed by Conversent Communications of New York, LLC (Conversent) on March 2, 2005. Verizon filed reply comments in support of its tariff on March 8, 2005. Additionally, on March 9, 2005, Covad Communications Company and IDT America Corp. (Covad) filed joint comments in support of the MCI Petition, as did AT&T Communications of New York, Inc., Teleport Communications Group, Inc., TC Systems, Inc., Teleport Communications New York, and ACC Corp. (AT&T).³ Finally, on March 9, 2005, the Joint CLECs filed a Response to the Verizon Reply.

In this order we review the proposed tariff changes and filed comments. We first consider the tariff changes themselves and conclude that several modifications

² Although MCI withdrew its petition for emergency declaratory relief, Covad and IDT America filed comments in support of that petition on March 9, 2005. Therefore, the issues raised in the MCI Petition will be considered.

³ The Joint CLECs filed their comments in Case 04-C-0420 and MCI filed its comments in Case 04-C-0314. AT&T and Covad filed in support of the MCI Petition. As all comments deal, in pertinent part, with the tariff filing at issue in this case, the comments have been construed as also being filed in Case 05-C-0203.

are required. Apart from those modifications, we believe the tariff properly implements the TRRO. We also consider issues raised as to whether Verizon's tariff properly implements the PFS, and conclude that it does. Finally, we consider how the tariff changes affect Interconnection Agreements.⁴

TARIFF FILING

Local Switching and UNE-Platform Service

The TRRO allows for the phase-out of local circuit switching as an Unbundled Network Element (UNE) required to be provided by incumbent local exchange carriers. Thus, UNE-Platform service (UNE-P)⁵ would no longer be available. Verizon's tariff revisions give CLECs one year (until March 11, 2006) to transition existing UNE-P customers to their own facilities or make other arrangements for local circuit switching. CLECs will pay the state approved Total Element Long Run Incremental Cost (TELRIC) rate as of June 15, 2004 plus one dollar. However, Verizon will continue to provide UNE-P arrangements to CLECs through December 21, 2007 in Zone 2 wire centers pursuant to the PFS.⁶ New orders for UNE-P service will be accepted through December 21, 2005 for these wire centers only. After March 11, 2006, the rate for service in Zone 2 wire centers will transition to Verizon's applicable resale rate.

⁴ Although issues were raised regarding state unbundling authority and the effect of the Merger Order, we decline to deal with them in this tariff proceeding designed to implement the TRRO.

⁵ UNE-P is a combination of network elements that includes local circuit switching, a switch port, and a subscriber loop.

⁶ Zone 2 wire centers are those located in less densely populated areas and are identified in Appendix A to P.S.C. No. 10 – Network Elements tariff. The provision of local circuit switching in these wire centers is still subject to the FCC's four line carve out rule, which allowed Verizon to discontinue switching service for four lines and above (at a single customer location) from certain central offices in New York City.

Pricing proposal for Zone 2

Verizon's tariff provides that the PFS transitional pricing for Zone 2 wire centers will be in effect until March 10, 2006. During the interval of March 11, 2006 to December 21, 2007, the tariff indicates the price will be increased over time to rates equivalent to resale rates. However, no proposal for incremental price increases has been submitted. To ensure sufficient clarity exists for this transition, Verizon is required to file its proposal for price increases to resale rates for the Zone 2 wire centers by April 30, 2005.

Adding features

Joint CLECs object to Verizon's tariff on the grounds that it does not allow CLECs to submit feature change orders for their embedded UNE-P customers. Verizon responds that it does not object to making such changes, for as long as it is required to continue to maintain embedded platform arrangements. Verizon also published this clarification in "TRRO UNE-P Mass Market Discontinued Facilities Frequently Asked Questions" posted on its website. Thus, since the tariff does not preclude feature changes, no tariff revision is required.

Four Line Carve Out

Under the Triennial Review Order (TRO)⁷, the FCC permitted ILECs to discontinue providing UNE-P for business customers with four or more lines (four line carve-out customers) or enterprise switching customers (those with local circuit switching

⁷ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-146, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶497 (footnotes omitted) (2003) ("TRO"); Errata, 18 FCC Rcd 19020 (2003), vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004), cert. denied 125 S.Ct. 313, 316, 345 (2004).

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at DS1 and higher capacity levels). Last year, Verizon filed tariff revisions indicating its intent to bill for those services in a limited number of central offices at resale rates via a surcharge on tariffed TELRIC rates. However, Verizon chose not to file the rate for that surcharge for inclusion in its tariffs. Although the Commission is investigating whether the surcharge should be tariffed, it has permitted Verizon to depart from TELRIC pricing.

The Joint CLECs assert that because Verizon has not withdrawn its tariff for UNE-P service at TELRIC rates, enterprise switching and four line carve out customers are included in the embedded base of customers as of the date the TRRO was issued. Thus, the Joint CLECs argue that under the TRRO, CLECs are entitled to ongoing provision of this service until March 2006 at TELRIC plus \$1, irrespective of the provisions of the earlier TRO order.

Verizon responds that switching for enterprise and four line carve out customers was eliminated as a UNE by the FCC, the courts and this Commission prior to the effective date of the TRRO. Tariff provisions were allowed to go into effect that removed the obligation to provide this UNE.

The FCC permitted ILECs to discontinue providing local circuit switching to enterprise and four line carve out customers at TELRIC rates. In Case 04-C-0861, the Commission is investigating the process by which Verizon revised its rates for a limited number of enterprise and four line carve out customers by imposing a surcharge without filing the rate in its tariff. While the process that Verizon utilized is under review, that does not require us to frustrate the clear goal of the FCC to remove the obligation to provide such services at TELRIC rates. Thus, the Joint CLECs argument is rejected.

DS1 and DS3 Loops and Transport

With respect to dedicated transport, Verizon's tariff provides that DS1 (24 voice channels per line) dedicated transport will no longer be available as a UNE at TELRIC prices where the connected wire centers (building where Verizon terminates the local wire loop) both have at least four fiber collocators or at least 38,000 business access lines. Additionally, DS3 (672 voice channels per line) and "dark fiber" (fiber that

has been lit by the CLEC using its own electronics, rather than the incumbent) transport will no longer be available as a UNE where the wire centers have at least three fiber collocators or at least 24,000 business lines. CLECs have until March 11, 2006 to transition existing lines from DS1 and DS3 dedicated transport, and until August 11, 2006 to transition from dark fiber transport. During the transition CLECs will pay 115% of the state approved TELRIC rate available on June 15, 2004.

Verizon's tariff provides that DS1 high-capacity local loops will no longer be available as a UNE at TELRIC prices where the local area is served by a wire center having at least 60,000 business lines and at least four fiber collocators. DS3 loops will no longer be available as a UNE where the wire center serving area (the area of a local exchange served by a single wire center) has at least 38,000 business lines and at least four fiber collocators. Dark fiber loops will no longer be available as a UNE, irrespective of the number of lines and collocators in the wire center. CLECs have until March 11, 2006 to transition from DS1 and DS3 UNE loops and until September 11, 2006 to transition from dark fiber UNE loops. During the transition CLECs will have to pay 115% of the state approved TELRIC rate available on June 15, 2004.

Negative construction

The Joint CLECs submitted specific objections to the language in Verizon's tariff revisions with respect to DS1 and DS3 loops and transport. For example, it took issue with language that identified when Verizon was not obligated to provide unbundled access to DS1 loops. The FCC rules were written in the affirmative, thus the CLECs argue that Verizon's tariffs should also be written in the affirmative to "define the rights of the CLEC that continue to obtain access to loops and transport". (Joint CLECs at p. 25.) Because the tariffs are written in the negative, identifying the circumstances under which Verizon is not obligated to provide various elements, the Joint CLECs contend that the CLECs' entitlement is left unclear.

Verizon's tariff identifies its obligations under the TRRO to provide UNEs in light of the applicable restrictions established by the FCC. That Verizon chose to state the obligation in the negative does not prejudice the CLECs. The CLECs failed to indicate any specific obligation for providing DS1 and DS3 loops and transport that the tariff would allow Verizon to evade. Verizon's tariff reasonably reflects the obligations set forth in the TRRO.

Certification of ineligible wire centers

Under the FCC's TRRO, CLECs are required to determine whether they can continue to place orders for loop or transport UNEs at TELRIC. Verizon has filed lists with the FCC that designate which wire centers meet the various criteria identified in the TRRO in order for CLECs to determine which dedicated transport and high-capacity loops will remain eligible as UNEs. Verizon's tariff requires CLECs, prior to submitting a request for UNE services, to review the lists in making their determinations as to whether the wire centers involved meet the applicable criteria for continued UNE eligibility. In the event an order is submitted for a location not eligible for the requested UNE (dedicated transport or high-capacity loop), the tariff provides that Verizon will institute the applicable dispute resolution process.⁸ Under most of the interconnection agreements currently in effect, it is anticipated those disputes would be submitted to this Commission for resolution.

Conversent objects because Verizon does not include the list of wire centers for UNEs which are still available in the tariff. They contend that this does not meet the requirements of Public Service Law '92, which requires filing rates, charges,

⁸ The TRRO makes clear that an ILEC challenging a UNE request "must provision the UNE and subsequently bring any dispute regarding access to the UNE before a state commission or other appropriate authority". Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand 2005 FCC Lexis 912, ¶234 (issued February 4, 2005).

terms, and conditions of the services Verizon provides. Additionally, the Joint CLECs contend that the list of ineligible wire centers that Verizon filed with the FCC must be vetted by the applicable regulatory authority and that Verizon must demonstrate changes in facts prior to amending such lists.

Verizon's response contends that Public Service Law does not preclude references to information available elsewhere and that it was not required to include the list of wire centers not qualifying for UNEs in its tariff. It analogizes to methods and procedures, as well as business rules, which CLECs are able to obtain via Verizon's website.

To ensure adequate notice and process, we will direct Verizon to file the list of exempt wire centers as part of its tariff. Under the TRRO, once a wire center is determined to be a Tier 1 wire center and thus exempt from provision of DS1 service as a UNE, that wire center is not subject to reclassification as a Tier 2 or Tier 3 wire center in order to make DS1 UNEs available at a later date. This permanent classification calls for the review and approval process inherent in tariffing. Also, wire centers can be added to the list or upgraded to a different classification. Without the official records provided through tariffing, effective dates could be questioned. If the affected wire centers are included in the tariff, then there will be specific effective dates that can be used in order to resolve disputes that are allowed under the TRRO. These could result in true-ups that can be done more efficiently with "bright line" effective dates.

Verizon will be required to amend its tariff to include the list of wire centers which no longer qualify for certain UNEs. The supporting documentation also should be provided to Staff for review and analysis.⁹ Verizon, of course, can request confidential treatment under the Commission's rule. Any subsequent changes to the list

⁹ Documentation includes but is not limited to the number of business lines under the FCC's ARMIS reports and wire center inspection results.

should also be provided to the Commission via tariff filings with supporting documentation.

The Joint CLECs argue that the revised tariff provides Verizon a conclusive right to determine whether to fill a CLEC order for service, which goes beyond the FCC's order. It contends that the FCC clearly instructed CLECs to perform due diligence before submitting an order for service, but that the CLEC can weigh all evidence including that which contradicts Verizon's list of exempt wire centers.

Verizon contends that the issue is not whether it will process an order submitted by a CLEC, but whether a CLEC can submit an order in bad faith for a wire center that does not meet the objective criteria established in the TRRO. Verizon notes that it has made the lists publicly available and requested that any errors be brought to its attention.

We do not agree with the Joint CLECs' assessment regarding an ILEC's responsibility to provide access to a UNE when the order is submitted by a CLEC. A CLEC will not be considered to have performed its due diligence if it submits an order for a wire center that is on the Commission approved tariff list of exempt wire centers. Thus, we will not require a tariff amendment requiring Verizon to process orders that clearly conflict with the approved tariff list of exempt wire centers.

Backbilling

The Joint CLECs object to the tariff provision that, in the event the applicable dispute resolution process found a CLEC was not entitled to a UNE at a specific location, would allow Verizon to backbill for such service. The CLEC would be billed from the provision date of the service for the difference in price between the UNE rate and the rate that would otherwise be charged for the use of such element. The Joint CLECs contend that the TRRO does not provide for such backbilling and the applicable rate is not set forth in the tariff.

Verizon responds that backbilling would only be implemented after the appropriate dispute resolution process has found the CLEC was not entitled to UNE rates

in the wire center. It notes that the rate would be the applicable charge for a non-UNE equivalent for the transport or loop facility ordered.

The CLECs are correct that the TRRO does not speak to the ability of ILECs to bill for the foregone charges when a CLEC mistakenly requests access to a UNE in an ineligible rate center. However, the TRRO does not prohibit such a provision. Without such backbilling, there is little incentive for a CLEC to refrain from placing orders in an ineligible rate center. It is reasonable for Verizon to assert its right to backbill for services for which it would otherwise be entitled to charge a higher price. However, it is expected that backbilling can be mostly avoided by having Verizon's list of exempt wire centers vetted through the tariff process.

Post-transition arrangements

Verizon's tariff requires CLECs to place orders for conversion or discontinuance of UNEs in sufficient time according to applicable intervals. These intervals are referenced in the Carrier-to-Carrier guidelines that are available to all CLECs, and links to the appropriate information were provided in Verizon's January 6, 2005 compliance filing in Case 97-C-0139.

The CLECs argue that Verizon's tariff burdens CLECs in requiring them to place orders to transition services from UNEs early enough to ensure that orders can be fulfilled by the end of the FCC mandated transition periods. It contends more appropriate language would require Verizon to process orders placed for discontinuance or conversion of UNEs within the transition period and to continue TELRIC rates if Verizon is unable to fully process the order before the end of the applicable transition period. The CLECs also argue for grooming plans and efficient processes for conversions to be developed under interconnection agreements.

Verizon's response notes that its tariff prevents CLECs from extending the TRRO mandated transition periods. It points out that the tariff provides that if an order is placed with the applicable provisioning intervals, the service will not be disconnected.

The FCC set a transition period for all the tasks, both CLEC and ILEC, necessary for an orderly transition to be completed.¹⁰ The TRRO does not allow a carrier placing an order one day before the end of the transition period to continue to get TELRIC pricing for the service because the ILEC was unable to process the order. The grooming plans and efficient processes for conversions under interconnection agreements recommended by the CLECs are not precluded by Verizon's tariff. However, if an order were placed for conversion of the service prior to the end of the transition period, but not within the applicable provisioning interval, requiring Verizon to continue to provide the service at resale rates would seem a reasonable alternative to disconnection. If no order is placed within the transition period, disconnection, as set forth in the tariff, is reasonable. Therefore, Verizon is directed to amend its tariff to allow for conversion to analogous service at the applicable resale rate in the event an order for conversion is placed before the end of the FCC mandated transition period, even if the order cannot be completed within the transition period. This is analogous to the conversion process for interoffice transmission facilities under an earlier Triennial Review Order that Verizon proposed in Case 03-C-1442.

Dark fiber loops

The Joint CLECs submit that Verizon's tariff should be amended to recognize Verizon's obligation to perform network modifications to provision DS1 and DS3 loops to include activating dark fiber strands under the same circumstances that Verizon would perform the work for its customers.

¹⁰ TRRO, ¶¶142-145, 195 -198.

The Commission's February 9, 2005 order in Cases 04-C-0314 and 04-C-0318 directing Verizon to perform routine network modifications is sufficient to address this concern. In that order the Commission refrained from providing an exhaustive list of work that falls within the parameters of routine network modifications. Verizon is already on notice that it must perform such work for CLECs if it does so for its own customers. Thus, the Joint CLECs' contentions are not persuasive.

DS1 transport caps

The Joint CLECs and Conversent contend that Verizon's tariff unfairly restricts the number of DS1 circuits to 10 unbundled DS1 loops. They cite the TRRO provision that indicates that the 10-loop cap is only applicable where the FCC found non-impairment for DS3 transport.¹¹ Verizon responds that the TRRO and its attached regulation are inconsistent. We read the TRRO as a whole as intending to apply the 10-loop cap only where the FCC found non-impairment for DS3 transport. That is the most logical and reasonable interpretation of the FCC's action. Verizon is directed to modify its tariff accordingly.

Conclusion

The changes Verizon has made to its tariff implement the FCC's designated transition periods and price structures for dedicated transport, high capacity loops, and local circuit switching. In addition, Verizon has incorporated the additional commitments it made to the Commission to provide unbundled local circuit switching in the PFS, which go beyond the requirements of the TRRO. The proposed tariff revisions are reasonable and customers have been notified. Therefore, the tariff revisions listed on Appendix A should continue in effect. Verizon is directed to amend its tariff to allow for conversion of DS1 and DS3 loop and transport services to analogous services at the applicable resale rate in the event an order for conversion is placed before the end of the

¹¹ TRRO, ¶ 128.

FCC mandated transition period, even if the order cannot be completed within the transition period. Further, Verizon should amend its tariff to include the list of wire centers which no longer qualify for certain UNEs. The supporting documentation also should be provided to Staff for review and analysis. Verizon should amend its tariff concerning the 10-loop cap for DS1 services. Lastly, Verizon is required to file by April 30, 2005 its proposal for price increases to resale rates for the Zone 2 wire centers.

PRE-FILING STATEMENT

Background and Comments

On April 6, 1998, in connection with its application to provide in-region long distance service, Bell Atlantic-New York (hereinafter Verizon), made additional commitments to the Commission, beyond those required by section 271, to ensure competition in New York.¹² With respect to combining network elements, Verizon committed to offer UNE-P for specified duration periods and “until such methods for permitting competitive LECs to recombine elements are demonstrated to the Commission. This commitment, when met, will permit competing carriers to purchase from Bell Atlantic-New York and connect all of the pieces of the network necessary to provide local exchange service to their customers.”¹³ In order to define methods available to CLECs to combine elements, the Commission instituted a proceeding.¹⁴

¹² The major areas addressed were: (1) combining network elements; (2) terms and conditions enabling CLECs to connect their facilities to Verizon’s; (3) testing Verizon’s Operations Support Services (OSS) for pre-order, ordering, billing, customer migration, order changes, and maintenance and repair performance; and, (4) establishing an incentive system to maintain competition and service performance.

¹³ Case 98-C-0690, Combining Unbundled Elements, Order Initiating Proceeding (issued May 6, 1998).

¹⁴ Id.

Joint CLECs maintain that Verizon's Pre-filing Statement (PFS) imposes additional UNE-P provisioning obligations on Verizon in New York despite the TRRO's discontinuation of Verizon's section 251 obligations regarding UNE-P. Joint CLECs assert that the TRRO tariff filing does not reflect those PFS obligations which Joint CLECs maintain consist of providing UNE-P at TELRIC or cost-based rates until December 22, 2005 in Zone 2 and during a 2-year transition at a Commission approved increased price once the Commission finds that two conditions have been met: (1) assembly or a reasonable process enabling CLECs to combine unbundled loops; and, (2) a seamless and ubiquitous hot cut process. According to Joint CLECs, if the Commission found that both conditions had been met before December 22, 2003 in Zone 1 and December 22, 2005 in Zone 2, then the two-year transition for Zone 1 would end on December 22, 2005 and on December 22, 2007 for Zone 2. However, they claim the assembly and hot cut pre-transition conditions have not been met and, therefore, Verizon must continue to provide UNE-P at cost-based TELRIC rates in New York pursuant to the terms of the PFS.

In addition, Joint CLECs contend that the PFS requires Verizon to accept orders for new UNE-P lines after March 11, 2005 and until the two-year transition has ended. The TELRIC plus \$1 dollar tariffed rate violates the terms of the PFS, according to Joint CLECs, because it is not a Commission approved transitional rate.

The MCI Petition states that irreparable harm will occur if new UNE-P orders are not provisioned after March 10, 2005, and that the PFS requires Verizon to provide UNE-P in New York regardless of Verizon's federal obligations. The MCI Petition asserts that Verizon has not met the assembly condition, and therefore, the two-year transition has not begun. The MCI Petition further asserts that this failure was acknowledged by the Commission in Case 98-C-0690 when the Commission found "that only in conjunction with the continued provision of UNE combinations by Verizon pursuant to the Pre-filing Statement did Verizon provide recombination methods sufficient to support foreseeable competitive demand."

Verizon maintains that its TRRO tariff filing regarding PFS terms and rates is consistent with its PFS obligations. Verizon, the Joint CLECs and MCI agree that the PFS duration period for Zone 1 ended on December 21, 2003 and will end December 21, 2005 for Zone 2. However, Verizon contends that the transition period for each zone began automatically after the duration period ended, while Joint CLECs state that the beginning of the PFS transition period is contingent upon a Commission determination that two preconditions, assembly and hot cuts, have been fulfilled. As authority for a transition automatic start, Verizon cites a Commission Notice Requesting Comments in Case 04-C-0420 which describes Verizon's continuing obligation to provide UNE-P beyond the duration period: "[a]t the end of the duration period Verizon committed to continue the availability of the platform for an additional two years, albeit at a price that would increase to substantially the cost of resold lines."

Verizon asserts that no new customers may be added once the duration period has ended, that the PFS silence regarding new platform obligations, combined with fulfillment of the hot cut and assembly conditions, precludes any interpretation except that the transition period was intended to provide time for CLECs to find alternative arrangements for existing UNE-P customers.

As to meeting the PFS assembly and hot cut conditions, Verizon maintains that it has met both conditions and that Commission certification of that satisfaction, effected by a formal approval process, is not required by the PFS. According to Verizon, it has amply demonstrated the performance of both conditions to the Commission's satisfaction.

The price for new and existing UNE-P arrangements in Zone 2 is set at TELRIC plus one dollar during the remainder of that PFS duration period. Verizon states this FCC transition price is consistent with PFS obligations because the PFS requires UNE rates set by the Commission in accordance with federal law. According to Verizon, TELRIC plus one dollar is the price for UNE-P after March 11, 2005 until March 11, 2006.

Compliance With Assembly Condition

In Opinion 98-18,¹⁵ the Commission examined Verizon's Pre-filing Statement combination obligations. The Commission concluded that "[a]fter exhaustive analysis of the strengths and shortcomings of these options [referring to methods CLECs could use to recombine elements themselves], consideration of competitors' proposals, and collaboration, we are requiring the provision of every technically feasible method available today. These methods, with certain modifications, are sufficient to support foreseeable competitive demand in a reasonable and non-discriminatory manner, in conjunction with its provision of element combinations pursuant to the Pre-Filing."¹⁶ Verizon subsequently implemented its Assembly Products in tariffs, which were approved. Opinion No. 98-18 and Verizon's Assembly Products tariff were designed to permit CLECs to assemble or combine a Verizon loop and Verizon port (i.e., switch). Although the Commission's finding in Opinion No. 98-18 recognized that the assembly options would be offered in conjunction with the UNE platform, we find no reason to conclude that Verizon's assembly offerings would not continue to enable carriers to combine the Verizon link and port themselves. We also note the availability of commercial agreements for UNE-P replacement services for new UNE-P customers.¹⁷

In their March 9 Response, the Joint CLECs claim that Verizon has no functioning method that enable CLECs to combine a Verizon loop with a Verizon port as required by the PFS. The Joint CLECs claim that Verizon's assembly product focuses on combining a Verizon loop with a CLEC switch, not a Verizon switch. Such allegations

¹⁵ Opinion No. 98-18, Opinion and Order Concerning Methods for Network Element Recombination (issued November 23, 1998).

¹⁶ Id. at 3.

¹⁷ For example, see MCI's March 10, 2005 letter withdrawing its Petition for Emergency Declaratory Relief.

were made in the Joint CLEC original filing and accompanied by an offer of affidavits to demonstrate the alleged lack of assembly. The Joint CLECs did not, however, supply facts upon which we could conclude that Verizon does not provide a functioning method of assembly. In view of Opinion No. 98-18, which examined methods by which Verizon would combine Verizon loops and Verizon ports, and the Verizon Assembly Products tariff, which has been in effect since January 2001, conclusory contrary statements by the Joint CLECs are simply not adequate to demonstrate that Verizon has failed to provide a product that CLECs may or may not demand.

Compliance With Hot Cut Condition

Joint CLECs suggest that compliance with the PFS hot cut condition might be premised upon Commission review of Verizon's hot cut processes in Case 02-C-1425 with a concomitant transition date coinciding with issuance of the Order in August 2004. Verizon states that Commission review of hot cut processes in Case 02-C-1425 was just one determination regarding the efficacy of the hot cut process. In 2002, the Commission reviewed Verizon's hot cut process and concluded that the process was effective and "well-refined."¹⁸ In addition, Verizon indicates Carrier-to-Carrier metrics demonstrate high levels of performance regarding Verizon's hot cut process¹⁹ and ISO 9000 certification demonstrating conformance with best practices.²⁰

We conclude that Verizon has had, since the end of the Zone 1 duration period in December 2003, a reasonable hot cut process. The loop migration process has performed well and has met our metrics. We find Verizon has met its PFS commitment for hot cuts.

¹⁸ Case 02-C-1425, Order Instituting Proceeding (issued November 22, 2002).

¹⁹ See monthly C2C reports in Case 97-C-0139.

²⁰ Case 02-C-1425 Hearing Record, Tr. 53-55.

Demonstrated compliance with the assembly and hot cut conditions resolves the issue of Commission certification that the standards have been met and the timing of the transition period in Zones 1 and 2. Therefore, the two-year transition period in Zone 1 will end on December 21, 2005 and the two-year transition period in Zone 2 will end on December 21, 2007.

Transition Availability of UNE-P for New Customers

Joint CLECs maintain that the PFS' silence regarding availability of UNE-P for new customers during the two-year transition argues for an interpretation allowing CLECs to order new UNE-P arrangements while transitioning from the platform. Verizon maintains that the same silence precludes such interpretation.

There is no express term in the PFS authorizing CLECs to order new UNE-P services during the transition period. To imply such a term is unreasonable given the context and language of the PFS and that the transition period was intended to facilitate a smooth process for migrating existing UNE-P customers from the Verizon provided regulated platform. Adding customers while that transition is underway could undermine efforts for that smooth and seamless transition. Therefore, new UNE-P arrangements will not be available in Zone 1 pursuant to the PFS where the transition period ends on December 21, 2005 and will not be available in Zone 2 once the transition period begins on December 22, 2005.

Joint CLECs point out in their March 9 Response that Verizon's argument that the PFS doesn't apply to new customers during the two year PFS transition period is inconsistent not only with the PFS but with Verizon's own interpretation of the PFS. They note that in April 2004, in response to the Commission's March 29, 2004 Notice in Case 04-C-0420 (March 29 Notice) in connection with the USTA II vacatur of the FCC's Triennial Review Order, Verizon stated that the PFS transition charge for UNE-P should be implemented as a separate rate element to be applied to any new or existing UNE-P arrangement.

The key issue raised by the March 29 Notice was the establishment of a surcharge and not the more refined point of whether new customers would be served after

the expiration of the duration period. This plus the fact that the surcharge levels being considered in the March 29 Notice were higher than the FCC's \$1 UNE-P surcharge, lead us to conclude that Verizon's April 2004 statement expresses a willingness to offer a higher rate for new customers, but is not a definitive statement concerning the scope of the PFS. Moreover, in its April 2004 pleading Verizon points to other PFS language indicating that its suppression of access charge billing will continue for *existing platforms after the expiration of the availability of new platforms*. ~~This language more directly~~ supports the distinction between the broad UNE-P commitment during the duration period and the more limited (i.e., existing customers only) commitment during the two year transition period following the duration period.²¹

In short, the PFS both expressly obligates Verizon to provide UNE-P for the four and six year duration periods²² and describes the transition period as the period after the expiration of the availability of new platforms.²³ For all the reasons set forth above we reject the Joint CLECs' interpretation.

Transition Pricing

Zone 2

Joint CLECs claim that they are entitled to TELRIC or cost-based pricing in Zone 2 through December 21, 2005, the duration period for that zone. Verizon points to the fact that the Zone 2 duration period and FCC transition period run concurrently until December 21, 2005 and that the PFS transition period for Zone 2 runs concurrently with the FCC transition period after December 21, 2005 until March 11, 2006. Verizon

²¹ Even if the Joint CLECs' view of the scope of the PFS obligation were accepted, because the TRRO eliminated Verizon's obligation to provide new UNE-P arrangements, they would not be entitled to the FCC surcharge (TELRIC plus \$1) for new UNE-P customers.

²² Pre-filing Statement pp. 8-9.

²³ *Id.* at p. 8.

has filed a proposed FCC TRRO transition rate of TELRIC plus \$1. After the FCC UNE-P transition ends on March 11, 2006, the price for UNE-P arrangements will increase to resale rates by December 21, 2007, the end of the transition period for Zone 2. This increase in price during the transition is consistent with the PFS.

Contrary to Joint CLECs' claim, the PFS does not entitle CLECs to TELRIC rates. No PFS citation has been offered to support the contention that UNE-P under the PFS can only be priced at TELRIC rates. When the PFS was filed in April 1998, the FCC's TELRIC rule was not in effect because it had been overturned by the 8th Circuit. We find that the \$1 increase during the remainder of the duration period in Zone 2 is reasonable.

Zone 1

The two-year transition period in Zone 1 ends on December 21, 2005 and runs concurrently with the FCC transition period, which begins on March 11, 2005. Verizon, therefore, will apply the FCC TRRO transition rate of TELRIC plus \$1 during that period and through the entire FCC transition period, rather than a higher PFS rate. After the FCC UNE-P transition ends, any remaining UNE-P arrangements will be discontinued or converted to alternative arrangements. Verizon's proposed increase in price during the Zone 1 transition is consistent with the PFS, which specifies that increases in transition rates are subject to Commission approval. The increased rate for the remainder of the transition period in Zone 1, TELRIC plus \$1, is reasonable.

SECTION 271

Covad and IDT America maintain that Verizon has an obligation to continue providing access to UNE-P, apart from TRRO determinations, and cite 47 U.S.C. section 271 as authority. Although they admit that the FCC declined to require combining network elements no longer impaired pursuant to 47 U.S.C section 251, the MCI Petition contends that 47 U.S.C. section 202's nondiscrimination provisions provide a basis for combining non-impaired network elements since allowing only Verizon to

offer customers bundled switching would discriminate against CLECs. Joint CLECs also contend that Verizon's section 271 obligations remain despite the FCC's non-impairment findings and that it is essential that the PFS assembly condition be met in order to combine network elements.

In addition to jurisdictional arguments, Verizon cites the TRRO provision in which the FCC "declined to require BOCs, pursuant to section 271, to combine network elements that are no longer required to be unbundled under section 251."²⁴

Given the FCC's decision to not require BOCs to combine 271 elements no longer required to be unbundled under section 251, it seems clear that there is no federal right to 271-based UNE-P arrangements.

INTERCONNECTION AGREEMENTS

Comments

Joint CLECs assert that specific provisions in their Interconnection Agreements regarding change of law and/or material change, which require bilateral negotiation, prohibit Verizon from unilaterally amending those Interconnection Agreements through its proposed tariff filing. In addition, Joint CLECs argue that the FCC's TRRO directs that changes should be implemented through the Interconnection Agreement amendment process and that Verizon's tariff filing is not a substitute for that process.

The MCI Petition states that Interconnection Agreements with Verizon cannot be abrogated by Verizon's unilateral tariff filing. Specifically, MCI states that until its Interconnection Agreement with Verizon is amended, Verizon must continue to provide UNE-P at cost based prices. The MCI Petition points to a prior instance in which Verizon sought to immediately discontinue providing services no longer required by the FCC, i.e. enterprise switching and four-line carve-out, in which Verizon acknowledged

²⁴ TRO ¶ 655, n. 1990.

that it had an obligation to follow change of law provisions in the MCI/Verizon Interconnection Agreement rather than summarily suspend provisioning of the service.

Conversent states that the TRO calls for implementing FCC required changes through the 47 U.S.C. Section 252 arbitration process and the TRRO mirrors that implementation and transition plan by also directing negotiated change. By precluding negotiation of key issues, e.g. wire centers where high-capacity loops and dedicated transport will or will not be provided, Conversent claims that Verizon's TRRO tariff filing usurps the process called for by the FCC in the TRRO.

AT&T contends that the specific change of law language in its Interconnection Agreements with Verizon preserves the status quo as to TRRO implementation until the Interconnection Agreements are amended. Similarly, Covad cites a section of its Interconnection Agreement that requires parties to negotiate changes in law which are then not effective unless executed in writing. According to IDT, its Interconnection Agreement specifies that regulatory and judicial changes must be negotiated and the status quo maintained during the pending negotiations. These provisions preclude Verizon from withdrawing network elements previously required pursuant to section 251, according to Covad and IDT.

Verizon states that the TRRO's directives take effect on March 11, 2005 and Interconnection Agreement terms "cannot override an FCC directive." The 12-month conversion process for UNE-P customers outlined in the TRRO, applies only to existing, not new customers, according to Verizon. Therefore, the FCC's decision to delist UNEs and specify that the transition period applies to embedded customers only expressly prohibits CLECs from ordering new UNE-arrangements after March 11, 2005.

In addition, Verizon argues that the FCC's intent to immediately effect discontinuation of certain UNEs is evidenced by the March 11, 2005 expiration date, of the FCC's Interim Rules Order, which imposed a temporary obligation to provide UNEs, and the effective date of the TRRO, which relieves Verizon and other ILECs of any obligation to provide certain UNEs, also March 11, 2005.

Verizon counters MCI's argument that the TRRO allows CLECs to order new UNE-P service until changes are made to existing Interconnection Agreements by pointing to the express prohibition in the TRRO against adding new UNE-P customers and the FCC's finding that continuing new UNE-P arrangements would "seriously undermine infrastructure investment and hinder the development of genuine facilities-based competition."²⁵

Verizon states that it is not violating change of law provisions nor unilaterally amending Interconnection Agreements by filing its TRRO tariff because the change of law provisions invoked require compliance in the first instance with effective law, followed by a negotiation process to conform Interconnection Agreements. In addition, applicable law provisions in Verizon/CLEC Interconnection Agreements direct the CLECs to follow applicable law. In this instance, according to Verizon, applicable law eliminates its obligation to provide new UNE-P arrangements on or after March 11, 2005.

Discussion

The issue presented is whether our approval of the Verizon tariff and the clear statements of the TRRO regarding new customers for delisted UNEs satisfy or override change of law provisions in Interconnection Agreements regarding entitlement to ordering and receiving new network elements delisted in the TRRO, including UNE-P arrangements, after March 11, 2005.

The TRRO, in ¶233, makes reference to a negotiated process for implementing changes. Based on this language the TRRO should be implemented through interconnection agreements as necessary. However, for CLECs that have interconnection agreements with provisions allowing such amendment via tariff changes, changes will be effected via the tariff change process. The AT&T/Verizon

²⁵ TRRO ¶ 218.

Interconnection Agreement, for example, incorporates tariffs and envisions that tariff changes may flow through to the interconnection agreement.²⁶ In view of the notice provided by the tariff filing, the comment process thereon, and our review of both the tariff and comments, we find that this change process properly balances CLECs' interest in avoiding unilateral changes and the FCC's and Verizon's interest in avoiding unnecessary delay in implementing the TRRO's clear mandates. Therefore, the Commission declines to invoke its authority to prevent the tariff changes from flowing through to interconnection agreements, where provided for by interconnection agreements.

Further, to the extent other interconnection agreements do not incorporate tariff terms for UNE offerings and where changes must first be negotiated, we find that the change of law provision in those agreements should be followed to incorporate the transition pricing on delisted elements for the embedded base. Because the terms of the transition are clearly specified in the TRRO, this process should not be complex.²⁷ Moreover, to be consistent with the TRRO, the amendment should provide for a true-up to the TRRO transition rate for the embedded base of customers back to March 11, 2005, the effective date of the TRRO.²⁸

Finally, with regard to new customers and interconnection agreements, based on our careful review of the TRRO, we conclude that the FCC does not intend that

²⁶ See Case 01-C-0095, Joint Petition of AT&T Company of New York Inc., TCG New York, Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Order Resolving Arbitration Issues (issued July 30, 2001) p. 8. Many of the CLECs that have filed comments in this proceeding have opted into the ATT/Verizon interconnection agreement.

²⁷ The FCC made clear that the UNE-P price should be increased by \$1 and loops and transport in affected wire centers should be increased to 115% for the transition period.

²⁸ TRRO n. 408, n. 524, n. 630.

new UNE-P customers can be added during the transition period as the TRRO "does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to Section 251(c)(3)." TRRO ¶ 227. Although TRRO ¶233 refers to interconnection agreements as the vehicle for implementing the TRRO, had the FCC intended to use this process for new customers, we believe it would have done so more clearly. Paragraph 233 must be read together with the FCC directives that ~~UNE-P obligations for new customers are eliminated as of March 11, 2005. Providing a true-up for new UNE-P customers would run contrary to the express directive in TRRO ¶227 that no new UNE-P customers be added.~~

CONCLUSION

Based on our review of the Verizon tariffs and the comments thereon, we conclude that several modifications to Verizon's tariff are required. Apart from these modifications, we believe the tariff properly implements the TRRO and Verizon's Pre-filing Statement commitments. Finally, we decline to prevent the tariff changes from flowing through to interconnection agreements that rely on tariffs for UNE terms.

The Commission orders:

1. The tariff revisions listed on Appendix A are allowed to continue in effect as filed, and newspaper publication of the changes proposed by the amendment and further revision directed by order clauses 2, 3, 4 and 5 are waived pursuant to §92(2) of the Public Service Law.
2. Within ten days of the issuance of this Order, Verizon New York Inc. shall file tariff amendments allowing for conversion of DS1 and DS3 loop and transport services to analogous services at the applicable resale rate in the event an order for conversion is placed before the FCC-mandated transition period, even if the order for conversion cannot be completed within the transition period.
3. Within ten days of the issuance of this Order, Verizon New York Inc. shall file tariff amendments to include the list of wire centers which no longer qualify

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for UNEs. The supporting data and documentation upon which it based its determinations shall be provided to Staff for review and analysis at the same time.

4. By April 30, 2005, Verizon New York Inc. shall file its proposal for UNE-P price increases to resale rates for the period between March 11, 2006 and December 21, 2007 for the Zone 2 wire centers.

5. Within ten days of the issuance of this Order, Verizon New York Inc. shall file tariff amendments to apply the 10-loop cap for DS1 service only where there is non-impairment for DS3 transport.

6. The petitions for suspension, investigation and emergency relief are denied, except to the extent consistent with the foregoing Order.

7. This proceeding is continued pending compliance with the above ordering clauses following which it shall be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

Appendix A

Tariff pages in effect March 12, 2005:

PSC NY No. 10 – COMMUNICATIONS

**Preface –
Original Page 8**

**Section 5 –
2nd Revised Page 1.2
Original Pages 1.3 through 1.12**

**Appendix D –
Original Page 1**

Issued: February 10, 2005

Effective: March 12, 2005

EXHIBITS B

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995) (FCC Triennial Review 9-Month Phase)

**OPINION CONFIRMING THE ASSIGNED COMMISSIONER
RULING DENYING IN PART AND GRANTING IN PART MOTIONS FOR
CONTINUATION OF UNBUNDLED NETWORK ELEMENT PLATFORM**

I. Summary

This order confirms the March 11, 2005 Assigned Commissioner's Ruling (ACR) denying in part and granting in part the motions for continuation of the unbundled network element platform (UNE-P), as filed on March 1 and March 2, 2005, respectively, described as follows.

On March 1, 2005, a joint motion was filed by MCI, Inc.,¹ The Utility Reform Network (TURN), Blue Casa Communications, Inc. Wholesale Air-Time, Inc. Anew Communications Corp d/b/a Call America, TCAST Communications, and CF Communications LLC d/b/a Telekenex (Joint Movants). Each of the

¹ MCI indicated its withdrawal from the motion on March 15, 2005, on the basis that MCI has subsequently negotiated a commercial agreement with SBC.

Joint Movants (except for TURN) are competitive local exchange carriers (CLECs) that have Interconnection Agreements (ICAs) with Pacific Bell Telephone Company (Pacific), by and through its parent company, SBC Communications (SBC). Each of the ICAs (patterned after the ICA between MCI and Pacific) provides that Pacific shall provision unbundled network elements (UNEs) in combinations, including the "UNE Platform (UNE-P).

The Joint Motion was filed in response to SBC's announcement that, beginning on March 11, 2005, it would reject all orders for new lines utilizing UNE-P and would also stop processing requests for moves, adds, and changes for each CLEC's existing UNE-P customer base. SBC made this announcement pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order (TRRO), released February 4, 2005.

Joint Movants seek a Commission order forbidding SBC from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective ICAs. Joint Movants claim that affected CLECs will be unable to place UNE-P orders in California after March 10, 2005, absent Commission action to forbid SBC from rejecting such UNE-P orders pending compliance with the change-of-law provisions in their respective interconnection agreements. Unless such Commission action is taken, Joint Movants claim that CLECs would sustain immediate and irreparable injury because they will be unable to fill service requests for existing and new UNE-P customers.

On March 2, 2005, DMR Communications and Navigator Telecommunications, LLC (collectively Small CLECs) filed a similar motion entitled "Motion for an Order Requiring SBC to Comply With Its CLEC Interconnection Agreements." The motion presents allegations and seeks relief

essentially similar to that requested in the Motion filed in this same proceeding on March 1, 2005, by MCI, Inc. *et. al.* The DMR ICA is patterned after the AT&T ICA, except for its reciprocal compensation provisions. The Navigator ICA was approved in Resolution T-16524. Both the DMR and Navigator ICAs contain provisions for negotiation and dispute resolution for change of law provisions similar to those patterned after the MCI ICA.

As summarized in the ACR, parties were provided the opportunity to fully brief issues pertinent to a ruling on the respective motions. The assigned commissioner issued the March 11, 2005 ACR after all affected parties had fully briefed the motions, including offering supporting declaration.

II. Confirmation of the ACR

A copy of the ACR is attached as Appendix A hereto. We hereby confirm the ACR in accordance with the provisions of Pub. Util. Code § 310 which states, in part:

“Every finding, opinion, and order made by the commissioner or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, is the finding opinion and order of the commission.”

Because the ruling is attached to this decision, we do not repeat its full contents. In brief, the ACR affords parties additional time to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO. The ACR accordingly directs SBC to continue processing CLEC orders involving additional UNE-Ps for the embedded base of customers who already have UNE-Ps, until no later than May 1, 2005. SCB is directed to not unilaterally impose those provisions of the accessible letter that involve the embedded customer base until the company has either negotiated and executed the

applicable interconnection agreements with the involved CLECs or May 1, 2005 has been reached. During this negotiation window, all parties are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC ordered changes. Commission staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay.

The ACR, however, also concluded that under the terms of the TRRO, for new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005. The ACR determined, therefore, that the SBC accessible letter for the replacement of UNE-P may take effect on March 11, 2005 with respect to service offerings to new CLEC customers. The ACR also directed the parties to proceed expeditiously with good faith negotiations toward amending their interconnection agreements in accordance with the TRRO.

III. Comments on Draft Decision

This is an unforeseen emergency in that the request for relief is based on extraordinary conditions in which time is of the essence. (*See* Rule 81(f) of the Commission's Rules of Practice and Procedure.) We therefore waive the 30-day period for comments on draft decisions set forth in Pub. Util. Code § 311(g)(1) as well as the comment period in Rule 77.7. (*See* also Pub. Util. Code § 311 (g)(2) and Commission's Rules of Practice and Procedure 77.7 (f)(1).

IV. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The March 11, 2005 ruling on the Joint Parties' Motions, as set forth above, was made after full briefing.

2. The motion resolves disputes concerning SBC's announcement that, beginning on March 11, 2005, it would reject all orders for new lines utilizing UNE-P and would also stop processing requests for moves, adds, and changes for each CLEC's existing UNE-P customer base.

3. SBC made this announcement pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order (TRRO), released February 4, 2005.

4. The ACR affords parties additional time until May 1, 2005 to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO.

5. The ACR also determined that the SBC accessible letter for the replacement of UNE-P may take effect on March 11, 2005 with respect to service offerings to new CLEC customers.

6. This is an unforeseen emergency situation in that the request for relief is based on extraordinary conditions in which time is of the essence.

Conclusions of Law

1. The March 11, 2005 ruling on the Joint Parties' Motions resolves the issues brought before the Commission relating to disputes over SBC's obligations on and after March 11, 2005 to continue offering UNE-P for new customers and for additions or other changes to lines for existing UNE-P customers.

2. The March 11, 2005 ruling is consistent with the TRRO, and accordingly should be affirmed by the Commission in accordance with Pub. Util. Code § 310.

3. The 30-day period for comments on draft decisions set forth in Pub. Util. Code § 311(g)(1) as well as the comment period in Rule 77.7 should be waived in view of the fact that the ACR involves an unforeseen emergency situation.

O R D E R

~~IT IS ORDERED that the Assigned Commissioner's Ruling denying in~~
part and granting in part the motions for continuation of the unbundled network element platform (UNE-P), attached hereto as Appendix A, is hereby confirmed.

This order is effective today.

Dated _____, at San Francisco, California.

SK1/TRP/hl2 3/11/2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995) (FCC Triennial Review 9-Month Phase)

**ASSIGNED COMMISSIONER'S RULING DENYING IN PART
AND GRANTING IN PART MOTIONS ON CONTINUATION
OF UNBUNDLED NETWORK ELEMENT PLATFORM**

Introduction

On March 1, 2005, a joint motion was filed by MCI, Inc., The Utility Reform Network (TURN), Blue Casa Communications, Inc. Wholesale Air-Time, Inc. Anew Communications Corp d/b/a Call America, TCAST Communications, and CF Communications LLC d/b/a Telekenex (Joint Movants). Each of the Joint Movants (except for TURN) are competitive local exchange carriers (CLECs) that have Interconnection Agreements (ICAs) with Pacific Bell Telephone Company (Pacific), by and through its parent company, SBC Communications (SBC). Each of the ICAs (patterned after the ICA between MCI and Pacific) provides that Pacific shall provision unbundled network elements (UNEs) in combinations, including the "UNE Platform (UNE-P).

The Joint Motion was filed in response to SBC's announcement that, beginning on March 11, 2005, it will reject all orders for new lines utilizing UNE-P and will also stop processing requests for moves, adds, and changes for each CLEC's existing UNE-P customer base. SBC will take this action pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order (TRRO), released February 4, 2005.

Joint Movants seek a Commission order forbidding SBC from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective ICAs. Joint Movants claim that affected CLECs will be unable to place UNE-P orders in California after March 10, 2005, unless this Commission takes affirmative action to forbid SBC from rejecting such UNE-P orders pending compliance with the change-of-law provisions in their respective interconnection agreements. Unless such Commission action is taken, Joint Movants claim that CLECs will sustain immediate and irreparable injury because they will be unable to fill service requests for existing and new UNE-P customers.

On March 2, 2005, DMR Communications and Navigator Telecommunications, LLC (collectively Small CLECs) filed a similar motion entitled "Motion for an Order Requiring SBC to Comply With Its CLEC Interconnection Agreements." The motion presents allegations and seeks relief essentially similar to that requested in the Motion filed in this same proceeding on March 1, 2005, by MCI, Inc. et. al. The DMR ICA is patterned after the AT&T ICA, except for its reciprocal compensation provisions. The Navigator ICA was approved in Resolution T-16524. Both the DMR and Navigator ICAs contain

provisions for negotiation and dispute resolution for change of law provisions similar to those patterned after the MCI ICA.

Pursuant to the schedule set by the ALJ, replies in opposition to both motions were filed by SBC on March 4, 2005. A response in support of the joint motion was also filed by nni Communications, Ltd and California Catalog & Technology, Inc. d/b/a CCT Telecommunications, with supplemental concurrence by Blue Casa Communications, Inc. and Wholesale Air-Time. A response in support of the joint motion was also filed by Arrival Communications, Inc. A response was also filed by AT&T Communications of California, Inc., TCG Los Angeles, TCG San Diego and TCG San Francisco (AT&T), asking for the same relief for AT&T as may be granted to the Joint Movants and/or the Small CLECs.

The ALJ also specifically identified two questions to be addressed in parties' replies relating to ¶ 227 of the TRRO. The ALJ also authorized responses, filed on March 7, 2005, to the SBC reply limited to these two questions. In response to a March 7, 2005, email request, Joint Movants were granted leave to file a general third-round response on March 8, 2005.

Sequence of Events Leading to the Motion

On February 4, 2005, the FCC issued the TRRO, determining that the ILECs are not obligated to provide unbundled local switching pursuant to Section 251(c)(3) of the Federal Act. The effective date of the TRRO is March 11, 2005.

Regarding the required process for implementing the provisions of the TRRO regarding the availability of UNE-P, the FCC stated:

Mass Market Local Circuit Switching. Incumbent LECs have *no* obligation to provide competitive LECs with unbundled access to

mass market local circuit switching. We adopt a 12-month plan for competing carriers to transition away from use of unbundled mass market local circuit switching. This transition plan applies only to the embedded customer base, and does not permit competitive LECs to add new switching UNEs. During the transition period, competitive carriers will retain access to the UNE platform (*i.e.*, the combination of an unbundled loop, unbundled local circuit switching, and shared transport) at a rate equal to the higher of (1) ~~the rate at which the requesting carrier leased that combination of~~ elements on June 15, 2004, plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of this Order, for this combination of elements, plus one dollar. (TRRO ¶ 5, emphasis added by italics)

In addition, the FCC also said,

Further, regardless of any potential impairment that may still exist, we exercise our "at a minimum" authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, *justify a nationwide bar on such unbundling.* (TRRO ¶ 204, emphasis added by italics)

Concerning the embedded base of customers the FCC notes:

Because unbundled local circuit switching will no longer be made available pursuant to section 251(c)(3), we establish a transition plan to migrate *the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement.* (TRRO ¶207, emphasis added by italics, footnote omitted)

The FCC adopted a transition plan that calls for CLECs to move their UNE-P embedded customer base to alternative service arrangements within 12 months of the effective date of the TRRO. The FCC also prescribed the basis for pricing during the transition period for unbundled switching provided pursuant to Section 251 (c)(3).

Finally, concerning the overall implementation of the order, the FCC states

Given the need for prompt action, the requirements set forth here shall take effect on March 11, 2005, rather than 30 days after publication in the Federal Register. (TRRO ¶ 235.)

In addition, to implement the order, the TRRO states: "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. [footnote omitted.] Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order." (TRRO ¶ 233.)

SBC issued several "Accessible Letters" on February 11, 2005 (attached as Exhibit A to the Motion) in which SBC provided notification to CLECs concerning how it intended to modify its service offerings in response to the TRRO. The SBC Accessible Letters include a commercial offering described as "Interim UNE-P Replacement." In the Accessible Letter, SBC characterizes this offering as designed to be a bridge between March 11, 2005, i.e., the effective date of the TRRO, and when SBC and the CLEC are able to reach agreement on a long-term commercial agreement. Under this commercial offering, SBC would continue to provide the CLEC with the ability to acquire and provision new mass market local switch port with loop combinations, but at a new price to be unilaterally determined by SBC, and higher than the UNE-P prices currently paid under the Agreement.

Parties' Positions

Joint Movants argue that SBC's proposed actions would constitute breach of the Joint CLECs' interconnection agreements in at least two respects: (1) by rejecting UNE-P orders that it is bound by the ICA to accept and process and (2) by refusing to comply with the change-of-law or intervening law procedures established by the ICAs.

In support of its Motion, Joint Movants attached the "Affidavit of Kathy Jespersen," the designated contract notices manager for interconnection agreements between MCI's California local service entities and Pacific Bell. Based on her interactions with MCI mass market business units, Jespersen asserts that MCI will be adversely affected in its efforts to provide reasonably adequate service to its mass market customers if SBC rejects request for new UNE-P orders beginning on March 11, 2005. Jespersen asserts that SBC's refusal to accept new orders will prevent MCI from obtaining new customers, and its refusal to access moves, adds and changes relating to the embedded base of existing customers will lead to inadequate service for those customers.

Joint movants argue that the TRRO requires that its change-of-law provisions be implemented through modifications to the parties' ICAs. In this regard, as noted above, the TRRO (§ 233) requires that parties "implement the [FCC's] findings" by making "changes to their interconnection agreements consistent with our conclusions in this Order." Thus, this requirement of the TRRO recognizes that some period of time may be necessary for parties to negotiate the appropriate changes to their interconnection agreements to conform to the change of law provisions.

In its response filed March 3, 2005, in support of the Motions, nni Communications pointed out that service to its 23,000 payphone customer lines depends on availability of the "Flex-ANI" switch feature that is used to identify calls as originating from payphones so that mandatory payphone compensation can be accounted and paid for by interexchange carriers. Yet, SBC refuses to continue providing nni Communications with this required feature even under a separate "commercial agreement."

SBC opposes the Joint Motion and the Small LEC Motion in their entirety. SBC argues that there is no basis for the Commission to prohibit SBC from terminating its offering of new UNE-P arrangements effective March 11, 2005, since SBC is merely complying with the requirements of the TRRO. Although the FCC adopted a 12-month transition period from the effective date of the TRRO, SBC argues that this period only applies to the embedded customer base of existing UNE-P lines. (TRRO ¶ 199)

Discussion

Parties' pleadings raise issues concerning the timing of the implementation of the provisions of the TRRO relating to new UNE-P arrangements. Specifically, the question is whether the provisions of the TRRO regarding elimination of new UNE-P arrangements form a sufficient basis for SBC to unilaterally implement its Accessible Letters on March 11, 2005, even though parties have not yet completed the process outlined in the ICA to negotiate appropriate amendments relating to applicable changes of law under the TRRO. As a basis for resolving the issues in the Joint Motion, the relevant authority is in the provisions of the TRRO and the provisions of the ICAs outlining the sequence of events to occur in order to implement applicable changes of law.

Applicability of Exceptions Under ¶ 227

The TRRO does, in fact, set different timetables for the embedded customer base versus new customers with respect to the transition period. The TRRO states: "The [12-month] transition period shall apply only to the embedded customer base, and *does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order.*" (¶ 227)

SBC interprets this language as prohibiting the CLECs from adding any new UNE-P arrangements after the effective date of the TRRO. SBC views this prohibition as self-effectuating, and interprets the limiting clause "except as otherwise specified," as referring merely to carriers' option of voluntarily negotiating "alternative arrangements...for the continued provision of UNE-P," as referenced in ¶ 228.

By contrast, the Joint Movants interpret the clause "except as otherwise specified in this order," as referring to ¶ 233. Specifically, Joint Movants interpret ¶ 233 as entitling Joint CLECs to continue adding new UNE-P customers after March 11, 2005, until the current interconnection agreements are amended to prohibit it. Joint Movants also interpret the reference to "new UNE-P arrangements" to be limited to arrangements for new customers, not including subsequent changes or additions to UNE-P arrangements for existing UNE-P customers.

Parties thus disagree as to whether "new arrangements" refer only to new customers or also include modifications to service arrangements of the existing UNE-P customer base made after March 11, 2005 and whether the exception clause permits the continued provision of UNE-P to new and existing customers pending the development of a new ICA.

We will interpret ¶ 227 and the term "new arrangements" in light of the whole order.

First, we note that the FCC has clearly stated that "Incumbent LECs have *no* obligation to provide competitive LECs with unbundled access to mass market local circuit switching." (TRRO, ¶ 5, emphasis added.) In addition, it is clear that the FCC desires an end to the UNE-P, for it states "... we exercise our "at a minimum" authority and conclude that the disincentives to investment

posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, *justify a nationwide bar on such unbundling.*" (TRRO ¶ 204, emphasis added by italics.) Therefore, since there is no obligation and a national bar on the provision of UNE-P, we conclude that "new arrangements" refers to any new UNE-P arrangement, whether to provide service for new customers or to provide a new arrangement to existing services.

The TRRO clearly bars both.

Other parts of the TRRO also support this interpretation. In particular, the FCC also states: "... we establish a transition plan to migrate *the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement.*" (TRRO ¶207, emphasis added by italics, footnote omitted.) Note that this last statement refers to "the embedded base of unbundled local circuit switching;" it does *not* refer to an "*embedded base of customers.*" This statement suggests that there is a need only to transition those already having the UNE-P service, and that there is no need to transition customers who buy the UNE-P service over the next twelve months.

Even when the FCC discusses market disruption caused by the withdrawal of UNE-P service, the FCC limits its discussion to the taking away of service from customers who already possess UNE-P. Although the FCC notes in ¶ 226 that "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors," this statement is contained in the section of the TRRO titled "Transition Plan." Thus, the FCC's concerns over the disruption to service caused by the withdrawal of UNE-P are focused on those customers undergoing a transition away from UNE-P. This statement does not indicate that the FCC believes that the failure to provide new UNE-P services to

still more customers would be disruptive. Indeed, common sense indicates that it would more disruptive to provide a service to a new customer that would only be withdrawn in 12 months than to refrain from providing such a service that will be discontinued.

In summary, the only reasonable interpretation of the prohibition of "new service arrangements" is that this term embraces any arrangements to provide UNE-P services to any customer after March 11, 2005. However, the order did establish an exception process to this blanket bar.

Concerning "the *except as otherwise specified in this Order*" exception contained in ¶ 227, we see that as referring to the need to negotiate serving arrangements, particular as to the customers undergoing transition or already holding UNE-P services. In particular, the TRRO still contemplated a transitional process to pursue contract negotiations so that CLECs could continue to offer services to new customers and existing customers.

In particular, the TRRO also states:

We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. [footnote omitted] Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. [footnote omitted] We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. [footnote omitted] We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay. (TRRO, ¶ 233, emphasis added by italics.)

This clearly indicates that the FCC did not contemplate that ILEC's would unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the TRRO. Just as clearly, the California Commission was afforded an important role in the process by which ILECs and CLECs resolve their differences through good faith negotiations. Moreover, the Commission was encouraged by the FCC to monitor the implementation of the accessible letters issued by SBC to ensure that the parties do not engage in unnecessary delay.

The warning against unreasonable delay is meaningful only where a process for contract negotiation was contemplated to implement change of law provisions that could extend beyond March 11, 2005. The remedy against unreasonable delay is not to circumvent the negotiation process by unilateral implementation of the ILEC's Accessible Letters on March 11, 2005.

Thus, the centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period. To date, there have been few negotiations between SBC and the petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO. Therefore, to afford the parties additional time to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO, SBC is directed to continue processing CLEC orders involving additional UNE-Ps for the embedded base of customers who already have UNE-Ps, until no later than May 1, 2005. SCB is directed to not unilaterally impose those provisions of the accessible letter that involve the embedded customer base until the company has either negotiated and executed the applicable interconnection agreements with the involved CLECs or May 1, 2005 has been reached. During this negotiation

window, all parties are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC ordered changes. Commission staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay.

In summary, we see three different situations and different implications of the TRRO:

1. For new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005. Therefore, the accessible letter may take effect at that time.
2. For existing CLEC customers already receiving UNE-P services that seek new serving arrangements involving UNE-P, SBC will process new orders for UNE-Ps while negotiations to modify the ICA's continue, but will do so only until May 1, 2005 at the latest.
3. During the transition period until March 11, 2006, absent a new ICA, ILECs must continue to maintain the existing serving arrangements involving UNE-P that CLEC customers currently have, but the TRRO has authorized ILECs to increase the price of UNE-P by \$1.

Process for Implementing Applicable ICA Amendments for UNE-P Replacement

Since further ICA amendments are required, no party shall be permitted to use negotiations as a means of unreasonably delaying implementation of the TRRO or attempting to defeat the intent of the TRRO. The TRRO envisioned a limited period of negotiations, to be monitored by state commissions, after which the UNE-P prohibition against new arrangements would take effect.

Section 29.18 of the ICA between SBC and MCI under the Appendix "General Terms and Conditions" sets forth the process and sequence of events whereby changes of law are implemented.

29.18 Intervening Law

... If the actions of ...regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that ~~were the basis or rationale for a provision of the contract, the affected~~ provision shall be invalidated, modified or stayed, consistent with the action of the regulatory body. In the event of any such action, the Parties shall expend diligent efforts to arrive at an agreement respecting the appropriate modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.... (emphasis added).

The process for dispute resolution is set forth in Section 29.13 "Alternative to Litigation" of the ICA.

Thus, in accordance with these provisions of the ICA, parties are to first pursue "diligent efforts" to agree on appropriate modifications to the agreement. According to the Affidavit of Jespersen, SBC did not engage in any negotiations with MCI regarding the subject matter of the February 11th Accessible Letters. SBC replies that for more than two weeks after it advised CLECs that it would no longer accept new UNE-P orders after March 11, 2005, the CLECs "did nothing." Jespersen states, however, that MCI wrote to SBC on February 18, 2005, indicating that it considered the February 11th Accessible Letters to be an anticipatory breach of MCI's ICA, as well as a violation of the notice, change of law, and dispute resolution terms thereof.

In any event, parties' efforts have failed to produce agreement on the appropriate modifications to implement the change of law provision relating to the elimination of UNE-P. As noted above, SBC remains obligated to continue to

offer new serving arrangements involving UNE-P for existing customers already holding UNE-P services until no later than May 1, 2005 or until an agreement is reached. As noted above, the FCC has also prescribed the basis for pricing of the embedded UNE-P base during the transition period as provided pursuant to Section 251 (c)(3). The pricing of new UNE-P arrangements added before May 1, 2005 should likewise apply the same transition pricing.

IT IS RULED that:

1. The Motions of Joint Movants and Small CLECs are hereby denied in part and granted in part in accordance with the terms and conditions outlined above.
2. SBC shall continue to honor its obligations under the TRRO in accordance with the discussion outlined above.
3. SBC has no obligation to process CLEC orders for UNE-P to serve new customers.
4. Parties are directed to proceed expeditiously with good faith negotiations toward amending the ICA in accordance with the TRRO.
5. If parties have not reached an agreement on the necessary amendments for new arrangements to serve new orders placed by existing CLEC customers,

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SBC shall continue processing CLEC orders for UNE-Ps (for these existing customers) already holding UNE-P services until no later than May 1, 2005.

Dated March 11, 2005 in San Francisco, California.

/s/ SUSAN P. KENNEDY by TJS
Susan P. Kennedy
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have served by electronic mail to the parties for whom an electronic mail address has been provided, this day and by U.S. Mail on Monday, March 14, 2005, served a true copy of the original attached Assigned Commissioner's Ruling Denying in Part and Granting in Part Motions on Continuation of Unbundled Network Element Platform on all parties of record in this proceeding or their attorneys of record.

Dated March 11, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

EXHIBITS C

CLOSED

MAR 15 2005

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MAR 15 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

MCIMETRO ACCESS TRANSMISSION)
SERVICES LLC,)

Plaintiff,)

v.)

MICHIGAN BELL TELEPHONE COMPANY,)
d/b/a SBC MICHIGAN,)

Defendant.)

Civil Action No. 05-70885

Hon. Arthur J. Tarnow

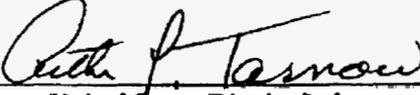
Magistrate Judge Pepe

**ORDER OF DISMISSAL AND
DISSOLUTION OF PRELIMINARY INJUNCTION**

This matter is before the Court on the parties' Stipulation of Dismissal and for
Dissolution of Preliminary Injunction, and the Court having reviewed the stipulation, it is:

1. ORDERED AND ADJUDGED, that this matter be and hereby is DISMISSED, and that
2. The Preliminary Injunction issued by the Court on March 11, 2005 be and hereby is
DISSOLVED as moot.

IT IS SO ORDERED this 15th Day of March, 2005.


United States District Judge

FILED
MAR 15 2005
CLERK'S OFFICE
DETROIT