Richard A. Chapkis
Vice President -- General Counsel, Southeast Region
Legal Department

FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-1256
Fax 813 204-8870
richard.chapkis@verizon.com

December 23, 2004 – **VIA ELECTRONIC MAIL**

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

Re: Docket No. 040156-TP
Petition for Arbitration of Amendment to Interconnection Agreements With Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.

Dear Ms. Bayo:

Enclosed for filing is Verizon Florida Inc.'s Petition for Reconsideration of the Order Establishing Procedure in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at 813-483-1256.

Sincerely,

/s/ Richard A. Chapkis

Richard A. Chapkis

RAC:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Petition for Reconsideration of the Order Establishing Procedure in Docket No. 040156-TP were sent via electronic mail on December 23, 2004 to the parties on the attached list.

/s/ Richard A. Chapkis

Richard A. Chapkis

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ALEC, Inc.
3640 Valley Hill Road
Kennesaw, GA 30152-3238

Sonia Daniels
AT&T
1230 Peachtree St. N.E.
Suite 400
Atlanta, GA 30309

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

Stephen D. Klein, President
Ganoco, Inc.
1017 Wyndham Way
Safety Harbor, FL 34695

MCI WorldCom Comm.
Dulaney O'Roark, III
6 Concourse Parkway
Suite 600
Atlanta, GA 30328

MCI WorldCom Comm./
Intermedia Comm./MCImetro
Access/Metropolitan Fiber
Donna C McNulty
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301-2960

Director-Interconnection Services
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021-8869

NewSouth Comm. Corp.
c/o Jon C. Moyle, Jr.
Moyle, Flanigan, Katz,
Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301

Supra Telecommunications
and Information Systems Inc.
2620 SW 27th Avenue
Miami, FL 33133

Eric Larsen
Tallahassee Telephone Exchange Inc.
1367 Mahan Drive
Tallahassee, FL 32308

The Ultimate Connection L.C.
d/b/a DayStar Comm.
18215 Paulson Drive
Port Charlotte, FL 33954

USA Telephone Inc.
d/b/a CHOICE ONE Telecom
1510 NE 162nd Street
North Miami Beach, FL 33162

Kellogg Huber Law Firm
A. Panner/S. Angstreich
1615 M Street, NW, Suite 400
Washington, DC 20036

James C. Falvey
Xspedius Management Co.
7125 Columbia Gateway Dr.
Suite 200
Columbia, MD 21046

Tracy Hatch
AT&T Communications
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301

Norman Horton/Floyd Self
Messer, Caparello & Self
215 S. Monroe Street
Suite 701
Tallahassee, FL 32302

The Ultimate Connection
c/o Andrew M. Klein
Kelley Drye & Warren LLP
1200 19th Street NW, 5th Floor
Washington, DC 20036

Local Line America, Inc.
c/o CT Corporation
1200 South Pine Island Rd.
Plantation, FL 33324

Mario J. Yerak, President
Saluda Networks Incorporated
782 NW 42nd Avenue, Suite 210
Miami, FL 33126

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.	Docket No. 040156-TP Filed: December 23, 2004

VERIZON FLORIDA INC.'S PETITION FOR RECONSIDERATION OF THE ORDER ESTABLISHING PROCEDURE

Verizon Florida Inc. ("Verizon") asks the Commission to reconsider two aspects of its Order Establishing Procedure ("Order"), issued on December 13, 2004.[1]

First, the Commission should accelerate the existing schedule, which contemplates conclusion of this case no sooner than ***two years*** after the FCC's adoption of the *Triennial Review Order* in August of 2003.[2] Verizon should not have to wait any longer to amend its interconnection agreements to reflect binding and effective *TRO* rulings that were never challenged or, if challenged, were affirmed on appeal.[3]

Second, the Commission should eliminate issue 17(e), which addresses hot cut processes, from the tentative list of issues for resolution in this case. The CLECs proposed this issue more than a year ago because the *TRO* directed state commissions to approve a batch hot cut process in conjunction with the impairment evaluations the FCC delegated to the commissions. But the D.C. Circuit invalidated the *TRO's* mass-

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[1] Order No. PSC-04-1236-PCO-TP (Dec. 13, 2004).

[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 FCC Rcd 16978 (2003) *("Triennial Review Order"* or *"TRO"*), *vacated in part and remanded, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) *("USTA II"), cert. denied, NARUC v. United States Telecom Ass'n,* Nos. 04-12, 04-15 & 04-18 (U.S. Oct. 12, 2004).

[3] Significantly, Verizon's proposed language helps to ensure that any future changes in federal law can be implemented in an orderly way.

market switching subdelegation scheme, including the batch hot cut requirement. In adopting its final rules, the FCC has unconditionally eliminated the requirement to unbundle mass market switching. State commissions therefore have no authority to impose their own hot cut conditions before Verizon may cease providing UNE switching. It would, therefore, be improper, as well as a waste of time and resources, for the Commission to consider hot cut issues in this proceeding or to allow them to delay relief to which Verizon has been entitled for more than a year.

I. THE COMMISSION SHOULD ACCELERATE BRIEFING AND DECIDE THE CASE WITHOUT A HEARING.

The Order establishes controlling dates to govern the key activities in this case. (Order at 12.) Among other things, the schedule calls for direct and rebuttal testimony on January 28 and March 11, respectively; a hearing from May 4 through 6; and briefs on June 20. No date is set for a final order, let alone execution of amendments reflecting the Commission's rulings. Because the Commission apparently does not intend to consider conforming contract language until after it adopts an order resolving the issues that have been identified, amendments would not likely be approved sooner than the fall of 2005, ***two years*** after the *TRO* took effect. This extreme delay in giving contractual effect to governing law is patently unreasonable, prejudices Verizon, and interferes with the federally-mandated move to facilities-based competition.

Verizon initiated negotiation of a TRO Amendment ***more than one year ago,*** on October 2, 2003, the effective date of the *TRO*. Although a number of CLECs have signed Verizon's *TRO* Amendments, many others have done their best to avoid implementing binding federal law—despite the FCC's finding that even a months-long delay in implementing the *TRO*'s rulings "will have an adverse impact on investment

and sustainable competition in the telecommunications industry." *TRO*, ¶¶ 703, 705. As a result, *nearly 15 months* after the *TRO* took effect, there has still been little progress toward execution of an amendment to reflect even the *TRO* rulings that were either upheld by the D.C. Circuit in its *USTA II* decision or not challenged in the first place. These rulings, include, among others, the elimination of unbundling requirements for OCn loops, OCn transport, enterprise switching, the feeder portion of the loop on a stand-alone basis, signaling networks and virtually all call-related databases; and the determination that the broadband capabilities of hybrid copper-fiber loops and fiber-to-the-premises facilities are not subject to unbundling. Verizon should not have to wait any longer to implement these changes, which should have been reflected in contracts months ago.

More generally, the FCC has emphasized the importance of making a "speedy transition" to implement new unbundling rules.[4] Verizon's amendment is designed to ensure that in the event of future changes in federal law, parties will not be obligated to negotiate and ultimately to litigate cumbersome changes to their agreements. For example, the FCC's permanent unbundling rules appear to impose substantial obligations on incumbents to provide unbundled access to high capacity loops and transport. If that obligation is subsequently narrowed through judicial or administrative action, such changes should be implemented through an orderly process without this Commission's intervention, contributing to clarity and commercial certainty. As FCC

[4] Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-179 (rel. Aug. 20, 2004) ("*Interim Order*"), ¶ 22.

Chairman Powell has aptly observed, such clarity is something that "[c]onsumers demand . . . and competitors and incumbents alike need."[5]

Verizon knows the Commission has not chosen to deliberately deny Florida consumers the benefits of a speedy transition to the FCC's new rules. Rather, Verizon understands that the schedule was driven, in large measure, by the perceived need to find time in the Commission's crowded calendar for a prolonged hearing in this matter. But there is no need for a hearing at all, let alone the three days of hearings the Commission has scheduled.

In its Petition for Arbitration (at 11-12) and during the issues identification process, Verizon explained that this proceeding raises only legal issues, which may be resolved on the basis of briefs, without the need for prefiled testimony or a hearing. The CLECs, however, argued that a hearing was necessary, because some (although not all) of the issues identified for resolution might require fact or policy testimony.[6]

The CLECs' opposition to resolving the issues on briefs is surprising, because in other states they have agreed that there is no need for a hearing to decide the same issues arising from the same amendments. All parties in the Washington arbitration, including AT&T, MCI, Sprint, and the CLEC group represented by the Kelley, Drye firm, expressly agreed that no hearing or prefiled testimony was necessary. In fact, AT&T and MCI filed a joint motion requesting a January 5, 2005 briefing date. The motion (attached as Exhibit A) recites that "recent e-mails exchanged between the parties and the ALJ" confirmed that "no hearing in this matter is necessary." (Joint Motion at 2.)

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[5] *Interim Order*, Concurring Statement of Chairman Powell, 2004 FCC LEXIS 4717 at * 61.

[6] The Order fails to indicate that all parties agreed that a number of issues can be resolved on the basis of briefs only, without the need for testimony or a hearing.

Although AT&T and MCI asserted that the FCC's final rules (which had not been adopted when the Motion was filed) would affect the proceeding, they requested only a slight extension of the briefing deadline (from Dec. 21 to Jan 5) to assess the effect of the FCC's decisions, citing the need to "keep this proceeding moving within its original time frame." (Joint Motion at 3.) Although Verizon opposed any delays in briefing based on then-pending FCC action, it agreed to the January 5 briefing date so the parties could develop a uniform issues list based on the list adopted here in Florida.

In Vermont, the parties—again including AT&T, MCI, and CLECs represented by Kelley, Drye—likewise agreed not to file testimony and to submit briefs on February 16, 2005.[7] A technical session or hearing will be held in early January only if the Vermont Board determines it is necessary.

Because the same CLECs in this proceeding have not demanded hearings or prefiled testimony in other states, there is no reason why they cannot support the same approach here. The Commission should not automatically grant the CLECs a hearing in this case, but should require some compelling justification, in light of their agreement to forgo testimony and/or hearings elsewhere and the pressing need to quickly transition to *TRO* rulings now in effect. The Commission should ask the CLECs to specify which issues they believe require *factual* testimony and why.

If, after this process, the Commission remains reluctant to cancel the hearing and do away with prefiled testimony on all issues, then it could take one of two approaches.

First, the Commission could bifurcate the proceeding, as Verizon proposed in its October 18, 2004 Reply to the CLECs' Answers to Verizon's Petition for Arbitration.

[7] See Letter from Verizon Vermont counsel, Linda M. Ricci, to Vermont Public Service Board Clerk, Susan M. Hudson, dated Sept. 17, 2004.

Most or all of the issues upon which the CLECs request testimony relate to Verizon's Amendment 2, which implements certain requirements established by the *TRO*, such as those relating to commingling and routine network modifications—issues that were not part of Verizon's Petition for Arbitration. The Commission could thus place the Amendment 2 issues on a separate, hearing track and keep the issues relating to Verizon's Amendment 1 on a briefing-only track, with briefs to be submitted on January 17, and a final decision on the Amendment 1 issues to be rendered by the end of February. If any party believes these issues require factual proof, the relevant facts can be presented through affidavits.

A second option would permit litigation of both Amendment 1 and Amendment 2 issues on the same, accelerated track. Under this approach, the Commission would order the CLECs to identify which issues do not require testimony or a hearing, and reserve those for briefing only. For issues the Commission concludes may require factual development, Verizon suggests scheduling direct testimony for January 14; rebuttal testimony and prehearing statements for February 14; a prehearing conference for February 18; discovery cutoff on March 1; a hearing (if the Commission deems one necessary after examination of the prefiled testimony) during the first week of March; posthearing briefs on March 14; a final decision on March 31; and approval of amendments during the first week of April.

If the Commission wishes to schedule a hearing, it should reserve only one day, with the possibility of a continuance to a second (not necessarily consecutive) day. If hearing dates are not currently available during the first week of March, the Commission should consider moving other events on its calendar to different dates. Prompt

implementation of the changes in unbundling regulations is critical to consumers and the telecommunications industry, and it is difficult to imagine a proceeding that would better justify extraordinary measures to ensure its completion at the earliest possible date.

II. THE COMMISSION SHOULD DELETE THE CLECS' PROPOSED HOT CUT ISSUE FROM THE PROCEEDING.

Tentative Issue 17(e) asks whether Verizon "should be subject to standard provisioning intervals or performance measurements and potential remedy payments, if any, in the underlying Agreement or elsewhere, in connection with its provision of [b]atch hot cut, large job hot cut, individual hot cut processes." The Order correctly notes that "Verizon continues to oppose including any hot cut issues in this proceeding." Order at 16, Appendix A.

The purpose of this proceeding is to conform certain existing interconnection agreements to the law establishing Verizon's unbundling obligations—specifically, the *TRO*, *USTA II*, the FCC's *Interim Order*, and its final unbundling rules. The parties appear to agree that this arbitration should address only *TRO*-related issues. But the hot cut proposals the CLECs wish to litigate under issue 17(e) have nothing to do federal unbundling requirements.[8]

As AT&T explains, "AT&T's proposed language guarantees continued availability of unbundled mass market switching under the terms of the Agreement until such time as performance metrics and remedies are adopted and implemented with stable

[8] A "hot cut" refers to the process of transferring a working line from the ILEC's switch to the CLEC's switch. Batch hot cut or large job hot cut processes involve moving large volumes of customers' lines from the ILEC to the CLEC.

performance."[9] The Competitive Carrier Group's hot cut proposal is the same as AT&T's.[10] MCI, likewise, has language in its amendment under which "the transition arrangements for Mass Market Switching...would be triggered by Verizon's implementation of both a batch hot cut process and an individual hot cut process."[11]

The Commission cannot consider these nor any other proposals conditioning the elimination of mass-market switching on this Commission's approval of hot cut processes, performance measures, remedies, or anything else. In the *TRO*, the FCC directed state Commissions to approve batch hot cut processes in conjunction with their nine-month proceedings to examine whether CLECs were impaired without unbundled access to mass-market switching. The D.C. Circuit, of course, invalidated the FCC's subdelegation scheme, and with it the mandate for the states to develop batch hot cut processes as part of their delegated examination of switching impairment. As this Commission correctly observed when it closed the impairment proceedings here, "*USTA II* is clear that the decision-making regarding impairment is reserved for the FCC, not the states."[12]

The FCC has now exercised its exclusive authority to make non-impairment determinations, stating unequivocally that: "Incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit

[9] AT&T's Response to Verizon Florida's [original] Petition for Arbitration, at 24, citing AT&T's proposed Section 3.10 and Ex. B (April 13, 2004).

[10] See CCG's Answer to Verizon's Petition for Arbitration, CCG Amendment at § 3.10 and Exhibits B and C.

[11] MCI's Response to Verizon's Petition for Arbitration, at 13, citing MCI's proposed section 8 (October 4, 2004).

[12] Order Closing Dockets, *Implementation of Requirements Arising from FCC's Triennial UNE Review: Local Circuit Switching for Mass Market Customers, etc.*, Order No. PSC-04-0989-FOF-TP, at 3 (Oct. 11, 2004).

switching." (FCC News Release at 2.) The FCC has adopted a transition plan to wean CLECs away from their use of UNE mass-market switching. There is thus no basis for any inquiry into hot cuts at this time. Moreover, even if the FCC were to decide that hot cut issues are pertinent to the timing of any *conversion* of *existing* UNE-P customers to UNE loops (perhaps at the conclusion of the 12-month transition period announced by the FCC), this would have nothing to do with conforming existing agreements to current legal obligations. Thus, if any inquiry into hot cuts is needed (and there is no clear indication that it will be), this proceeding is not the appropriate vehicle for that inquiry. Rather, any such inquiry should be done, if at all, only in accordance with the FCC's specific direction. Indeed, the proceedings contemplated by the CLECs' hot cut proposals would be extraordinarily complex and resource-intensive, requiring the Commission to determine, among other things, the volume of loops to be included in batch and "large job" hot cuts and the specific processes to be used to perform a batch hot cut; to devise new performance measures and remedies relating to hot cut performance; to test hot cut performance; and to set rates for the batch hot cut activities the Commission approves. This entire inquiry – or certain aspects of it – may prove to be unnecessary. But even assuming a basis for such inquiry under binding federal law, it would be more appropriate to carry it out in a generic proceeding separate from this time-sensitive arbitration between Verizon and particular carriers.

To entertain the CLECs' proposals under Issue 17(e), the Commission would have to pretend that *USTA II* was never decided, and that the FCC had not adopted rules eliminating unbundled switching and establishing its own transition plan. The

Commission, of course, cannot do that, and it would be an enormous waste of time and resources for the Commission to consider hot cut requirements that it may not adopt.

Given the urgent need to implement binding *TRO* rulings, it is critical to avoid wasting any time litigating issues that do not relate to any federal unbundling requirements and considering complex proposals that the Commission may not adopt, in any event. Verizon asks the Commission to delete Issue 17(e) from the tentative issues list.[13]

[13] To the extent that the Commission believes it necessary to address the hot cut issue in Florida, it should not address this issue in the instant proceeding. Rather, the Commission should include the hot cut issue in a separate industry-wide proceeding, such as the Competitive Issues Forum.

III. CONCLUSION

Verizon asks the Commission to modify the procedural schedule in accordance with its proposals in this filing, to delete Issue 17(e) from the tentative issues list, and to confirm that no hot cut issues will be addressed in this docket.

Respectfully submitted on December 23, 2004.

Respectfully submitted,

s/ Richard A. Chapkis_____
Richard A. Chapkis
Attorney for Verizon Florida Inc.
201 N. Franklin Street, FLTC0717
Tampa, FL 33602
(813) 483-1256
(813) 204-8870 (fax)

Aaron M. Panner
Scott H. Angstreich
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(202) 326-7999 (fax)

Kimberly Caswell
Associate General Counsel
Verizon Corp.
201 N. Franklin Street, FLTC0007
Tampa, FL 33602
(727) 360-3241
(727) 367-0901 (fax)

Counsel for Verizon Florida Inc.

EXHIBIT A

Letty S.D. Friesen
Attorney
(303) 298-6475

919 Congress
Suite 900
Austin, TX 78701

December 9, 2004

Via Overnight Delivery

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P. O. Box 47250
Olympia, Washington 98504-7250

Re: Docket No. UT-043013

Dear Ms. Washburn:

Enclosed for filing are the original and 2 copies of Joint Motion for Extension of Time to File Initial Briefs in this matter.

Very truly yours,

Letty S.D. Friesen by MH with permission
Letty S.D. Friesen

Enclosures

cc: Service List

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of	)	
VERIZON NORTHWEST, INC.	)	DOCKET NO. UT- 043013
with	)	**JOINT MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEFS**
COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON	)	
Pursuant to 47 U.S.C. § 252(b), and the *Triennial Review Order*	)	

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle, TCG Oregon (collectively "AT&T") and MCImetro Access Transmission Services LLC ("MCI") hereby submit this Motion for Extension of Time to File Initial Briefs in the above-captioned matter. As grounds therefore, the Joint Movants state as follows:

1. Verizon Northwest, Inc. ("Verizon") initiated this mass arbitration in an effort to alter its interconnection agreements in accordance with the Federal Communications Commission's ("FCCs") changed and changing rules developed under 47 U.S.C. §§ 251 and 252.

2. As the Commission and Administrative Law Judge ("ALJ") know well,

the FCC's Triennial Review Order ("TRO"), [1] upon which this arbitration is based, was appealed—rejected in part and sustained in part—the subject of interim rules and much debate. Now, we stand on the precipice of the FCC announcing yet further, "permanent" changes to its TRO decision and rules thereunder. It's latest order is on its agenda for a vote on December 15, 2004. [2]

3. Through a series of recent e-mails exchanged between the parties and the ALJ, it appears that no hearing in this matter is necessary. Where no hearing is planned, the current procedural schedule requires the parties to file initial briefs on December 21, 2004.

4. The upcoming FCC decision will have an impact on this proceeding and the numerous issues described on the various lists detailing that which the parties anticipate briefing. The Joint Movants fully expect that the parties will alter their respective positions and may need to remove or add issues to the lists. The scope of the initial briefs is determined by the issues lists and when those lists are a moving target based upon changing law, it is exceedingly difficult for the parties to obtain due process.

5. Consequently, it makes little sense for the parties to brief issues and expect the ALJ to make decisions regarding those issues where the very foundation upon which such arguments and decisions are based may be altered so as to make them moot, or worse yet, illegal.

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[1] *In the Matter of 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,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (Rel. Aug. 21, 2003).

[2] *See* **Exhibit A**, "Communications Daily." Vol. 24, No. 236 re: FCC UNE Order on December 15th Agenda.

6. The parties should be afforded sufficient time to understand the FCC's decisions and alter their respective positions such that they may be adequately "heard" on the issues. Thus, the Joint Movants propose that the Commission grant this extension of time to the parties such that they may re-examine their issues lists and submit initial briefs that are consistent with the best understanding of the FCC's requirements. To keep this proceeding moving within its original time frame, the Joint Movants further suggest that the new due date for the filing of initial briefs be January 5, 2005.

7. WHEREFORE, the Joint Movants respectfully request that the ALJ grant this request to extend the due date for the initial briefing to January 5, 2005.

Submitted this 9th day of December, 2004.

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

By: Letty S.D. Friesen by MTT with permission

Letty S.D. Friesen
AT&T Law Department
919 Congress Avenue, Suite 900
Austin, TX 78701
(303) 298-6475
lsfriesen@att.com

EXHIBIT A

WARREN COMMUNICATIONS NEWS Telecom & Media Intelligence www.warren-news.com

Communications Daily

The Authoritative News Service of Electronic Communications

THURSDAY, DECEMBER 9, 2004

VOL. 24, NO. 236

Today's News

FCC UNE ORDER goes on agenda for Dec. 15 vote, as CLECs and Bells battle to end of lobbying period. Commissioners begin editing process, Powell's support unsure. (P. 1)

LEGISLATION UNLIKELY this year from Congress. With little time left and nothing done, failure blamed on political infighting. (P. 6)

NEW IP STANDARD leaves U.S. in the dust. Asia, Europe could reap the benefits. (P. 7)

ASIA DOMINATES communications service, device innovation, as U.S. lags, senior Intel executive says. IBM PCs just first of global brands Chinese will capture, Maloney says. (P. 7)

EC TELECOM REPORT outlines challenges, official says. (P. 8)

EUROPEAN REGULATORS lay out ambitious work program for 2005. (P. 9)

COPYRIGHT BILL likely to die with end of Congress. Opponents celebrate early. (P. 10)

TELECOM NOTES: Prepaid calling sector continues to grow, study says... Qwest to expand VoIP offering.. (P. 11)

FCC Puts UNE Order on Meeting Agenda

The next 7 days will be crucial to the outcome of the FCC's draft UNE rules, as commissioners begin framing their positions and working on possible changes in time for a formal vote at the FCC's agenda meeting Dec. 15, FCC staffers said Wed. Commissioners and their staff have been meeting almost nonstop with lobbyists the past 2 weeks. Those meetings stopped late Wed., and commissioners can get to work on their own views, an 8th floor staff member said.

The item, known as the Triennial Review Order (TRO) remand, went on the Dec. 15 agenda late Wed., curtailing all contact between commissioners and outsiders. One source said the commissioners probably will be asked to make a list of the 2 or 3 biggest things they are concerned about. It's too early to know how the commissioners will vote, though sources inside and outside the agency say it might not be hard to gain 3 votes for the proposal -- Chmn. Powell, Comr. Abernathy and possibly Comr. Martin. But Powell may want 5 votes in an effort to bolster the order in court. If he doesn't get more votes, Powell might decide to pull the item from the agenda before Dec. 15, said a lobbyist. "I wouldn't sell the farm" on the item's staying on the agenda, he said. "No one expects a 5-0 vote on the whole order," said another lobbyist. "Over the next week we'll find out as the agency turns inward and the edits process begins."

Industry reaction to the rules remains highly contentious, with CLECs saying the proposed regime could severely curtail their business and Bells arguing the proposal doesn't go far enough in complying with the remand by the U.S. Appeals Court, D.C. "It's hard for us because both sides come in angry," said an 8th floor staffer. As expected, the proposed order calls for an end to the UNE-P option for CLECs by eliminating switching as a UNE, with a 6-month transition period. The most controversial issues involve the high-cap UNEs aimed at business customers. Lawrence Spiwak, pres. of the competitive-leaning think-tank Phoenix Center, said he was "flabbergasted" by the signals from the FCC that it would greatly reduce the situations in which CLECs were considered "impaired," and thus eligible to get Bell UNEs at lower-cost TELRIC rates. An FCC staffer said the agency will have to weigh CLECs' concern about "pain" against the action needed to meet court requirements.