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March 29, 2004

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

Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., Metropolitan Fiber Systems of Florida, Inc. and Intermedia Communications Inc. (collectively "MCI") are an original and fifteen copies of MCI 's Opposition to Motions to Dismiss in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

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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: March 29, 2004

MCI's OPPOSITION TO MOTIONS TO DISMISS

MCImetro Access Transmission Services LLC, MCI WORLDCOM Communications, Inc., Metropolitan Fiber Systems of Florida, Inc. and Intermedia Communications Inc. (collectively, "MCI") hereby file this response in opposition to the Motions to Dismiss by Sprint Communications Company L.P. ("Sprint") dated March 16, 2004 and Eagle Telecommunications Inc. and Myatel Corporation dated March 15, 2004 (collectively, "Eagle").

BACKGROUND

1. On February 20, 2004, Verizon Florida, Inc. ("Verizon") petitioned the Commission to arbitrate amendments to its interconnection agreements proposed by Verizon on October 2, 2003 to implement changes in Verizon's obligations resulting from rules adopted by the Federal Communications Commission ("FCC") in its *Triennial Review Order* ("*TRO*"). MCI filed a substantive response to the Verizon Petition on March 16, 2004, which included a red-lined version of the proposed Verizon amendment, setting forth MCI's proposed changes to the amendment.

2. Sprint has moved the Commission to dismiss the Verizon Petition on several grounds: 1) Verizon has allegedly failed to negotiate in good faith with respect to Sprint; 2) the Verizon Petition is procedurally defective because it failed to satisfy the requirements of section 252 of the Telecommunications Act of 1996 ("Act") and it failed to properly serve Sprint with

the Petition; (3) Verizon failed to comply with the change-in-law provisions in the parties' Florida interconnection agreement; and (4) the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*, Case No. 00-1012, decided March 2, 2004 ("*USTA II*") requires dismissal.

3. Eagle has advanced similar arguments in its Motion to Dismiss. It seeks dismissal on the grounds that the Petition is procedurally defective because only a CLEC, not the ILEC, may commence the arbitration process under section 252 of the Act. Eagle requests in the alternative that the Commission abate these proceedings because it is not yet clear what requirements govern ILECs' unbundling obligations. Eagle also asserts that the Commission should take into account its own authority to require unbundling over and above what has been ordered by the FCC, although apparently Eagle does not ground its Motion to Dismiss on this last point. In addition, Eagle provided a substantive response to Verizon's proposal.

4. For the reasons set forth below, the Motions to Dismiss should be denied as they relate to Verizon's Petition for arbitration with respect to the interconnection agreements between Verizon and MCI.

ARGUMENT

The Motions to Dismiss Should Be Denied as to the Verizon/MCI Agreements

A. *Other CLECs have no right to object to an Verizon/MCI Arbitration*

5. Under the architecture created by Congress in 1996, interconnection agreements are *bilateral* contracts between an incumbent local exchange carrier, in this case Verizon, and a requesting telecommunications carrier. The process for requesting, negotiating, arbitrating and approving these bilateral contracts is spelled out in detail in section 252 of the Act. MCI has four

currently effective interconnection agreements with Verizon in Florida. Verizon has proposed that these contracts be amended to reflect changes in law resulting from the FCC's *Triennial Review Order*. Pursuant to that order, Verizon has now sought to invoke the arbitration provisions of the Act to seek a final adjudicated resolution to the additional contract language that it has proposed for these four agreements. Because these are bilateral contracts, other carriers have limited rights with respect to the efforts of Verizon and MCI to conclude amendments to their contracts. Other carriers can oppose negotiated agreements under section 252(e) on the grounds that the negotiated agreement discriminates against a carrier that is not a party to the agreement or that implementation of the agreement is not in the public interest. *See* 47 U.S.C. § 252 (e)(2)(A). And other carriers can seek to avail themselves of negotiated interconnection agreements under section 252(i) of the Act. But nothing in section 252 gives a CLEC the right to object to attempts by Verizon and another carrier to seek resolution through arbitration of disputed contract language. Sprint and the Eagle thus clearly lack standing to lodge any objections to this proceeding on behalf of any carriers other than themselves. Sprint has recognized this point to some extent, by seeking to have the Petition dismissed, "or in the alternative, dismissed *with respect to Sprint*." Sprint Motion, p. 9 (emphasis added).

6. MCI desires to conclude a contract amendment with Verizon on the issues raised in Verizon's Petition that are ripe for arbitration and further desires to have the Commission conduct this arbitration under section 252 of the Act. It is MCI's position that the *TRO* does represent a change of law on certain issues, thereby requiring amendments to MCI's interconnection agreements with Verizon. MCI has submitted, in its March 16 Response, a detailed response to Verizon's proposed contract amendment, including a red lined contract amendment that sets forth MCI's proposed additions and deletions to the language proposed by

Verizon. To the extent that there are unresolved issues, MCI is fully prepared to go forward with arbitration of these issues before the Commission. That one or more other CLECs may not be interested or willing to proceed with a section 252 arbitration with Verizon at this time has no bearing on whether MCI and Verizon can negotiate and arbitrate unresolved contract issues under section 252.

B. *Any procedural deficiencies can be cured quickly*

7. Sprint and Eagle both cite deficiencies in the Verizon Petition relating to requirements in section 252 of the Act with respect to petitions for arbitration. Sprint cites the omission of information setting forth an identification of the issues, the positions of the parties on those issues, and a listing of unresolved issues. Sprint Motion, p. 6. Eagle asserts the Petition is procedurally defective because only CLECs, not the ILEC, have the ability to start the arbitration process under section 252. Eagle Response, p. 7. In addition, Sprint asserts that Verizon failed to negotiate in good faith, failed to comply with the change-of-law provisions in the Sprint-Verizon interconnection agreement, and failed to effect proper service of the Petition on Sprint. Sprint Motion, pp. 4-7. None of these procedural concerns should stand in the way of MCI and Verizon moving forward with their arbitration.

8. As discussed earlier, Sprint and Eagle are entitled to raise these objections with respect to arbitrations concerning their own interconnection agreements. For its agreements, MCI believes that any deficiencies can be remedied promptly. For instance, a detailed issues statement or matrix can be prepared and filed in fairly short order because of the limited scope of the proposed amendment and because many of MCI's proposed changes to Verizon's proposed language relate to a limited number of recurring or "global" issues. Such procedural issues

should not be a barrier for the Commission in proceeding to arbitrate the unresolved issues between Verizon and MCI.

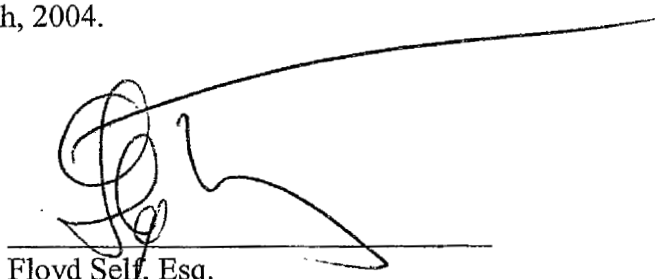
C. *The pending appeals of the USTA II decision should not delay this proceeding*

9. The Sprint and Eagle motions both cite the *USTA II* decision by the D.C. Circuit as grounds for dismissing or at least abating the Verizon Petition. Sprint Motion, pp. 8-9; Eagle Response, pp. 8-9. As an initial matter, a number of provisions of the *TRO* are not affected by the pending appellate litigation. Moreover, the *TRO* went into effect on October 2, 2003 and remains in effect. The *USTA II* mandate has been stayed for at least 60 days by order of the D.C. Circuit, and further stays may extend that date out indefinitely. Notwithstanding the possibility of future changes, MCI is prepared to negotiate and arbitrate contract language with Verizon. Future events in the courts and the FCC may require additional changes, but the parties will address those changes under the change-in-law provisions in their interconnection agreements.

10. The initial round of arbitrations under the Act, during 1996 through 1997, were conducted while the FCC's *First Report and Order* in the *Local Competition Proceeding* was the subject of appeal after its release by the FCC on August 8, 1996. The existence of those appeals did not prevent negotiations and arbitration of interconnection agreements between ILECs and CLECs in Florida and other states. The same should be true today.

WHEREFORE, for the foregoing reasons, the Motions to Dismiss filed by Sprint and Eagle should be denied, and the Commission should proceed with arbitration proceedings as set forth in MCI's March 16, 2004 response in this docket.

Respectfully submitted this 29th day of March, 2004.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail on this 29th day of March, 2004.

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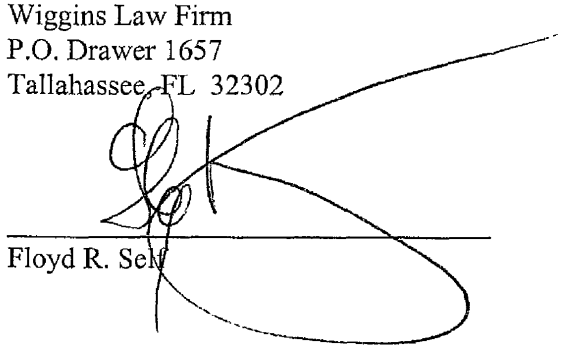

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