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April 26, 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 Brief in Opposition to Motions to Dismiss Verizon's Amended Petition for Arbitration 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

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: April 26, 2004

MCI's BRIEF IN OPPOSITION TO MOTIONS TO DISMISS VERIZON'S AMENDED PETITION FOR ARBITRATION

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"), Eagle Telecommunications Inc. and Myatel Corporation (collectively, "Eagle"), the Competitive Carrier Coalition, Z-Tel Communications, Inc., Time Warner Telecom of Florida, L.P., AT&T Communications of the Southern States, LLC and TCG South Florida (collectively "Movants").

BACKGROUND

On February 20, 2004, Verizon Florida, Inc. ("Verizon") petitioned the Commission to arbitrate amendments to its interconnection agreements that had been 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. Sprint and Eagle

filed motions to dismiss. In response, MCI made three basic points: (i) neither Sprint nor Eagle had the right to prevent MCI's arbitration with Verizon from moving forward; (ii) none of the procedural deficiencies alleged by Sprint and Eagle stood in the way of MCI's and Verizon's arbitration; and (iii) the ongoing *USTA II* litigation should not prevent the arbitration from proceeding.

Before a ruling was made on the Sprint and Eagle motions to dismiss, Verizon filed its Update to Petition for Arbitration of Verizon Florida Inc. dated March 19, 2004 ("Amended Petition"). MCI filed a response to the Amended Petition, as did a number of other parties. The Movants (some of whom also filed responses) filed motions to dismiss. These motions alleged various grounds for dismissal, including: (i) alleged procedural defects regarding the negotiations preceding the Amended Petition as well as the petition itself; (ii) alleged procedural defects and well as substantive concerns with the Amended Petition regarding 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*"); and (iii) the allegation that there has been no change of law because the FCC's conditions on the merger between Bell Atlantic Corporation and GTE Corporation obligate Verizon to provide the UNEs and UNE combinations required in the UNE Remand Order and the Line Sharing Order until they, and orders issued in any subsequent proceedings, become final and non-appealable.

In MCI's response to the Sprint and Eagle motions, MCI already has responded to many of the arguments raised by the Movants, and MCI incorporates its previous response herein by reference. For the reasons set forth in its initial response and 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

A. *No Party Has Objected to the Verizon/MCI Arbitration and No Party Has the Right to Do So*

As explained in MCI's response to the Sprint and Eagle motions to dismiss, the Telecommunications Act of 1996 established a process for negotiation and arbitration that results in bilateral contracts between ILECs and CLECs. Although carriers have certain limited rights that permit them to oppose the approval of an interconnection agreement filed by third parties, 47 U.S.C. § 252 (e)(2)(A), and to opt in to agreements negotiated by others, 47 U.S.C. § 252(i), nothing in the Act permits a party to oppose a third parties' negotiation and arbitration of interconnection agreements. No party has asserted that MCI and Verizon should not be permitted to proceed with their arbitration and no party would have standing to take such a position.

A number of Movants assert procedural defenses to Verizon's Amended Petition. As noted in MCI's response to the Sprint and Eagle motions to dismiss, MCI does not dispute the right of other parties to raise such issues. But in MCI's case, it believes that any procedural issues can be remedied quickly and should not prevent MCI and Verizon from moving forward. Other parties' concerns, based in some cases on their particular negotiations, should not impede MCI and Verizon from arbitrating their disputed issues.

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

Movants raise two objections to the Verizon Petition based on *USTA II*. First, some Movants note that the court's mandate has not issued and the decision may be subject to Supreme Court review. Even if the decision is not appealed, further proceedings would have to take place at the FCC before revised rules can be issued. While all this is true, as MCI noted in its initial brief, a number of provisions of the *TRO* are not affected by the pending appellate litigation. These provisions must be addressed in the parties' interconnection agreements regardless of the outcome of the *TRO* litigation and doing so ought not to be delayed by that litigation. What is more, for much of the eight years since the Act was passed, appellate litigation has been pending that has had the potential to change existing relationships between parties. Moving forward has required that decisions be made even when it was uncertain how such litigation would be resolved, with the understanding that changes might have to be made once the final outcome was known. The *TRO* is currently effective and is likely to remain so for some time. MCI is prepared to move forward to incorporate changes based on the *TRO*, and to make additional changes in the event that *USTA II* becomes effective.

The second *USTA II* attack is procedural. Some Movants assert that Verizon should not be permitted to amend its Petition after the arbitration window has closed to propose new language based on *USTA II*. MCI agrees with Movants in part. As stated in MCI's Response to the Amended Petition, because the *USTA II* mandate has not yet issued, incorporating language based on *USTA II* is not appropriate at this juncture. MCI has reserved the right to submit additional edits or changes as part of this proceeding in the event that *USTA II* becomes effective during the course of this proceeding. The parties'

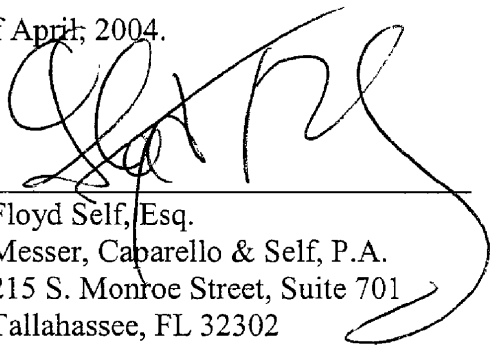
apparent disagreement on the current applicability of *USTA II*, however, is hardly a reason for the MCI-Verizon arbitration not to proceed. The issue of whether to incorporate language into the parties' interconnection agreement based on *USTA II* can be addressed during the arbitration.

C. *The Bell Atlantic-GTE Merger Conditions Do Not Prevent the MCI-Verizon Arbitration*

Some Movants contend that the Bell Atlantic-GTE merger conditions require Verizon to continue providing the UNEs and UNE combinations that were ordered in the UNE Remand Order and the Line Sharing Order until those orders, and orders issued in any subsequent proceedings, become final and non-appealable. MCI agrees. Because the subsequent *TRO* proceedings have not yet resulted in a final and non-appealable order, Verizon must continue providing such elements and combinations. What must not be overlooked, however, is that in some respects the *TRO* imposes obligations on Verizon that go beyond the UNE Remand Order, and thus it cannot be disputed seriously that a change of law has taken place. Obviously, the merger conditions should not prevent the adoption of interconnection agreement language that imposes new and additional obligations on Verizon. Because that is so, the merger conditions do not prevent this arbitration from going forward.

For the foregoing reasons, the Motions to Dismiss filed Movants should be denied. In the alternative, the Commission should deny Verizon's request for a consolidated arbitration with respect to all CLECs and should proceed with arbitration proceedings for those CLECs, like MCI, that desire to go forward with the arbitration.

Respectfully submitted this 26th day of April, 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 26th day of April, 2004.

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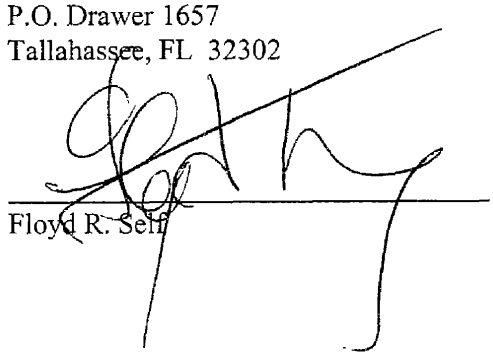

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