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December 30, 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, and MCI WORLDCOM Communications, Inc. (collectively "MCI"), AT&T Communications of the Southern States LLC and TCG South Florida (collectively "AT&T"), and the Competitive Carrier Group ("CCG") are an original and fifteen copies of MCI, AT&T and CCG'S Response in Opposition to Verizon's Petition for Reconsideration 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: December 30, 2004

JOINT RESPONSE OF MCI, AT&T AND CCG'S RESPONSE IN OPPOSITION TO VERIZON'S PETITION FOR RECONSIDERATION

MCImetro Access Transmission Services, LLC, and MCI WORLDCOM Communications, Inc. (collectively "MCI"), AT&T Communications of the Southern States LLC and TCG South Florida (collectively "AT&T"), and the Competitive Carrier Group ("CCG"),[1] pursuant to Florida Public Service Commission Order No. PSC-04-1236-PCO-TP, issued December 13, 2004, ("Procedural Order"), and Rules 25-22.0376 and 28-106.103, Florida Administrative Code, hereby respond to the petition for reconsideration filed by Verizon Florida Inc., ("Verizon") on December 23, 2004. In opposition to this motion MCI, AT&T and CCG state the following:

Background

1. The background to these proceedings is well described in the Procedural Order. The Procedural Order, among other things, sets this matter for hearing, establishes controlling dates, and identifies 26 tentative issues (not counting subparts) to be decided. On December 23, 2004, Verizon filed its "Petition for Reconsideration." The Uniform Rules of Procedure do not authorize a "petition for reconsideration." See Rule 28-106.201, Florida Administrative Code.

[1] The Competitive Carrier Group includes NewSouth Communications Corporation, The Ultimate Connection d/b/a DayStar Communications, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC.

However, under Rule 25-22.0376, Florida Administrative Code, a party may file a "motion for reconsideration," and this Joint Response addresses Verizon's pleading on that basis.

Standard of Review

2. Rule 25-22.0376, Florida Administrative Code, establishes the procedure for requesting reconsideration of a Commission order. It is well recognized that:

> [t]he purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance... It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order. (citations omitted)

Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). In that regard, the standard for a motion for reconsideration is the same as that for a motion for rehearing. See *Department of Revenue v. Leadership Housing, Inc.,* 322 So.2d 7, 8-9 (Fla. 1975), which holds:

> Under the rules and precedents of this Court, the form of appellees' motion ordinarily would be considered improper. In practical effect, it challenges... the correctness of his conclusions on the matters considered and passed upon in his order. This is not appropriate in a motion for reconsideration or for rehearing.
>
> The proper function for rehearing is to present to the court in clear concise terms some point that it overlooked or failed to consider; only this and nothing more. (citations). Upon an application for rehearing of a cause decided by this court, it is irregular, and an infraction of the rule, to accompany the petition with a written argument and citation of authorities. (citations)
>
> An application for rehearing that is practically a joinder of issue with court as to the correctness of its conclusion upon points involved in its decision that were expressly considered and passed upon, and that reargues the cause in advance of a permit from the court for such reargument, is a flagrant violation of the rule, and such an application will not be considered. (citations)

Id., citing *Texas Co., v Davidson*, 76 Fla. 475, 80 So. 558 (1919). A review of the petition for reconsideration filed in this case by Verizon reveals that Verizon does no more than reargue issues that were specifically addressed by the prehearing officer. There is no matter that was

overlooked or not considered by the Prehearing Officer when he issued the Order Establishing Procedure, and Verizon's reconsideration should be denied.

Verizon's Motion Fails to Meet Reconsideration Standard

3. Verizon asks the Commission to reconsider two aspects of its Procedural Order. First, Verizon requests that the Commission accelerate the existing schedule and to decide the case without a hearing. Second, Verizon requests that the Commission eliminate issue 17(e), which addresses hot cut processes. Both of these requests should be rejected because they fail to meet the standard for reconsideration.

4. First, Verizon requests the Commission to accelerate the existing schedule and to decide the case without a hearing. The Prehearing Officer specifically considered Verizon's request for an accelerated schedule when he issued the Procedural Order in the first instance. In consideration of Verizon's new Petition for Arbitration, the Procedural Order specifically states:

> Verizon proposed a schedule in this docket by which a decision would be rendered by mid-February 2005. Verizon asserts that all identified issues are legal, thus requiring only a briefing schedule, with no need to file testimony. While the CLECs have not proposed a specific schedule, they have indicated that some issues will likely require testimony. Upon consideration, this matter shall be set for an evidentiary administrative hearing as set forth in this Order. (*Procedural Order*, p. 1).

The Prehearing Officer specifically considered Verizon's request for an expedited hearing when the Commission established the hearing schedule. Considering the FCC has yet to issue its order on permanent unbundling rules, this case already is set on a very fast track with direct testimony due on January 28, 2005. Moreover, the Prehearing Officer set the matter for an evidentiary hearing consistent with Section 120.569(1), Florida Statutes, which governs proceedings "in which the substantial interests of a party are determined by an agency." All of the CLEC parties to this case are unquestionably having their substantial interests determined in this proceeding.

Section 120.569(1) further provides that section 120.57(1) governs any proceeding involving a disputed issue of material fact, "unless waived by all parties." As the prehearing officer found, there are disputed issues of material fact and all the parties are not willing in this situation to waive their right to a hearing. Verizon has not offered anything new or different in support of its request. The fact that parties in other state proceedings, pursuant to the law of those other jurisdictions and the issues in those cases, may have agreed to a different procedure is simply irrelevant to this case and the issues being decided under Florida law.[2] As for Verizon's alternative request, that the case be bifurcated, this would only benefit Verizon while the CLECs would have to wait for a later resolution of the "Amendment 2" issues — again, this proposal has already been considered and denied by the procedural order.

5. Verizon's second basis for rehearing, that the hot cuts issue should be removed from the proceeding, is equally without merit. As Verizon acknowledges in its reconsideration at page 7, the Commission considered Verizon's position that hot cuts should not be included in this proceeding. Notwithstanding its argument during the issues identification phase, Verizon's arguments were considered and denied. Making the same argument, **again**, does not meet the standard for a matter overlooked or not considered. If ever there was a situation of sour grapes, this is it. Verizon's request **on its face** and by its own words does not meet the standard for reconsideration.

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[2] Importantly, the members of the Competitive Carrier Group are not even parties to the arbitrations currently before the Vermont Public Service Board and the Washington Utilities and Transportation Commission, as Verizon suggests. Furthermore, Exhibit A to Verizon's Motion is presented out of context. The Joint Motion by AT&T and MCI seeking to file briefs on January 5, 2005 was premised on the existence of an agreed upon list of issues which has yet to materialize. Moreover, the Joint Motion was filed before the FCC issued its press release which indicated that there will again be substantial changes Verizon's federal unbundling obligations. Because the details of these changes will not be available until the FCC's order is issued, the CLECs in the Washington proceeding intend to seek an abatement in the proceeding to allow parties to evaluate the new rules and to conform their cases accordingly.

Verizon's Attempt to Accelerate the Procedural Schedule Should be Denied

6. In its Motion, Verizon seeks to **accelerate** the existing schedule so that the parties would have their Direct and Rebuttal case filed **prior to** the issuance of the FCC's Order containing new permanent unbundling rules and any opportunities to review those rules to determine where disagreements, if any exist.

7. Verizon's request for an acceleration of the procedural schedule appears to be based on its objection to the time that has passed since the TRO was released in August 2003. *("The Commission should accelerate the existing schedule, which contemplates conclusion of this case no sooner that **two years** after the adoption of the FCC's adoption of the Triennial Review Order in August of 2003."* Verizon Reconsideration Petition, pg. 1, emphasis in original). As noted above, however, Verizon's first Arbitration Petition, based on its view of the TRO, as well as its amended Petition, based on its view of the effects of *USTA II* on the TRO, were dismissed by this Commission based on procedural flaws. Therefore, a portion of the delay about which Verizon complains is its own responsibility for failure to comply with the requirements for arbitration as specified in the federal Act. In any event, the TRO, when originally issued, was intended to reflect the permanent unbundling obligations of Verizon. Of course, since the issuance of the TRO, the courts and subsequent FCC decisions have substantially modified the permanent unbundling obligations of Verizon. Therefore, any decision that this Commission would have made on the basis of Verizon's initial flawed Arbitration Petitions would have had to be revisited as these modifications to Verizon's permanent unbundling obligations evolved.

8. Furthermore, Verizon's latest Arbitration Petition filed on September 9, 2004, was based on the "presumption" that it would be relieved of its unbundling obligations with

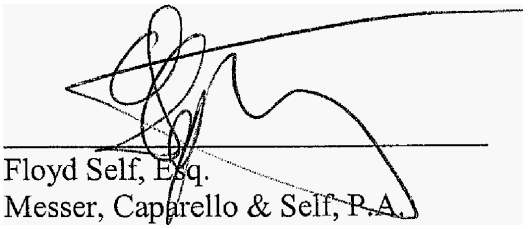
regard to high capacity loops and transport. In that Arbitration petition, Verizon also asked for an accelerated schedule so that its petition could be acted upon expeditiously and before the adoption of final permanent unbundling rules by the FCC. Of course, we now know that, based on the FCC's December 15, 2004 decision, the "presumption" on which Verizon's current Arbitration Petition is based is erroneous and, if the Commission acts as expeditiously as Verizon has requested, it will have to refresh its record after the FCC Order establishing new permanent unbundling rules is released in order to have a proper basis for a sound decision in this case. Thus, while Verizon accuses the CLECs of having "done their best to avoid implementing binding federal law" (Reconsideration Petition, pg. 2), the fact of the matter is that "binding federal law" has been in a continuing state of flux – soon to be clarified with the issuance of the FCC's Order codifying the new permanent unbundling rules announced on December 15, 2004.

9. The history of this proceeding has fully illustrated Verizon's obsession with forcing the parties and the Commission to a rush to judgment on its particular views of the state of federal law regarding Verizon's federal unbundling obligations. The fatal flaw has been the continual state of flux of these same obligations. To have succumbed to Verizon's continual desire rush to judgment would have resulted in at least three separate proceedings to address the three existing iterations of Verizon's Petition for Arbitration. With the FCC's Final Rules Order expected in January 2005, the parties would be faced with yet another proceeding to address changes in Verizon's federal unbundling obligations. Verizon's desired procedural schedule would have the parties putting on their respective cases before there can be any opportunity to consider and evaluate or perhaps even see the impending final FCC rules. Nor can there be any question that these final rules will alter the current interim rules. In view of the imminent

issuance of the FCC's final unbundling rules, Verizon's obstinate obsession with accelerating the arbitration of its chosen issues is illogical in the extreme and wasteful of the resources of the Commission and the other parties. Accordingly, Verizon's request to accelerate the procedural schedule should be denied. A far better course is to wait for the issuance of the FCC's final rules and determine at that time the appropriate schedule to resolve the issues that are then presented by the parties.

WHEREFORE, for the reasons set forth above, Verizon's request for reconsideration of the procedural schedule should be denied.

Respectfully submitted this 30th day of December, 2004.



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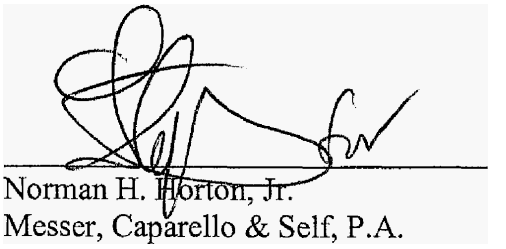

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail on this 30th day of December, 2004.

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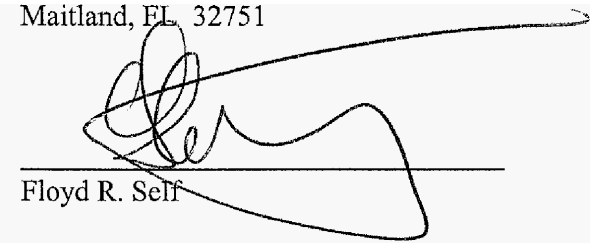

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