COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts For Arbitration of Interconnection Agreements between Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order	)))))))	D.T.E. 04-33

MCI's OPPOSITION TO MOTIONS TO DISMISS

MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Massachusetts, Inc., MCI Worldcom Communications, Inc., MCI Worldcom Communications, Inc. as successor to Rhythms Links Inc., and Intermedia Communications, Inc. (collectively "MCI") hereby file this response in opposition to the Motions to Dismiss, dated March 15, 2004, filed by 1) Sprint Communications Company L.P. ("Sprint") and 2) Allegiance Telecom of Massachusetts, Inc., et al., under the name "Competitive Carrier Coalition." (hereinafter "CLEC Coalition"). The Department, by notice dated March 18, 2004, has solicited comments on the pending motions.

Background

On February 20, 2004, Verizon New England, Inc. ("Verizon") petitioned the Department to arbitrate amendments to its interconnection agreements with MCI (and all other CLECs) 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 has moved the Department to dismiss the Verizon Petition, as to Sprint, on several grounds: 1) Verizon has allegedly failed to negotiate in good faith with respect to Sprint; 2) 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) the Verizon Petition is procedurally defective because it failed to satisfy the requirements of section 252 of the Telecommunications Act of 1996 ("the Act"); and 4) Verizon failed to comply with the change-in-law provisions in the parties' interconnection agreement for Massachusetts.

The CLEC Coalition advanced similar arguments in its Motion to Dismiss. These carriers seek dismissal because: 1) the Petition is premature because there has not been an effective change of law, because the *TRO* is not yet final and non-appealable; 2) the Petition did not satisfy the section 252 filing requirements; and 3) consideration of the Petition would be a waste of administrative resources. The CLEC Coalition also seeks dismissal of that part of Verizon's filing that seeks to propose rates for routine upgrades to its network, on the ground that that portion of the *TRO* only clarified Verizon's existing legal obligations, and thus, there is no change of law requiring a contract amendment.

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 the MCI companies.

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*

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. The MCI companies listed above have a total of five (5) currently effective interconnection agreements with Verizon. 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 five 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 between MCI and Verizon is discriminatory against a carrier not 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). Also, other carriers can seek to avail themselves of agreements between MCI and Verizon under section 252(i) of the Act. 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 CLEC Coalition thus clearly lack standing to lodge any objections to this proceeding on behalf of any carriers other than themselves. Sprint has recognized this point, by seeking only to have the Department "dismiss this Petition ***as to Sprint***….." Sprint Motion, p. 2 (emphasis added).

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 Department 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 our 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 Department. 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 quickly cured*

Sprint and the CLEC Coalition both cite deficiencies in the Verizon Petition relating to requirements in section 252 with respect to petitions for arbitration. They cite 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. 7; CLEC Coalition Motion, pp. 6-9.

As discussed earlier, the movants 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 promptly remedied. Given the limited scope of the proposed amendment and that many of MCI's proposed changes to Verizon's proposed language relate to a limited number of recurring or "global" issues, preparation and filing of a detailed issues

statement or matrix can be done in fairly short order. These issues should not be a barrier for the Department 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*

The Sprint and CLEC Coalition motions both cite the *USTA II* decision by the D.C. Circuit as grounds for dismissing the Verizon Petition. Sprint Motion, p. 4; CLEC Coalition Motion, pp. 2-6. The CLEC Coalition argues that there has not been an effective change of law because the *TRO* has not become final and un-appealable. CLEC Coalition Motion, pp. 3-5. Although this point is certainly correct, it is also true that a number of provisions of the *TRO* are not affected by the pending appellate litigation. The *TRO* went effect on October 2, 2003 and remains in effect. The *USTA II* mandate has been stayed for 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.

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 the existing interconnection agreements between Verizon and MCI (and other CLECs) in the Department's *Consolidated Arbitrations* docket. The same should be true today.

Finally, the CLEC Coalition cites the FCC's order approving the Bell Atlantic-GTE merger as authority for the proposition that there has not been an effective change in law because

under the merger conditions agreed to by Bell Atlantic and GTE, these companies agreed to provide UNEs and UNE combinations until there is a final, un-appealable order in the UNE Remand and Line Sharing proceedings and any subsequent proceedings. CLEC Coalition Motion, pp. 3-5. The CLEC Motion misses two points. First, the merger condition speaks to what contract language is appropriate to describe Verizon's UNE obligations, not whether there should be an arbitration proceeding. More importantly, the merger condition language does not apply to provisions of the *TRO* that are not the subject of pending appeals, and thus cannot serve as the basis for a dismissal of the Petition in its entirety.

For the foregoing reasons, the Motions to Dismiss filed by Sprint and the CLEC Coalition should be denied. In the alternative, the Department 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.

MCIMETRO ACCESS TRANSMISSION SERVICES LLC, BROOKS FIBER COMMUNICATIONS OF MASSACHUSETTS, INC., MCI WORLDCOM COMMUNICATIONS, INC., MCI WORLDCOM COMMUNICATIONS, INC. AS SUCCESSOR TO RHYTHMS LINKS INC., AND INTERMEDIA COMMUNICATIONS, INC.

By:_____

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