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June 25, 2004

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Written *Ex Parte* Presentation, UNE Triennial Review – CC Docket No. 01-338
Local Competition – CC Docket No. 96-98
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Ms. Dortch:

Attached for inclusion in the record of the three above-referenced proceedings is a copy of a letter to Chairman Michael K. Powell, Commissioner Kathleen Q. Abernathy, Commissioner Jonathan Adelstein, Commissioner Michael J. Copps, and Commissioner Kevin J. Martin from Richard S. Whitt, Senior Director, Federal Law and Policy for MCI.

Sincerely,

/s/Ruth Milkman
Ruth Milkman

Attachment

cc: Christopher Libertelli
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Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
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Commissioner Kathleen Q. Abernathy
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Commissioner Kevin J. Martin
Federal Communications Commission
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Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Interim UNE Rules

Dear Chairman Powell and Commissioners:

In the wake of the Solicitor General's decision not to petition the Supreme Court for a *writ of certiorari* in *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA IP*"), Chairman Powell emphasized that "[o]ur top priority is to ensure that consumers do not experience any disruption in service and to provide sorely needed stability in the marketplace."¹ To that end, the Chairman observed that the Bell Operating Companies ("BOCs") had "guaranteed the status quo until the end of the year."² MCI fully supports the Chairman's efforts to maintain the *status quo* in the beleaguered telecommunications industry, pending the completion of a rulemaking on remand. The woefully inadequate voluntary commitments offered by the BOCs, however, together with their recent tactics before state regulatory commissions, demonstrate the need for more concrete assurance to make certain the Commission's goal is achieved. Because the BOCs have refused to make clear commitments, and because they have threatened to ignore the few

¹ FCC News Release, "FCC Chairman Michael K. Powell Announces Plans for Local Telephone Competition Rules" (June 14, 2004), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-248393A1.pdf>.

² *Id.*

commitments they have made, the Commission should move promptly to put in place interim rules that preserve the *status quo* until permanent rules have been adopted and change-of-law procedures have been followed properly. Such rules are essential to prevent the BOCs from unilaterally upsetting the stability and orderly functioning of the telecommunications marketplace.

The BOCs' actions since the Solicitor General's announcement plainly demonstrate the need for interim rules that preserve the *status quo* pending issuance of final rules.

First, the voluntary commitments issued by the BOCs to substantiate their asserted desire to maintain temporarily the *status quo* are vague, misleading, and incomplete. For example, the Verizon and Qwest letters conspicuously fail to include any commitment to continue to provide access to high-capacity loops and transport.³ The Verizon commitment also extends only to mid-November. None of the BOC commitment letters affirmatively represents that the BOC will not seek retroactive pricing adjustments (or "true-ups"), or that it will process new orders for access to unbundled elements at existing rates.

Second, notwithstanding their commitments to the FCC, the BOCs have begun to take steps at the state level that betray even the few commitments the BOCs have made to maintain the *status quo*. Thus, several BOCs have made clear that they do not intend to wait for the Commission to issue final rules before attempting to use state change-of-law proceedings to shed their obligation to continue to provide access to unbundled network elements that were subject to the District of Columbia Circuit's *vacatur*. For example, BellSouth recently filed letters with the state utility commissions throughout its region stating that it would only "continue to honor the terms of the carrier's existing interconnection agreement until such time as established legal processes relieve BellSouth of that obligation."⁴ BellSouth then made clear that it promptly will pursue change-of-law proceedings to eliminate those provisions in its interconnection agreements that require BellSouth to provide unbundled access to any network elements vacated by the *USTA II* decision.⁵ Similarly, Verizon recently filed a letter with the New Jersey Board of Public Utilities ("Board") stating that the Board should proceed with its

³ Letter from Ivan Seidenberg, Verizon, to Honorable Michael K. Powell, at 1-2 (June 11, 2004); Letter from Richard C. Notebaert, Qwest, to Honorable Michael K. Powell, at 1 (June 14, 2004).

⁴ BellSouth NCUC Letter at 2.

⁵ *Id.* (BellSouth will provide competitors an amendment that "will reflect the Court's mandate by eliminating language from the interconnection agreement concerning those network elements provided under the FCC rules that have now been vacated.").

pending docket to determine “the appropriate form of a contract amendment effectuating the *Triennial Review Order* and *USTA II*.”⁶

MCI does not object to the invocation of change-of-law provisions to incorporate amendments to the FCC’s rules that will not be part of the pending FCC remand proceeding. The BOCs, however, clearly plan to pursue such proceedings to eliminate unbundling obligations that will be the focus of the FCC proceeding. Such tactics plainly will undermine the FCC’s efforts to maintain the *status quo* during its expedited remand proceeding. Verizon’s actions in particular threaten to destabilize competitive telecommunications and create needless confusion. If Verizon’s tactics succeed, there will be multiple state processes to remove current unbundling requirements from Verizon’s interconnection agreements (only to have those requirements reimposed once the FCC issues final rules). Moreover, Verizon unilaterally has denied competitors the right to opt into interconnection agreements that pre-date *USTA II* because, according to Verizon, section 252(i) does not require it to make available to competitors agreements that include network elements vacated by the *USTA II* decision.⁷

In view of these developments since the issuance of the mandate, it is critical that the Commission promptly adopt interim rules that preserve the *status quo* until final rules are effective. Among other things, those interim rules explicitly should bar the BOCs from commencing change-of-law proceedings that relate to unbundling obligations that are before the Commission on remand. Further, they should make clear that the BOCs must continue to maintain the *status quo* by providing, at current rates, access to unbundled network elements. The rules in particular should make clear that the CLECs continue to have rights to submit new orders for these network elements. Such interim requirements are essential to ensure that competitive and incumbent local exchange carriers as well as state commissions understand their responsibilities in maintaining stability and minimizing the risk of consumer disruption during this interim period.

Respectfully submitted,

/s/ Richard S. Whitt
Richard S. Whitt

⁶ See Letter from Bruce D. Cohen, Verizon New Jersey, to Kristi Izzo, Board of Public Utilities, at 5 (June 1, 2004); see also *id.* at 3 n.1 (preserving Verizon’s right to argue that “upon issuance of the mandate, there will not be a ‘change of law’ to eliminate previously authorized UNEs, but merely an affirmation that there have never been lawful UNEs to change”). Although Verizon’s filing with the Board pre-dates its commitment letter to the FCC, Verizon has not retracted or otherwise altered its stated position in that filing.

⁷ See, e.g., *Petition of DSCI Corporation for Approval of an Interconnection Agreement with Verizon New York Inc.*, NYPSC Case 04-C-0647 et al., Notice Soliciting Comments (June 17, 2004).