

March 18, 2004

Ms. Cheryl Walker
Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street N.E., Suite 215
Salem, OR 97310

RE: ARB 165(1) and ARB 422(1) Comments of Verizon Northwest Inc.

Dear Ms. Walker,

Enclosed are Verizon Northwest Inc.'s comments in response to the comments filed by Level III in the above mentioned dockets. Please call me at (503) 645-7909 if you have any questions.

Sincerely,

Renee Willer
Verizon Northwest Inc.

BEFORE THE OREGON PUBLIC UTILITY COMMISSION

In the Matter of MCIMETRO ACCESS)
TRANSMISSION SERVICES LLC and)
VERIZON NORTHWEST INC. First)
Amendment to Interconnection Agreement,) **Docket No. ARB 165(1)**
Submitted for Commission Approval)
Pursuant to Section 252(e) of the)
Telecommunications Act of 1996.)

In the Matter of MCI WORLDCOM)
COMMUNICATIONS INC and VERIZON)
NORTHWEST INC. First Amendment to) **Docket No. ARB 422(1)**
Interconnection Agreement, Submitted for)
Commission Approval Pursuant to Section)
252(e) of the Telecommunications Act of 1996.)

**VERIZON NORTHWEST INC. RESPONSE
TO COMMENTS OF LEVEL 3 COMMUNICATIONS**

Verizon Northwest Inc. (Verizon) responds to the comments filed by Level 3 Communications (Level 3) in reference to the Joint Petitions of Verizon and MCImetro Access Transmission Services (MCIMetro) and MCI Worldcom Communications, Inc. (MCI Worldcom) (collectively MCI) in the above-referenced proceedings.

No one opposes the Commission’s approval of the proposed amendment to Verizon's Interconnection Agreements with MCI.¹ Instead, Level 3 raises a single legal issue that is not ripe for the Commission to consider now. Level 3 asks the Commission to address prematurely what precedential value the Commission's approval of the proposed amendment will have in the context of future proceedings. This issue is appropriately addressed, as a matter of law, in such future proceedings. At that time, all parties will have the right to advance arguments about the precedential value of this amendment as such arguments relate to matters at issue then. The

¹ The term “MCI” refers to all entities addressed by the proposed amendment.

Commission, therefore, should approve the proposed amendments without addressing Level 3's legal issue of future precedent.²

Furthermore, while it would be inappropriate for the Commission to consider what precedential value its approval will have in future proceedings, it is important to note that Level 3's supposed rationales for assigning the Commission's approval no value in future proceedings are entirely inaccurate. Level 3 alleges that the amendment's "blended" rate for compensation is inconsistent with the FCC's rules regarding compensation for Internet bound traffic, and that the amendment's inclusion of Voice Over Internet Protocol ("VOIP") as a Telecommunications Service is inconsistent with the definition of Telecommunications Services contained in the Telecommunications Act of 1996 (TA96). (Level 3 Cmts., pp. 4-6). Level 3 is wrong on both counts.

First, the amendment's blended rate approach expressly relies on the FCC's interim rate structure for Internet traffic adopted in its *Order on Remand*.³ (See, Amendment, pp. 1-4, 11, Ex. B). As such, the amendment is perfectly consistent with the framework set forth by the FCC regarding compensation for Internet bound traffic. The blending essentially permits Verizon and MCI to reach agreement on the timing for implementation of the FCC's rate structure set forth in its *Order on Remand* in each of the states in which they operate. The implementation of the

² It is clear that a real and existing controversy does not exist with respect to Level 3's concern in the current proceedings. No party suggests that the proposed amendment will be binding on Level 3, who is not a party to the amendment. The Commission's approval will serve to effectuate the amendment as between Verizon and MCI. Thus, it is apparent that any ruling on the question of law Level 3 raises (i.e., what precedential value the Commission's approval should have in future cases) cannot affect the results as to the parties and the issues in the current proceedings.

³ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 2001 WL 455869, 16 FCC Rcd. 9151 (2001)(*Order on Remand*), *remanded further by WorldCom, Inc. v. FCC*, 288 F.3d 429 (DC Cir. 2002)(declining to vacate interim rate structure on remand), *cert. denied by Core Communications, Inc. v. FCC*, 123 S.Ct. 1927, 155 L.Ed.2d 848 (2003).

FCC's new rate structure has been the major issue in dispute between the parties, and through the amendment they have been able to reach agreement on the issue.

Even if blended rates were not consistent with the FCC's rules, which they are, Verizon and MCI are perfectly free to negotiate terms to govern compensation for Internet bound traffic that differ from any rules the FCC may implement. Level 3 acknowledges that this is true. (Level 3 Cmts., p. 3). Thus, Verizon's and MCI's agreement to the blended rates would still be consistent with TA96's legal framework and Congressional intent.

Second, Level 3's assertion that VOIP is not a Telecommunications Service as defined by TA96 is pure speculation. (Level 3 Cmts., p. 5). The FCC has initiated a rulemaking to investigate the issue of the regulatory status of VOIP traffic and has not come to any conclusive

determinations with respect to the types of VOIP traffic that MCI is offering.⁴ Thus, Level 3's statements that presume certainty as to the regulatory status of VOIP traffic constitute nothing more than guesses as to the eventual outcome of the FCC's rulemaking.

The proposed amendment provides, however, that should the FCC or Congress subsequently hold otherwise, the parties would adhere to such decision. The proposed amendment specifically provides as follows:

Notwithstanding anything in this Section 2 [addressing VOIP Traffic], if, after the Effective Date, the FCC or Congress promulgates an effective and unstayed law, rule or regulation, or a court of competent jurisdiction issues an effective and unstayed nationally-effective order, decision, ruling, or the like regarding VOIP Traffic, the Parties will adhere to the relevant portions (i.e., those relating to the regulatory classification of or, compensation for, VOIP Traffic generally or any category of VOIP Traffic) of such legally effective and unstayed rule, regulation, order, decision, ruling or the like as soon as it becomes legally effective.

(Amendment, p. 7). Accordingly, the proposed amendment currently is consistent with the regulatory status of VOIP traffic.

Once again, however, it is not necessary for the Commission to consider whether Level 3's arguments regarding the amendment's blended rates and VOIP are accurate. Level 3 does not comment on these matters for purposes of opposing the Commission's approval of the proposed amendment. Level 3, rather, only does so in a premature effort to have the Commission declare what precedential value approval will have in the context of unknown, future proceedings. The Commission should reserve judgment until such future proceedings arise.

WHEREFORE, Verizon respectfully requests that the Commission approve the proposed amendment pursuant to Subsections 252(e) of TA96, decline to address the precedential value

⁴ Notice of Proposed Rulemaking, Docket No. WC 04-36, FCC 04-28 (adopted Feb. 12, 2004)(not yet released). To the best of Verizon's knowledge, MCI is not presently offering a free PC-to-PC VOIP service comparable to that of Pulver.com, which the FCC recently concluded was an information service. See, In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, *Memorandum Opinion and Order*, 2004 WL 315259, WC Docket No. 03-45, FCC 04-27 (rel. Feb. 19, 2004).

that its order in these proceedings will have with respect to any future issues that may arise in future proceedings, and grant any and all other appropriate relief.

Respectfully submitted,

VERIZON NORTHWEST INC.

By: _____
CHARLES H. CARRATHERS III

ITS ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2004 I placed an original and two copies of COMMENTS OF VERIZON NORTHWEST INC. in overnight mail to the Oregon Public Utility Commission, ATTN: Cheryl Walker. I also electronically mailed true and correct copies to: PUC Efiling; michel.singer_nelson@mci.com and gary.tucker@level3.com.

Renee Willer – Verizon Northwest Inc.