Mailed 3/18/2005

Decision 05-03-027 March 17, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order.	Application 04-03-014 (Filed March 10, 2004)

OPINION CONFIRMING THE ASSIGNED COMMISSIONER RULING THAT GRANTED IN PART THE MOTION FOR EMERGENCY ORDER GRANTING STATUS QUO FOR UNBUNDLED NETWORK ELEMENT PLATFORM ORDERS

I. Summary

This order confirms the March 11, 2005 Assigned Commissioner's Ruling (ACR) which granted in part the motion for an emergency order granting status quo for the unbundled network element platform (UNE-P) orders, as filed on March 1, 2005, as described below.

On March 1, 2005, a joint motion was filed by MCI, Inc. on behalf of its subsidiary MCImetro Access Transmission Services, LLC ("MCImetro") and its other California local exchange subsidiaries that have adopted MCImetro's

interconnection agreement with Verizon California, Inc. (collectively "MCI");[1] nii Communications, Ltd., ("nii"); Wholesale Air-Time, Inc. ("WAT") (collectively "Joint CLECs"); and The Utility Reform Network ("TURN") (collectively "Joint Movants"). In the Motion, Joint Movants allege that Verizon California Inc. (Verizon), by and through its parent company, Verizon Communications Corporation (Verizon Communications) has stated that beginning on March 11, 2005, Verizon will reject all orders for new lines utilizing the unbundled network element platform (UNE-P). The Movants claim that in doing so Verizon would be taking steps that are inconsistent with Verizon's initiation of this arbitration proceeding, would unilaterally prejudge Verizon's still pending motions to withdraw certain parties from this proceeding, and breach its interconnection agreements with Joint CLECs. Each of the interconnection agreements in question, patterned after that between Verizon and MCImetro, provides that that Verizon shall provision unbundled network elements (UNEs) in combinations, including the UNE-P.

It is alleged that Verizon will take this action pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order, released February 4, 2005 (TRRO). On February 10, 2005, at its website, Verizon provided a notice to CLECs with which it has interconnection agreements, Exhibit A in the Joint Motion, which identifies various facilities on which the FCC made findings of non-impairment with

[1] On March 10, 2005, MCI, on behalf of all its California competitive local exchange carrier affiliates, withdrew from the Motion based on MCI Inc. entering into an interim commercial agreement with Verizon Services Corporation and its local exchange affiliates, including Verizon California Inc., which covers the subject matter of and makes moot MCI, Inc.'s relief request in the Motion.

respect to various unbundled network elements, including those comprising the UNE-P, in the TRRO. The Verizon notice states that these "discontinued facilities" will not be available for addition under § 251(c)(3) of the Telecommunications Act of 1996 and is subject to a transition period.

The Joint Movants thus seek a Commission order forbidding Verizon from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective interconnection agreements and completion of this arbitration proceeding.

The Joint Movants concurrently filed a request for an order shortening time to respond to the motion by no later than 5:00 p.m., Friday, March 4, 2005, in order to enable the Commission to issue Joint Movants' requested relief prior to Verizon's implementation of its planned action to reject Joint CLECs' UNE-P orders beginning on March 11, 2005. Joint Movants argued that the shortening of time is therefore necessary to avoid substantial harm, to the competitive marketplace and to consumers, that Joint Movants allege would result from Verizon's planned actions. Verizon and SBC California objected to any shortening of time, contending the Movants could have made their request earlier.

Based on the representation that Movants were endeavoring to reach some resolution prior to filing their motion and that neither Verizon nor SBC California contend that the date on which Verizon will decline to offer new UNE-P arrangements is other than the date alleged by Movants, the Joint Movants' request for an order shortening time for responses to the Motion was granted by Administrative Law Judge Ruling (ALJ) on March 2, 2005.

Joint Movants seek a Commission order forbidding Verizon from rejecting such UNE-P orders pending compliance with the change of law provisions in the

respective ICAs. Joint Movants claim that affected CLECs will be unable to place UNE-P orders in California after March 10, 2005, unless this Commission takes affirmative action to forbid Verizon from rejecting such UNE-P orders pending compliance with the change-of –law provisions in their respective interconnection agreements. Unless such Commission action is taken, Joint Movants claim that CLECs will sustain immediate and irreparable injury because they will be unable to fill service requests for existing and new UNE-P customers.

Pursuant to the schedule set by the ALJ, Verizon filed a response in opposition to the Joint Motion on March 4, 2005. AT&T Communications of California, Inc., TCG Los Angeles, Inc., TCG San Diego, Inc, and TCG San Francisco (jointly AT&T) and Anew Telecommunications, Corp. d/b/a Call America, DMR Communications, Navigator Telecommunications, TCAST Communications and CF Communications, LLC. d/b/a Telekenex (jointly Small CLECs) filed responses in support of the Joint Motion.

The ALJ also specifically identified two questions to be addressed in parties' responses relating to ¶ 227 of the TRRO. The ALJ also authorized replies, filed on March 7, 2005, to the Verizon response limited to these two questions and by Verizon to the AT&T and Small CLEC responses. In response to a March 7, 2005, e-mail request, Joint Movants were granted leave to file a reply pursuant to Rule 45(g) on March 8, 2005.

The Assigned Commissioner issued a ruling on March 11, 2005 regarding Joint Movants' motion. As summarized in the ACR, parties were provided the opportunity to fully brief issues pertinent to a ruling on the motion. The assigned commissioner issued the March 11, 2005 ACR after all affected parties

had fully briefed the motions, including offering a supporting declaration and documents.

II. Confirmation of the ACR

A copy of the ACR is attached as Appendix A hereto. We hereby confirm the ACR in accordance with the provisions of Pub. Util. Code § 310 which states, in part:

> "Every finding, opinion, and order made by the commissioner or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, is the finding opinion and order of the commission."

Because the ruling is attached to this decision, we do not repeat its full contents.

Parties' pleadings raise issues concerning the timing of implementation of the provisions of the TRRO relating to new UNE-P arrangements. Specifically, the question is whether the provisions of the TRRO regarding elimination of new UNE-P arrangements form a sufficient basis for Verizon to unilaterally implement the February 10, 2005 Verizon Notice on March 11, 2005, even though parties have not yet completed the process outlined in the interconnection agreements to negotiate appropriate amendments relating to applicable changes of law under the TRRO. As a basis for resolving the issues in the Joint Motion, the relevant authority is in the provisions of the TRRO and the provisions of the interconnection agreements outlining the sequence of events to occur in order to implement applicable changes of law.

Thus, the centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period. To date, there have been few negotiations between Verizon and the petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO.

Therefore, to afford the parties additional time to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO, Verizon is directed to continue processing CLEC orders for the embedded base of customers, including additional UNE-Ps, until no later than May 1, 2005. Verizon is directed to not unilaterally impose those provisions of the accessible letter that involve the embedded customer base until the company has either negotiated and executed the applicable interconnection agreements with the involved CLECs or May 1, 2005 has been reached. During this negotiation window, all parties are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC ordered changes. Commission staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay. In summary, we see three different situations and different implications of the TRRO:

1. For new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005.

2. For existing CLEC customers seeking new serving arrangements involving UNE-P, Verizon will process new orders for UNE-Ps while negotiations to modify the ICA's continue, but will do so only until May 1, 2005 at the latest.

3. During the transition period until March 11, 2006, absent a new ICA, ILECs must continue to maintain the existing serving arrangements involving UNE-P that CLEC customers currently have, but the TRRO has authorized ILECs to increase the price of UNE-P by $1.

III. Comments on Draft Decision

This is an unforeseen emergency in that the request for relief is based on extraordinary conditions in which time is of the essence. (*See* Rule 81(f) of the Commission's Rules of Practice and Procedure.) We therefore waive the 30-day period for comments on draft decisions set forth in Pub. Util. Code § 311(g)(1) as well as the comment period in Rule 77.7. (See also Pub. Util. Code § 311(g)(2) and Rule 77.7(f)(1).)

IV. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Philip Weismehl is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The March 11, 2005 ruling on the March 1, 2005 Motion, as set forth above, was made after full briefing.

2. The motion resolves disputes concerning Verizon's announcement that, beginning on March 11, 2005, it would reject all orders for new lines utilizing UNE-P and would also stop processing requests for moves, adds, and changes for each CLEC's existing UNE-P customer base.

3. Verizon made this announcement pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order (TRRO), released February 4, 2005.

4. The ACR determined that:

   a. For new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005;

   b. For existing CLEC customers seeking new serving arrangements involving UNE-P, Verizon will process new orders for UNE-Ps while negotiations to modify the ICA's

continue, but will do so only until May 1, 2005 at the latest; and

c. During the transition period until March 11, 2006, absent a new ICA, ILECs must continue to maintain the existing serving arrangements involving UNE-P that CLEC customers currently have, but the TRRO has authorized ILECs to increase the price of UNE-P by $1.

5. This is an unforeseen emergency situation in that the request for relief is based on extraordinary conditions in which time is of the essence.

Conclusions of Law

1. The March 11, 2005 ruling on the Joint Movants' Motion resolves the issues brought before the Commission relating to disputes over Verizon's obligations on and after March 11, 2005 to continue offering UNE-P for new customers and for additions or other changes to lines for existing UNE-P customers.

2. The March 11, 2005 ruling is consistent with the TRRO and, accordingly, should be affirmed by the Commission in accordance with Pub. Util. Code § 310.

3. The 30-day period for comments on draft decisions set forth in Pub. Util. Code § 311(g)(1) as well as the comment period in Rule 77.7 should be waived in view of the fact that the ACR involves an unforeseen emergency situation.

O R D E R

IT IS ORDERED that the Assigned Commissioner's Ruling denying in part and granting in part the motions for continuation of the unbundled network element platform (UNE-P), attached hereto as Appendix A, is hereby confirmed.

This order is effective today.

Dated March 17, 2005, at San Francisco, California

MICHAEL R. PEEVEY
President
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

I dissent.

/s/ GEOFFREY F. BROWN
Commissioner

I reserve the right to file a concurrence.

/s/ DIAN M. GRUENEICH
Commissioner

APPENDIX A

MP1/LLJ/acb 3/11/05

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Assigned Commissioner's Ruling Granting In Part Motion for Emergency Order Granting Status Quo for UNE-P Orders

Introduction

On March 1, 2005, a joint motion was filed by MCI, Inc. on behalf of its subsidiary MCImetro Access Transmission Services, LLC ("MCImetro") and its other California local exchange subsidiaries that have adopted MCImetro's interconnection agreement with Verizon California, Inc. (collectively "MCI"); nii Communications, Ltd., ("nii"); Wholesale Air-Time, Inc. ("WAT") (collectively "Joint CLECs"); and The Utility Reform Network ("TURN") (collectively "Joint Movants"). In the Motion, Joint Movants allege that Verizon California Inc. (Verizon), by and through its parent company, Verizon Communications Corporation (Verizon) has stated that beginning on March 11, 2005, Verizon will reject all orders for new lines utilizing the unbundled network element platform (UNE-P). The Movants claim that in doing so Verizon would be taking steps that are inconsistent with Verizon's initiation of this arbitration proceeding, would unilaterally prejudge Verizon's still pending motions to withdraw certain

parties from this proceeding, and breach its interconnection agreements with Joint CLECs. Each of the interconnection agreements in question, patterned after that between Verizon and MCImetro, provides that that Verizon shall provision unbundled network elements (UNEs) in combinations, including the "UNE Platform (UNE-P). It is alleged that Verizon will take this action pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order, released February 4, 2005 (TRRO). On February 10, 2005, at its website, Verizon provided a notice to CLECs with which it has interconnection agreements, Exhibit A in the Joint Motion, which identifies various facilities on which the FCC made findings of non-impairment with respect to various unbundled network elements, including those comprising the UNE-P, in the TRRO. The Verizon notice states that these "discontinued facilities" will not be available for addition under §251(c)(3) of the Telecommunications Act of 1996 and is subject to a transition period.

The Joint Movants thus seek a Commission order forbidding Verizon from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective Interconnection Agreements and completion of this arbitration proceeding.

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that Joint Movants allege would result from Verizon's planned actions. Verizon and SBC California objected to any shortening of time, contending the Movants could have made their request earlier.

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Joint Movants seek a Commission order forbidding Verizon from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective ICAs. Joint Movants claim that affected CLECs will be unable to place UNE-P orders in California after March 10, 2005, unless this Commission takes affirmative action to forbid Verizon from rejecting such UNE-P orders pending compliance with the change-of –law provisions in their respective interconnection agreements. Unless such Commission action is taken, Joint Movants claim that CLECs will sustain immediate and irreparable injury because they will be unable to fill service requests for existing and new UNE-P customers.

Pursuant to the schedule set by the ALJ, Verizon filed a response in opposition to the Joint Motion on March 4, 2005. AT&T Communications of California, Inc., TCG Los Angeles, Inc., TCG San Diego, Inc, and TCG San Francisco (jointly AT&T) and Anew Telecommunications, Corp. d/b/a Call America, DMR Communications, Navigator Telecommunications, TCAST Communications and CF Communications,

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Sequence of Events Leading to the Motion

On March 10, 2004 Verizon initiated this arbitration intended to address various interconnection agreement issues under change of law provisions and in light of the issuance of the Federal Communication's Commission's (FCC) Triennial Review Order on August 21, 2003. A number of uncertainties developed concerning the status of the TRO, including a federal court decision invalidating portions of the TRO and remanding the matter to the FCC. By ruling, the assigned ALJ questioned parties as to the need for the arbitration to go forward at that time. Ultimately Verizon filed a request on May 6, 2004 to hold the arbitration in abeyance for a brief period. On December 2, 2004, Verizon filed an updated amendment to its petition for arbitration and requested resumption. However, at that time the FCC issuance of what would become known as the TRRO, was imminent, but had not yet occurred.

On February 4, 2005, the FCC issued the TRRO, determining, among other things, that the ILECs are not obligated to provide unbundled local

switching pursuant to [2]Section 251(c)(3) of the Federal Act. The FCC made the TRRO effective as of March 11, 2005. The FCC adopted a transition plan that calls for CLECs to move their UNE-P embedded customer base to alternative service arrangements within twelve months of the effective date of the TRRO and noted the purpose of the transition plan was to avoid substantially disrupting service to millions of mass market customers, as well as to the business plans of competitors. (TRRO, ¶ 226). The FCC also prescribed the basis for pricing during the transition period for unbundled switching provided pursuant to Section 251 (c)(3).

Verizon issued, via its website for CLECs, a "Notice of FCC Action Regarding Unbundled Network Elements" on February 10, 2005 (Verizon Notice, attached as Exhibit A to the Joint Motion) in which in which Verizon notified CLECs that the TRRO had been released and, among other things, that Verizon would cease processing orders for new UNE-P lines starting March 11, 2005. Verizon provided notification to CLECs concerning how it intended to modify its service offerings in response to the TRRO and offered various "alternative arrangements" for CLEC review.

With respect to UNE-P Verizon noted it "is developing a short-term plan that is designed to minimize disruption to your existing business operations. This new commercial services offering would allow your

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[2] Even though the FCC's new unbundling rules end unbundling of certain UNEs under Section 251(c)(3), Verizon has commercial agreements that offer arrangements functionally equivalent to these UNEs, including UNE-P to existing and new customers, and under Section 251(c)(2) it cannot deny similar arrangements to other carriers without facing a charge of discrimination.

continued use of Verizon's network … for a limited period of time while a longer term commercial agreement is negotiated." Verizon goes on to state: "In any event, to the extent you have facilities or arrangements that will become Discontinued Facilities [including UNE-P], please contact your Verizon Account Manager no later than May 15, 2005 in order to review your proposed transition plans. Should you fail to notify Verizon of your proposed transition plans by that date, Verizon will view such failure as an act of bad faith intended to delay implementation of the TRO Remand Order and take appropriate legal and regulatory actions." (Joint Motion, Ex. A at p. 3).

At almost the same time, on February 14, 2005, Verizon wrote to the assigned ALJ requesting that in light of the issuance of the TRRO this arbitration should proceed as quickly as possible. Verizon stated: "On February 4, 2005, the FCC issued its Triennial Review Remand Order ("TRRO"), memorializing the final unbundling rules the FCC adopted on December 15, 2004. The TRRO requires carriers to amend their interconnection agreements, to the extent necessary to implement the FCC's findings, within twelve months (or eighteen months with respect to the no-impairment findings for dark fiber loops and transport) from the March 11, 2005 effective date of the Order. See id. at ¶¶ 143, 196, 227. The FCC expects ILECs and CLECs to promptly implement the Commission's findings as directed by section 252 of the Act, and has asked state commissions to "ensure that parties do not engage in unnecessary delay." Id. at ¶ 233. Verizon's request included a proposed schedule. This request was being considered when the Joint Motion was filed.

Parties' Positions

Joint Movants argue that Verizon's proposed actions would constitute breach of the Joint CLECs' interconnection agreements in at least two respects: (1) by rejecting UNE-P orders that it is bound by the ICA to accept and process and (2) by refusing to comply with the change-of-law or intervening law procedures established by the ICAs.

In support of its Motion, Joint Movants attached the "Affidavit of Dayna Garvin," the designated contract notices manager for interconnection agreements between MCI's California local service entities and Verizon. Based on Garvin's interactions with MCI mass market business units, Garvin asserts that MCI will be adversely affected in its efforts to provide reasonably adequate service to its mass market customers if Verizon rejects request for new UNE-P orders beginning on March 11, 2005. Garvin asserts that Verizon's refusal to accept new orders will prevent MCI from obtaining new customers, and its refusal to access moves, adds and changes relating to the embedded base of existing customers will lead to inadequate service for those customers.

Joint Movants argue that the TRRO requires that its change-of-law provisions be implemented through modifications to the parties' ICAs. In this regard, the TRRO (¶ 233) requires that parties "implement the [FCC's] findings" by making "changes to their interconnection agreements consistent with our conclusions in this Order."

Thus, this requirement of the TRRO recognizes that some period of time may be necessary for parties to negotiate the appropriate changes to their interconnection agreements to conform to the change of law provisions.

Verizon opposes the Joint Motion in its entirety. Verizon argues that there is no basis for the Commission to prohibit Verizon from terminating

its offering of new UNE-P arrangements effective March 11, 2005, since Verizon is merely complying with the requirements of the TRRO. Although the FCC adopted a 12-month transition period from the effective date of the TRRO, Verizon argues that this period only applies to the embedded customer base of existing UNE-P lines, citing TRRO ¶ 199.

Discussion

Parties' pleadings raise issues concerning the timing of implementation of the provisions of the TRRO relating to new UNE-P arrangements. Specifically, the question is whether the provisions of the TRRO regarding elimination of new UNE-P arrangements form a sufficient basis for Verizon to unilaterally implement the February 10, 2005 Verizon Notice on March 11, 2005, even though parties have not yet completed the process outlined in the ICA to negotiate appropriate amendments relating to applicable changes of law under the TRRO. As a basis for resolving the issues in the Joint Motion, the relevant authority is in the provisions of the TRRO and the provisions of the ICAs outlining the sequence of events to occur in order to implement applicable changes of law.

Applicability of Exceptions Under ¶ 227

The TRRO does, in fact, set different timetables for the embedded customer base versus new customers with respect to the transition period. The TRRO states: "The [12-month] transition period shall apply only to the embedded customer base, and *does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order*."(¶ 227).

Verizon interprets this language as prohibiting the CLECs from adding any new UNE-P arrangements after the effective date of the TRRO. Verizon views this prohibition as self-effectuating, and interprets the

limiting clause "except as otherwise specified," as referring merely to carriers' option of voluntarily negotiating "alternative arrangements…for the continued provision of UNE-P," as referenced in ¶ 228.

By contrast, the Joint Movants interpret the clause "except as otherwise specified in this order," as referring to ¶ 233. Specifically, Joint Movants interpret ¶ 233 as entitling Joint CLECs to continue adding new UNE-P customers after March 11, 2005, until the current interconnection agreements are amended to prohibit it. Joint Movants also interpret the reference to "new UNE-P arrangements" to be limited to arrangements for new customers, not including subsequent changes or additions to UNE-P arrangements for existing UNE-P customers.

Parties thus disagree as to whether "new arrangements" refer only to new customers or also include modifications to service arrangements of the existing UNE-P customer base made after March 11, 2005 and whether the exception clause permits the continued provision of UNE-P to new and existing customers pending the development of a new ICA.

We will interpret ¶ 227 and the term "new arrangements" in light of the whole order.

First, we note that the FCC has clearly stated that "Incumbent LECs have *no* obligation to provide competitive LECs with unbundled access to mass market local circuit switching." (TRRO, ¶ 5, emphasis added) In addition, it is clear that the FCC desires an end to the UNE-P, for it states ". . . we exercise our "at a minimum" authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, *justify a nationwide bar on such unbundling*." (TRRO ¶ 204, emphasis added by italics.) Therefore, since there is no obligation and a national bar on the provision of UNE-P, we conclude that "new arrangements" refers to any new UNE-P arrangement, whether to provide service for new customers or to

provide a new arrangement to existing services. The TRRO clearly bars both.

Other parts of the TRRO also support this interpretation. In particular, the FCC also states: ". . . we establish a transition plan to migrate *the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement*." (TRRO ¶207, emphasis added by italics, footnote omitted) Note that this last statement refers to "the embedded base of unbundled local circuit switching;" it does *not* refer to an "*embedded base of customers.*" This statement suggests that there is a need only to transition those already having the UNE-P service, and that there is no need to transition customers who buy the UNE-P service over the next twelve months.

Even when the FCC discusses market disruption caused by the withdrawal of UNE-P service, the FCC limits its discussion to the taking away of service from customers who already possess UNE-P. Although the FCC notes in ¶226 that "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors," this statement is contained in the section of the TRRO titled "Transition Plan." Thus, the FCC's concerns over the disruption to service caused by the withdrawal of UNE-P are focused on those customers undergoing a transition away from UNE-P. This statement does not indicate that the FCC believes that the failure to provide new UNE-P services to still more customers would be disruptive. Indeed, common sense indicates that it would more disruptive to provide a service to a new customer that would only be withdrawn in 12 months than to refrain from providing such a service that will be discontinued.

In summary, the only reasonable interpretation of the prohibition of "new service arrangements" is that this term embraces any to any arrangements to provide UNE-P services to any customer after March 11, 2005.

Concerning "the *except as otherwise specified in this Order*" exception contained in ¶ 227, we see that as referring to the need to negotiate serving arrangements, particular as to the customers undergoing transition or already holding service. In particular, the TRRO still contemplated a transitional process to pursue contract negotiations so that CLECs could continue to offer services to new customers and existing customers.

In particular, the TRRO also states:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. [footnote omitted] Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. [footnote omitted] We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. [footnote omitted] We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. *We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.* (TRRO, ¶ 233, emphasis added by italics)

This clearly indicates that the FCC did not contemplate that ILEC's would unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the TRRO. Just as clearly, the California Commission was afforded an important role in the process by which ILECs and CLECs resolve their differences through

good faith negotiations. Moreover, the Commission was encouraged by the FCC to monitor the implementation of the accessible letters issued by SBC to ensure that the parties do not engage in unnecessary delay.

The warning against unreasonable delay is meaningful only where a process for contract negotiation was contemplated to implement change of law provisions that could extend beyond March 11, 2005.

Thus, the centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period. To date, there have been few negotiations between Verizon and the petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO. Therefore, to afford the parties additional time to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO, Verizon is directed to continue processing CLEC orders for the embedded base of customers, including additional UNE-Ps, until no later than May 1, 2005. Verizon is directed to not unilaterally impose those provisions of the accessible letter that involve the embedded customer base until the company has either negotiated and executed the applicable interconnection agreements with the involved CLECs or May 1, 2005 has been reached. During this negotiation window, all parties are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC ordered changes. Commission staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay.

In summary, we see three different situations and different implications of the TRRO:

1. For new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005.
2. For existing CLEC customers seeking new serving arrangements involving UNE-P, Verizon will process new orders for UNE-Ps while negotiations to modify the ICA's continue, but will do so only until May 1, 2005 at the latest.
3. During the transition period until March 11, 2006, absent a new ICA, ILECs must continue to maintain the existing serving arrangements involving UNE-P that CLEC customers currently have, but the TRRO has authorized ILECs to increase the price of UNE-P by $1.

Process for Implementing Applicable ICA Amendments for UNE-P Replacement

Since further ICA amendments are required, no party shall be permitted to use negotiations as a means of unreasonably delaying implementation of the TRRO or attempting to defeat the intent of the TRRO. The TRRO envisioned a limited period of negotiations, to be monitored by state commissions, after which the UNE-P prohibition against new arrangements would take effect.

The dispute resolution provisions of the MCI Agreement are contained in the General Terms and Conditions, §14. The pertinent provisions are:

14. Dispute Resolution

> 14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute, pursuant to Section 29 of the General Terms and Conditions, that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in

> the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within thirty (30) days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.
>
> 14.2 If the Parties have been unable to resolve the dispute within thirty (30) days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction. In addition, the Parties may mutually agree to submit a dispute to resolution through arbitration before the American Arbitration Association; provided that, neither Party shall have any obligation to agree to such arbitration and either Party may in its sole discretion decline to agree to submit a dispute to such arbitration.

§29 of the General Terms and Conditions requires that the notice of a dispute be in writing and delivered to specified individuals. The Joint Movants contend that by ignoring these dispute resolution provisions, Verizon CA has breached the Agreement.

Thus, in accordance with these provisions of the ICA, parties are to first pursue "diligent efforts" to agree on appropriate modifications to the agreement. According to the Affidavit of Garvin, with reference to the Masoner letter in Exhibit 1 of the Joint Motion, Verizon did not engage in any negotiations with MCI regarding the subject matter of the February 10 Verizon Notice. Verizon replies that for more than two weeks after it advised CLECs that it would no longer accept new UNE-P orders after March 11, 2005, the CLECs did nothing. Garvin states that MCI wrote to Verizon on February 18, 2005, indicating that it considered the February 10 Notice to be an anticipatory breach of MCI's ICA, as well as a violation of the notice, change of law, and dispute resolution terms thereof. (Exhibit 1 of Joint Motion.)

In any event, parties' efforts have failed to produce agreement on the appropriate modifications to implement the change of law provision relating to the elimination of UNE-P. As noted above, Verizon remains obligated to continue offer new serving arrangements involving UNE-P for existing customers until no later than May 1, 2005 or until an agreement is reached As noted above, the FCC has also prescribed the basis for pricing of the embedded UNE-P base during the transition period as provided pursuant to Section 251 (c)(3). The pricing of new UNE-P arrangements added before May 1, 2005 should likewise apply the same transition pricing.

IT IS RULED that:

1. The Motions of Joint Movants and Small CLECs are hereby denied in part and granted in part in accordance with the terms and conditions outlined above.
2. Verizon shall continue to honor its obligations under the TRRO in accordance with the discussion outlined above.
3. Verizon has no obligation to process CLEC orders for UNE-P to serve new customers.
4. Parties are directed to proceed expeditiously with good faith negotiations toward amending the ICA in accordance with the TRRO.
5. If parties have not reached an agreement on the necessary amendments for new arrangements to serve new orders placed by existing CLEC customers, Verizon shall continue processing CLEC orders for UNE-Ps (for these existing customers) until no later than May 1, 2005.

Dated March 11, 2005 in San Francisco, California.

/s/ MICHAEL R. PEEVEY
MICHAEL R. PEEVEY

Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Granting in Part Motion for Emergency Order Granting Status Quo for UNE-P Orders on all parties of record in this proceeding or their attorneys of record.

Dated March 11, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

(END OF APPENDIX A)