BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

INTEGRA TELECOM OF WASHINGTON, INC., a Washington corporation, Complainant, vs. VERIZON NORTHWEST INC. Respondent.	Docket No. 053038 MOTION TO DISMISS OF VERIZON NORTHWEST INC.

I. INTRODUCTION

1 Pursuant to WAC 480-07-380, Verizon Northwest Inc. ("Verizon") hereby moves to dismiss the above-captioned Complaint filed by Integra Telecom of Washington, Inc. ("Integra"). As explained herein, the Washington Utilities and Transportation Commission ("Commission" or "WUTC") lacks the jurisdiction to entertain a complaint that would circumvent the interconnection agreement process established by the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act" or the "FTA"), Pub. Law No. 104-104, 56 Stat. 110 (1996). Integra's Complaint raises disputes that can be resolved only through application of the provisions of the interconnection agreement between Verizon and Integra in Washington, not through independent state law claims, and fails to follow the procedures established by this Commission for enforcement of

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interconnection agreements, WAC 480-07-650. Accordingly, Integra cannot obtain the relief sought by the Complaint, which must be dismissed.

II. STATEMENT OF FACTS

2 On February 18, 2000, pursuant to § 252(i) of the Act, Integra adopted the interconnection agreement between Covad Communications Company and GTE Northwest Incorporated ("GTE," now Verizon) that was approved by the Commission in Docket No. UT-990341 on May 26, 1999 ("Adopted Agreement" which, as amended, constitutes the parties' "ICA"). The Adopted Agreement includes terms that control resolution of Integra's disputes: [1]

- agreement that the ICA constitutes the entire agreement of the parties pertaining to the subject matter contained therein (including provision of unbundled network elements (UNEs)) (Article III, Section 16);
- an alternative dispute resolution procedure for the resolution of controversies and claims arising out of the ICA (Article III, Section 15.1);
- a limitation of liability provision (Article III, Section 25.4);
- certain service standards (Article III, Section 37); and
- a process for maintenance and trouble reporting (Appendix F, Section 2).

Integra amended the Adopted Agreement four times, including an amendment effective June 29, 2000 that addressed UNEs ("UNE Amendment"). The UNE Amendment included provisions specifying that Verizon need not construct new facilities to offer any UNE or combination of UNEs (Sections 1 and 4.4). These were similar to, and built on, provisions in the Adopted Agreement making clear that Verizon only had to provide UNEs that were "Currently Available." (Article II, Section 1.22; Article VII, Section 2.3).

[1] Relevant provisions of the ICA are attached hereto.

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3 After it executed the UNE Amendment, Integra placed a number of UNE orders under that amendment, including orders for facilities to be used to serve the end user customers listed in the Complaint. In May and June of this year, the parties corresponded about problems that Integra claimed to be having in serving the end users listed in the Complaint, dating back in certain cases more than three years. The correspondence culminated with a letter dated June 8, 2005 from Verizon counsel to Integra explaining that, based on the information provided by Integra, there did not appear to be any pending service problems and noting that certain provisions of the ICA would govern the dispute. On June 14, Integra filed the Complaint, which did not analyze any of these ICA provisions, and instead focused on Washington anti-discrimination statutes.

III. ANALYSIS AND ARGUMENT

A. THE COMMISSION CANNOT CIRCUMVENT THE FEDERAL INTERCONNECTION AGREEMENT PROCESS BY ENTERTAINING AN INDEPENDENT STATE LAW CLAIM IN A COMPLAINT.

4 In order to facilitate local exchange service competition through interconnection, leasing of network elements, and the provision of incumbent services at wholesale, Congress designed a comprehensive system under which requesting competitors and incumbent providers are required to enter into ICAs setting forth the terms and conditions of their business relationship. 47 U.S.C. § 251(c)(1). The detailed federal procedural scheme includes negotiation, arbitration, state commission approval, FCC oversight and federal judicial review of ICAs. State commission actions that would ignore this detailed process for competitive interconnection set up by Congress are preempted. *See Verizon North v. Strand,* 309 F.3d 935 (6th Cir. 2002). The Act preempts state law "if it interferes with the methods by which the federal statute was designed to reach [its] goal." *Gade v. National Solid Waste Management Association*, 505 U.S. 88, 103, 120 L.Ed.2d 73, 112 S. Ct. 2374 (1992). Central to the federal regime established by Congress is a detailed interconnection agreement process.

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5 A competitive local exchange carrier ("CLEC") such as Integra may not circumvent its duties under its ICA with Verizon by pleading violation of state antidiscrimination statutes because that would undermine the competitive interconnection process dictated by federal law. That process requires interconnection agreements to govern the relationships between the parties to implement federal rules regarding interconnection, unbundling, and resale. That is why the parties agreed on a detailed interconnection agreement setting forth the terms, conditions and rates governing the discharge of Verizon's unbundling obligations to Integra under the Act. Allowing Integra to bring old grievances under state antidiscrimination laws when the mandated interconnection agreement covers the same conduct would conflict with, and impeded, implementation of the federal statutory scheme and the controlling contract executed by the parties. Accordingly, Integra's claimed state statutory violations cannot be entertained by this Commission.[2] Simply put, all claims regarding the provisioning of UNEs are governed by ICAs that implement federal law; there is no room in this scheme for independent state law claims.

B. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

6 The parties also clearly intended that the unbundling provisions in their ICA exclusively govern disputes over the provision of UNEs. The ICA provides detailed terms and conditions on unbundling, and includes comprehensive general terms addressing such matters as dispute resolution, procedures for contesting bills, and limitations on liability. By failing to address the ICA in its Complaint, Integra can prove "no set of facts in support of [its] claim which would entitle [it] to relief," and thus the Complaint must be dismissed. *See Berge v. Gorton*, 88 Wn.2d 156, 759, 567 P.2d 187 (1977). Even a cursory review of

[2] Integra alleges violations of RCW 80.36.080, .170, .186 and .090.

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certain ICA provisions shows that the parties intended that disputes such as the one presented must be resolved within the four corners of the ICA, not through Commission litigation of generalized allegations invoking state anti-discrimination statutes.

7 For example, Integra agreed in the ICA that it would use an alternative dispute resolution procedure as the primary remedy with respect to any controversy or claim arising out of the ICA. (Article III, Section 15.1). This reflects the Parties' agreement that, except for approval of the ICA by the Commission under Section 252 of the Act, "the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation." (Article III, Section 15.1). The provision then goes on to delineate specific requirements and processes to be used in the negotiation and commercial arbitration of any such disputes. (Article III, Section 15.1). Accordingly, Integra was required to pursue negotiation and arbitration under the terms of the ICA before bringing this matter to the Commission, if at all.

8 Moreover, one claim in the Complaint is described as a billing dispute in which Integra seeks to recover the difference between resale and UNE rates going back as far as 2002. Such billing adjustment claims are stale and barred by the terms of the ICA, which provides:

> "If one party disputes a billing statement issued by the other party, the billed party shall notify Provider in writing regarding the nature and the basis of the dispute *within six months of the statement date or the dispute shall be waived.*" (Article III, Section 7.1 (emphasis added))

Accordingly, billing adjustment claims dating back more than three years are clearly barred by the ICA.

9 Integra also asks the Commission to make a finding that Integra would use in a damages action against Verizon which is clearly barred by the ICA. This request ignores the limitation on liability clause Integra agreed to (Article III, Section 25.4), which limits Verizon's direct damages to "not more than the monthly charges for the services, UNEs or

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facilities for the months during which the claim of liability arose." Integra's request for such a finding is an attempt to circumvent Washington law, which the Commission has repeatedly found does not provide it with authority to award damages. *Taut v. All My Sons Moving & Storage,* Docket No. TV-021248, 2003 Wash. UTC LEXIS 19 (Jan. 15, 2003); *Bhatnagan v. US West Communications,* Docket No. UT-900603, 1991 Wash. UTC LEXIS 57 (June 4, 1991).

10 In addition to dictating the procedural aspects for resolving claims, the ICA exclusively governs the substance of any claims regarding unbundling performance, provisioning, and trouble report resolution. For example, the parties agreed that service performance under the ICA was to be governed by certain standards set forth in Article III, Section 37 of the ICA, but Integra's Complaint fails to state how those standards were violated. The Complaint also describes certain "trouble tickets" that Integra purports to have submitted to Verizon, although many of the numbers used to describe such trouble tickets are not recognizable by Verizon and appear to be numbers used internally at Integra. Moreover, the Complaint fails to address the process for maintenance and resolution of trouble tickets as set forth in the ICA (Appendix F, Section 2), including the process for clearing trouble reports.[3] The Complaint also fails to address the likely cause of any service problems encountered by the Integra customers mentioned in the complaint: the incompatibility of Integra customer equipment with Verizon's network, which numerous ICA provisions make clear that Verizon has no obligation to change. Such provisions specify repeatedly that Verizon need not construct any new facilities, install new electronics

[3] It appears that the trouble tickets Verizon has been able to locate were, in fact, resolved and cleared but given the staleness of Integra's claims (in some cases reaching back more than three years) and the cryptic descriptions of the trouble tickets allegedly submitted by Integra, it has been extremely difficult for Verizon to search its databases to research the allegations of the Complaint. Section 2 of Appendix F does not address retention of trouble tickets, but other sections recognize that similar types of data are not kept for long periods of time (*see, e.g.*, Section 1.2.14 of Appendix F, which requires Verizon to keep ordering data backup for only 45 business days).

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or software or provide any service, feature, or function that it does not have the capability in place to provide. (Sections 1 and 4.4, UNE Amendment; Article VII, Section 2.3; Article II, Section 1.22).

11 By entering a comprehensive agreement governing Verizon's provisioning of UNEs and agreeing expressly that the ICA constitutes the entire agreement between the parties on matters covered therein,[4] Integra agreed that any disputes arising with regard to Verizon's provisioning of UNEs were to be resolved within the four corners of the ICA. Because the issues alleged in the Complaint are to be resolved under the ICA, there is no basis for the independent state law claims raised against Verizon by Integra, and the Complaint must be dismissed.

C. THE COMPLAINT DID NOT FOLLOW WAC 480-07-650.

12 By filing the Complaint, Integra also violated the Commission rules governing enforcement of an interconnection agreement. Using its statutory authority under RCW 80.36.610 to implement the Act, the Commission enacted specific and detailed procedural rules in WAC 480-07-650 for "Petitions for Enforcement Of Telecommunications Company Interconnection Agreements" ("ICA Enforcement Rules"). Included among the ICA Enforcement Rules are requirements that the petition: (a) include a statement of specific facts demonstrating that the petitioner engaged in good faith negotiations that proved unsuccessful to resolve the issue, a copy of the interconnection agreement, and a description of facts demonstrating failure to comply with the agreement; (b) be served on the responding party (including service to notice recipients set forth in the interconnection agreement) the same day it is filed with the Commission; and (c) preceded by at least ten day's written notice of the intent to file such a petition for enforcement. Integra failed to meet any of these requirements in its filing of the Complaint. Thus, in addition to failing to

[4] *See* Article III, Section 16.

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state a claim for which the Commission can grant relief, the Complaint must be dismissed on procedural grounds as well.

IV. CONCLUSION

For the foregoing reasons, Integra's Complaint must be dismissed with prejudice.

Respectfully submitted this 7th day of July, 2005.

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