

Agenda Date: May 12, 2004  
Item Number: Addendum A2

**Docket:** UT-043027

Company Name: VCI Company (a.k.a. Vilaire) and Verizon Northwest Inc.

Staff: Robert Shirley

**Recommendation:**

Approve VCI Company's (VCI) request to adopt, in its entirety, the fully negotiated interconnection agreement between Verizon Northwest Inc. (Verizon) and Tel West Communications, LLC (Tel West), which the Commission approved on February 28, 2003.

**Background:** By letter dated April 22, 2004, VCI requested Commission approval of its adoption of a fully negotiated interconnection agreement between Verizon and Tel West ("Tel West agreement"). On April 30, Verizon objected to approval in a letter addressed to the Commission.

Prior to requesting Commission approval of the adoption, on March 15, 2004, VCI notified Verizon that it wished to adopt the Tel West Agreement. *VCI Letter to Washburn, May 6, 2004, at 1.* On April 5, 2004, Verizon responded to VCI and requested that VCI agree to five terms as a condition of adoption of the Tel West agreement. *Verizon Letter to VCI, April 5, 2004, at 1.* Verizon premised the five terms on its understanding that the FCC's TRO Order altered terms of the Tel West agreement. Verizon also stated that any changes to interconnection agreements approved by the Commission as a result of Docket No. UT-043013 would amend the terms of the Tel West agreement. *Id., 2.* Verizon further premised VCI's adoption of the Tel West agreement on VCI's agreement that Verizon's standard pricing schedule in Washington would supplant contrary terms in the Tel West agreement. *Id., 3.*

VCI represents that it is turning away 19 customers per day that it cannot serve until it has access to Verizon's network.

**Verizon's Position:** Verizon contends that it is not obligated to provide VCI with access to any unbundled element that it is no longer obligated to provide as a result of the FCC's TRO Order. To the extent that the Tel West agreement provides for such access, VCI's adoption of that agreement will not obligate Verizon to so provide. *Verizon Letter to Washburn, April 30, 2004, at 1.* In addition, Verizon stated that under FCC rules ILECs are required to make interconnection agreements available for adoption for "a reasonable period of time." *Id.* (citing 47 C.F.R. § 51.809(c)), and that because some arrangements set forth in interconnection agreements are no longer required by the TRO Order, the reasonable time for adopting them has expired. *Id.* Verizon requests the Commission not approve Verizon's request to adopt the Tel West agreement. Rather,

Verizon recommends that VCI and Verizon should execute a separate adoption letter setting forth the terms of the Tel West agreement that VCI shall not adopt. *Id.*, 2.

**VCI's Position:** In a May 6, 2004 letter to the Commission VCI stated that Verizon's objection is groundless because VCI proposes to adopt the Tel West agreement in its entirety, Verizon has not shown that the proposed adoption is discriminatory or contrary to the public interest, and VCI's request to adopt the agreement is timely. *VCI Letter to Washburn, May 6, 2004, at 1.* VCI contends that Verizon's demand that VCI agree to the five additional terms is an improper modification of the agreement. *Id.* VCI points out that Verizon cited no discrimination and no damage to the public interest that would result if VCI adopts the agreement. *Id.*, 2. According to VCI, the fact that Verizon provides service to Tel West under the agreement demonstrates Verizon's concerns have no merit.

VCI contends that any issues raised by the TRO Order are not relevant to whether VCI may adopt the agreement under 47 U.S.C. § 252(i). *Id.* VCI states that Verizon should not be permitted to use regulatory uncertainty, which VCI states is always present in some degree, to force VCI to accept Verizon's interpretation of the TRO Order *Id.*

Finally, VCI argues that Verizon distorts the reasonable time standard in 47 C.F.R. § 51.809. According to VCI adoption is permitted up until an agreement expires, that the Tel West-Verizon agreement is effective until January 14, 2005, and that it is reasonable for VCI to adopt an agreement that will run for nearly a year. VCI notes that World Communications adopted the Tel West agreement in January 2004. *Id.*

**Staff Recommendation:** Staff recommends the Commission follow its Interpretive and Policy Statement adopted in 2000. *Interpretive and Policy Statement, UT-990355, April 12, 2004 (Policy Statement).*

Pursuant to the Policy Statement, the Commission will decide, within 90 days of the request for adoption of an interconnection agreement in its entirety whether it will approve or reject the adoption. The Commission will reject an adoption "only if it finds that the agreement as adopted by the parties discriminates against any carrier not a party to the agreement, or if the agreement is not consistent with the public interest, convenience and necessity." *Policy Statement, ¶ 31.*

There is no indication that VCI's adoption of the Tel West agreement will discriminate against any carrier not a party to the agreement. Nor is there any indication that VCI's adoption of that agreement would be contrary to the public interest, convenience and necessity.

Once VCI adopts the Tel West agreement, Verizon may pursue its contention that it is no longer obligated to provide access to some unbundled elements. If VCI disagrees with Verizon's actions, VCI may request enforcement of the interconnection agreement pursuant to WAC 480-07-650. Staff notes that it is unclear whether VCI would request

any access that is affected by the TRO Order. Staff draws the Commission's attention to the change of law provision in the Tel West agreement, which VCI adopts along with the remainder of the agreement. *First Amended Interconnection Agreement Between Verizon Northwest Inc. and Tel West communications, LLC, Docket No. UT-990305 (February 6, 2003)*, ¶¶ 4.4, 4.5, 4.6 and 4.7. Verizon may follow the change of law provisions in its commercial relationship with VCI, and if any dispute arises, either or both parties will have recourse to the Commission. *WAC 480-07-650*.

Staff recommends that the Commission reject Verizon's argument that the TRO Order affects the reasonable period of time during which a carrier may adopt an interconnection agreement. Staff recommends that the Commission follow the Policy Statement and permit adoption until the expiration date of the agreement. While the TRO may affect whether Verizon is obligated to provide certain access to VCI under the Tel West agreement, it does not affect the expiration date of that agreement.

In Staff's view, 47 U.S.C. § 252(i) does not contemplate the need for a contract for adoption as Verizon suggests. Rather, Staff believes that Section 252(i) gives no choice to the carrier but to provide service under the terms and conditions of a Commission-approved agreement, unless doing so discriminates against other carriers or is not in the public interest, convenience, or necessity.

Neither VCI nor Verizon Will Be Prejudiced by Approval of Adoption: Verizon does not contend that the entire Tel West agreement has been voided by the TRO. Verizon will not be prejudiced if the Commission approves VCI's request to adopt the Tel West agreement. Once VCI takes service under the Tel West agreement, Verizon may refuse to provide service if the law and the agreement itself permit Verizon to do so, in which case VCI may petition the Commission for enforcement under WAC 480-07-650. Both Verizon and VCI will have the advantage of a commercial agreement, as well as the opportunity to avail themselves of legal rights and processes that might exist regarding its interpretation and enforcement.

**Summary:** There are two reasons why the Commission might reject adoption of an interconnection agreement in its entirety if approval would result in discrimination against a carrier not a party to the agreement, or if adoption is not consistent the public interest, convenience and necessity. None of Verizon's objections meet either standard. Verizon's concerns about the effect of the TRO on its obligations are best addressed through the change of law provisions in the Tel West agreement and not through imposing conditions on a section 252(i) adoption. Therefore, Staff recommends that the Commission approve the adoption by VCI of the Tel West agreement in its entirety.