

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

THE JOINT PETITION FOR
ENFORCEMENT OF
INTERCONNECTION AGREEMENTS
WITH VERIZON NORTHWEST, INC.

DOCKET NO. UT-041127

COMMENTS ON
RECOMMENDED DECISION

1 Commission Staff submits the following arguments regarding the recommended decision in this matter, pursuant to WAC 480-07-650(5)(c). The recommended decision is in error insofar as it concludes that federal law does not require Verizon to unbundle narrowband switching functionality provided over its Nortel Succession switch in the Mount Vernon exchange.

2 The Federal Communications Commission (FCC) decisions establishing that “packet switching” need not be unbundled always discuss packet switching as the means of delivering *broadband services*.¹ The FCC consistently discusses “packet switching” as part of “advanced networks,” used to provide “advanced services.”² In the consumer market, “advanced services” means broadband Internet access that telecommunications companies provide over their copper loops via DSL (or in some cases over fiber-to-the-premises) and that cable companies provide to their customers over their coaxial cable via cable modems.³

¹ See Memorandum Opinion and Order, In the Matter of Petition for Forbearance of the Verizon Telephone Companies, WC Docket No. 01-338, ¶ 1 (Oct. 27, 2004) (discussing “broadband elements” which include fiber-to-the-home, fiber-to-the-curb, packetized functionality of hybrid loops, and packet switching).

² UNE Remand Order, FCC 99-238, ¶¶ 303-306; TRO, FCC 03-36 ¶¶ 537, 541.

³ Newton’s Telecom Dictionary, 20th Ed. (2004), defines “advanced services” as follows: “This is the FCC’s definition: Advanced telecommunications capability is the availability of high-speed, switched, *broadband*

The generic service is broadband Internet access and this service requires the ability to deliver packetized data from the Internet (or a private network) to a modem at the customer's premises.

3 By contrast, plain old telephone service (which can be used for dial-up Internet access), is narrowband service.

4 Within the telephone network, broadband traffic does not travel over the switches that connect narrowband calls. Rather, digital subscriber line access multiplexers (DSLAMs) send that traffic to the Internet via an Internet service provider.⁴ DSLAMs do the “packet switching” for broadband services while circuit switches do the switching for narrowband traffic. No advanced services are provided using the new Nortel Succession switch in the Mount Vernon exchange—no broadband traffic is carried over the switch. Separate DSLAM and packet switching equipment is still required, as before, to provide DSL in the exchange. The packet switch associated with the DSLAM, that Verizon uses in the provision of DSL, has no connection with the new Nortel Succession switch, which carries only narrowband traffic.⁵

5 The FCC defines packet switching as *including* DSLAM packet switching, both in the UNE Remand Order and the TRO. In the UNE Remand Order, at paragraph 303, the FCC states: “[I]ncluded in our definition of the packet switching functionality, and *included in our definition of packet switching is the Digital Subscriber Line Access Multiplexer (DSLAM)*” (emphasis added). At paragraph 304, the FCC states: “We decline to adopt

telecommunications that enables users to originate and receive high-quality voice, data, graphics, and video using any technology [emphasis added].” “Broadband” is defined as follows: “Today’s common definition of broadband is any circuit significantly faster than a dial-up phone line. That tends to be a cable modem circuit from your friendly cable TV provider, a DSL circuit, a T-1 or and E-1 circuit from your friendly local phone company.”

⁴ Decl. of Robert Williamson ¶¶ 13-15.

⁵ *Id.* at ¶ 19.

proposed definitions of packet switching that exclude DSLAMs from packet switching functionality.” Plainly, the FCC views the DSLAM and the packet switching that is associated with the DSLAM as being of one piece in the provision of broadband, Internet access service.

6 At paragraph 541 of the TRO, the FCC states: “Finally, because packet switching is used in the provision of *broadband services*, our decision not to unbundle stand-alone packet switching is also guided by the goals of, and our obligations under, section 706 of the 1996 Act . . . [W]e decline to require unbundling on a national basis for *stand-alone packet switching* because it is the *type of equipment used in the delivery of broadband*” (emphasis added). The FCC has never indicated that ILECs do not have to unbundle switching of the type used by Verizon in Mount Vernon to complete narrow band voice traffic. That switch provides “voice switching” functionality only.

7 The Recommended Decision appears to hinge on the FCC’s statement at paragraphs 447 and 448 of the TRO, and footnote 1365 of (UT-041127 Order No. 2 ¶ 81). However, the Recommended Decision takes the FCC’s statements out of context. Footnote 1365 must be read with the FCC’s own definition of packet switching that includes DSLAM functionality that is *not* included in the narrow band voice switch used by Verizon in Mount Vernon.

8 In the TRO, the FCC did nothing to change the its prior decisions regarding the unbundling requirements for packet switching. It did, however, change the rules regarding access to the high frequency portion of the loop, which is the way packetized data is transmitted to and from the customer premises in DSL service. Prior to the TRO, CLECs that wanted to provide broadband services to customers could obtain the high frequency

portion of the loop (through line sharing), but they had to provide their own DSLAM equipment and packet switching functionality—they could not lease on an unbundled basis the packet switching equipment that the ILECs used to provide DSL to their customers.

9 The FCC has promoted a policy of removing disincentives for ILECs to deploy advanced networks. The FCC has relieved ILECs from the obligation to unbundled broadband services in order to remove a disincentive for ILECs to invest in such facilities. Thus, the FCC provided in the TRO that if ILECs deploy fiber-to-the-premises (in competition with cable companies' cable modem service), they need not unbundled it for CLECs.

10 Verizon's Nortel Succession switch carries only narrowband traffic, not broadband. As configured, the switch is not capable of carrying broadband traffic. It does not send traffic to, or receive traffic from, the Internet (other than dial-up traffic like any circuit switch). It does not send or receive packetized data from customer premises. It only carries narrowband traffic, just as the switch it replaced did. It only "packetizes" that narrowband traffic for its own internal purposes, within the switch itself. The traffic enters and leaves the switch in the same form as it did with the prior switch—using time division multiplexing, not Internet protocol or any other packet-based protocol. Broadband traffic is split-off from the copper loops and routed to a DSLAM before it reaches the switch, exactly as it was before Verizon replaced the switch. The switch simply is not part of an "advanced network" as the FCC uses that term and it does not provide broadband or any of the "advanced services" that broadband enables a customer to receive.

11

In short, this switch is not what the FCC meant by a “packet switch.” At the very least, there is a question of fact as to whether this switch, as configured, is actually capable of carrying any broadband traffic.

DATED this 13th day of December, 2004.

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