

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of) DOCKET NO. UT- 041127
)
THE JOINT PETITION FOR) TEL WEST COMMUNICATIONS, L.L.C.
ENFORCEMENT OF) PETITION FOR REVIEW OF ORDER NO. 2,
INTERCONNECTION AGREEMENTS) THE RECOMMENDED DECISION
WITH VERIZON NORTHWEST, INC.) GRANTING VERIZON’S MOTION FOR
) JUDGMENT ON THE PLEADINGS
)

COMES Now, Tel West Communications, L.L.C. (“Tel West”) and files this Petition for Review of Order No. 2, *Recommended Decision Granting Verizon’s Motion for Judgment on the Pleadings And Denying, in Part, Verizon’s Motion to Strike* and would respectfully show as follows:

I. INTRODUCTION

On December 3, 2004, the Administrative Law Judge entered Order No. 2 in the above referenced matter (“Order No. 2”). Order No. 2 granted Verizon’s Motion for Judgment on the Pleadings, and though styled an interlocutory order, Order No. 2 effectively holds that the Federal Communication Commission’s (“FCC”) Triennial Review Order,¹ other FCC Orders, and interconnection agreements allow the replacement of circuit switches used for voice service with packet switches, rather than the mere deployment of packet switching. See Order No. 2 at ¶ 2.

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17145, para. 278 (2003) (Triennial Review Order) , corrected by Errata, 18 FCC Rcd 19020 (2003) (Triennial Review Order Errata), vacated and remanded in part, affirmed in part, United States Telecom Ass’n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (USTA II).

Because Order No. 2 is based on dicta and speculation, Id., especially at ¶ 81, it effectively terminates Tel West’s participation, causes substantial harm to Tel West that is not remediable, and because a review is extremely warranted, notwithstanding the additional time and expense, to preserve the Washington State Utilities and Transportation Commission’s (“Commission”) duty to regulate in the public interest, RCW 80.01.040(3), Tel West requests the Commission revisit and reverse Order No. 2.

II. LEGAL STANDARD

Interlocutory review is discretionary. Review of an interlocutory order in adjudicative proceedings is permitted if:

- (a) the ruling terminates a party's participation ... and the party's inability to participate thereafter could cause it substantial and irreparable harm; or
- (b) any post-hearing review would not prevent substantial injustice, or
- (c) “A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.”

WAC 480-07-810(2).

A petition for review, such as this one, “must state why the ruling is in error or should be changed and why interlocutory review is necessary, and must cite reasons that support the petition.” (WAC 480-07-810(3)).

III. ORDER NO. 2 TERMINATES TEL WEST’S PARTICIPATION

Whether an ILEC may block access unbundled network access at TELRIC rates to the public switched telephone network (“PSTN”) by replacing a voice circuit switch with a packet switch violated interconnection agreements was first presented to the Commission in *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc. With Competitive Local Exchange*

Carriers And Commercial Mobile Radio Service Providers In Washington Pursuant to 47 U.S.C. Section 252(b), and the Triennial Review Order, Docket UT-043013.

The Administrative Law Judge subsequently determined to decide the issue of replacement versus deployment of a packet switch is permitted under the Triennial Review Order and interconnections agreements in a separate proceeding. Order No. 10 at ¶ 36 (“the issue of whether the provisions in the Triennial Review Order, other FCC Orders and interconnection agreements allow the replacement of existing circuit switches used for voice service with packet switches, rather than the mere deployment of packet switching. This issue must be determined on the merits in a separate proceeding.”) See UT-043013, Order No. 10, ¶ 36. The “separate” proceeding is UT-041127.

Tel West is not a party to UT-043013. But Tel West is a party to this matter, i.e., the “separate” proceeding. Tel West intervened in UT-041127 on September 24, 2004, and was granted party status on October 14, 2004. Order No. 2, ¶¶ 7, 9. Tel West believes there will be no outstanding issues in this Docket if Order No. 2 becomes final. Therefore, if Order No. 2 is not set aside, Tel West’s ability to participate in any further proceedings regarding issues that impact Tel West, and should be handled in this docket, and not UT-043013, will be terminated.

IV. ORDER NO. 2 IS IN ERROR AND/OR SHOULD BE CHANGED

Order No. 2 is in error and should be changed because it establishes a negative precedent for the Commission. For the reasons set out in *Tel West’s Answer to Verizon’s Motion for Judgment on the Pleadings of, and Answer to, Joint Petition for Enforcement of Interconnection Agreements*, which is incorporated herein for all purposes, Verizon

may not block access to the voice capabilities of the PSTN. There is no competent or substantial evidence to the contrary.

Order No. 2 is based on “dicta” from the Triennial Review Order and speculation about what the FCC’s understanding of the issue might be. ¶ 81 (“Although the language in footnote 1365 and paragraph 448 are more dicta than final ruling, they provide insight into the FCC’s understanding of the issue.”) Order No. 2 further speculates, or perhaps hopes, in a footnote, that because the “FCC is continuing to develop final rules in the wake of the USTA II decision, the FCC may address the issue more directly in the future.” Id. n. 8.

Perhaps the FCC will, but in the meantime, this Commission must not make decisions on what the FCC may do. Decisions must be based on what is in the public interest [RCW 80.01.04(3)]. The law further demands that this Commission not allow any “telecommunications company [to] ... subject any corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”. RCW 80.36.170.

Order No. 2 is not consistent with the public interest and imposes an undue and unreasonable prejudice on Tel West. Any costs or delay in review are *de minimus* compared with ensuring that orders of the commission are based on substantial evidence consistent with the law. The Commission is urged to undertake a review of Order No. 2.

PRAYER

Wherefore, Tel West requests this Commission grant its Petition for Review of Order No. 2, the *Recommended Decision Granting Verizon's Motion for Judgment on the Pleadings And Denying, in Part, Verizon's Motion to Strike* and be awarded such other and further relief to which it may be entitled.

Dated this _10__th day of December, 2004.

Respectfully submitted,

TEL WEST COMMUNICATIONS, L.L.C.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I served Tel West's Petition for Review of Order No. 2, Recommended Decision Granting Verizon's Motion for Judgment on the Pleadings And Denying, in Part, Verizon's Motion to Strike was served, with the correct number of copies, on the following by e-mail at records@wutc.wa.gov and by overnight delivery.

Carole Washburn, Executive Secretary
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I further certify that I served a true and correct copy of the foregoing document on the following parties by e-mail and U.S. Mail:

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Said copies were served by placing them in sealed envelopes addressed to said party's/attorneys' last know addresses as shown and deposited in the United States Mail, and that the postage thereon was prepaid and also via electronic mail to the addresses indicated.

DATED this 10th day of December, 2004.

David Mittle, NMSBA # 6597