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May 7, 2004

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VIA HAND DELIVERY

Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transportation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

**Re: Docket No. UT-043013 –
Verizon's Motion to Hold Proceeding in Abeyance Until June 15, 2004**

Dear Ms. Washburn:

Please find an original and six copies of Verizon's Motion to Hold Proceeding in Abeyance Until June 15, 2004 and a Certificate of Service.

Thank you in advance for your assistance in this regard.

Very truly yours,

A handwritten signature in black ink that reads "Timothy J. O'Connell".

Timothy J. O'Connell

Enclosures

cc: Parties of Record

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for
Arbitration of an Amendment for
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 No. UT-043013

VERIZON'S MOTION TO HOLD
PROCEEDING IN ABEYANCE UNTIL
JUNE 15, 2004

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In order to avoid interference with ongoing *Triennial Review* commercial negotiations, Verizon Northwest Inc. ("Verizon") respectfully moves to hold this proceeding in abeyance until June 15, 2004, the date on which the D.C. Circuit's mandate in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*") is currently scheduled to issue. Verizon is authorized to state that counsel for the following parties do not oppose this motion: ELI; Rio; New Edge; and the members of the Competitive Carriers Coalition represented by Swidler Berlin Shereff Friedman LLP.

On February 26, 2004, Verizon filed a petition for arbitration to amend Verizon's interconnection agreements with CLECs and CMRS providers in Washington to reflect the rules promulgated in the *Triennial Review Order*.¹ On March 2, 2004, the D.C. Circuit issued its

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18

decision in *USTA II*, in which it affirmed in part and vacated in part the FCC's *Triennial Review Order*. The D.C. Circuit, however, stayed the issuance of its mandate for 60 days (*i.e.*, until May 3, 2004).² On April 9, 2004, the FCC and the United States — with the consent of Verizon, other incumbent carriers, CLECs, CMRS providers, and industry trade associations — sought a 45-day extension of the D.C. Circuit's stay of its mandate, explaining that such an extension would “give carriers a fair opportunity to reach a negotiated resolution of their disputes over unbundled access to network elements.”³ The D.C. Circuit granted that motion on April 13, 2004.⁴ As a result, the D.C. Circuit's mandate will not issue until June 15, 2004.

As Verizon has explained in prior filings, the pendency of appellate proceedings regarding some aspects of the *Triennial Review Order* provides no legal basis for delaying the arbitration of amendments to existing interconnection agreements.⁵ Verizon also has made clear that the commercial negotiations the FCC requested and this ongoing arbitration are separate efforts with distinct purposes.

Nonetheless, Verizon recognizes that the parties have limited resources. Placing the current proceeding into abeyance would help to ensure that parties will be able to devote their attention to commercial negotiations without the distraction of simultaneous litigation, including

FCC Rcd 16978 (2003) (“*Triennial Review Order*”), *vacated in part and remanded, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).

² The D.C. Circuit initially stayed its vacatur until the *later* of the denial of any petition for rehearing or 60 days from March 2, 2004. Because no party timely sought rehearing, only the latter trigger remained applicable.

³ Consent Motion of the FCC and the United States To Extend the Stay of the Mandate, *USTA II*, Nos. 00-1012 *et al.*, at 2 (D.C. Cir. filed Apr. 9, 2004).

⁴ *See* Order, *USTA II*, Nos. 00-1012 *et al.* (D.C. Cir. Apr. 13, 2004).

⁵ Indeed, the FCC expressly held that such amendments should not be delayed until the time when its “Order become[s] final and unappealable,” because “it would be unreasonable and contrary to public policy to preserve [the FCC’s] prior rules” — which were vacated more than 14 months ago — “for months or even years pending any reconsideration or appeal of this Order.” *Triennial Review Order* ¶ 705.

litigation over non-substantive matters, such as whether this proceeding is the appropriate forum in which to resolve issues related to the *Triennial Review Order*. Accordingly, Verizon respectfully requests that the Commission hold this proceeding in abeyance — and thereby conserve the resources of the Commission and the parties — until June 15, 2004. To ensure that no party is prejudiced by this hiatus, Verizon also requests that the Commission toll the time for completion of this arbitration that would otherwise apply under 47 U.S.C. § 252(b)(4)(C). On, or shortly after June 15, Verizon will propose a procedural schedule for the resumption and completion of this proceeding.

For the foregoing reasons, Verizon's motion to hold this proceeding in abeyance until June 15, 2004, should be granted.

Respectfully submitted,



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May 7, 2004