BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by VERIZON NORTHWEST, INC.	)	Docket No. UT-011219
	)	JOINT CLEC RESPONSE TO VERIZON MOTION TO TERMINATE PROCEEDING

Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc. ("Joint CLECs") provide the following response to the Motion of Verizon Northwest Inc. ("Verizon") to Terminate Proceeding ("Verizon Motion"). The Verizon Motion does nothing more than rehash the arguments that Verizon previously made in opposition to the Commission's establishment of the scope of this docket and which the Commission previously rejected. The Commission should deny the Verizon Motion.

Introduction

1. Verizon has consistently and continuously opposed the Commission's decision to establish standard terms and conditions for access to, and interconnection with, Verizon's network in Washington. Verizon apparently cannot take "no" for an answer and once again asks the Commission to dispense with this proceeding. Not surprisingly and in sharp contrast to Verizon's representations, such a result would benefit only Verizon, would require wasteful expenditure of Commission and competitive local exchange company ("CLEC") resources, and would serve only to diminish the already minimal level of competition in Verizon's local service territory in Washington.

2. Verizon falsely claims that "as a practical matter, this proceeding has been unproductive and unnecessary since CLECs have ample options for interconnection, whether they desire to negotiate individually with Verizon or not." Verizon Motion at 6. The negotiations to date

have been far more "productive" than multiple individual negotiations would have been. The fact that the parties have identified "close to 100 unique issues still in dispute" in the resale, interconnection, and general terms provisions of Verizon's proposed template agreement demonstrates only Verizon's inflexibility and insistence on its own contract language and legal interpretations. Verizon, for example, has repeatedly refused to accept CLECs' proposals to use language that the Commission previously reviewed and adopted for use in the Statement of Generally Available Terms ("SGAT") of Qwest Corporation ("Qwest"), based solely on Verizon's belief that the Commission's determinations are inapplicable to Verizon. The CLECs have made a good faith effort to negotiate with Verizon, but Verizon simply will not compromise on any substantive issues or on most contract language issues. To the extent that the negotiations have been "unproductive," the fault lies with Verizon, not this proceeding.

3. Verizon nevertheless contends that its "one-on-one negotiations with the participating CLECs have proven much more fruitful than the negotiations in this proceeding." Verizon Motion at 5-6. Verizon, of course, does not even attempt to provide factual support or even specific examples to prove its contention. Not one of the parties that are actively participating in this proceeding has executed a fully negotiated interconnection agreement with Verizon since the Commission initiated this proceeding. To the extent that Verizon refers to other carriers, only Verizon could believe that its ability to use its vastly superior bargaining power and virtually unlimited resources to bully small CLECs into accepting Verizon's proposed contract language represents "fruitful negotiations."

4. Verizon incorrectly states that "CLECs also have had the option not to negotiate with Verizon at all and instead adopt an existing agreement between Verizon and another carrier." Verizon Motion at 6. Verizon fails to mention that every interconnection agreement that is available for

adoption is between Verizon and a small CLEC, primarily if not exclusively resellers, with little or no facilities and an insignificant presence in Washington. Not surprisingly, those agreements are virtually indistinguishable from Verizon's proposed template agreement that the parties have been negotiating in this proceeding. As the number of disputed issues to date indicates, adoption of any such agreement is not even arguably a viable option for the CLECs participating in this docket.

5. Finally, Verizon maintains that Commission statistics show "a majority of interconnection agreements are successfully negotiated, that relatively few must be arbitrated, and that virtually none have required arbitration in recent years." Verizon Motion at 6, n.15. Any such statistics fail to reflect reality. All of the interconnection agreements between Verizon and the CLECs in this docket were executed a year or two after passage of the Telecommunications Act of 1996 ("Act"), and those agreements' initial terms expired long ago. No arbitrations have been necessary in recent years because this docket has provided a forum in which the participating CLECs can negotiate and arbitrate their disputed issues while Verizon continues to honor the existing agreements. As a practical matter, moreover, few agreements are arbitrated because most CLECs do not have the resources to arbitrate and generally adopt agreements that have been arbitrated by AT&T, MCI, or other larger companies. As the Commission has implicitly recognized, such a system is inefficient and inappropriately requires a few CLECs to shoulder the financial burdens of establishing interconnection agreements to be used by all other CLECs.

6. The Qwest SGAT has been a model for a far more efficient and equitable way to develop interconnection agreements. The Commission and interested parties spent over two years to establish the SGAT, which is now used as the template for all interconnection agreements between Qwest and CLECs. While there have been some arbitrations, the disputed issues have been far fewer

and more discrete than the mammoth arbitration proceedings filed before the SGAT was available. Verizon, however, eschews these benefits because Verizon is far more likely to be able to force CLECs to accept most or all of Verizon's interconnection contract of adhesion if the CLECs are forced to negotiate and arbitrate their own individual agreements. Encouraging such a "divide and conquer" strategy is not in the public interest and provides no basis on which the Commission should terminate this proceeding.

Discussion

7. The primary legal basis for the Motion is Verizon's belief that the Commission lacks authority to require Verizon to maintain standard interconnection terms and conditions. The Commission has already rejected this argument, but Verizon relies on three federal court cases to take issue with the Commission's prior determination. Not only are none of those cases binding on the Commission, none of them preclude the Commission from conducting this proceeding. To the contrary, one of those cases expressly endorses such a proceeding.

8. The Act provides that a state commission retains authority to establish and enforce obligations for access to, and interconnection with, local exchange company networks as long as those obligations are consistent with the requirements in Section 251 and do "not substantially prevent implementation of the requirements of [Section 251] and the purposes of [the Act]."[1] Verizon nevertheless contends that federal law preempts Commission action in this proceeding because such action allegedly is inconsistent with the Act. The case law that Verizon cites does not support this contention.

[1] 47 U.S.C. § 251(d)(3); *accord id*. § 261.

9. Each of the cases on which Verizon relies involved state commission attempts to *tariff* rates, terms, and conditions for access to, and interconnection with, the incumbent local exchange carrier's ("ILEC's") network and to eliminate the need for interconnection agreements. As the Sixth Circuit stated,

> The proper focus for the preemption analysis in this case is on the § 252 process as a whole. The important point is not the narrow issue of negotiation/arbitration as the means for molding the business relationship between the incumbent and its competitors, but rather that the MPSC order provides an alternative route around the entire interconnection process (with its attendant negotiation/arbitration, state commission approval, FCC oversight, and federal court review procedures).[2]

10. The Commission in this proceeding, however, has never expressed an intention to "provide[] an alternative route around the entire interconnection process." To the contrary, the Commission obviously contemplates that the document that results from this proceeding, like Qwest's SGAT, will form the basis for interconnection agreements between Verizon and CLECs. Such a process is fully consistent with the Section 252 process. Carriers still will be required to execute an interconnection agreement with Verizon, which will be subject to Commission approval and judicial review. Even to the extent that a carrier requests the Commission-approved template as its interconnection agreement, such an election is virtually indistinguishable from a carrier's ability to adopt all or some of the provisions of interconnection agreements between Verizon and another carrier under Section 252(i).

11. Indeed, the Oregon District Court decision on which Verizon relies actually supports

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[2] *Verizon North, Inc. v. Strand*, 309 F.3d 935, 943 (6th Cir. 2002); *see Wisconsin Bell v. Bie*, 340 F.3d 441, 442 (7th Cir. 2003) ("The question presented by this appeal is whether a state may create an alternative method by which a competitor can obtain interconnection rights.").

the Commission's actions in this docket. As that Court explained,

> However, not all CLECs need a custom interconnection agreement. Some CLECs merely want to purchase services for resale, and do not plan to physically interconnect with GTE's network. ***The PUC is not precluded from adopting a universal "short-form" interconnection agreement for use in this circumstance.*** Upon signing the agreement, a CLEC could purchase services "off the rack" at the established prices.
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> A universal short-form agreement might also be appropriate for some CLECs purchasing unbundled elements, so long as there is sufficient opportunity for the parties to address any technical issues regarding that interconnection, and the PUC ensures that GTE is compensated (to the extent required by the Act) for any special costs associated with a particular interconnection agreement that are not already included within the unbundled element prices. Of course, a CLEC could still negotiate a custom agreement, if it chose.
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> Admittedly, the Act does not specifically provide for this short-form procedure, but the Act does not forbid it either. ***The primary goal of the Telecommunications Act of 1996 was to open local telephone markets to competition, and this procedure furthers that goal and is not inconsistent with either the terms or the purposes of the Act.***[3]

12. The purpose of this proceeding is to establish a standard form interconnection agreement that CLECs can use as a template for individual negotiations or adopt in whole or in part as their agreement with Verizon. Such a form agreement is fully consistent with the Oregon District Court's decision, as well as with the terms and purpose of the Act.

13. Verizon disagrees, claiming that "Congress chose instead to encourage the parties to determine the terms and conditions of interconnection through individualized, private negotiation wherever possible." Verizon Motion at 11. The plain language of the Act fails to support this claim.

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[3] *MCI Telecommunications Corp. v. GTE Northwest Inc.*, 41 F. Supp. 1157, 1177 (D. Or. 1999) (emphasis added).

The Act authorizes ILECs to maintain SGATs, which can be (and often are) used by CLECs in lieu of individualized interconnection agreements.[4] Indeed, where such an SGAT exists, no "individualized, private negotiation" would be required, and few if any such negotiations may take place. The Act also authorizes carriers to adopt some or all of an agreement between the ILEC and another CLEC, obviating the need for many CLECs to engage in "individualized, private negotiation."[5] In the extreme but realistic scenario, only one CLEC would need to engage in such negotiation and arbitration, while the remaining CLECs simply adopt the resulting agreement. Congress thus did not even arguably "encourage the parties to determine the terms and conditions of interconnection through individualized, private negotiation wherever possible." Rather, Congress established such negotiation as one *option* available to CLECs seeking access to, and interconnection with, ILECs' networks. The additional option that will result from this proceeding thus is entirely consistent with the Congressional scheme of providing a variety of alternatives to CLECs to establish an interconnection agreement that will fulfill their needs.

14. Verizon also argues that Sections 252(f) and (g) do not authorize the Commission to compel Verizon to undertake an "SGAT"-like proceeding. The Commission need not even address this point because Washington law unambiguously provides the Commission with more than ample authority. Washington statutes specifically provide,

> Whenever the commission shall find, after [a hearing had upon its own motion or complaint] that the rules, regulations, or practices of any telecommunications company are unjust or unreasonable, . . . the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, [and] practices, . . . and fix the same by

[4] 47 U.S.C. § 252(f).

[5] *Id*. § 252(i).

order or rule . . . .[6]

The Commission will examine Verizon's rules, regulations, and practices with respect to providing CLECs with access to, and interconnection with, its network, and the template interconnection agreement that the Commission will adopt will establish just, reasonable, proper, adequate, and efficient rules, regulations, and practices. Verizon cannot reasonably maintain that the Commission lacks the legal authority to undertake this proceeding.

15. Washington law authorizes the Commission to establish a standard template interconnection agreement for Verizon, and establishment of such an agreement is consistent with the language and purpose of the Act. Verizon, therefore, has failed to identify any basis on which the Commission should terminate this proceeding.

Conclusion

16. The Commission created this docket to establish standard terms and conditions for interconnection agreements between Verizon and CLECs in Washington. Such terms and conditions are authorized by state law, consistent with the Act, and further the Commission's long-standing goals of encouraging the development of effective local exchange competition. The Commission, therefore, should deny the Verizon Motion to terminate this proceeding.

DATED this 28th day of June, 2004.

[6] RCW 80.36.140.

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