

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Development of)	
Universal Terms and Conditions for)	DOCKET NO. UT-011219
Interconnection and Network)	
Elements to be Provided by)	
)	NINTH SUPPLEMENTAL ORDER
VERIZON NORTHWEST, INC.)	
)	DENYING MOTION TO TERMINATE
)	PROCEEDING
.....)	

1 **Proceeding.** This matter involves a request that the Commission direct Verizon to provide persons requesting interconnection agreements with Verizon some generally available terms, and that the Commission review the terms for compliance with pertinent law.

2 **Background.** The Commission initiated this proceeding in March 2002.¹ Since that time, the schedule of proceedings has been continued several times to accommodate the parties’ negotiations and the Commission’s Triennial Review Order proceedings. In its Eighth Supplemental Order, the Commission established a new schedule and set a prehearing conference for July 9, 2004.

3 On June 18, 2004, Verizon filed a motion to terminate the proceeding on the basis that federal law preempts it.

4 AT&T responds that it does not agree with Verizon’s legal basis for termination, but for practical reasons, does not oppose termination.

¹ *In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest Inc.*, Docket No. UT-011219, First Supplemental Order (March 1, 2002).

5 Commission Staff and the Joint CLECs (XO, Washington, Inc., Time Warner
Telecom of Washington, LLC and Integra Telecom of Washington, Inc.) oppose
termination.

6 **Appearances.** Catherine Kane Ronis, attorney, Washington, D.C., represents
Verizon Northwest Inc. (Verizon). Letty S.D. Friesen, attorney, Denver, Colorado,
and Gregory J. Kopta, attorney, Seattle, WA, represent AT&T Communications
of the Pacific Northwest, Inc. Gregory J. Kopta represents Fox Communications
Corp. (Fox), Time Warner Telecom of Washington, LLC (Time Warner); and XO
Washington, Inc. (XO). Dennis D. Ahlers, attorney, Minneapolis, MN, represents
Eschelon Telecom, Inc. (Eschelon). Michel Singer-Nelson, attorney, Denver,
Colorado, represents WorldCom, Inc. (WorldCom). Karen J. Johnson, attorney,
represents Integra Telecom of Washington, Inc. (Integra). Gregory Trautman,
Assistant Attorney General, represents Washington Utilities and Transportation
Commission Staff (Commission Staff).

7 **Motion.** In determining whether it is appropriate to terminate this proceeding,
this Order addresses individually each argument raised by Verizon.

- ***Is this proceeding precluded by the provisions of section 252(f) and section 252(g) of the federal Telecommunications Act (the Act)?***

8 Verizon contends that section 252(f)(1),² the provision of the Act addressing
Statements of Generally Available Terms (SGAT), applies only to Bell operating
companies and that Verizon is not a Bell operating company. Furthermore,
Verizon contends that 252(f)(1) is a voluntary mechanism and that the

² §252(f)(1) In General. A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 252 and the regulations thereunder and the standards applicable under this section.

Commission cannot use it to compel Verizon to engage in a proceeding such as this.

9 Verizon also argues that section 252(g)³ of the Act, allowing for consolidation of existing proceedings, does not provide authority for this proceeding.

10 Commission Staff and the Joint CLECs point out that the Commission has already rejected these arguments in the First Supplemental Order where the Commission identified its statutory authority to order such a proceeding to determine terms and conditions for local interconnection,⁴ including RCW 80.36.140:

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 order or rule.

11 **Discussion and decision.** Under RCW 80.36.140, the Commission clearly has the authority to order a proceeding to determine universal terms and conditions for CLEC interconnection with Verizon. The Commission identified the bases for its authority in both the First Supplemental and the Second Supplemental Orders in this proceeding.⁵ Whether Verizon is a Bell operating company or the federal Act indicates that filing a statement of generally available terms is voluntary is

³ §252(g) Consolidation of State Proceedings. Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 252(f) and 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings and the State commission in carrying out its responsibilities under this Act.

⁴ *First Supplemental Order*, ¶¶ 14 and 19, and fn. 5 and 6 (March 1, 2002).

⁵ *Second Supplemental Order*, ¶¶ 3 (June 7, 2002).

irrelevant to whether the Commission has independent authority to order such a proceeding. Moreover, in those earlier orders in this case, the Commission also found that this proceeding was consistent with Section 252(g) of the Act that allows for the consolidation of hearings to reduce administrative burdens on carriers and commissions.⁶ Nothing has changed with regard to the Commission's authority since the time the Commission entered its earlier rulings on the issue.

- ***Does the federal Telecommunications Act preempt this proceeding and require that the proceeding be terminated?***

12 Verizon asserts that this proceeding is preempted by the negotiation and arbitration procedures set out in sections 251 and 252 of the Act. Verizon argues that any state law or regulation that conflicts with federal law is preempted.⁷ Verizon states that federal court decisions⁸ since the initiation of this proceeding have found this type of proceeding inconsistent with, and thus preempted by, the Act. Verizon contends that in this proceeding the Commission is really

⁶ *First Supplemental Order*, ¶ 19.

⁷ *Motion* at 6, fn. 16.

⁸ In *Verizon North, Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002) (*Strand*), the Sixth Circuit struck down a Michigan Public Service Commission (MPSC) order allowing CLECs to purchase network elements without using the negotiation/arbitration system established by Congress in sections 251 and 252 of the Act.

In *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003) (*Wisconsin Bell*) the Seventh Circuit similarly held that a state commission could not require the incumbent carrier to file tariffs with prices and terms that CLECs could select for interconnection with the local network because that bypassed the need for individual interconnection agreements.

In *MCI Telecomms. Corp. v. GTE Northwest, Inc.*, 41 F. Supp. 2d 1157 (D. Or. 1999) (*MCI Telecomms*) the U.S. District Court for the District of Oregon also found that a state commission's tariff requirement conflicted with the Act because it bypassed the Act and ignored the negotiation/arbitration procedures contained in the Act.

compelling a state law tariff, similar to those rejected in recent federal decisions.⁹ Verizon argues that the result of this proceeding will be an agreement produced by a state proceeding external to the Act rather than by means of the negotiation and arbitration proceedings contained in the Act.¹⁰

13 Commission Staff distinguishes the cases cited by Verizon, pointing out that in each instance the court rejected state commission requirements that incumbent carriers file tariffs setting forth the prices and terms at which competitors could purchase services from the incumbent. Staff contends that in this proceeding, the Commission does not bypass the Act's mandated processes for interconnection. Rather, Staff argues, the terms and conditions resulting from this proceeding would be incorporated into interconnection agreements. Staff points out that two other recent federal decisions confirm that this approach is consistent with, and not preempted, by the Act.¹¹

14 **Discussion and decision.** Verizon's preemption arguments are not persuasive. The *Strand* and *Wisconsin Bell* decisions apply to cases where the state commission attempted to require the incumbent carrier to file tariffs governing interconnection with CLECs. That is not the situation here. In the early stages of this proceeding, the Commission recognized that the goal of the proceeding would be the development "of a form interconnection agreement for use by CLECs in negotiating interconnection agreements with Verizon."¹² This manifests a clear intent to stay within the framework of the negotiation/arbitration process contained in sections 251 and 252 of the Act, rather than to bypass, eliminate or circumvent it. In another case cited by the parties, a federal court has recognized that State commissions have authority to adopt "universal short-form interconnection agreements, even though not specifically provided for in the

⁹ *Motion* at 11-12.

¹⁰ *Motion* at 11.

¹¹ *US West Communications, Inc. v. Spring Communications Co., L.P.*, 275 F. 3d 1241 (10th Cir. 2002) (*US West*); see also *MCI Telecomms* *supra*.

¹² *Third Supplemental order* ¶ 9.

Act.¹³ This confirms the legality of this proceeding which is intended to develop a universal statement of terms and conditions for interconnection agreements between CLECs and Verizon.

- ***Should other considerations dictate termination of this proceeding?***

15 Verizon appears to argue that an additional reason to terminate is that the parties have not made much progress toward a negotiated resolution of the issues. Verizon blames the CLECs in large measure for the lack of progress. The Joint CLECs in turn blame Verizon's lack of flexibility in negotiation for the lack of progress. Each party observes that approximately 100 issues remain in dispute.

16 Verizon also argues that if this hearing were terminated the CLECs would still have alternatives available for entering into agreements with Verizon. These would include reliance on the Verizon template agreement, or opting in to other CLEC agreements, or arbitrations such as the current Verizon arbitration hearing now pending at the Commission. Verizon suggests that it has negotiated many agreements with CLECs since the inception of this proceeding.

17 The Joint CLECs point out that none of the active parties to this case has actually negotiated to completion any agreement with Verizon since the case was initiated. They contend that most agreements entered into between Verizon and Joint CLECs were signed just after the Act became effective and have long expired. The parties have been operating under the expired agreements pending the outcome of this proceeding.¹⁴ The Joint CLECs also contend that any agreements that have been successfully concluded have been with small CLECs that accepted Verizon's template due to Verizon's overwhelming bargaining power, or with CLECs that provide resale only. Moreover, the Joint CLECs

¹³ *MCI Telecomms* at 1177.

¹⁴ *Joint CLEC Response* at 3.

argue that opting in to provisions in Verizon's agreement with a big carrier such as MCI is not suitable for smaller CLECs.

18 AT&T argues that the drain on its resources due to the lack of progress in bargaining causes it to agree with Verizon that the proceeding should be terminated.

19 **Discussion and decision.** Lack of progress in bargaining is not a sufficient reason to terminate this proceeding. The parties have been given ample time to negotiate. This Order will not terminate the case and the parties should prepare to present their contested issues for Commission resolution.

ORDER

20 Verizon's motion to terminate this proceeding is denied. The schedule of proceedings established in the Eighth Supplemental Order remains in effect unless altered as a result of the prehearing conference scheduled for July 9, 2004.

Dated at Olympia, Washington, and effective this 6th day of July, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.