

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

In the Matter of Request of)	
)	DOCKET NO. UT-043027
VCI COMPANY (a.k.a Vilaire))	
)	ORDER NO. 01
For Approval to Adopt the Fully)	
Negotiated Interconnection)	ORDER APPROVING ADOPTION
Agreement, in its Entirety, Between)	OF FULLY NEGOTIATED
Verizon Northwest Inc. and Tel West)	INTERCONNECTION AGREEMENT
Communications, LLC., approved on)	IN ITS ENTIRETY
February 28, 2003)	
.....)	

Synopsis: *The Commission grants the request of VCI for approval of adoption of a fully negotiated interconnection agreement in its entirety. The agreement does not discriminate against any carrier not a party to the agreement, and the agreement is consistent with the public interest, convenience and necessity. VCI's rights under the agreement are identical to the rights of Tel West.*

I. INTRODUCTION

- 1 This Order concerns approval of adoption of a fully negotiated interconnection order, in its entirety, after a party to the underlying agreement objected to adoption.
- 2 This Order decides issues raised in a non-adjudicative proceeding. The Commission took up this matter at a recessed meeting of its regularly scheduled Open Meeting held on May 12, 2004, after due and proper notice. The Commission has jurisdiction over the matter pursuant to RCW 80.01.040 and RCW 80.36.610(1). This decision is permitted and contemplated for a state commission by Section 252 of the federal Telecommunications Act of 1996 (Act).

II. BACKGROUND INFORMATION

A. VCI's Request

3 On April 22, 2004, VCI Company, a.k.a. Vilaire (VCI) requested Commission approval of an interconnection agreement between VCI and Verizon Northwest Inc. (Verizon). To accomplish this, VCI stated it would fully adopt the terms and conditions of the existing interconnection agreement between Tel West, LLC., and Verizon that was approved in Docket No. UT-990305. *VCI Request for Approval of Adoption, 1.*

4 In its request for approval, VCI stated that the agreement it seeks to adopt does not discriminate against nonparty carriers and is consistent with the public interest, convenience and necessity. It requested expeditious approval. *Id.*

B. Background

5 Prior to requesting Commission approval of the adoption VCI notified Verizon, on March 15, 2004, that it wished to adopt the Tel West Agreement. *VCI Letter to WUTC, May 6, 2004, at 1.* On April 5, 2004, Verizon responded to VCI and requested that VCI agree to five terms as a condition of adoption of the Tel West agreement. *Verizon Letter to VCI, April 5, 2004, at 1.* Verizon premised the five terms on its understanding that the Federal Communications Commission's (FCC) Triennial Review Order (TRO)¹ altered terms of the Tel West agreement. Verizon also stated that any changes to interconnection agreements approved by the Commission as a result of Docket No. UT-043013 would amend the terms of the Tel West agreement. *Id., 2.* Verizon further premised VCI's adoption of the Tel West agreement on VCI's agreement that Verizon's standard pricing schedule in Washington would supplant contrary terms in the Tel West agreement. *Id., 3.*

¹ *In re Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand (rel. Aug. 21, 2003). See also *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

6 VCI represents that it is turning away 19 customers per day that it cannot serve until it has access to Verizon's network.

C. Statutory Requirements and Procedure

7 Incumbent local exchange carriers (ILECs) must make interconnection agreements available under an agreement approved under 47 U.S.C. § 252 to any other requesting telecommunications carrier on "the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i).

8 The Commission routinely approves fully negotiated interconnection agreements between carriers at open meetings. The Commission also approves adoptions pursuant to § 252(i) at open meetings in accordance with WAC 480-07-640 and an Interpretive and Policy Statement (Policy Statement).² The Commission provides fifteen days from the date of filing a request for adoption before scheduling it for an open meeting so that objections to adoptions may be lodged. *Policy Statement*, ¶ 31. When no objection is received, the Commission deems the agreement approved. Adopted agreements are listed on the "No Action" agenda at a regularly scheduled open meeting and the Commission by letter informs the adopting party and the ILEC of the approval.

9 The Commission is not required by the Act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to approving adoption of a fully negotiated interconnection order in its entirety.³

D. Positions of Interested Persons

1. *Verizon*

10 Verizon contends that it is not obligated to provide VCI with access to any unbundled element that it is no longer obligated to provide as

² *In the matter of implementation of Section 252 (i) of the Telecommunications Act of 1996*, Interpretive and Policy Statement, Docket No. UT-990355 (April 12, 2000).

³ *See, for e.g.*, *Washington Independent Telephone Association et al v. Washington Utilities and Transportation Commission*, 149 Wn.2d 17.

a result of the FCC's TRO. To the extent that the Tel West agreement provides for such access, Verizon contends that VCI's adoption of the agreement will not obligate Verizon to provide such elements. *Verizon Letter to WUTC, April 30, 2004, at 1.* In addition, Verizon states that under FCC rules ILECs are required to make interconnection agreements available for adoption for "a reasonable period of time." *Id. (citing 47 C.F.R. § 51.809(c).* Verizon also argues that some arrangements set forth in interconnection agreements are no longer required by the TRO, as the reasonable time for adopting them has expired. *Id.* Verizon requests the Commission not approve VCI's request to adopt the Tel West agreement. Rather, Verizon recommends that VCI and Verizon should execute a separate adoption letter setting forth the terms of the Tel West agreement that VCI shall not adopt. *Id. 2.*

2. VCI

11 In a May 6, 2004, letter to the Commission, VCI stated that Verizon's objection is groundless because VCI proposes to adopt the Tel West agreement in its entirety, Verizon has not shown that the proposed adoption is discriminatory or contrary to the public interest, and VCI's request to adopt the agreement is timely. *VCI Letter to WUTC, May 6, 2004, at 1.* VCI contends that Verizon's demand that VCI agree to the five additional terms is an improper modification of the agreement. *Id.* VCI points out that Verizon cited no discrimination and no damage to the public interest that would result if VCI adopts the agreement. *Id., 2.* According to VCI, the fact that Verizon provides service to Tel West under the agreement demonstrates Verizon's concerns have no merit.

12 VCI contends that any issues raised by the TRO Order are not relevant to whether VCI may adopt the agreement under 47 U.S.C. § 252(i). *Id.* VCI states that Verizon should not be permitted to use regulatory uncertainty, which VCI states is always present in some degree, to force VCI to accept Verizon's interpretation of the TRO. *Id.*

13 Finally, VCI argues that Verizon distorts the reasonable time standard set forth in 47 C.F.R. § 51.809. According to VCI, adoption is permitted up until an agreement expires, that the Tel West-Verizon agreement is effective until January 14, 2005, and that it is reasonable for VCI to adopt an agreement that will run for

nearly a year. VCI further notes that World Communications adopted the Tel West agreement in January 2004. *Id.*

3. *Commission Staff*

14 Staff recommends the Commission follow the policies in the Interpretive and Policy Statement adopted in 2000.⁴ Those policies are based on 47 U.S.C. § 252(e) and reflected in WAC 480-07-640.

15 Staff notes that in the Policy Statement, the Commission states it will decide, within 90 days of the request for adoption of an interconnection agreement in its entirety, whether it will approve or reject the adoption. Staff also notes that the Policy Statement includes the standards for rejection of an adoption “only if it finds that the agreement as adopted by the parties discriminates against any carrier not a party to the agreement, or if the agreement is not consistent with the public interest, convenience and necessity.” 47 U.S.C. § 252(e); WAC 480-07-640(2)(a)(i); *Policy Statement*, ¶ 31.

16 There is no indication, states Staff, that VCI’s adoption of the Tel West agreement will discriminate against any carrier not a party to the agreement. Nor is there any indication, according to Staff, that VCI’s adoption of that agreement would be contrary to the public interest, convenience and necessity.

17 Once VCI adopts the Tel West agreement, reasons Staff, Verizon may pursue its contention that it is no longer obligated to provide access to some unbundled elements. If VCI disagrees with Verizon’s actions, staff asserts that, VCI may request enforcement of the interconnection agreement pursuant to WAC 480-07-650. Staff notes that it is unclear whether VCI would request any services or elements that is affected by the TRO. Staff draws the Commission’s attention to the change of law provision in the Tel West agreement, which VCI adopts along with the remainder of the agreement. *First Amended Interconnection Agreement Between Verizon Northwest Inc. and Tel West communications, LLC, Docket No. UT-990305 (February 6, 2003), ¶¶ 4.4, 4.5, 4.6 and 4.7.* Verizon may follow the change

⁴ Staff’s statements and recommendations can be found in the Open Meeting memo prepared by Staff and reviewed by commissioners prior to the Commission meeting on May 12, 2004.

of law provisions in its commercial relationship with VCI, states Staff, and if any dispute arises, either or both parties will have recourse to the Commission. WAC 480-07-650.

- 18 Staff recommends that the Commission reject Verizon's argument that the TRO Order affects the reasonable period of time during which a carrier may adopt an interconnection agreement. Staff recommends that the Commission follow the policies underlying § 252(e), WAC 480-07-640(2), and the Policy Statement and permit adoption until the expiration date of the agreement. While the TRO may affect whether Verizon is obligated to provide certain access to VCI under the Tel West agreement, states Staff, it does not affect the expiration date of that agreement.
- 19 In Staff's view, 47 U.S.C. § 252(i) does not contemplate the need for a contract for adoption as Verizon suggests. Rather, Staff believes that Section 252(i) gives no choice to the incumbent carrier but to provide service under the terms and conditions of a Commission-approved agreement, unless doing so discriminates against other carriers or is not in the public interest, convenience, or necessity.
- 20 Staff also stated its view that neither VCI nor Verizon will be prejudiced by approval of adoption. Verizon does not contend that the entire Tel West agreement has been voided by the TRO. Verizon will not be prejudiced if the Commission approves VCI's request to adopt the Tel West agreement. Once VCI takes service under the Tel West agreement, Verizon may refuse to provide service if the law and the agreement itself permit Verizon to do so. Then VCI may petition the Commission for enforcement under WAC 480-07-650. Verizon and VCI will both have the advantage of a commercial agreement, as well as the opportunity to avail themselves of legal rights and processes that exist for interpretation and enforcement.

4. *Open Meeting Comments*

- 21 The Commission heard this matter at our Open Meeting on May 12, 2004. At that meeting, counsel for VCI stated that VCI wished to "step into the shoes of Tel West," and was not asserting any rights--now or later—that Tel West does not have under the agreement. In particular, VCI is not and will not assert that

the “change of law” provisions of the agreement have a differential effect on VCI than on Tel West because of VCI’s date of adoption coming after the TRO, and that VCI will be bound by the results of Verizon’s consolidated TRO arbitration, Docket No. UT-043013. On those representations, Verizon’s counsel expressed satisfaction, asserting that Verizon had a similar desire—VCI should have no more rights under the agreement than Tel West.

III. COMMISSION DISCUSSION AND DECISION

A. Legal and Policy Issues

- 22 Under the Act, Congress required that interconnection agreements adopted by negotiation or arbitration be submitted for approval to state commissions, which must approve or reject the agreements. *47 U.S.C. § 252(e)*. Certain ILECs are permitted to offer interconnection through statements of generally available terms, and a state commission may not approve such a statement unless the state commission finds that the statement complies with the Act. *47 U.S.C. § 252(f)*. State commissions are required to make available to the public copies of interconnections agreements approved under subsections 252(e) and (f). *47 U.S.C. § 252(h)*. While the FCC has authority to establish rules related to interconnection. The Act leaves approval of agreements to state commissions in the first instance. *47 U.S.C. § 252(e)(5)*.
- 23 The Act requires local exchange carriers with an interconnection agreement to make services available to all other carriers on the same terms and conditions. *47 U.S.C. § 252(i)*. The Commission has adopted rules for enforcement of these provisions when carriers have an existing relationship. *WAC 480-07-650*. It has also addressed disputes between parties to an agreement and between parties to an agreement when one party seeks to supplement its existing agreement with a term or condition from another approved agreement. *Policy Statement, ¶¶23-30*.
- 24 The Commission has addressed adoption of fully negotiated agreements in their entirety in *WAC 480-07-640(2)(a)(i)*. Unlike circumstances in which the issue is enforcement between two parties to an existing agreement, the Commission did not state in the rule or Policy Statement that it would proceed through an

adjudication to decide whether to approve or reject the adoption of an agreement in its entirety. In this instance, where VCI proposes to adopt an agreement in its entirety, and where the parties, after discussion at the Open Meeting, appear to concur in the intended effects of adoption (i.e., VCI having identical rights under the agreement as Tel West including any revisions to that agreement resulting from Verizon's consolidated TRO arbitration, Docket No. UT-043013), it is appropriate to decide such a matter at an open meeting.

B. The Merits

- 25 We agree with staff that the standards for rejection are those found in the Act; we may reject only if the agreement would result in discrimination against a carrier not a party to the agreement, or because the agreement is not consistent with the public interest, convenience and necessity. *47 U.S.C. 252(e); see also Policy Statement, ¶ 31.*
- 26 Verizon has not alleged discrimination. Because we can find none on our own, we conclude that we may not reject this adoption on the basis of discrimination.
- 27 Verizon has argued that the FCC's TRO means it does not have to provide certain unbundled network elements to carriers. Because of that, Verizon argues that the "reasonable time" for which it must make an agreement available has run. *See 47 U.S.C. § 51.809(c).* While Verizon did not couch its argument in its pre-meeting written material in public interest terms, we take Verizon's argument to be that adoption is not in the public interest because it would result in a requirement to provide certain unbundled elements which Verizon contends that by law it would not have to agree to provide if it were negotiating a new agreement with VCI. However, after the Open Meeting discussion, it appears that all agree VCI will *not* have any rights which the TRO denies Tel West. By making this point clear in our order, Verizon's fears are eliminated.
- 28 We disagree with Verizon's view that the "reasonable time" has run. As VCI notes, World Communications adopted this agreement in January and VCI sought adoption only two months later. (At the Open Meeting, however, Verizon said it had found no record of the World Communications agreement or

of doing business with World Communications.)⁵ Verizon was prepared to agree to adoption in early April, but wanted changes to five terms of an agreement that extends to more than one hundred pages, covering dozens of items. There are seven months remaining on this agreement. In that time, according to VCI, it may be able to serve in excess of 500 customers. All the while, Verizon will be fulfilling its obligations to Tel West under the agreement. We conclude that it is still reasonable for VCI to adopt and order services from Verizon under the terms of the agreement. 47 U.S.C. § 252(e); WAC 480-07-640(2); and Policy Statement, ¶ 20.⁶

IV. FINDINGS OF FACT

- 29 Having discussed above all matters material to our decision, and having stated
general findings and conclusions, the Commission now makes the following
summary findings of fact.
- 30 (1) VCI requested approval of adoption of a fully negotiated interconnection
agreement between Tel West and Verizon on April 22, 2004.
- 31 (2) Verizon filed a timely objection to the adoption.
- 32 (3) The agreement for which VCI requests approval contains change of law
provisions.
- 33 (4) VCI agrees that its rights under the agreement will be identical to Tel
West's, including any effect of the change of law provisions, and any
revisions to the agreement resulting from Verizon's consolidated TRO
arbitration, Docket No. UT-043013.

⁵ World Communications filed its request for approval of adoption with the Commission on January 8, 2004. *Docket No. UT-043000*. World Communications' request appeared on the Commission's "No Action" agenda of the January 28, 2004 Open Meeting. *Washington Utilities and Transportation Commission Open Meeting Agenda, January 28, 2004, p. 10*.

⁶ See *Eschelon Telecom of Washington, Inc. v. Qwest Corporation*, Final Order Granting Petition, In Part, Docket No. UT-033039 (Order No. 4)(February 6, 2004) (Petition for Judicial Review Pending, Thurston County Superior Court, Cause No. 04-2-00686-1), (approving adoption of select terms and conditions five months prior to expiration of the agreement).

- 34 (5) Verizon is obligated to fulfill the terms of the agreement until its expiration on January 14, 2005.

V. CONCLUSIONS OF LAW

- 35 (1) The Commission has jurisdiction over the subject matter of the request and over VCI and Verizon.
- 36 (2) The Commission is not required by the act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to approving adoption of a fully negotiated interconnection order in its entirety.
- 37 (3) Approval of the agreement to which the other party objects is permitted and contemplated for a state commission by subsections 252(e) and (i) the federal Telecommunications Act of 1996.
- 38 (4) Approving the request of VCI for approval of adoption of the Tel West - Verizon agreement will not discriminate against any carrier not a party to the agreement.
- 39 (5) Approving the request of VCI for approval of adoption of the Tel West - Verizon agreement is consistent with the public interest, convenience and necessity.
- 40 (6) It is reasonable for VCI to adopt the agreement and have available to it the same terms and conditions as Tel West until the agreement expires.

VI. ORDER

41 This Order decides issues raised in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:

- 42 (1) The Commission grants the request of VCI for approval of adoption, in its entirety, of the fully negotiated interconnection agreement between Verizon Northwest Inc. and Tel West Communications, LLC., which the Commission approved on February 28, 2003.

- 43 (2) Verizon must perform under the adopted agreement with VCI in the same manner as it performs under the February 28, 2003, agreement with Tel West.

DATED at Olympia, Washington, and effective this 13th day of May, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner