

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order

Docket No. UT-043013

RESPONSE OF ADVANCED TELECOM GROUP INC.; BULLSEYE TELECOM INC.; COMCAST PHONE OF WASHINGTON LLC; DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY; AND GLOBAL CROSSING LOCAL SERVICES INC.; (“COMPETITIVE CARRIER GROUP”) TO VERIZON’S MOTION TO HOLD PROCEEDING IN ABEYANCE

1 Advanced Telecom Group Inc.; BullsEye Telecom Inc.; Comcast Phone of Washington LLC; DIECA Communications, Inc. d/b/a Covad Communications Company; and Global Crossing Local Services Inc. (“Competitive Carrier Group” or “CCG”),¹ by their attorneys, respectfully submit this Response to Verizon Northwest Inc.’s (“Verizon’s”) May 7, 2004 motion to hold the above-captioned proceeding in abeyance until June 15, 2004.²

I. INTRODUCTION AND SUMMARY

2 The CCG opposes Verizon’s Motion to hold this proceeding in abeyance with regard to those issues that are not affected by the District of Columbia Circuit’s decision

¹ KMC Telecom V Inc. and Winstar Communications LLC are not participating in this Response.

² Verizon Northwest Inc.’s Motion to Hold Proceeding in Abeyance until June 15 (filed May 7, 2004 (“Verizon Motion”).

in *United States Telecom Ass'n v. FCC*, Case No. 00-0012 (D.C. Cir. 2004) (“*USTA I*”). Rather, the Washington Utilities and Transportation Commission (“Commission”) should move forward and arbitrate those issues raised in the Federal Communications Commission’s (“FCC’s”) Triennial Review Order³ that are not impacted by the *USTA II* decision. Moreover, the Commission must, without delay, order Verizon to comply with the FCC’s current rules with regard to commingling and routine network modifications. Such issues are vital to CLECs’ businesses in Washington and resolution cannot be delayed, as requested by Verizon.

3 With regard to those arbitration issues that may be affected by the *USTA II* decision, the CCG does not oppose Verizon’s Motion to hold this proceeding in abeyance until June 15, with the express condition that Verizon will maintain the status quo, pending resolution of this proceeding, and will refrain from engaging in any unilateral action to modify the availability, terms and conditions, and/or pricing for Unbundled Network Elements (“UNEs”) offered pursuant to existing interconnection agreements. The CCG has already commented that this Commission should address *USTA II* issues in a separate phase of the proceeding, and therefore does not oppose a temporary abatement until June 15.⁴ Nevertheless, it is imperative for the continued provision of competitive

³ *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, 17125-26, ¶ 242 (2003), *corrected by Errata*, 18 FCC Rcd 19020 (2003) (collectively “TRO”), *reversed and remanded, United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (decided March 2, 2004) (“Triennial Review Order”).

⁴ As discussed more fully in the Answer of the Competitive Carrier Coalition to Verizon’s Petition when procedurally appropriate, the Commission should assert its authority, pursuant to sections 252 of the Act, as well as state law, to arbitrate the nature and scope of Verizon’s ongoing obligation to provide to CLECs access to network elements, as required by the Act and state law. Moreover, to the extent that the Commission may determine that the rates applicable to network elements provided by Verizon under section of the Act and Washington state law differ from those rates currently available to CLECs under section 251(c)(3) of the Act, the Coalition has urged the Commission to immediately establish a “just and reasonable” pricing standard

services in Washington that Verizon be expressly required to maintain the status quo after June 15 during the pendency of this arbitration.

**II. THE COMMISSION SHOULD GO FORWARD ON
THOSE ISSUES NOT AFFECTED BY USTA II**

4 The Commission must require that Verizon comply with the existing requirements of the FCC for commingling of UNEs and services and routine network modifications, as clarified by the Triennial Review Order. Neither of these existing obligations require a change of law amendment to implement.

5 The FCC’s clarification of the rates, terms and conditions pursuant to which CLECs may commingle network elements and services did not create any new legal obligation applicable to Verizon. Significantly, the Triennial Review Order states that “a restriction on commingling would constitute an ‘unjust and unreasonable practice’ under section 201 of the Act” and an “undue and unreasonable prejudice or advantage” under section 202 of Act, and thus would violate the nondiscrimination requirement in section 251(c)(3) of the Act.⁵ Moreover, the Triennial Review Order expressly requires that Verizon immediately effectuate rates, terms and conditions for commingling of network elements and services by modification of its interstate access tariffs.⁶

6 Likewise, the FCC simply clarified in the Triennial Review Order that ILECs need to continue to perform routine network modifications and specified what is encompassed in that rule.⁷ Therefore, in accordance with the Triennial Review Order, the

applicable to network elements. *See* Answer of Competitive Carrier Coalition (filed March 19, 2004). *See also* Response of Competitive Carrier Group f/k/a Competitive Carrier Coalition to Verizon’s Responses to Motions to Dismiss (filed May 4, 2004).

⁵ Triennial Review Order at ¶ 581.

⁶ *Id.* at ¶ 581 and fn. 1791.

⁷ *Id.* at ¶ 632 (“We require incumbent LECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facilities has already been constructed. By ‘routine network modifications’ we mean that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers.”).

Commission must immediately act to ensure compliance by Verizon with the FCC's existing requirements for commingling of UNEs and services and the performance of routine network modifications.

III. THE COMMISSION SHOULD REQUIRE THAT VERIZON MAINTAIN THE STATUS QUO AS A CONDITION TO GRANTING THE MOTION WITH REGARD TO USTA II ISSUES

7 The CCG does not oppose Verizon's Motion to hold those issues affected by the *USTA II* decision in abeyance until June 15, the date the mandate in *USTA II* is scheduled to issue, assuming no further stay is granted. The CCG does, however, request that the Commission expressly order that Verizon maintain the status quo under its current interconnection agreements after June 15, during the pendency of this arbitration proceeding, as a condition to granting its Motion with regard to those issues affected by *USTA II*.

8 The members of the CCG are rightfully concerned that Verizon may attempt to take unilateral action to modify the availability, terms and conditions, and/or pricing of UNEs offered pursuant to their interconnection agreements. To say that the parties must abide by their current interconnection agreements is not sufficient. Rather, Verizon must be specifically ordered not to attempt to modify, in any way, UNEs or UNE combinations currently offered under existing interconnection agreements or to increase any rates set forth in those agreements, while the current arbitration docket is underway.

9 As discussed in the CCG's Answer, the Commission should evaluate the necessary procedural schedule for addressing any remaining issues at the time *USTA II* goes into effect. If the *USTA II* mandate does, in fact, go into effect on June 15, this Commission should direct the parties to reach a negotiated agreement, with oversight by Commission Staff as appropriate, over a subsequent 135-day period. To the extent the parties cannot reach a negotiated agreement, the parties should submit to this Commission a jointly-developed issues list at the end of that period, which would trigger

another phase of the arbitration proceeding to address those issues impacted by the *USTA II* mandate.

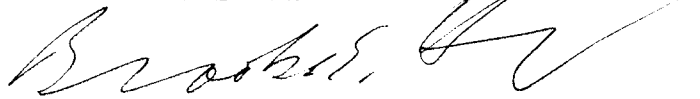
10 Despite the procedural process necessary to resolve any *USTA II* issues, the Commission must expressly require Verizon to maintain the status quo on and after June 15, during the pendency of this arbitration proceeding, in order to protect the contract rights of Washington CLECs from potential unilateral actions by Verizon.

IV. CONCLUSION

11 Consistent with the foregoing, the Commission should move forward with this proceeding and deny Verizon's Motion to hold the proceeding in abeyance until June 15, with regard to those issues not affected by the *USTA II* decision. With regard to those issues that are impacted by the *USTA II* decision, the Commission should expressly require that Verizon maintain the status quo after June 15, pending resolution of this proceeding, and refrain from engaging in any unilateral action to modify the availability, terms and conditions, and/or pricing for UNEs offered pursuant to existing interconnection agreements.

12 Respectfully submitted this 18th day of May, 2004.

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