BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of	)	
VERIZON NORTHWEST, INC.	)	DOCKET NO. UT- 043013
with	)	**AT&T'S RESPONSE TO VERIZON'S MOTION TO HOLD PROCEEDING IN ABEYANCE**
COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON	)	
Pursuant to 47 U.S.C. § 252(b), and the *Triennial Review Order*	)	

Pursuant to the May 11th Notice of Opportunity to Respond, AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit their Response to Verizon's Motion to Hold Proceeding in Abeyance. In short, AT&T encourages the Commission to grant Verizon's Motion only upon Verizon's agreement to two conditions: (1) Verizon provisions, modifies and maintains unbundled network elements ("UNEs") pursuant to existing law and (2) Verizon maintains the *status quo* under the existing interconnection agreements ("ICAs") at existing rates pending the completion of the arbitration. These conditions are absolutely necessary for the reasons that follow.

INTRODUCTION

In support of its Motion, Verizon asserts that, given limited resources, the parties need to "devote their attention to commercial negotiations without the distraction of

simultaneous litigation … ."[1] AT&T generally agrees that such negations are important, and there is no doubt that this arbitration will proceed much more efficiently and expeditiously if the parties engage in substantive negotiation that identifies and narrows the disputed issues. That said, however, the parties must actually engage in good faith negotiations in order to make any progress.

Unfortunately, to date Verizon has failed to respond in any meaningful way to AT&T's detailed response to Verizon's proposed Triennial Review Order ("TRO")[2] amendment. Not only has Verizon failed to respond to AT&T's mark-up of Verizon's proposal, it has never provided even its initial position with respect to the completely new sections of the amendment proposed by AT&T on such topics as line splitting, line conditioning, subloops, and hot cuts. Until Verizon provides a substantive response to AT&T's (and the other CLECs') draft amendments or engages in good faith negotiations to narrow the issues in dispute, the scope of the arbitration will remain murky at best and the abeyance will not remedy that situation. Thus, as a matter of principle, AT&T is not at all averse to using the next month to engage in *substantive* negotiation—assuming Verizon provides the needed responses.

Furthermore, with each passing day AT&T suffers significant financial and operational harm as a result of Verizon's failure to meet its obligations under current law, the ICA and the TRO. The Commission should not allow AT&T, and other similarly situated competitive local exchange carriers ("CLECs"), to incur additional harm to

[1] Verizon Motion at 2.
[2] *In the Matter of 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,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (Rel. Aug. 21, 2003) (hereinafter "TRO").

accommodate Verizon's request for an abeyance. Therefore, the Commission should allow Verizon's request for an abeyance only if Verizon agrees to: (1) participate in good faith by responding to the various parties' proposals; (2) maintain mandated UNE provisioning by, among other things, performing routine network modifications and providing Enhanced Extended Links ("EELs") as required under current law;[3] and (2) ceases all unilateral implementation of its own interpretation of the ICAs before the Commission has the opportunity to consider fully Verizon's rights and obligations under such agreements.

ARGUMENT

Verizon has held AT&T's rights hostage, demanding acquiescence in Verizon's unreasonable TRO amendments before it will perform its existing legal obligations. As a result, AT&T opposes any abeyance that will delay AT&T's ability to obtain relief in the form of an order requiring Verizon to meet its existing contractual and legal obligations. Verizon's conduct is exemplified in its refusal to modify EELs.

In addition, AT&T is concerned that Verizon may unilaterally discontinue its provisioning of certain UNEs (or unilaterally charge more for such UNEs) should the *USTA II* decision become effective before the Commission has an opportunity to fully consider Verizon's contractual obligations under all applicable law. An abeyance will impede a near-term decision in this proceeding interpreting the scope of Verizon's obligations under the TRO and State law. As a result, any abeyance should be conditioned on an order that Verizon preserve the *status quo* and fulfill its current

[3] The EEL condition described by AT&T is but one patently clear requirement that Verizon should be held to abide by with respect to UNEs. There may exist others that other CLECs struggling with Verizion will bring to light.

obligations under its ICAs until the Commission has the opportunity to determine Verizon's ongoing obligations under all applicable law.

- **I. AMONG ITS OBLIGATIONS TO PROVIDE UNES UNDER EXISTING LAW, VERIZON SHOULD BE REQUIRED TO PROVISION UNES REQUIRING ROUTINE NETWORK MODIFICATIONS AND TO CONVERT EXISTING SPECIAL ACCESS CIRCUITS TO EELS.**

Singularly most important among these UNE issues is the long-overdue conversion of special access lines to enhanced extended links (EELs), as required by *TRO* ¶¶ 585-589. These conversions primarily consist of a change in price, rather than any change in physical facilities. The TRO (¶ 589) required Verizon to begin making these straightforward price changes as of October 2, 2003, the effective date of the *TRO,* but, to date, Verizon has refused to process AT&T's EEL conversion requests or has raised operational roadblocks. Moving forward with the arbitrations is necessary to clear away these Verizon-created impediments.

Despite unambiguous legal obligations, Verizon has failed to perform routine network modifications and to provide the EELs as mandated. This causes ongoing harm to AT&T that AT&T needs addressed immediately. In the absence of an order from the Commission requiring Verizon to comply with its existing obligations to provision UNEs requiring routine network modifications and to provide EELs or conversions of special access to EELs, AT&T is prejudiced by delay in the arbitration. As explained below, however, if the Commission requires Verizon both to live up to its existing obligations under the TRO and preserve those obligations until the Commission has a full opportunity to consider Verizon's ongoing obligations, then AT&T agrees that a short abeyance is reasonable.

Moreover, the FCC essentially clarified in the TRO that Verizon's ongoing refusal to perform routine network modifications violates *existing* law.[4] Because the FCC's clarification of Verizon's existing obligation does not constitute a change in those obligations, there is no "change of law" to consider and the issue regarding network modifications is, therefore, not ripe for arbitration; however, AT&T seeks an order from this Commission requiring Verizon to abide by the clarifications of the TRO concerning routine network modifications. Specifically, Verizon should be directed to abide by the FCC's definition of "routine network modifications" which include "those activities that incumbent LECs regularly undertake for their own customers."[5] Examples of such necessary loop modifications include "rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer."[6]

The Arbitrator in Rhode Island's TRO Arbitration[7] and the Hearing Examiner in Maine's TRO Arbitration[8] have already concluded that the TRO does not alter Verizon's obligations to provide routine network modifications and have ordered Verizon to comply with the clarified definitions set forth in the TRO. A similar order is warranted here and should be made part of any order staying this proceeding.

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[4] TRO at ¶¶ 630 & 639, n.1940. This clarification was not modified by *USTA II*.
[5] TRO at ¶ 634.
[6] *Id.*.
[7] *In Re: Petition Of Verizon-Rhode Island For Arbitration Of An Amendment To Interconnection Agreements With Competitive Local Exchange Carriers And Commercial Mobile Radio Service Providers In Rhode Island To Implement The Triennial Review Order*, Rhode Island Docket No. 3588, Procedural Arbitration Decision (April 9, 2004), at 10-11.
[8] *Verizon Maine Petition for Consolidated Arbitration*, Maine Docket No. 2004-135, Examiner's Report (May 6, 2004), at 11-13.

Similarly, the TRO clarifies that, upon the TRO's effective date, October 2, 2003, Verizon must provide EELs and permit CLECs to order new circuits as EELs or to convert existing special access circuits to EELs, so long as the requesting CLEC meets certain criteria.[9] AT&T has met the required criteria, yet Verizon has, unlawfully, refused to provide EELs at TELRIC prices until AT&T executes other Verizon-proposed unreasonable modifications to AT&T's ICA with Verizon. Verizon's refusal has resulted in AT&T's payment of inflated, above-cost special access fees for circuits that qualify for TELRIC prices as EELs under the TRO.

Delaying the arbitration will delay resolution of these critical issues. Unless Verizon is willing to begin accepting EEL conversion requests and forego any new routine network modification charges pending completion of this arbitration, or unless the Commission is willing to condition an abeyance on Verizon's processing EEL conversion requests and deferring the new NRCs pending the outcome of the arbitration, AT&T respectfully requests that Verizon's motion be denied and the arbitration proceed.

Given Verizon's chronic failure in this instance as well as others, Verizon's abeyance motion should be granted subject to an order that requires Verizon to honor its existing contract obligation to provide UNEs at the prices specified in its ICAs when UNEs requiring routine network modifications of the types specified in the TRO are ordered and accept orders for EELs in accordance with the eligibility standards in the TRO, as required under Verizon's own tariff.

[9] TRO at ¶ 579.

II. VERIZON SHOULD MAINTAIN THE STATUS QUO, AT EXISTING RATES, WHILE THE ARBITRATION IS PENDING.

AT&T is concerned that delay in this proceeding will provide an opportunity for Verizon to unilaterally implement its proposed TRO amendments if *USTA II* becomes effective before the Commission can fully consider Verizon's rights and obligations under its ICAs pursuant to all applicable law. As a further condition for holding this proceeding in abeyance, Verizon should be required to continue to provision all UNEs in the current ICAs, including but not limited to switching, loops and dedicated transport as specified under its ICAs until the Commission has had the opportunity to review Verizon's ongoing obligations under all applicable law.[10] Verizon should not be permitted simultaneously to stall these proceedings--preventing the Commission from expeditiously ruling on the proposed amendments--and unilaterally discontinue certain offerings based on its self-serving interpretation of the TRO or the *USTA II* decision. Not only would such unilateral action by Verizon significantly disrupt customers and cause widespread marketplace confusion, it would be entirely inconsistent with Verizon's legal and contractual obligations.

At least one State Commission has already issued a status quo order in response to SBC's similar motion for abeyance in a Texas arbitration proceeding. The Public Utility Commission of Texas conditioned its abeyance on the requirements that SBC continue to operate under its current ICAs and "UNEs will continue to be offered consistent with

[10] This includes not only sections 251 and 271 of the Telecommunications Act but also Verizon's obligations under state law and the Merger Commitments that Verizon consented to as a condition of the Bel Atlantic/GTE merger.

those agreements."[11] Thus, what AT&T seeks here is not at all out of line with what is happening elsewhere.

CONCLUSION

For the reasons stated above and assuming Verizon provides substantive responses to AT&T's proposals during the negotiation, AT&T does not oppose Verizon's motion to hold the arbitration in abeyance, if: (1) Verizon provisions, modifies and maintains UNEs pursuant to existing law, but more specifically, Verizon is required to perform routine network modifications and comply with its own tariff provision to accept EEL orders that satisfy eligibility standards specified in the TRO; and (2) the status quo is preserved.

Respectfully submitted this 18th day of May, 2004.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

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[11] Order Abating Proceeding, Public Utilities Commission of Texas, Docket NO. 28821, May 5, 2004. Attached to Sprint's March 10, 2004 filing in this docket.