

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an)	
Amendment to Interconnection Agreements of)	Docket No. UT-043013
)	
VERIZON NORTHWEST INC.)	JOINT CLEC MOTION FOR
)	AN ORDER REQUIRING
with)	VERIZON TO MAINTAIN
)	STATUS QUO PENDING
COMPETITIVE LOCAL EXCHANGE)	RESOLUTION OF LEGAL
CARRIERS AND COMMERCIAL MOBILE)	ISSUES
RADIO SERVICE PROVIDERS IN)	
WASHINGTON)	
)	
Pursuant to 47 U.S.C. Section 252(b), and the)	
<i>Triennial Review Order.</i>)	
_____)	

Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., Pac-West Telecomm, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc. (collectively “Joint CLECs”), bring the following motion for an order requiring Verizon Northwest Inc. (“Verizon”) to continue to maintain the status quo of its obligations under existing Commission-approved interconnection agreements (“ICAs”) with any competing local exchange carrier (“CLEC”) pending resolution of judicial review of the Federal Communications Commission’s (“FCC’s”) Triennial Review Order (“TRO”)¹ and any resulting FCC action or additional Commission action.

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).

MOTION

1. On March 2, 2004, the D.C. Circuit Court of Appeals vacated portions of the TRO in which the FCC established unbundling requirements for local switching, transport, and other unbundled network elements (“UNEs”).² The Court temporarily stayed its vacatur for 60 days, or until May 2, 2004. The D.C. Circuit recently granted the FCC’s unopposed motion to extend the stay until June 15, 2004. If there are no further extensions and the stay expires, no FCC rules governing the unbundling requirements under Section 251 of the Telecommunications Act of 1996 (“Act”) will exist for local switching and transport. In addition, Verizon and other incumbent local exchange carriers (“ILECs”) contend that if the stay expires, no such FCC rules will exist for high capacity loops as well.³

2. Verizon, like the other ILECs, is engaged in multi-party negotiations to replace UNE-P with a new product. While the Joint CLECs are willing to engage in negotiations with Verizon, Verizon has yet to address how or whether it will provide individual network elements other than UNE-P, such as dark fiber and high capacity transport circuits, in the absence of a federal rule to do so as a UNE.

² *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

³ Although the D.C. Circuit’s opinion addresses only unbundled local switching and transport, Verizon and other ILECs have sought to expand the ruling by taking the position that the court’s decision also vacates the FCC’s unbundling rules for high capacity loops. *See, e.g., In re Qwest Communications Int’l Petition for Rulemaking to Adopt Interim Unbundling Rules Following Remand of the Triennial Review Order* at i (filed March 29, 2004) (“As of May 1, 2004, or shortly thereafter, when the D.C. Circuit’s mandate will issue, the Commission’s impairment findings regarding mass market switching, shared and dedicated transport, *and high-capacity loops* will be vacated.”) (emphasis added). Without in any way conceding that the D.C. Circuit’s decision has any such impact, the Joint CLECs include high capacity loops among the UNEs at issue to ensure that the requested order applies to all UNEs the ILECs claim are affected by the D.C. Circuit’s decision.

Presumably, Verizon intends to require that high capacity transport and loop UNEs be converted to special access circuits at significantly higher costs. Most ominously, Verizon has not given any indication that it intends to provide *any* dark fiber product, which would require the physical migration of hundreds of customers currently served using Verizon dark fiber to Verizon special access facilities at enormous cost and potential for CLEC customer service disruption.

3. Verizon, moreover, has not represented that it will continue to honor its obligations under its existing ICAs in Washington, nor has Verizon represented that it will not immediately implement its interpretation of the D.C. Circuit's decision, or seek to amend those ICAs, to eliminate switching, dark fiber, transport, and high capacity loop UNEs after June 15, 2004. Verizon obviously has little or no incentive to make any such representations or to reach any agreement to continue to provide CLECs with UNEs other than UNE-P. Upon expiration of the D.C. Circuit's stay, therefore, Verizon can be expected immediately to eliminate, or seek to revise all of its interconnection agreements to eliminate, these UNEs, possibly including refusing to process any new orders after June 15, 2004, for these UNEs, initiating billing for existing circuits at special access tariff rates, and requiring mass migration of customers from dark fiber facilities to special access circuits. The Commission, in turn, should expect CLECs to initiate dozens of individual Commission proceedings challenging Verizon's actions and interpretations of its interconnection agreements and applicable law.

4. The D.C. Circuit's decision has created tremendous uncertainty with respect to the availability of UNE local switching, dark fiber, transport, and, in light of recent ILEC contentions, high capacity loops. The Joint CLECs currently obtain local switching, dark fiber, transport or high capacity loops as UNEs under their ICAs with Verizon and use those UNEs to provide service to end

user customers. An immediate elimination of those UNEs at Commission-prescribed rates developed using Section 252(d) pricing standards would have a devastating impact on Verizon's Washington local exchange competitors and more importantly, on end user customers, particularly those customers who obtain service from providers other than Verizon.

5. Accordingly, the Joint CLECs urge the Commission to issue an order requiring Verizon to maintain the status quo and continue to honor all of its obligations under existing ICAs and its SGAT, including the provisioning of unbundled local switching (including UNE-P), transport, dark fiber, and high capacity loops at Section 252(d) compliant rates, until final federal unbundling rules are in place or until the Commission can undertake a generic proceeding to determine the impact of the D.C. Circuit's decision on Verizon's existing obligations to provide these UNEs. Maintaining the status quo while the Commission undertakes the appropriate generic proceeding to examine these issues would ensure continuity as well as most efficiently make use of Commission and affected party resources to determine issues of general applicability, including but not necessarily limited to the following:

(a) Whether the D.C. Circuit's *USTA II* decision represents a "change in law."

The Telecommunications Act of 1996 ("Act") establishes Verizon's obligation to provide UNEs, and even in the absence of FCC rules, existing ICAs provisions requiring Verizon to provide UNEs are fully consistent with, and required by, the Act.

(b) Whether the FCC's Bell Atlantic/GTE Merger Order⁴ requires Verizon to continue to provide all UNEs that Verizon currently is providing until final FCC rules have been

⁴ *In re GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer*

adopted. That order expressly conditions FCC approval of the merger of Verizon's parent corporation's predecessor companies on Verizon's agreement to maintain the status quo pending development of final FCC unbundling rules.

(c) Whether, as a matter of Washington law, Verizon should be required to provide the subject UNEs at Section 252(d) or comparable Commission-prescribed rates. Section 252(d)(3) of the Act expressly preserves the authority of state commissions to enforce their own requirements with respect to access to, and interconnection with, incumbent local exchange company facilities.

6. The Joint CLECs do not seek to preclude parties from voluntarily negotiating amendments to their interconnection agreements to incorporate all or part of the TRO or to prevent any commercial negotiations in the wake of the D.C. Circuit's decision. Rather, the objective is to ensure that Verizon will not unnecessarily expend party and Commission resources after June 15, 2004, by seeking to require CLECs to amend their existing interconnection agreements (or act unilaterally) to eliminate provisioning of existing UNEs at Section 252(d) rates until critical issues have been resolved at both the federal and state levels.

7. The Commission has ample authority to require Verizon to continue to comply with its obligations under existing ICAs. The Commission has reviewed and approved – and in many cases arbitrated – each effective ICA in Washington. The Commission has long asserted jurisdiction to enforce those agreements. *See, e.g.*, WAC 480-07-540. Issues concerning the extent to which

Control of Domestic and International Authorizations, Memorandum Opinion and Order, 15 FCC Rcd. 14032 (2000).

Verizon must comply with its obligations under those agreements fall squarely within the Commission's jurisdiction and authority to interpret applicable federal legal requirements and prescribe appropriate rates, terms, and conditions for unbundled access to Verizon's network in Washington.

8. The Commission also has independent authority under state law to require Verizon to continue to provide existing UNEs under current ICAs. Prior to passage of the Act, the Commission concluded that it "has authority to order unbundling pursuant to RCW 80.36.140." *WUTC v. U S WEST, et al.*, Docket Nos. UT-941464, *et al.*, Fourth Supp. Order at 51 (Oct. 31, 1995) ("*Interconnection Order*"); accord *In re Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest, Inc.*, Docket No. UT-011219, First Supp. Order ¶ 19 (March 2002). The Commission explained that the statute "gives the Commission broad authority over practices and services," and "[t]he way in which services are offered, on a bundled or unbundled basis, certainly falls within the scope" of that authority. *Interconnection Order* at 51. The Commission further concluded that the rates for unbundled services must be based on total service long run incremental costs ("TSLRIC"), which is comparable to the total element long run incremental cost ("TELRIC") methodology adopted by the FCC. *See id.* at 52.

9. The Commission's conclusions are no less applicable today. Indeed, the concerns with creation of "new" services raised by the ILECs in the *Interconnection Order* no longer exist now that Verizon files interconnection agreements with the Commission, all of which establish rates, terms, and conditions for Verizon's provisioning of UNEs, including local switching, dark fiber, transport, and high capacity loops. Having already unbundled its network, the issue is whether Verizon can

discontinue providing certain UNEs in the absence of federal rules requiring Verizon to continue providing them. Such an issue indisputably falls within the Commission's authority to determine whether the "practices of any telecommunications company are unjust or unreasonable" and whether "the facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient." RCW 80.36.140.

10. The Commission has, and should exercise, authority to require Verizon to continue to provide unbundled local switching, dark fiber, transport, and high capacity loops at existing rates, terms, and conditions. The Commission should not permit the potential chaos created by the FCC and the D.C. Circuit to affect the ability of Washington consumers to have an effective choice of local service providers. Accordingly, the Commission should require Verizon to maintain the status quo until the federal dispute over local switching, dark fiber, transport, and high capacity UNEs has been resolved or until the Commission can conduct the appropriate proceedings to determine whether, in the absence of federal rules, Verizon should be required to provide these UNEs on some other basis.

REQUEST FOR RELIEF

WHEREFORE, the Joint CLECs request the following relief:

A. An order from the Commission requiring Verizon to continue to maintain the status quo and honor all of its obligations under existing ICAs, including the provisioning of unbundled local switching (including UNE-P), dark fiber, transport, and high capacity loops at Commission-prescribed rates established under Section 252(d) standards, until final federal unbundling rules are in place or until the Commission can undertake a generic proceeding to determine the impact of the D.C. Circuit's decision on Verizon's existing obligations to provide these UNEs; and

B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 20th day of May, 2004.

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By _____
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