

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)	
Arbitration of an Amendment to)	DOCKET NO. UT-043013
Interconnection Agreements of)	
)	ORDER NO. 04
VERIZON NORTHWEST INC.)	
)	ORDER GRANTING MOTION
with)	TO HOLD PROCEEDING IN
)	ABEYANCE UNTIL JUNE 15,
COMPETITIVE LOCAL EXCHANGE)	2004; SUSPENDING
CARRIERS AND COMMERCIAL)	PROCEDURAL SCHEDULE,
MOBILE RADIO SERVICE)	CANCELING MAY 25, 2004,
PROVIDERS IN WASHINGTON)	PREHEARING CONFERENCE
)	
Pursuant to 47 U.S.C. Section 252(b),)	
and the <i>Triennial Review Order</i> .)	
.....)	

1 **NATURE OF PROCEEDING.** This proceeding involves a petition Verizon Northwest Inc. (Verizon) filed with the Washington Utilities and Transportation Commission (Commission) requesting arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Act), and the Federal Communications Commission’s (FCC) Triennial Review Order.¹ The petition was served on all competitive local exchange carriers (CLECs) and Commercial Mobile Radio Service (CMRS) providers in Washington that have entered into interconnection agreements with Verizon.

¹ *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*, CC Docket Nos. 01-338, 96098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. August 21, 2003) [Hereinafter “Triennial Review Order”].

- 2 **PROCEDURAL HISTORY.** Verizon filed its arbitration petition with the Commission on February 26, 2004. On March 15, 2004, the Commission entered Order No. 01, Order on Arbitration Procedure, appointing Administrative Law Judge Ann E. Rendahl as arbitrator and scheduling a prehearing conference for March 29, 2004.
- 3 On March 17, 2004, Sprint Communications Company, L.P (Sprint) filed with the Commission a motion to dismiss Verizon’s petition.
- 4 On March 19, 2004, Verizon filed with the Commission an Update to Petition for Arbitration of Verizon Northwest, Inc., amending Exhibit 2 to the petition filed on February 26, 2004, Verizon’s proposed amendment to interconnection agreements.
- 5 On March 19, 2004, Advanced Telecom Group Inc., Bulls Eye Telecom Inc., Comcast Phone of Washington LLC, DIECA Communications Inc. d/b/a Covad Communications Company, Global Crossing Local Services Inc., KMC Telecom V Inc., and Winstar Communications LLC (collectively “Competitive Carriers Group”) filed with the Commission an answer to Verizon’s petition for consolidated arbitration.
- 6 The Commission convened a prehearing conference in this docket on March 29, 2004. On March 31, 2004, the arbitrator entered Order No. 03, a prehearing conference order establishing a dispositive motion schedule and scheduling a prehearing conference for May 14, 2004. The prehearing conference was later rescheduled to May 25, 2004.
- 7 Pursuant to the motion schedule set in Order No. 03, various parties have filed with the Commission responses and replies concerning Sprint’s motion to dismiss, responses to Verizon’s amended arbitration petition, and motions to

dismiss Verizon's amended petition, as well as responses and replies to such motions.

8 On May 7, 2004, Verizon filed with the Commission a Motion to Hold Proceedings in Abeyance Until June 15, 2004, asserting that suspending the proceedings will allow the parties to focus on commercial negotiations without the distraction of simultaneous litigation. Verizon noted that certain parties, ELI, Rio, New Edge Networks and the members of the Competitive Carriers Coalition, were not opposed to the motion.²

9 On May 11, 2004, the arbitrator issued a notice seeking responses to Verizon's motion. The Competitive Carrier Coalition, the Competitive Carrier Group, Sprint, MCI, XO, and AT&T filed responses opposing Verizon's motion.

10 **PARTY REPRESENTATIVES.** Timothy J. O'Connell, Stoel Rives, LLP, Seattle, Washington, represents Verizon. Edward W. Kirsch and Philip J. Macres, Swidler Berlin Shereff Friedman, LLP, Washington, D.C., represent Adelphia Business Solutions Operations, Inc., Allegiance Telecom of Washington, Inc., DSLnet Communications LLC, Focal Communications Corporation of Washington, ICG Telecom Group, Inc., Integra Telecom of Washington, Inc., Level 3 Communications LLC, McLeodUSA Telecommunications Services, Inc., and Pac-West Telecomm, Inc., collectively the Competitive Carrier Coalition or (coalition). Letty S.D. Friesen, AT&T Law Department, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle (collectively AT&T). Andrew M. Klein, Kelley, Drye & Warren, LLP, Washington, D.C., represents Advanced TeleCom Group, Inc., Bulls Eye Telecom Inc., Comcast Phone of Washington LLC, DIECA Communications, Inc. d/b/a Covad Communications Company, Global Crossing Local Services, Inc., KMC Telecom V Inc., and Winstar Communications LLC

² Verizon later notified the Commission that the Competitive Carrier Coalition does oppose Verizon's motion.

(collectively the Competitive Carrier Group). Brooks E. Harlow, Miller Nash LLP, Seattle, Washington, and Hong Huynh, Miller Nash LLP, Portland, Oregon, represent Centel Communications. Karen S. Frame, Senior Counsel, Denver, Colorado, represents Covad Communications Company (Covad). Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents Electric Lightwave, Inc., New Edge Networks, Inc., Pac-West Telecomm Inc., Time Warner Telecom of Washington LLC and XO Washington, Inc. Dennis D. Ahlers, Senior Attorney, Minneapolis, Minnesota, represents Eschelon Telecom of Washington, Inc. Richard A. Pitt, attorney, Burlington, Washington, represents Northwest Telephone, Inc. Richard A. Finnigan, attorney, Olympia, Washington, represents SBC Telecom, Inc. William E. Hendricks, III, attorney, Hood River, Oregon, represents Sprint Communications Company, LLP (Sprint). Michael E. Daughtry, Vice President of Operations, Bend, Oregon, represents United Communications, Inc., d/b/a/ UNICOM. Michel Singer Nelson, Regulatory Attorney, Denver, Colorado, represents WorldCom, Inc. and its subsidiaries in Washington (n/k/a MCI, Inc.).

11 **MOTION.** Verizon requests that the Commission hold the arbitration proceeding in abeyance until June 15, 2004, the date to which the D.C. Circuit Court of Appeals has stayed its mandate in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*). Verizon requests that the Commission suspend the procedural schedule in this proceeding to avoid interference with simultaneous commercial negotiations to resolve disputes over unbundled access to network elements following the release of the FCC's Triennial Review Order and the D.C. Circuit's decision in *USTA II*.

12 Verizon also requests that the Commission toll the time for completion of the arbitration that would apply under 47 U.S.C. § 252(b)(4)(C). Verizon offers to propose a procedural schedule for resuming and completing the proceeding on or shortly after June 15, 2004.

- 13 The Competitive Carrier Coalition would not oppose Verizon's motion if Verizon agrees not to "alter the availability of UNEs during the pendency of the stay and the arbitration proceeding." Because Verizon has not agreed to the Coalition's request, the Coalition opposes Verizon's motion.
- 14 The Competitive Carrier Group opposes Verizon's motion with respect to issues not affected by the D.C. Circuit's decision, arguing that the Commission should order Verizon, without delay, to comply with FCC rules governing commingling and routine network modifications. Similar to the Coalition, the Competitive Carrier Group does not oppose Verizon's motion subject to the condition that Verizon "maintain the status quo, pending resolution of this proceeding, and refrain from any unilateral action to modify the availability, terms and conditions and /or pricing" for UNEs.
- 15 MCI and XO take the same position as the Competitive Carrier Group, asserting that the Commission should not grant Verizon's motion with respect to those issues not affected by the D.C. Circuit's decision. MCI asserts that it will withdraw its opposition if Verizon agrees to negotiate separate amendments to give immediate effect to conversions and commingling provisions of the Triennial Review Order, or if Verizon agrees to charge MCI UNE loop rates for special access circuits that are combined with special access multiplexers.
- 16 Sprint requests that the Commission rule on its motion to dismiss Verizon's petition prior to issuing a ruling on Verizon's motion. Sprint argues that dismissing the petition will allow all parties to devote their attention to commercial negotiations. Like the Coalition and Competitive Carrier Group, Sprint also requests the Commission require Verizon to maintain the status quo, citing to a recent decision of the Texas Public Utilities Commission.
- 17 AT&T requests that the Commission only grant Verizon's motion if Verizon agrees to provision, modify and maintain UNEs pursuant to existing law, and

maintain the status quo under existing interconnection agreements at existing rates pending completion of the arbitration.

18 **DISCUSSION AND DECISION.** Verizon's motion to hold the proceeding in abeyance until June 15, 2004, is granted, subject to the condition that Verizon maintains the status quo under existing interconnection agreements in Washington State by continuing to offer UNEs consistent with the agreements at existing rates pending completion of the arbitration. Given the uncertainty for telecommunications companies following the D.C. Circuit's decision and stay of its mandate, the FCC has encouraged ILECs and CLECs to negotiate commercial agreements that will resolve some of the uncertainty. Engaging in such negotiations while also trying to arbitrate an agreement in this proceeding imposes significant resource constraints on all parties.

19 The Commission would like the parties to focus their efforts on negotiating a resolution to the issues. The Commission also recognizes that there must be some certainty for all parties during the negotiating process, and if negotiations fail, during the arbitration process, that existing agreements will be honored. Verizon and CLECs in Washington State must use the opportunity granted by this Order to engage in good faith, substantive, negotiations to reach agreements on issues pending in this arbitration proceeding.

20 If Verizon negotiates an agreement with a CLEC that resolves issues pending in this arbitration between Verizon and the CLEC, Verizon must file that agreement with the Commission and the CLEC may request to be dismissed from this arbitration proceeding. Should Verizon take any action contrary to the provisions of interconnection agreements, CLECs may also file petitions for enforcement of the interconnection agreements pursuant to WAC 480-07-650.

21 The procedural schedule set forth in Order No. 03 in this proceeding is suspended and the prehearing conference scheduled for 9:30 a.m. on May 25,

2004, is canceled. The Commission will rule, prior to June 15, 2004, on the dispositive motions filed in this proceeding.

22 The Commission will schedule a prehearing conference soon after June 15, 2004, to determine the status of the arbitration proceeding and determine if the Commission should proceed to arbitrate the specific issues raised by the CLECs. Given the possibility that a further stay of the D.C. Circuit's mandate may be requested, and that petitions for stay and for writ of certiorari may be filed with the Supreme Court,³ Verizon must advise the Commission by Noon on June 11, 2004, whether the Commission should resume the proceeding or stay the proceeding further, pending further judicial review.

23 **NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-09-760.**

Dated at Olympia, Washington, and effective this 21st day of May, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

³ Justice Rehnquist has granted the Solicitor General a thirty-day extension of time to file a petition for a writ of certiorari. Other requests for extension are pending.