BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by VERIZON NORTHWEST, INC.	)	Docket No. UT-011219 JOINT CLEC PETITION FOR RECONSIDERATION OF ELEVENTH SUPPLEMENTAL ORDER TERMINATING PROCEEDING

Pursuant to WAC 480-07-850, Integra Telecom of Washington, Inc., XO Washington, Inc., MCI, Inc., f/k/a WorldCom, Inc., and Covad Communications Company (collectively "Joint CLECs") petition for reconsideration of the Commission's Eleventh Supplemental Order Granting Petition for Review of Ninth Supplemental Order and Terminating Proceeding ("Order"). In support of their Petition, the Joint CLECs state as follows:

Discussion

1. The Order identifies two grounds on which the Commission relied to terminate this proceeding. First, the Commission states that in light of recent events on the federal level, including the Federal Communications Commission's ("FCC's") *Triennial Review Order,*[1] the D.C. Circuit's decision in *USTA II,*[2] and the resulting FCC *Interim Rules Order,*[3] "and the uncertainty they engender regarding the status of unbundling, we find that termination of this proceeding would be the most reasonable and practical course of action at this time." Order

[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).

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

[3] *In re Unbundled Access to Network Elements, et al.,* WC Docket No. 04-313 & CC Docket No. 01-338, FCC 04-179, Order and Notice of Proposed Rulemaking (rel. Aug. 20, 2004).

¶23. Second, the Order provides, "Termination also avoids the potential for duplicative proceedings," specifically referencing the petition that Verizon filed to arbitrate an amendment to its existing interconnection agreements to incorporate the *Triennial Review Order* ("TRO Amendment Arbitration").[4] Order ¶ 24. Both of these grounds are based on erroneous interpretations of the scope of recent developments and the nature of the current proceedings before the Commission and thus do not support the Order.

2. The Commission correctly recognizes that the FCC's *Triennial Review Order* and subsequent legal developments concern "the status of unbundling" under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"). Order ¶ 23. The Act, however, establishes far more obligations than unbundling, including but not limited to interconnection (Section 251(c)(2)), resale (Section 251(c)(4)), collocation (Section 251(c)(6)), access to poles, ducts, conduits, and rights of way (Section 251(b)(4)), and reciprocal compensation (Section 251(b)(5)). The terms and conditions for all of these obligations, as well as general contract terms and ancillary services, are included in interconnection agreements. Qwest's Statement of Generally Available Terms ("SGAT"), for example, spans over 300 pages, exclusive of the 12 attachments, yet only about one-third of those pages address unbundled network elements ("UNEs").

3. Accordingly, events at the federal level, at most, have created uncertainty with respect to Verizon's *unbundling* obligations, but that uncertainty does not have any impact whatsoever on the vast majority of Verizon's obligations under the Act, which are included in

[4] Docket No. UT-043013.

interconnection agreements. Indeed, some competing local exchange carriers ("CLECs") currently do not obtain UNEs from Verizon, but such CLECs nevertheless need a comprehensive interconnection agreement to enable them to interconnect with, and obtain facilities other than UNEs from, Verizon. The Order thus throws out the interconnection agreement baby with the unbundling bathwater.

4. The Order is also inconsistent with comparable decisions made in the Verizon TRO Amendment Arbitration. Several CLEC parties in that docket have requested that the Commission terminate that proceeding based on the uncertainty arising from the multiple shifts in the federal law on unbundling over the last few months, but the Administrative Law Judge has denied those requests.[5] The Commission thus is *continuing* to arbitrate unbundling issues in the Verizon TRO Amendment Arbitration *despite* the uncertainty in federal law, while *terminating* this docket *because* of that same uncertainty. The contrast is particularly stark because the TRO Amendment Arbitration concerns *only* Verizon's unbundling obligations resulting from the recent changes in federal law, while UNE terms and conditions represent just *one* of several issues raised in this proceeding.

5. In addition, the Order fails to consider the Commission's prior decision to permit Verizon's collocation tariff to go into effect. The Commission took no action on, and interested parties including the Joint CLECs did not oppose, that tariff with the understanding that the terms and conditions in the tariff would be subject to review in this proceeding. Termination of this docket thus would deny CLECs any realistic opportunity to take issue with Verizon's

collocation tariff, effectively insulating the tariffed collocation terms and conditions from any Commission review.

6. The Commission's expressed concern with duplicative proceedings, the second ground on which it based its decision in the Order, derives from a misunderstanding of the nature of the different proceedings. The result of the Verizon TRO Amendment Arbitration will be a uniform *amendment* to existing interconnection agreements addressing recent changes in federal law on Verizon's unbundling obligations with respect to certain UNEs. The current schedule in that docket would have an arbitrator's decision issued no later than March 18, 2005 – approximately six weeks before the hearings in this docket are scheduled to begin. Far from duplicating efforts, the contract language resulting from the Verizon TRO Amendment Arbitration would be used in the template agreement to resolve the same issues, conserving Commission and party resources in this proceeding.

7. Termination of this proceeding, moreover, will actually *increase* demands on Commission and party resources. Without this proceeding, the Commission's and parties' efforts in the Verizon TRO Amendment Arbitration may well be wasted as Verizon terminates the existing agreements that Verizon seeks to amend.[6] The Commission will also face multiple arbitrations between Verizon and individual CLECs, rather than a single proceeding to resolve

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[5] *E.g.*, Docket No. UT-043013, Order No. 5.

[6] Indeed, Verizon has recently filed a pleading seeking to exclude the vast majority of CLECs – including all of the Joint CLECs except MCI – from the arbitration. If the Commission were to grant Verizon's request, all of these CLECs would be required to file individual dispute resolution proceedings, which would exponentially increase the demand on limited Commission resources to deal with multiple duplicative proceedings.

disputed contract issues. Most ominously, the lack of a template agreement will likely discourage new entry into Verizon's local exchange service territory in Washington in light of the significant costs an individual carrier will be required to incur to negotiate and arbitrate its own interconnection agreement with Verizon. Given Verizon's current 97% share of the local exchange market in its service territory,[7] the termination of this proceeding is contrary to the legislative goal to "[p]romote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state."[8]

8. Finally, there is no basis for the statement in the Order that "it is unclear whether the template agreement will ever be necessary." Order ¶ 24. Each of the Joint CLECs currently is operating under an interconnection agreement with Verizon, the initial term of which long ago expired. Verizon has never disputed that there is no arbitrated interconnection agreement between Verizon and a CLEC that is available for adoption in Washington, leaving only "negotiated" agreements that are virtually indistinguishable from Verizon's proposed agreement. The Joint CLECs relied on this proceeding to develop a template agreement that they could adopt, with or without carrier-specific modifications, to replace their existing agreements. Termination of this proceeding now requires the Joint CLECs individually to negotiate, and inevitably arbitrate, Verizon's proposed agreement. It should be abundantly clear to the Commission that a template agreement, like Qwest's SGAT, remains necessary,

[7] Docket No. UT-023003, Ex. 1062T (Staff Spinks Response) at 11.

[8] RCW 80.36.300(5).

regardless of the current uncertainty of Verizon's unbundling obligations under federal law.

Prayer for Relief

WHEREFORE, the Joint CLECs request the following relief:

A. An Order from the Commission reconsidering the Order and affirming the Ninth Supplemental Order; and

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

DATED this 16th day of September, 2004.

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