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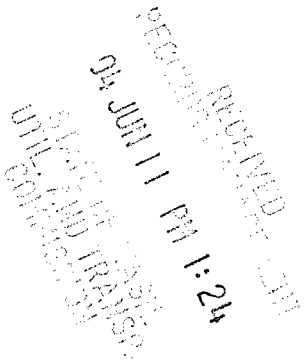
June 11, 2004

VIA FACSIMILE AND FEDERAL EXPRESS



Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transportation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Re: Docket No. UT-043013 –

Dear Ms. Washburn:

Enclosed please find an original and six copies for filing as supplemental authority to Verizon's Opposition to Joint CLECs' Motion for Order Requiring Verizon to Maintain Status Quo.

If you have any questions or concerns, please do not hesitate to call.

Sincerely,

Timothy J. O'Connell

Enclosures

cc: Hon. Ann Rendahl
Parties of Record

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 04-C-0314 - Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order

CASE 04-C-0318 Petition of AT&T Communications of New York, Inc. for Arbitration of Interconnection Agreement Amendments

RULING GRANTING MOTIONS FOR CONSOLIDATION AND TO HOLD PROCEEDING IN ABEYANCE

(Issued June 9, 2004)

ELIZABETH H. LIEBSCHUTZ, Administrative Law Judge:

By this ruling, I am granting the motion of Verizon New York Inc. to consolidate the two above-captioned cases and the motion filed by Verizon on May 5, 2004 to hold the arbitration in abeyance until June 15, 2004 with procedural deadlines tolled accordingly. In granting the motion to hold the proceeding in abeyance, I decline to impose the condition of requiring Verizon to maintain the status quo under its interconnection agreements during the course of the proceeding, as requested by several of the responding parties, as unnecessary and premature. At this time, the other motions filed in these proceedings, including motions to dismiss, motions to strike, and motions to hold the proceeding in abeyance on other grounds, remain under consideration and are not addressed by this ruling.

Procedural Background

Verizon and AT&T Communications of New York, Inc. filed their petitions for arbitration in Cases 04-C-0314 and 04-C-0318, respectively, on March 10, 2004. Both petitions seek to amend interconnection agreements to implement new rules regarding the provision of Unbundled Network Elements ("UNEs") set forth in the Federal Communications Commission's Triennial

Review Order.[1] In an April 5, 2004 response to AT&T's petition, Verizon incorporated its own petition by reference as an answer and moved to consolidate the two proceedings. AT&T filed a response on April 13, 2004, in which, among other things, it indicated that it has no opposition to consolidation. In response to the Verizon petition in Case 04-C-0314, numerous parties, acting either individually or in coalitions, moved to dismiss the entire proceeding on a variety of grounds, moved to dismiss the proceeding as to themselves, moved to hold the proceeding in abeyance pending a revised filing to be made by Verizon, and/or answered the petition on the merits.

On May 5, 2004, Verizon moved to hold Case 04-C-0314 in abeyance until June 15, 2004, the expected effective date of the order of the U.S. Court of Appeals for the District of Columbia Circuit in United States Telecommunications Assn. v. Federal Communications Comm'n, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II"), which vacated significant portions of the Triennial Review Order. Verizon asserted that the pendency of appellate proceedings was not a basis for delaying the arbitration. However, it stated, placing the arbitration in abeyance would help parties focus on commercial negotiations. (These, in turn, are necessitated by the appellate proceedings.) Verizon proposed that the other procedural milestones in this case be correspondingly delayed so that no party would be prejudiced while the case is held in abeyance. Six parties -- AT&T, MCI,[2] Sprint Communications Company L.P., the Competitive Carrier

[1] FCC 03-36, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338 (In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers), 96-98 & 98-147 (released August 21, 2003).

[2] "MCI" refers to Brooks Fiber Communications of New York Inc., Intermedia Communications Inc., MCI WORLDCOM Communications Inc., MCI WORLDCOM Communications Inc. (as successor to Rhythms Link Inc.) and MCImetro Access Transmission Services LLC.

Coalition (CCC),[3] the Competitive Carrier Group (CCG),[4] and Conversent Communications of New York LLC -- filed responses to Verizon's motion on May 13, 2004. Verizon submitted a letter reply on May 18, 2004, and AT&T and Conversent filed letter surreplies on May 20, 2004. The parties' positions are summarized below.

Summary of Parties' Arguments

Most of the parties responding to Verizon's motion to hold the case in abeyance argue that the motion should only be granted on the condition that Verizon be required to continue to provide UNEs as set forth in its current interconnection agreements until all issues regarding Verizon's interconnection agreement obligations are resolved in this arbitration proceeding. AT&T, MCI, Sprint, and CCG all take this position. CCC's position is a slight variant. It does not seek a Commission order requiring Verizon to preserve the status quo, but notes that the basis of its opposition to Verizon's motion is Verizon's unwillingness to unilaterally commit to the preservation of the status quo. Conversent similarly seeks a Commission order requiring Verizon to continue to offer UNEs under the terms of its interconnection agreements, not merely during the pendency of this arbitration proceeding, but until the FCC establishes new rules regarding UNEs, the existing FCC rules are reinstated, or this Commission establishes new prices in Case 04-C-0420. Conversent also notes that the status quo

[3] CCC consists of ACN Communication Services, Inc.; CoreComm New York, Inc.; CTC Communications Corp.; DSLnet Communications, LLC; Focal Communications Corporation of New York; ICG Telecom Group, Inc.; Lightship Telecom, LLC; PAETEC Communications, Inc.; and RCN Telecom Services, Inc.

[4] As of the May 13, 2004 response, CCG consists of A.R.C. Networks, Inc. d/b/a InfoHighway Communications Corporation, Broadview Networks Inc., Broadview NP Acquisition Corp., BullsEye Telecom Inc., Business Telecom Inc., Choice One Communications of New York Inc., Cordia Communications Corp., Covad Communications Company, DSCI Corporation, Global Crossing Local Services Inc., IDT America Corp., Line Systems Inc., Smart Choice Communications LLC, Spectrotel Inc., Talk America Inc., Telecon Communications Corp., and XO New York Inc.

order should not be limited to this proceeding but should apply generally to prevent the disruption of competition in New York.

AT&T, CCG, MCI, and Conversent all argue that only those issues affected by the D.C. Circuit's decision in USTA II should be held in abeyance. As to other issues, such as commingling of services and conversion of services to UNEs, MCI opposes any delay. CCG, Conversent, and AT&T refer specifically to the requirement in the Triennial Review Order that Verizon perform routine network modifications in providing high-capacity facilities. They argue that the routine network modifications portion of the Triennial Review Order is not a change of law that must be implemented through a change of law or amendment process, but rather that the Commission should order Verizon to perform these modifications immediately, without the need for any amendment or revision of the interconnection agreement and without any additional charge imposed by Verizon.

Sprint notes its preference that the Commission grant the pending motions to dismiss, thereby rendering the motion to hold the proceeding in abeyance moot. As an alternative, however, it seeks the status quo provisions noted above.

In its reply, Verizon protests that the CLECs are using the excuse of its motion as a platform to press other positions. It asserts that its request for an abeyance until June 15, 2004 has nothing to do with the time period after that date and so cannot serve as a basis for imposing conditions upon Verizon for an indefinite period of time thereafter. It asserts that imposing the status quo would be unlawful because it forces Verizon to forfeit its existing contractual rights. Verizon argues that its rights under interconnection agreements or under federal law as articulated by the D.C. Circuit should be assessed in "appropriate proceedings," rather than resolved summarily in the context of this motion. Verizon further asserts that this Commission does not have authority to stay the USTA II order, which would be the effect of what the CLECs are seeking. Verizon argues that it is not seeking a determination of its or the parties' rights under the interconnection agreements here. It also asserts that the Commission cannot

make generic determinations regarding contractual rights in disregard of individual contracts.

Verizon argues that it is unfair for the CLECs to seek a stay of the parts of the Triennial Review Order and USTA II decision that benefit Verizon, while demanding immediate implementation of the provisions that benefit the CLECs. Responding to Sprint's request for a ruling on the motions to dismiss, Verizon says that abeyance would be more efficient. If the case is dismissed, Verizon argues, it will merely be refiled, requiring a new round of responses. Also, Verizon points out, not all parties want dismissal, so the case will continue in any event, requiring Commission determinations that will affect the rights of all parties. Finally, Verizon states that it will withdraw its motion for abeyance rather than accept the conditions proposed by the CLECs.

In a surreply letter, AT&T draws a distinction between the substantive relief it is seeking in Case 04-C-0420 and the procedural relief it is seeking here. Here, AT&T asserts, it seeks only to preserve the Commission's jurisdiction, so that the rights of parties are determined by the Commission rather than by Verizon acting in self-help. In its surreply letter, Conversent takes issue with Verizon's characterization that Conversent has engaged in improper gamesmanship and bad-faith tactics in proposing the status quo condition to abeyance. Conversent also takes issue with Verizon's statement that Conversent seeks a stay of the status quo "indefinitely." Conversent asserts that the FCC is likely to have new rules in place within 90 days, so that the preservation of the status quo is limited in time. Conversent further argues that New York State has an important role to play here, which is not pre-empted by or in conflict with any federal rules.

Discussion

As noted above, AT&T and Verizon agree that their two arbitration proceedings should be consolidated into one. Although no formal ruling has issued on the subject, the parties have, for all intents and purposes, treated the proceedings as already consolidated. No other party has objected to the consolidation, and it appears that it will be more efficient to address all issues in a single place as the parties suggest. Therefore, the motion to consolidate is granted.

Verizon's motion to hold the case in abeyance is granted. Both this Commission and the FCC have encouraged the parties to engage in commercial negotiations to hammer out agreements that may very well moot this proceeding. It is assumed that those negotiations will address all issues globally, rather than merely deciding the limited number of issues unaffected by the D.C. Court's ruling. While there is an opportunity for these negotiations, it is appropriate to hold the arbitration proceedings in abeyance, at least for the limited time proposed by Verizon. Moreover, as many of the CLECs have asserted in their motions filed in this proceeding, the uncertainty regarding the status of the law, caused by the D.C. Circuit's decision as well as its stay of the effectiveness of the decision, makes it difficult to proceed with an effective arbitration. Because some of that uncertainty may be clarified after June 15, it makes sense to wait until that point before making further decisions regarding the course of these proceedings.

Some of the parties assert that the proceeding should continue as to issues unaffected by the USTA II decision. Such a piecemeal approach may become necessary, depending on the further course of appellate proceedings. However, at this time, that approach is not warranted. The potential for the parties to negotiate and resolve many or all issues and the short duration of the proposed period of abeyance are both factors suggesting that any party anxious to obtain a final decision on issues such as commingling and routine network modifications has suffered only minimal prejudice, if any, from the holding of the

case in abeyance. Countervailing that limited prejudice is a strong case for efficiency.

I decline to condition the grant of Verizon's motion on its preserving the status quo with regard to the provision of UNEs, as many of the CLECs request. The requests to preserve the status quo are not logically related to the motion to hold the proceeding in abeyance. Rather, they far exceed the scope of Verizon's initial motion, and they seek relief from a perceived harm that does not flow from the 41-day abeyance.

It is understandable that, as the June 15, 2004 deadline approaches, the CLECs are becoming increasingly nervous about a potential interruption in service from Verizon once the vacatur goes into effect. It appears that these fears, at least in the immediate term, are unfounded. Clearly, Verizon agrees with MCI's assertions that its rights and obligations with respect to provision of UNEs are governed primarily by its interconnection agreements. Verizon has further asserted that it intends to rely on clauses such as §8.4 of its interconnection agreement with Sprint, which, Verizon asserts, are self-executing. That clause entitles Verizon to discontinue the provision of any service after providing 60 days' prior written notice to Sprint, "in the event that as a result of any unstayed decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that BA [Verizon] ... shall not be required to furnish any service ... required to be furnished or provided to SPRINT ... hereunder ...."[5] If and when the stay of the USTA II decision is lifted, and if and when thereafter Verizon provides a notice to the CLECs under this clause, there may arise an issue as to whether the clause is applicable, whether Verizon has complied with its provisions, and whether Verizon is entitled to cease to provide service in reliance on

[5] Verizon has affirmed that it intends to give CLECs 90 days' notice from the time a vacatur goes into effect. See Declaration of Virginia P. Ruesterholz, filed in support of Joint Opposition of ILECs to Motions to Stay the Mandate, filed with the D.C. Circuit in the USTA II proceeding, Docket Nos. 00-1012, et al., June 1, 2004.

its terms. At this time, however, no party has alleged facts, made claims, or sought relief on this basis. It would therefore be premature to make any ruling on the matter at this time. However, this ruling is without prejudice to the rights of any CLEC to seek a status quo order, either in this proceeding or in another appropriate case before the Commission, if future facts or circumstances warrant.

It would be inappropriate at this time to rule on the argument relating to Verizon's responsibilities to make routine network modifications to high-capacity facilities in order to provide them as UNEs to requesting CLECs. Given the uncertainties regarding the federal court litigation, the on-going commercial negotiations among the parties, and the decision reflected herein to hold this case in abeyance, this is not the time to make a ruling on the merits of an important substantive issue in this proceeding.

The consequence of granting Verizon's motion is that an additional 41 days will be added to the schedule for this proceeding. Under the timetable established by 47 USC §252(b), arbitrations must be concluded within nine months of the commencement of negotiations. Verizon's March 10, 2004 petition for arbitration is predicated on a negotiation start date of October 2, 2003, which would require a final Commission decision in this proceeding by July 2, 2004. That date will now be delayed by 41 days, representing the time from the filing of Verizon's motion on May 5, 2004 through June 15, 2004, the date proposed by Verizon for the case to recommence. Consequently, the new timetable will be predicated upon a Commission decision by August 12, 2004. Of course, that date may well change in the future, depending on rulings on remaining pending motions or on the schedule which Verizon asserts it will propose after June 15, 2004.

Conclusion

For the foregoing reasons, and as stated above, Verizon's motion to consolidate Cases 04-C-0314 and 04-C-0318 is granted. Verizon's May 5, 2004 motion to hold Case 04-C-0314 in abeyance for 41 days, from the date of the motion until June 15, 2004, is granted as to the consolidated proceedings. Accordingly, the target date for conclusion of these cases is changed from July 2, 2004 to August 12, 2004. The condition of a status quo order requested by parties in their May 13, 2004 responses to Verizon's motion is not granted, since it is premature, unnecessary and inappropriate for resolution at this time. This ruling is without prejudice to the CLECs' raising concerns regarding the preservation of the status quo or Verizon's performance of routine network modifications at a later time and/or in another forum. All other motions previously filed in Cases 04-C-0314 and 04-C-0318 remain pending and under consideration.

(SIGNED) ELIZABETH H. LIEBSCHUTZ

STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

TO: Aaron Panner/Scott Angstreich
Fax #: 6,12023267999

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.	DOCKET NO. 040156-TP ORDER NO. PSC-04-0578-PCO-TP ISSUED: June 8, 2004

ORDER ON MOTION TO HOLD PROCEEDING IN ABEYANCE

I. BACKGROUND

On February 20, 2004, Verizon Florida, Inc. filed a Petition for Arbitration of Amendments to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida. By its Petition, Verizon sought to initiate a consolidated arbitration for the purpose of amending its interconnection agreements in light of the FCC s Triennial Review Order, FCC 03-36, released August 21, 2003; 18 FCC Rcd 16978 (2003)(TRO). Thereafter, on March 19, 2004, Verizon filed an Update to its Petition in Response to the D.C. Circuit s March 2, 2004, decision in United States Telecom Assoc. v. Federal Communications Commission and United States of America, 359 F.3d 554 (D.C. Cir. 2004), wherein the Court vacated, in part, and remanded, in part, the FCC s TRO.

To date, numerous responses, including several Motions to Dismiss, have been filed in response to both the initial and the updated Petitions.

On May 7, 2004, Verizon filed a Motion to Hold Proceeding in Abeyance until June 15, 2004. On May 14, 2004, Sprint filed a Response to Verizon s Motion. Subsequently, on May 17, 2004, counsel for the Competitive Carrier Coalition[1] (Coalition) submitted a letter in response to the Motion. Thereafter, on May 19, 2004, AT&T and the Competitive Carrier Group[2] (CCG) filed Responses to Verizon s Motion, and MCI filed a Response in Partial Opposition to the Motion. Verizon filed a Reply in Support of its Motion on May 21, 2004. Such a responsive pleading is not, however, contemplated by Commission rules.

This Order addresses the Motion to Hold Proceeding in Abeyance until June 15, 2004. The Motions to Dismiss will be handled separately by the Commission.

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[1] ACN Communications Services, Inc., Adelphia Business Solutions Operations, Inc. d/b/a TelCove, Allegiance Telecom, Inc., DSLnet Communications, LLC; Florida Digital Network, Inc., PAETEC Communications, Inc., and ICG Telecom Group, Inc.

[2] Bullseye Telecom, Inc., Business Telecom, Inc., DIECA Communications d/b/a Covad Communications Company, ITC DeltaCom Communications, Inc., Global Crossing Local Services, Incorporated, IDT America Corp., KMC Data LLC, KMC Telecom III, LLC, KMC Telecom V Inc., NewSouth Communications Corporation, NOW Communications, Inc., The Ultimate Connection L.C., Winstar Communications LLC, XO Florida Inc., Xspedius Management Co. Switched Access Services LLC, and Xspedius Management Co. of Jacksonville LLC.

II. ARGUMENTS

A. Verizon

Verizon asks that the proceeding be held in abeyance until June 15, 2004, the date the D.C. Circuit s mandate is currently scheduled to be issued in United States Telecom Assoc. v. Federal Communications Commission and United States of America, supra (USTA II). Verizon contends that an abeyance will avoid interference with the commercial negotiations that are ongoing as a result of the FCC s TRO and the D.C. Circuit s March 2, 2004, USTA II decision. While Verizon emphasizes that the TRO and the resulting appellate proceedings do not serve as a basis to delay arbitration of amendments to interconnection agreements, Verizon recognizes that parties have limited resources and that greater overall benefit will ultimately be derived if parties are able to focus their resources on the ongoing commercial negotiations. Verizon, therefore, asks that the proceedings be held in abeyance until June 15, 2004, and that, in the interim, the time for completing the arbitration under 47 U.S.C. 252(b)(4)(C) be tolled.

B. Sprint

At the outset, Sprint states it does not object to Verizon s request, subject to two conditions: (1) the Commission should rule on Sprint s Motions to Dismiss[3] prior to ruling on Verizon s Motion; and (2) the Commission should require Verizon to maintain the status quo at current rates for all UNEs while the proceeding is in abeyance.

Sprint contends that ruling on its Motions to Dismiss will also further the commercial negotiations by allowing the parties to devote themselves fully to the negotiations, instead of preparing for litigation. Sprint notes that if its Motions to Dismiss are granted, Verizon s Motion will be rendered moot.

Sprint notes that the Texas Public Utilities Commission recently held a similar proceeding in abeyance based, in part, on SBC s assurances that UNEs will continue to be offered under the current interconnection agreements.

C. Coalition

The Coalition states that it does not oppose Verizon s Motion, but it too would like a commitment from Verizon that it will maintain the status quo regarding the availability of UNEs during the pendency of the stay and the arbitration proceeding.

[3] Sprint has two Motions to Dismiss pending one filed on March 16, 2004, and one filed on April 13, 2004.

D. MCI

MCI opposes Verizon s Motion, in part, to the extent that MCI believes that certain issues are ripe for arbitration regardless of the USTA II decision. MCI argues that while USTA II did remand certain issues to the FCC, and companies are currently trying to resolve some of those issues, the TRO did create certain rights and obligations that are not affected by the USTA II decision and should be implemented. In particular, MCI references the issues relating to the conversion of services to UNEs and commingling of access and UNE traffic.

MCI argues that delay on these issues is not warranted, since Verizon has declined to participate in open, mediated negotiations with MCI and other CLECs; thus, Verizon should have plenty of resources to channel towards the arbitration/litigation process. Furthermore, MCI notes that simultaneous litigation and negotiation has been the rule ever since implementation of the Telecommunications Act of 1996.

MCI agrees, however, that those issues that are impacted by the USTA II decision, namely the availability of switching and transport, should be held in abeyance. MCI emphasizes that the Commission should urge Verizon to maintain the status quo on all issues pending the resolution of the arbitration, specifically directing Verizon to continue to provide switching and transport UNEs until this proceeding is concluded.

MCI states that it will, nevertheless, withdraw its opposition to Verizon s Motion if Verizon will agree to either: (1) negotiate separately and file for approval agreement amendments that give immediate effect to the conversion and commingling provisions of the proposed TRO amendment; or (2) begin charging MCI UNE loop rates for special access circuits that are currently combined with special access multiplexers, as well as future orders for such arrangements.

E. CCG

CCG agrees to a great extent with MCI. CCG believes that the Commission should move forward with the arbitration on those issues that were not impacted by the USTA II decision, but agrees with Verizon that abeyance is proper for those issues that have been affected by the decision. CCG also argues that the Commission should order Verizon to comply with the FCC s current rules on commingling and routine network modifications, and as to the provision of UNEs, the status quo be maintained for the full duration of this arbitration. CCG notes that the South Carolina Commission has taken this approach recently in its Docket No. 2004-49-C.

F. AT&T

Similarly, AT&T states that it will agree to the abeyance, if Verizon is ordered: (1) to perform routine network modifications as required under current law; and (2) to refrain from

implementing its own interpretation of the interconnection agreements unilaterally. While AT&T agrees that negotiations between the parties will be mutually beneficial, AT&T alleges that Verizon has not responded in any meaningful way to AT&T s comments on Verizon s proposed TRO amendment.

AT&T further argues that Verizon has, thus far, failed to perform routine network modifications and to provide Enhanced Extended Loops (EELs) as mandated. AT&T contends that the law is unambiguous on this point, yet Verizon is demanding that CLECs sign the proposed agreement amendment before Verizon will fulfill its obligations. As such, if the proceeding is held in abeyance in its entirety, AT&T contends that it will be prejudiced by the delay in the arbitration.

AT&T adds that Verizon s obligations with regard to routine network modifications are current, ongoing obligations, and as recognized by the FCC in the TRO, refusal to perform such modifications constitutes a violation of existing law.[4] AT&T notes that decisions by an arbitrator in Rhode Island and a hearing examiner in Maine have already concluded that the FCC s clarification in the TRO on this issue does not constitute a change in law. AT&T emphasizes that if the Commission is inclined to hold these proceedings in abeyance, as requested by Verizon, then the Commission should also reach the same conclusion reached in Rhode Island and Maine, and should order Verizon to provide routine network modifications.

G. Verizon s Reply

As a procedural matter, Verizon asserts that its Reply to the responses to its Motion is appropriate, because the CLECs have essentially used their ability to respond to the Motion as a platform to seek additional affirmative relief not related to Verizon s initial request for relief.

Thereafter, Verizon argues that its Motion does not go to the period after June 15 when the Court s mandate is expected to issue. As such, Verizon contends that its Motion should not be used as a basis for imposing obligations that would continue for the duration of the proceeding. Furthermore, Verizon contends that any Order requiring Verizon to continue to provide anything that it is no longer otherwise legally obligated to provide would go beyond the Commission s authority and would constitute, essentially, a stay by this Commission of the USTA II decision.

In addition, Verizon argues that it cannot be forced to give up its lawful, contractual rights. Verizon adds that it is committed to maintaining the status quo of all its existing contracts, including any contractual rights that might allow it to stop provisioning certain UNEs and transition CLECs to other alternatives. Verizon further argues that state commissions are without authority to make general determinations that affect existing contract rights contrary to

[4] C iting TRO at n. 1940.

the terms of such contracts.[5] States are also, argues Verizon, without authority to require unbundling of an element that the FCC specifically considered and rejected.[6] In further support of this argument, Verizon disagrees with CCG s interpretation of the action taken by the South Carolina Commission. Verizon contends that South Carolina did not decide to impose additional requirements on Verizon; instead that state commission decided that it was appropriate to maintain the status quo by requiring the terms of the current contracts to remain in effect for the duration of the arbitration proceeding. Verizon notes that this is precisely what it intends to do but emphasizes that the terms of the contracts apply to each party to the contract; thus, Verizon cannot be forced to move forward to implement changes resulting from the TRO without a contract amendment.

Finally, Verizon argues that Sprint s request to have its Motion to Dismiss ruled upon before Verizon s Motion for Abeyance should be rejected. Verizon contends that this proposal simply makes no sense for the following reasons: (1) Sprint s Motion to Dismiss largely addresses dismissal of only Sprint from this proceeding; (2) Verizon s Motion for Abeyance moots any arguments in the Motions to Dismiss about the uncertain state of the law; and (3) abeyance is more efficient than dismissal, because it will prevent inevitable redundancy in the process should Verizon be required to refile. Verizon adds that this process will likely prevent the Commission from being inundated with complaints by parties seeking to separately exercise their perceived rights under the TRO.

Based on the foregoing, Verizon asks that its Motion be granted without the additional requirements the CLECs ask the Commission to impose. Verizon notes that it would withdraw its Motion before agreeing with the conditions imposed by the CLECs.

III. DECISION

At the outset, I note that while Verizon s May 21, 2004, Reply to the CLECs Responses to its Motion is a pleading not generally contemplated by Commission rules, several of the CLECs have requested, via their Responses, affirmative relief beyond the scope of Verizon s initial Motion. It is appropriate, therefore, to allow Verizon the opportunity to respond to these new requests for relief. As such, Verizon s May 21, 2004, Reply is allowed, and I have considered the arguments therein.

Having considered the arguments presented, I hereby grant Verizon s Motion to Hold Proceedings in Abeyance Until June 15, 2004. The abeyance will allow the parties additional time to focus on their negotiations before we proceed with this arbitration. In granting this abeyance, it should go without saying that all of the parties are expected to participate in good faith in the negotiations for amendments to the current interconnection agreements. See also TRO at 706.

[5] Citing Pacific Bell V. Pac-West Telecomm, Inc., 325 F.3d 1114, 1125-26 (9th Cir. 2004).
[6] Citing TRO at 195, and FCC s Brief in USTA II, at pp. 92-93 (D.C. Cir., filed Dec. 31, 2003).

As for the CLECs requests for additional, affirmative relief to require Verizon to implement the FCC rules on commingling and routine network modifications, as well as to require Verizon to refrain from implementing its own interpretation of the interconnection agreements unilaterally, these requests are denied. Specifically, the request that Verizon should be required to immediately implement the rules on commingling and routine network modifications appears contrary to the basis upon which I have decided to grant the Motion to Hold Proceedings in Abeyance, that being that the parties should have time to focus their efforts on negotiating modifications to their current agreements. As to the request to require Verizon to maintain the status quo for the duration of the proceeding, Verizon has indicated that this is, in fact, its intent. Thus, it does not appear necessary at this time to affirmatively require Verizon to do so.

I also reject Sprint s request that its Motions to Dismiss be ruled upon prior to a ruling on Verizon s Motion. Sprint is correct that, if its Motions to Dismiss are granted, Verizon s Motion would be rendered moot. There is, however, no reason that Verizon s Motion cannot be dealt with first. In view of the number and complexity of the Motions to Dismiss currently pending, this is simply the most reasonable, timely course of action. The Motions to Dismiss are scheduled to be heard by the full Commission at an upcoming Agenda Conference.

Finally, I am persuaded by Verizon s argument that maintenance of the status quo should be applicable not only to the CLECs but also to Verizon. However, to the extent that any CLEC believes Verizon is not complying with a current, valid provision of its interconnection agreement with the CLEC, then that party is not precluded from filing a separate complaint seeking enforcement of the interconnection agreement provision if negotiations do not prove successful.

It is therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Verizon s Motion to Hold Proceedings in Abeyance is granted for the reasons set forth in the body of this Order.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 8th day of June, 2004.

/s/ Charles M. Davidson
CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(SEAL)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6932

Petition of Verizon New England Inc., d/b/a Verizon Vermont, for arbitration of an amendment to interconnection agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio service providers in Vermont, pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order	)))))))

Order entered: 5/26/2004

ORDER RE: MOTION TO HOLD PROCEEDING IN ABEYANCE UNTIL JUNE 15, 2004

The Vermont Public Service Board ("Board") opened this investigation in response to a petition filed on February 20, 2004, by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), in which Verizon sought arbitration to amend interconnection agreements with competitive local exchange carriers ("CLECs") and commercial mobile radio service providers in Vermont. Verizon sought to amend the agreements in response to the *Triennial Review Order* issued by the Federal Communications Commission ("FCC").[1] On March 2, 2004, the Court of Appeals for the District of Columbia Circuit issued a decision vacating in part the *Triennial Review Order* and remanding it to the FCC. The Court of Appeals subsequently stayed its mandate until June 15, 2004, in part due to a request from the FCC that the Court provide an opportunity for carriers to reach a negotiated settlement of the issues.

On May 6, 2004, Verizon filed a Motion to Hold Proceeding in Abeyance until June 15, 2004. Verizon stated that it recognized that parties had limited resources and that thus, a delay would ensure that parties could devote their attention to ongoing commercial negotiations to

1. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (generally referred to as the *"Triennial Review Order"*), *vacated in part and remanded, United States Telecom Association v. FCC* 359 F.3d 554 (D.C.Cir. 2004)(*"USTA II"*).

resolve issues arising from the *Triennial Review Order* "without the distraction of simultaneous litigation." Verizon also asked that the Board toll the time that would otherwise apply for completion of this arbitration. Verizon stated that it would propose a procedural schedule by June 15 for completion of the proceeding.

The other parties to this proceeding filed responses that either opposed Verizon's motion, or requested that the Board impose conditions on its approval. The Competitive Carrier Group ("CCG")[2] partially opposes the grant of Verizon's Motion. CCG asks that the Board specifically order Verizon to comply with the FCC's current rules with regard to commingling and routine network modifications, rather than delaying consideration. CCG also agreed that the remainder of the proceeding should be held in abeyance, but only subject to the express condition that Verizon "maintain the *status quo*" and refrain from any unilateral action to modify the terms, conditions, pricing and availability of unbundled network elements ("UNEs") under existing interconnection agreements. CCG states that it is not sufficient for the Board to simply order Verizon to comply with existing interconnection agreements. Finally, CCG says that the Board should evaluate the "necessary procedural schedule for addressing any remaining issues" once the Court of Appeals issues its mandate, beginning with a direction for parties to negotiate for 135 days.

MCImetro Access Transmission Services LLC ("MCI") and the Department of Public Service ("Department") also oppose Verizon's Motion as it relates to issues that are not affected by *USTA II*. The Department asserts that competition could be unnecessarily hampered if the Board does not move rapidly to address issues such as routine network modifications and rates, terms and conditions for commingling of network elements and services. AT&T of New England, Inc. ("AT&T") raises the same concerns, but also asks that the Board, as a condition of granting Verizon's Motion, direct Verizon to provide Enhanced Extended Links ("EELs") as required under current law.

MCI, the Department, and AT&T also request that the Board condition approval of Verizon's Motion on Verizon maintaining the status quo (at existing rates) during the arbitration.

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2. A.R.C. Networks Inc., d/b/a/ Infohighway Communications Corporation, Bullseye Telecom Inc., Equal Access Networks LLC, IDT American Corp., XO Communications Inc., and XO Long Distance Services, Inc.

AT&T expresses concern that Verizon will unilaterally alter rates, terms and conditions for certain UNEs. MCI echoes AT&T's comment, asking that the Board direct Verizon to continue to honor all of its commitments in existing interconnection agreements. The Competitive Carrier Coalition II[3] also does not oppose Verizon's motion if Verizon commits not to unilaterally alter the availability of UNEs.

By this Order, I grant Verizon's Motion without conditions. The Board has consistently encouraged efforts by the parties to settle disputes where possible. Granting Verizon's motion will provide an opportunity for parties to focus on negotiations without the need to simultaneously litigate the same issues. Moreover, it is clear from the filings to date that, notwithstanding the expectation that parties will engage in serious negotiations concerning the terms and conditions of interconnection prior to requesting arbitration from state commissions, such negotiations have not taken place in this case. Resolution of the issues raised by Verizon and the parties is likely to be aided if the parties now engage in the negotiations that should have taken place prior to filing Verizon's petition.

I fully recognize the concerns raised by the parties that delaying this proceeding may adversely affect competition, but am not persuaded that I need to impose conditions to preserve the status quo or continue to resolve the issues related to routine network modifications, commingling of elements and services, and EELs as rapidly as parties suggest. The delay sought by Verizon is short; given the fact that Verizon's obligations in these areas under existing law has been subject to debate for years (during which time no party has asked the Board to specifically rule on the obligations), I cannot conclude that a short delay will have harmful effects upon competition in Vermont. Moreover, I expect that Verizon will negotiate in good faith with respect to these issues as well as the proposed changes set out in Verizon's petition. Since the FCC appears to have now clarified Verizon's obligations, it seems likely that these negotiations will narrow, if not fully resolve, the issues.

As to the potential that Verizon may unilaterally alter rates, terms, conditions, and availability of UNEs under existing interconnection agreements, I do not find that it is necessary

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3. CTC Communications Corp., DSLnet Communications, LLC, ICG Telecom Group, Inc., and Lightship Telecom, LLC.

that I adopt specific conditions limiting Verizon at this time. It is clear that, as a matter of law, Verizon has an obligation to continue to operate under the terms of approved interconnection agreements until this Board approves a change to those terms and conditions. I expect that, unless the interconnection agreement permits Verizon to unilaterally alter the terms, conditions, prices, and availability of UNE's, Verizon will continue to abide by these terms or seek approval for modifications. A specific condition to that effect is not necessary

For the foregoing reasons, I grant Verizon's Motion to hold this proceeding in abeyance until June 15, 2004. On or before that date, Verizon shall file a proposed procedural schedule for completion of this proceeding, at which time I will schedule a Status Conference.[4]

SO ORDERED.

Dated at Montpelier, Vermont, this 26th day of May, 2004.

George E. Young
Hearing Officer

OFFICE OF THE CLERK

FILED: May 26, 2004

ATTEST: Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

4. To the extent possible, Verizon should consult with other parties in developing this schedule so as to take into consideration pre-planned absences.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133t

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request of the Competitive Carriers of the South, Inc., for an Emergency Declaratory Ruling	)))	ORDER DENYING EMERGENCY RELIEF

BY THE COMMISSION: On May 27, 2004, Competitive Carriers of the South, Inc. (CompSouth)[1] filed a petition for an emergency declaratory ruling "that the obligations of parties to interconnection agreements filed with the Commission remain in effect unless and until those interconnection agreements are amended, filed with and approved by the Commission." CompSouth requested an expedited ruling because the mandate in *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) will issue on June 15, 2004, and, for various reasons set forth in its petition, CompSouth is concerned that once the mandate issues, BellSouth Telecommunications, Inc. (BellSouth) may refuse to honor interconnection agreements with Competing Local Providers (CLPs). *USTA II* vacates certain portions of the Federal Communications Commission's (FCC's) *Triennial Review Order* (TRO).

While the first paragraph of CompSouth's petition appears to seek a general determination of the rights and obligations of "parties to interconnection agreements," the remainder of the petition deals exclusively with facts specific to BellSouth. In light of this ambiguity and the potential precedential ramifications a declaratory ruling could have, the Commission provided all interested Incumbent Local Exchange Carriers (ILECs) and the Public Staff an opportunity to file comments regarding CompSouth's petition. By Order dated May 28, 2004, the Commission ordered all such comments to be filed by June 4, 2004. BellSouth, Carolina Telephone and Telegraph Company, Central Telephone Company and Sprint Communications Company L.P. (collectively Sprint), Verizon South, Inc. (Verizon) and the Public Staff each filed comments in response to the Commission's Order.

Having reviewed and considered CompSouth's petition and all comments filed, the Commission finds that no cause exists at this time to issue a declaratory ruling of the rights and obligations of the parties, i.e., BellSouth and CLPs, under existing, Commission-approved interconnection agreements. BellSouth has given assurance, through a May 24, 2004 Carrier Letter Notification, a May 28, 2004 letter filed with the

[1] The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Covad Communications Company, IDS Telecom LLC, ITC^DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications. DSLnet Communications LLC also joined in the CompSouth petition.

Commission in Docket Nos. P-100, Sub 133q and Sub 133s, and a May 26, 2004 conference call convened in the same dockets by Commission Order dated May 21, 2004, that if the *USTA II* mandate issues on June 15, (1) it will not unilaterally disconnect or change rates for service being provided to a CLP under an existing interconnection agreement; (2) it will seek to effectuate changes that become permissible as a result of *USTA II* "via established legal procedures;" and, (3) it "will continue to accept and process new orders for services (including switching, high capacity transports, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed or modified consistent with the D. C. Circuit's decision pursuant to established legal processes." In addition, in its comments filed in this docket, BellSouth states that it "has repeatedly assured the industry that it will not act unilaterally with regard to its Interconnection Agreements once the vacatur [of TRO by *USTA II*] becomes effective." These assurances suggest that the requested emergency relief is not required by the vacatur of portions of the FCC's TRO becoming effective on June 15, 2004.

The Commission believes that BellSouth's acts of assurance are good faith attempts to allay fears that it would take unilateral actions contrary to its obligations under existing interconnection agreements with CLPs. While the Commission recognizes BellSouth's statement in its May 28th letter that "as it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to rates, terms, and conditions in the agreements" and its statement in the May 24th Carrier Notification Letter that it intends to pursue amendment, reformation or modification of existing interconnection agreements consistent with the *USTA II* Court's mandate, the Commission does not believe these statements necessitate granting emergency relief. In its filed comments, BellSouth states that it may be relieved of its contractual obligations "through the 'change of law' provisions in the Interconnection Agreements themselves, by a generic proceeding held by the appropriate state or federal agencies, or by a proceeding filed in the appropriate court." This explanation by BellSouth of the processes it would use to seek relief from its existing contractual obligations suggests to the Commission that CompSouth and other CLPs face no imminent threat with respect to their rights under interconnection agreements with BellSouth.

Accordingly, the Commission finds no cause to grant emergency declaratory relief at this time and, to the extent the CompSouth petition seeks an emergency ruling, the petition is denied. However, and in accordance with the comments of both BellSouth and the Public Staff, the Commission finds it appropriate to hold this docket open pending further order as it is anticipated that CompSouth and CLPs generally will continue to have concerns relating to their rights and the availability of unbundled network elements should the *USTA II* mandate take effect on June 15, 2004 or any time thereafter. Moreover, it is also possible that circumstances may change and warrant further consideration of the issues raised by the CompSouth petition at a later time—a particular possibility given that *USTA II* may still be heard on appeal to the United States Supreme Court. Finally, the Commission reminds all interested parties of its keen

interest in this matter and its desire that legitimate disputes between the parties be resolved in an orderly fashion that will not result in the sudden, unexpected interruption of telecommunication service to the citizens of North Carolina.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of June, 2004.

NORTH CAROLINA UTILITES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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