

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Development of	)	
Universal Terms and Conditions for	)	DOCKET NO. UT-011219
Interconnection and Network	)	
Elements to be Provided by	)	
	)	TWELFTH SUPPLEMENTAL ORDER
VERIZON NORTHWEST, INC.	)	DENYING PETITION FOR
	)	RECONSIDERATION AND
	)	TERMINATING PROCEEDING
.....	)	

1     **Synopsis:** *The Commission denies the petition for reconsideration filed by the Joint CLECs and affirms the Eleventh Supplemental Order terminating the proceeding.*

2     **Proceeding.** The purpose of this proceeding is to establish a set of universal terms and conditions under which competitive local exchange carriers (CLECs) may enter into interconnection agreements with Verizon Northwest, Inc.

3     **Appearances.** Catherine Kane Ronis and John Flynn, attorneys, Washington, D.C., represent Verizon Northwest Inc. (Verizon). Letty S.D. Friesen, attorney, Denver, Colorado represents AT&T Communications of the Pacific Northwest, Inc. Gregory J. Kopta represents Fox Communications Corporation (Fox), Integra Telecom of Washington, Inc. (Integra), Time Warner Telecom of Washington, LLC (Time Warner); and XO Washington, Inc. (XO). Dennis D. Ahlers, attorney, Minneapolis, MN, represents Eschelon Telecom, Inc. (Eschelon). Michel Singer-Nelson, attorney, Denver, Colorado, represents WorldCom, Inc. (WorldCom). Gregory Trautman, Assistant Attorney General, represents Washington Utilities and Transportation Commission Staff (Commission Staff).

4 **Background.** On June 18, 2004, Verizon filed a motion to terminate this proceeding on the basis that the Commission lacked authority to conduct it and that federal law preempted it. Commission Staff, Integra, Time Warner, and XO opposed the motion. AT&T disagreed with the jurisdictional premise of the motion, but agreed that the Commission should terminate the proceeding because little progress had been made in negotiating and because the proceeding was duplicative of others before the Commission and therefore unnecessary. MCI, Eschelon and Fox filed no response.

5 On July 6, 2004, an interlocutory order<sup>1</sup> was entered denying the motion on grounds that the Commission had the authority to conduct such a proceeding and that the proceeding was not preempted by federal law.

6 On July 16, 2004, Verizon filed a petition for review of the interlocutory order. Commission Staff, Integra, Time Warner, and XO continued their opposition to termination. AT&T, MCI, Eschelon, and Fox did not respond.

7 On September 10, 2004, the Commission entered its Eleventh Supplemental Order granting interlocutory review and terminating the proceeding. The grounds for termination stated in the Order were:

- Uncertainties generated by the USTA II decision<sup>2</sup> and the FCC's Interim Rules Order<sup>3</sup> regarding the availability of certain unbundled network elements;

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<sup>1</sup> *Ninth Supplemental Order.*

<sup>2</sup> *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Circuit). The D.C. Circuit Court of Appeals vacated in part the FCC's Triennial Review Order, *In re Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et.al.*, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order on Remand (rel. Aug. 21, 2003).

<sup>3</sup> *In re Unbundled Access to Net Work Elements, et al.*, WC Docket No. 04-313 and CC Docket No. 01-338, FCC 04-179, *Order and Notice of Proposed Rulemaking* (rel. Aug. 20, 2004).

- Elimination of potentially duplicative proceedings—the Verizon TRO mass arbitration proceeding<sup>4</sup> to amend its interconnection agreements addresses terms for interconnection and currently includes all the CLECs that filed the petition for reconsideration;
- Availability of other avenues for interconnection—opt-ins, negotiation, and arbitration;
- Lack of clarity about whether CLECs actually would use the resulting template agreement.

8 MCI, XO, and Integra (Joint CLECs) filed a petition for reconsideration of the Eleventh Supplemental Order. Only Verizon filed a response to the petition.

9 **Petition for reconsideration.** In their petition for reconsideration, the Joint CLECs urge the Commission to continue the proceeding, rather than terminate it, for the following reasons:

- Any uncertainty generated by USTA II and the FCC's Interim Rules relates only to certain unbundled network elements and not to the broader scope of terms and conditions included in a typical interconnection agreement.
- Some CLECs do not buy UNEs from Verizon but still need to interconnect with Verizon to obtain other facilities, so this proceeding would benefit them.

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<sup>4</sup> Docket No. UT-043013.

- Termination would eliminate review of Verizon's collocation tariff.<sup>5</sup>
- The Verizon TRO mass arbitration would not duplicate this proceeding but rather would complement it. The amendments to interconnection agreements resulting from the mass arbitration would be used in this proceeding on terms and conditions.
- The Commission's rulings are inconsistent. It has ordered continuation of the Verizon mass arbitration in the face of uncertainties created by USTA II and the Interim Rules but has ordered termination of this proceeding because of the same uncertainties.
- Terminating this proceeding may actually increase demands on the Commission and parties. In the mass arbitration proceeding, Verizon has petitioned to exclude all the Joint CLECs except MCI, on grounds that those CLECs' interconnection agreements are subject to automatic amendment (without necessity of Commission approval) under their change of law provisions.<sup>6</sup> The Joint CLECs argue that if these agreements

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<sup>5</sup> On June 14, 2001, the Commission authorized a Verizon collocation tariff to go into effect, and also ordered Verizon to file, for later consideration, proposed terms and conditions and for microwave rooftop collocation, Docket No. UT-003013, Twenty-Second Supplemental Order, Approving Verizon's Microwave Collocation Compliance Tariff Filings; and Requiring Filing of Terms and Conditions, (June 14, 2001). The Commission opened the instant docket on July 2, 2001, to review the collocation tariff. The only parties to the docket at that time were Verizon, Commission Staff, and Public Counsel. Later, the Commission determined that it would provide parties an opportunity to expand the issues in this docket to include a statement of general terms and conditions for interconnection. Docket No. UT-011219, Notice (November 27, 2001). After the scope of the proceeding was so expanded, the CLECs filed appearances.

<sup>6</sup> On June 18, 2004, Verizon filed a Petition for Review of Order Requiring Verizon to Maintain Status Quo (Status Quo Order) in Docket No. UT-043013. The Status Quo Order required Verizon to continue to provide UNEs eliminated by the Triennial Review Order and the USTA II decision, until amendments to interconnection agreements were approved. Verizon's Petition for Review of the Status Quo Order alleged that certain interconnection agreements did not, by their terms, require amendment in order to conform them to changes in law and therefore the Status Quo Order should not apply to those agreements. In Order No. 8, Docket UT-043013 (August 13, 2004), the Commission denied, in part, Verizon's Petition for Review of the Status Quo Order and

are terminated, all the CLECs involved would have to come to the Commission with individual dispute resolution actions.

- Elimination of this proceeding will discourage new entry into Verizon's territory because individual carriers will need to engage in costly negotiation and arbitration proceedings in order to interconnect with Verizon.
- The Joint CLECs are all operating under expired interconnection agreements with Verizon. They claim that only "negotiated" agreements with Verizon are available for adoption and these are "virtually indistinguishable from Verizon's proposed agreement." The Joint CLECs relied on this proceeding to develop a template agreement they could adopt to replace their existing expired agreements.

10 **Discussion and decision.** The Joint CLECs' arguments are not persuasive. Termination of this proceeding does not preclude any CLEC from opting in, to negotiating, or arbitrating an interconnection agreement with Verizon, even if the CLEC does not rely on Verizon for those unbundled network elements that are affected by the court's decision in USTA II and the FCC's Interim Rules.

11 It is true that termination of this proceeding would eliminate review of Verizon's June 2001 collocation tariff. However, from the history of this case, it does not appear that any CLECs sought to address the tariff in any event. Should the tariff require further scrutiny, it may take place in another docket directly related to that purpose.

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directed Verizon to file with the Commission copies of those agreements to which Verizon maintained the Status Quo Order did not apply. The Commission indicated that after review of those agreements, amendment of the Status Quo Order might be appropriate.

- 12 The effect of Verizon's petition to exclude CLECs in the mass arbitration case is not clear at this time because a decision is still pending. Should the removal of CLECs from the mass arbitration require the Commission to resolve a large number of their interconnection disputes, the Commission could determine to combine proceedings in order to husband its own resources.
- 13 The interconnection agreements of the Joint CLECs who filed this petition for reconsideration have all been expired for some period of time. The Joint CLECs claim that they were relying on this case to reach new agreements with Verizon. The strength of this claim is undermined, however, by the number of agreed-upon continuances that have been granted in this case.
- 14 Finally, as the Commission stated in the Eleventh Supplemental Order, if circumstances warrant, it may initiate a similar proceeding in the future.

**ORDER**

- 15 The Commission denies the Joint CLECs' petition for reconsideration and affirms the Eleventh Supplemental Order terminating the proceeding.

DATED at Olympia, Washington, and effective this 3rd day of November, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner