

BEFORE THE WASHINGTON 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)
)
)
VERIZON NORTHWEST, INC.) FIRST SUPPLEMENTAL ORDER
)
)
.....)

1 ***SYNOPSIS:*** *The Commission determines to exercise authority under state statutes and the federal Telecommunications Act to require Verizon NW to establish generally applicable terms and conditions for interconnection and network elements.*

Procedural Background

2 The Commission in the 22nd Supplemental Order of its “generic” proceeding¹ to establish costs and prices for interconnection and network elements, directed Verizon Northwest, Incorporated (“Verizon NW”) to file proposed terms and conditions regarding microwave entrance facilities with the Commission. The Commission also stated its intention to open a separate proceeding to review Verizon’s filing.

3 In compliance with paragraph 7 of the 22nd Supplemental Order, Verizon NW submitted Advice No. 997 on July 2, 2001, containing tariff sheets stating terms and conditions for microwave entrance facilities. The Commission opened this docket to review Advice No. 997.

4 The Commission on November 27, 2001, invited parties in this docket and in Docket No. UT-003013 to comment on whether the Commission should broaden the scope of issues in this proceeding to include the establishment of a tariff or other statement of generally available terms regarding Verizon NW’s provisioning of other network elements. Such a proceeding could be analogous to Commission Docket No. UT-003040 in which the Commission is reviewing Qwest Corporation’s (Qwest) proposed Statement of Generally Available Terms and Conditions, colloquially abbreviated to SGAT.

¹ Docket No. UT-003013, 22nd Supplemental Order (June 14, 2001).

5 On December 7, 2001, the Commission notified parties of the opportunity to respond to comments. On December 14, 2001, the time for filing responses was extended to December 21, 2001.

Parties Filing Comments

6 The following entities commented and responded to the comments of others: Verizon NW, represented by Jennifer McClellan, Hunton & Williams, Richmond, VA; Commission Staff, by Mary Tennyson, Asst. Attorney General, Olympia, WA; and XO Washington, Inc., Focal Communications Corporation of Washington, and Electric Lightwave, Inc., referred to collectively in this order as Joint CLECs by Gregory Kopta, Davis Wright Tremaine LLP, Seattle, WA.

Summary of Comments

7 Verizon NW strongly opposes a requirement that it maintain a tariff or SGAT with terms and conditions for interconnection, UNEs, and other wholesale services. According to Verizon NW, there is no legal or equitable basis for the Commission to conduct a comprehensive review of its interconnection terms and conditions in an SGAT-type proceeding. Verizon NW proposes that terms and conditions should continue to be established through negotiation and arbitration under Section 252 of the Telecommunications Act of 1996² on a case-by-case basis.

8 Verizon NW acknowledges that it has filed collocation tariffs containing terms and conditions in Washington State in order to obtain FCC approval of the Bell Atlantic/GTE merger, but it argues that the FCC's Merger Order³ did not require Verizon to file an SGAT or any other tariffs. Verizon NW states that it is not subject to SGAT provisions in Section 252(f), but even if it were, the choice to develop an SGAT would belong to the company and cannot be compelled by a state commission under the Act.

9 Commission Staff and the Joint CLECs support the proposal to broaden the scope of issues in this proceeding to include terms and conditions governing CLECs' interconnection with Verizon NW's network. Staff clarifies that it is not asking the Commission to literally establish an "SGAT," as that term is used in the Act. Rather, Staff requests that the Commission establish tariffs made up of terms and conditions for select interconnection and network elements contained in Verizon NW's Tariffs WN U-20, WN U-21, and WN U-22 (the company's collocation, UNE, and resale tariffs, respectively).

² Pub. L. No. 104-104, 101 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* (1996) ("Act").

³ *In re Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order (rel. June 16, 2000) ("Merger Order").

- 10 Staff and the Joint CLECs argue that the Commission's authority to establish tariffs made up of terms and conditions for Verizon NW's interconnection services derives from both the Act and Washington State statutes. Sections 251(d)(3) and 261(c) of the Act provide that state commissions may impose additional requirements that are not inconsistent with the Act or FCC regulations.
- 11 The Joint CLECs argue that significant changes have occurred in the industry since the first wave of arbitrations in 1996 when the Commission last conducted a thorough review of Verizon NW's terms and conditions. Now that the initial Verizon NW interconnection agreements have terminated, they argue, arrangements contained in those agreements are not available for adoption under Section 252(i). The Joint CLECs contend that Verizon NW does not voluntarily make available terms and conditions that it was previously required to offer.
- 12 According to Verizon NW, the Act effectively enables CLECs to pursue their rights through negotiation and arbitration, and adoption of interconnection arrangements approved by state commissions pursuant to Section 252(i). Therefore, the establishment of a Verizon NW SGAT is unnecessary.
- 13 According to the Joint CLECs, given current economic conditions CLECs do not have sufficient resources to negotiate, much less arbitrate, terms and conditions on an individualized basis. Thus, requiring Verizon to maintain a tariff or SGAT with terms and conditions for interconnection, unbundled network elements, and other wholesale facilities and services would benefit local competition and would not be inconsistent with the Act or FCC rules.
- 14 Staff points out that the Commission previously exercised jurisdiction under state statutes to establish tariffs made up of terms and conditions of service for US WEST in Docket No. UT-941464, Fourth Supplemental Order,⁴ prior to passage of the Act. The Commission there stated:

The Commission has broad authority to regulate the rates, services, facilities, and practices of telecommunications companies in the public interest. . . . We have concluded that the Commission's authority is sufficiently broad for [the Commission] to order compensation arrangements . . . and other terms and conditions that differ from those the incumbents propose. *See, Fourth Supplemental Order, pp. 15-16.*⁵

⁴ *Washington Utilities and Transportation Commission v. U S WEST*, Docket No. UT-941464, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, in Part (October 31, 1995) ("Fourth Supplemental Order").

⁵ The Fourth Supplemental Order then cites supporting case law and numerous Washington State statutes, at p.16.

- 15 Staff is concerned about the potential for disparity in regulations that could result if the Commission conducts a thorough review of the terms and conditions offered by one of the national ILECs operating in Washington (Qwest), but not the other (Verizon NW). Disparate standards could develop for Qwest and Verizon NW, even though they have identical obligations under Section 251 of the Act. Staff also believes that it is in the public interest to require Verizon NW to provide the same pro-competitive terms and conditions in Washington State that Verizon provides in states where it has met the market-opening requirements of Section 271.
- 16 Verizon NW responds that Congress specifically chose to treat GTE differently from the regional Bell Operating Companies (including Qwest's predecessor, U S WEST), and the concern that unfair disparate treatment could result is unfounded. It argues that because Verizon NW and Qwest serve mutually exclusive exchanges, the possibility of operational problems for CLECs should be minimal.
- 17 The Joint CLECs are concerned that a comprehensive review of a Verizon NW SGAT could overwhelm their available resources. The Joint CLECs propose that the Commission adopt the Qwest SGAT as a starting point for Verizon NW, and then require Verizon NW to demonstrate that any proposed amendments are necessary to reflect differences in Verizon NW's network and operations. Verizon NW responds that Qwest and Verizon NW have very different networks, and that Verizon NW should not be required to explain how and why it provides access to its network in a manner different from Qwest.
- 18 Staff emphasizes that it does not propose that the Commission abolish interconnection agreements. Rather, it proposes that the Commission exercise its state authority to establish terms and conditions, available to any party requesting interconnection, to be incorporated into interconnection agreements in the absence of a contrary agreement of the parties. Staff believes that the Commission should conduct the review using a workshop format, and not conduct the proceeding as a contested case. Verizon NW responds that it would not waive its rights to a hearing on all contested issues that might arise in a workshop process.

Discussion and Decision

- 19 We agree with the contention of Commission Staff that the Commission has authority under the Act and state statutes to require Verizon NW to establish interconnection and network element terms and conditions. It is a basic element of state law that service offerings to the public of regulated services by telecommunications companies must be made by tariff. RCW 80.36.100-.130. The requirement that Verizon NW make its offerings by means of tariffs that other carriers can elect is not

inconsistent with the Act or with any FCC rules.⁶ Furthermore, the conduct of a proceeding to establish universal terms and conditions is consistent with the principles of Section 252(g) of the Act allowing a state commission to consolidate certain proceedings in order to reduce administrative burdens on telecommunications carriers and the state commission.

- 20 The Telecom Act proclaims competition as the congressional purpose, and “the words ‘public interest’ in a regulatory statute ... take meaning from the purposes of the regulatory legislation.” *NAACP v. FPC*, 425 U.S. 662, 669 (1976). The claim that CLECs need an SGAT-type document for Verizon NW because they have limited resources to negotiate and arbitrate interconnection agreements on a case-by-case basis must be seriously considered in the context of the public interest. Likewise, the Commission’s limited resources to deal with multiple agreements must also be taken into consideration.
- 21 It is also consistent with the public interest that Verizon NW provide the same pro-competitive terms and conditions in Washington State that Verizon provides in other states, when those terms or conditions are consistent with conditions in Washington State. Consumers in Washington State are entitled to the same competitive benefits that flow to consumers in states where Verizon has developed a universal template agreement as part of its Section 271 applications. Furthermore, consumers in Verizon NW’s Washington State service areas are entitled to the same competitive benefits that flow to consumers in Qwest’s Washington State service areas from the development of Qwest’s SGAT as part of its 271 application process.
- 22 Verizon NW is incorrect in its view that a workshop process is inconsistent with protections under Washington State’s Administrative Procedure Act or with basic elements of due process.⁷ The informal workshop process employed in the Qwest SGAT proceeding, consolidated Docket Nos. UT-003022 and UT-003040, meets all tests of process and has successfully promoted consensus, identified impasse issues, elicited the positions of parties, and facilitated just decisions regarding interconnection and network element terms and conditions. That workshop process provides all of the elements of a hearing, including a record, briefs, initial and final orders, and the opportunity to address the Commissioners directly. Thus, all parties are afforded due process.

⁶ CLECs may under Section 271 of the Act opt-in to terms and conditions contained in tariffs. *See* U.S. WEST Communications, Inc. v. Sprint Communications Company, L.P., *et al.*, 275 F3d 1241 (10th Cir. 2002).

⁷ *See*, for example, RCW 34.12.080, in which the Office of Administrative Hearings may establish hearing procedures that seek the maximum uniformity in agency hearings consistent with demonstrable needs for individual agency variation.

23 The Commission will separately notice and convene a prehearing conference to address procedural matters. Commission Staff will participate as an advocate in the proceeding.

24 We agree with Verizon that Qwest's SGAT document does not adequately reflect Verizon NW's network and operations and it does not constitute an appropriate foundation on which to establish Verizon NW tariffs containing interconnection and network element terms and conditions for application in Washington state. Accordingly, the Commission will consider the use of Verizon's New York template agreement as a starting point for Verizon NW in this proceeding.

DATED at Olympia, Washington, and effective this day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

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*.