**BEFORE THE WASHINGTON STATE**
**UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of<br><br>VERIZON NORTHWEST INC.<br><br>with<br><br>COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON<br><br>Pursuant to 47 U.S.C. Section 252(b), and the *Triennial Review Order*.<br>. . . . . | ) | DOCKET NO. UT-043013<br><br>SPRINT'S ANSWER TO VERIZON'S PETITION FOR REVIEW OF ORDER NO. 5 REQUIRING VERIZON TO MAINTAIN STATUS QUO |

**ANSWER OF SPRINT TO VERIZON'S PETITION FOR REVIEW**

*1* Sprint hereby files its Answer to Verizon's Petition for Review of Order No. 5 Requiring Verizon to Maintain the Status Quo ("Petition"). Verizon's Petition fails because it does not comply with the Commission's rule, which limits review of interlocutory orders to adjudicative proceedings. Likewise, it mischaracterizes the change in law provisions contained in the Sprint's interconnection agreement. Moreover, it is inconsistent with the Commission's practices and policies regarding arbitration under the Act.

## I. Verizon's Petition Fails on Procedural Grounds because it does not Comport with WAC 480-07-810 or the Commission's Arbitration Policies

2 The Commission's rule, in WAC 480-07-810, allows for review of interlocutory orders only in adjudicative proceedings. The rule provides that "[o]rders entered during an adjudicative proceeding are interlocutory orders . . ."[1] The rule further states that interlocutory review is discretionary with the Commission and the Commission "may accept review of interim or interlocutory review in adjudicative proceedings."[2]

3 Arbitration proceedings are not adjudicative proceedings. The Commission has determined that "[a]rbitrations under the 1996 Act will not be deemed adjudicative proceedings under the Washington Administrative Procedure Act (APA)."[3] Moreover, the Commission stated in the *Arbitration Policy Statement* that "the Commission intends that arbitration under the 1996 Act be conducted by all participants as a dispute resolution process alternative to adversarial litigation, comparable to private arbitration. This process should be characterized by fairness, cooperation and openness between the parties, and is designed to resolve the dispute in an efficient and economical manner."[4] Review of Verizon's Petition would be a substantial departure from the Commission's long standing practice of declining to treat arbitration proceedings as APA adjudications. This Arbitration is not an adjudicative proceeding, nor does Verizon's Petition foster efficiency and economy or fairness and cooperation. This Arbitration is therefore not an appropriate forum in which to seek interlocutory review of an order.

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[1] *WAC 480-07-810(1)*.
[2] *WAC 480-07-810(2)*.
[3] *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996,* Docket No. 960269, Interpretive and Policy Statement Negotiation, Mediation, Arbitration, and Approval Agreements under the Telecommunications Act of 1996 (June 1996)("*Arbitration Policy Statement*")(emphasis added).
[4] *Id*.

4 Even if the Commission were to consider Verizon's petition under its rule for review of interlocutory orders in adjudicative proceedings, Verizon has not satisfied the standard set forth in the rule. The rule provides that the Commission may accept review of a petition if it finds that:

> (a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;
>
> (b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or
>
> (c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

5 Verizon does not contend that review is warranted under either (a) or (c). Furthermore, Verizon provides no support for its contention that review is warranted under (b). Verizon's only support for its Petition, therefore, is a conclusory statement that "Commission review is necessary to prevent substantial prejudice to Verizon that would not be remediable by post-hearing review."[5] Verizon is not explicit in identifying any harm to justify Commission review of Order No. 5, nor does it explain why any harm that it might face would not be remediable by post-hearing review.[6] And if the Commission were to grant Verizon's Petition, but later rule in favor of the CLECs on the merits in this Arbitration, the CLECs would face the same harm Verizon implies it would face – a harm for which CLECs could only have a remedy in a post hearing order. Therefore, the Commission should deny Verizon's Petition as premature.

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[5] Petition, at p. 2.

[6] Sprint can only infer that Verizon believes it will be harmed by continuing to offer UNEs at prices that it agreed to charge in its interconnection agreements. Disregarding the fact that Verizon has failed to meet its burden of persuasion by not developing this argument in its Petition, such "harm" could be remedied by the Commission in a post-hearing order.

*6* In addition, the Commission is well aware that the USTA II decision and the FCC's Triennial Review Order may to some degree impact Verizon's unbundling obligations. In fact, Verizon included these issues in its proposed issues list. Because these legal issues are disputed in this Arbitration, as recognized by Verizon, it is inappropriate, premature and unlawful for Verizon to ask the Commission to settle them now before the Commission satisfies its duty to conduct the Arbitration as authorized and required by § 252 of the Act.

## II. Verizon Cannot Unilaterally Amend its Interconnection Agreements Prior to a Commission Resolution of all the Issues in this Arbitration

*7* Verizon accuses the Commission of not considering the terms of each interconnection agreement, and thus entering a "generic" interconnection order. It is therefore surprising that Verizon would not fully consider the terms governing change in law in its interconnection agreements. In the case of Sprint, Verizon fails to quote Article II, § 1.2 of the Sprint-Verizon interconnection agreement (the "Agreement") in its entirety. Verizon quotes the Agreement as stating:

> The terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time this Agreement was produced, and shall be subject to any and all applicable statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings that subsequently may be prescribed by any federal, state or local governmental authority having appropriate jurisdiction. Except as otherwise provided expressly provided herein, such subsequently prescribed . . . judicial decisions . . . will be deemed to automatically supercede any conflicting terms or conditions of this Agreement."

Verizon, however, does not address the "as otherwise expressly provided herein" language and, as a result, omits essential terms that prohibit it from unilaterally refusing to provision UNEs. The parties agreed as follows in the very next sentence of Section 1.2:

> In addition, subject to the requirements and limitations set forth in Section 1.3, to the extent required or reasonably necessary, the Parties shall modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such . . . judicial decision . . . Should the Parties fail to agree on appropriate modification arising out of change in law, within sixty (60) calendar days of such change in law the dispute shall be governed by Section 3 of Article II."

*8* Section 3 of Article II, entitled "Dispute Resolution," requires the parties to follow a dispute resolution process when they cannot reach agreement on a change in law. If after complying with those procedures, the parties cannot reach agreement, they may submit the dispute to arbitration before the WUTC. Verizon is not permitted to stop providing UNEs or change the terms under which UNEs are provided until it follows these procedures. Furthermore, the agreement very clearly states that Verizon must continue to provide services under the interconnection agreement until a decision is rendered in the arbitration:

> 3.7.1 Continuous Service
>
> The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and Parties shall continue to perform their obligations, including making payments in accordance with Article I, Section 4.3 of this agreement.

Thus, under the interconnection agreement, Verizon cannot unilaterally change the terms of the agreement based on its own interpretation of law and without a decision by the Commission on the legal issues Verizon itself has included in this Arbitration.

## III. Conclusion

*9* Verizon cannot seek interlocutory review of a Commission order in this Arbitration, because it is not an adjudicative proceeding under the APA. And even if this proceeding were treated as adjudicative in nature, contrary to long standing Commission practice and policy, Verizon has failed to meet the criteria for interlocutory

review set forth in WAC 480-07-810(2). Verizon also does not acknowledge the requirement in the Agreement that it continue to provide UNEs under the terms of the Agreement until the Commission resolves this Arbitration. Therefore, Sprint requests the Commission to reject Verizon's Petition, or in the alternative, order that Verizon must continue to provide UNEs to Sprint in accordance with the parties' currently effective interconnection agreement.

Respectfully submitted this 28th day of June 2004.

By: _____

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