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UTIL. AND TRANSPORTATION
COMMISSION

600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

TIMOTHY J. O'CONNELL
Direct (206) 386-7562
tjoconnell@stoel.com

July 22, 2004

VIA HAND DELIVERY

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 a Second Statement of Supplemental Authorities with its Certificate of Service.

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

Sincerely,

A handwritten signature in black ink that reads "Timothy J. O'Connell".

Timothy J. O'Connell

Enclosures

cc: Parties of Record

Oregon
Washington
California
Utah
Idaho

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for
Arbitration of an Amendment for
Interconnection Agreements of

VERIZON NORTHWEST INC.

with

COMPETITIVE LOCAL EXCHANGE
CARRIERS AND COMMERCIAL
MOBILE RADIO SERVICE
PROVIDERS IN WASHINGTON

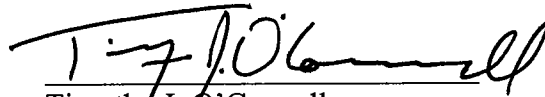
Pursuant to 47 U.S.C. Section 252(b),
And the *Triennial Review Order*

Docket No. UT-043013

SECOND STATEMENT
OF SUPPLEMENTAL AUTHORITIES

Attached for consideration regarding Verizon's pending Petition for Review of Order Requiring Verizon to Maintain Status Quo is the Order Dismissing Petition in the Virginia State Corporation Commission, dated July 19, 2004.

Respectfully submitted,



Timothy J. O'Connell
Vanessa Power
STOEL RIVES, LLP
One Union Square
600 University St., Suite 3600
Seattle, WA 98101
(206) 624-0900
(206) 386-7500

Aaron M. Panner
Scott H. Angstreich
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(202) 326-7999 (fax)

ORIGINAL

Kimberly Caswell
Associate General Counsel, Verizon Corp.
201 N. Franklin St.
Tampa, FL 33601
(727) 360-3241
(727) 367-0901 (fax)

Counsel for Verizon Northwest Inc.

July 22, 2004

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CURRENT CONTROL

AT RICHMOND, JULY 19, 2004

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PETITION OF

THE COMPETITIVE CARRIER COALITION

CASE NO. PUC-2004-00073

For an Expedited Order that Verizon Virginia Inc.
and Verizon South Inc. Remain Required to Provision
Unbundled Network Elements on Existing Rates and
Terms Pending the Effective Date of Amendments to
the Parties' Interconnection Agreements

and

PETITION OF

AT&T COMMUNICATIONS OF VIRGINIA, LLC,
and
TCG VIRGINIA, INC.

CASE NO. PUC-2004-00074

For an Order Preserving
Local Exchange Market Stability

ORDER DISMISSING PETITIONS

On May 25, 2004, ACN Communication Services, Inc.; Adelphia Business Solutions of Virginia, Inc. d/b/a Telcove; ATX Telecommunications Services of Virginia, LLC; Cavalier Telephone, LLC; DSLnet Communications, LLC; Focal Communications Corporation of Virginia; Lightwave Communications, LLC; McGraw Communications of Virginia, Inc.; NTELOS Network, Inc.; R&B Network Inc.; and Starpower Communications, LLC (collectively the "Competitive Carrier Coalition" or "Coalition"), filed with the State Corporation Commission ("Commission") a Petition for Expedited Relief ("Coalition Petition"). On May 27, 2004, AT&T Communications of Virginia, LLC, and TCG Virginia, Inc. (collectively "AT&T"), filed with the Commission a Petition for an Order Preserving Local Exchange Market Stability ("AT&T Petition"). Both petitions ask, in effect, that the Commission maintain the status quo regarding

Verizon Virginia Inc.'s and Verizon South Inc.'s (collectively "Verizon") duty to provide certain unbundled network elements ("UNEs"). The Coalition and AT&T both note that the stay of the decision in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*") is due to expire on June 15, 2004, and assert that there exists some uncertainty if, and under what conditions, certain UNEs will be provided by Verizon after that date.

The Competitive Carrier Coalition asserts, among other things, that *USTA II*, even if it becomes effective, would not immediately alter Verizon's statutory and contractual obligations. The Coalition states that applicable law requires continued unbundling of transport, loops, and switching and that the Commission must act to protect consumers and competition from Verizon's threat to disrupt its provision of UNEs unilaterally and prematurely. The Coalition contends that the Commission is not preempted by *USTA II* or by the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO")¹ from remedying any alleged void left by *USTA II*. The Coalition requests the Commission to clarify that Verizon is required to provision UNEs at the rates and terms of its existing interconnection agreements until interconnection agreement amendments that alter such obligations are approved pursuant to § 252 of the federal Telecommunications Act ("Act"). The Coalition states that its petition should be granted prior to June 15, 2004, to provide certainty to the market and consumers that service will not be unilaterally and unlawfully disrupted in the event that *USTA II* takes effect on June 16, 2004.

¹ *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

AT&T requests that the Commission direct Verizon: (1) to adhere to its existing interconnection agreements; (2) to adhere to its ongoing merger commitments to the FCC; (3) to comply with its independent unbundling obligations under Virginia law; and (4) otherwise to obtain the Commission's express approval (after first providing notice to affected parties and extending them an opportunity to be heard) before denying, restricting, hindering, or increasing the cost of access to the existing UNEs that Verizon provides. AT&T states that any measures by Verizon to raise UNE rates or limit their availability in response to *USTA II* would be contrary to Verizon's obligations under the Act; at odds with the terms of its interconnection agreements; in violation of obligations arising out of the Bell Atlantic/GTE merger; and inconsistent with its obligations under Virginia law. AT&T asks the Commission to act before June 16, 2004, to avoid disrupting the ability to provide competitive local exchange telecommunications services to Virginia customers.

On June 1, 2004, the Commission issued an Order Establishing an Abbreviated Schedule for Response that, among other things, consolidated the petitions of the Coalition and AT&T into a single proceeding and required Verizon to file an answer to the Petitions on or before June 9, 2004.

On June 9, 2004, A.R.C. Networks Inc. d/b/a InfoHighway of Virginia Inc.; Business Telecom of Virginia Inc.; Comcast Phone of Virginia Inc.; Comcast Phone of Northern Virginia, Inc.; DIECA Communications Inc. d/b/a Covad Communications Company; Essex Acquisition Corp.; Global Crossing Local Services Inc.; KMC Telecom of Virginia Inc.; KMC Telecom V of Virginia Inc.; Plan B Communications, Inc.; XO Virginia LLC; Xspedius Management Co. of Virginia LLC; and Xspedius Communications, LLC, filed a Notice of Intervention and Support of the Coalition Petition and AT&T Petition.

On June 9, 2004, Verizon filed an Answer and Motion to Dismiss. Verizon states that once the *USTA II* mandate issues on June 16, 2004, Verizon intends to provide competitive local exchange carriers ("CLECs") with 90 days' notice – a period of time that exceeds the requirements of its agreements with many Virginia CLECs – before taking any action pursuant to applicable law and its agreements. Verizon asserts that during the 90-day notice period, it will continue to provide the de-listed UNEs at Total Element Long Run Incremental Cost ("TELRIC") rates and will continue to accept new orders for those UNEs. Verizon argues that the petitioners do not allege that Verizon has violated its interconnection agreements or any provision of law; that there is no risk of service disruption that would justify the petitioners' requested relief; that there is not an actual controversy; and that the petitioners have failed to state a claim for either injunctive or declaratory relief under the Commission's rules. Verizon also asserts that the petitioners are trying to change the status quo by asking the Commission to override the terms of existing interconnection agreements. Verizon states that to the extent existing interconnection agreements give Verizon the right to cease providing UNEs under federal rules that were struck down by *USTA II*, the Commission cannot deprive Verizon of those rights or impose unbundling requirements in the absence of a lawful finding of impairment by the FCC. Verizon argues that the Commission lacks authority under Virginia law to abrogate the provisions of a lawful contract.

On June 17, 2004, AT&T filed a Response to Verizon's Motion to Dismiss. AT&T states that its interconnection agreement with Verizon does not permit Verizon unilaterally to terminate provision of any UNE or UNE combinations under the current state of the law. AT&T also argues that Verizon's threat to terminate provisions of four-line and above UNE platform ("UNE-P") and associated shared transport fails to satisfy the precondition of the FCC that

enhanced extended loops ("EELs") be readily available, and Verizon's plan to terminate provisioning of four-line and above UNE-P and associated shared transport is not a requirement of the TRO. AT&T asserts that Verizon's threat to restrict or re-price UNEs will have adverse consequences for competition in Virginia. AT&T asks that the Commission require Verizon to maintain the status quo with respect to the pricing and availability of existing UNEs. AT&T further states that the terms, conditions, and rates under which UNE-P is currently available in the Washington, D.C. and Norfolk/Virginia Beach/Newport News Metropolitan Statistical Areas should not be changed without approval by this Commission.

On July 1, 2004, Verizon filed its Reply to AT&T's Response to Verizon's Motion to Dismiss. Verizon states that the Commission cannot order injunctive or declaratory relief in the absence of a clear showing of imminent and irreparable harm and that the petitioners cannot make such showing. Verizon argues that the Commission does not have the authority under Virginia law to override the terms of binding interconnection agreements and to require Verizon to continue to provide access, at TELRIC prices, to UNEs that Verizon has no legal obligation to provide. Verizon also asserts that the Commission would be in violation of federal law if it provides the petitioners with the very stay of the *USTA II* mandate that the D.C. Circuit Court and Supreme Court have refused to grant. Verizon states that AT&T has not shown that it is entitled to relief regarding the four-line carve-out rule, and that Verizon already provides access to EELs (to the extent required by governing law) pursuant to the terms of numerous interconnection agreements in its service territory and, thus, satisfies any condition for invoking the four-line carve-out rule.

NOW UPON CONSIDERATION of the pleadings and applicable law, the Commission is of the opinion and finds as follows. The Coalition Petition and the AT&T Petition are hereby

dismissed. The matters complained of in the petitions involve existing interconnection agreements. We will not grant injunctive relief in this proceeding that may preempt these binding, valid contracts.² Moreover, certain issues raised herein by the petitioners, such as the conditions imposed by the FCC in its approval of the Bell Atlantic/GTE merger and the four-line carve-out rule, are the result of actions by the FCC and should be enforced by the FCC.

In addition, the stay of *USTA II* expired on June 15, 2004. *USTA II* establishes that no unbundling can be ordered in the absence of a valid finding by the FCC of impairment under 47 U.S.C. § 251(d)(2). The FCC, however, currently has not made a lawful finding of impairment pursuant to § 251(d)(2) of the Act. This Commission will not mandate unbundling requirements that violate federal law.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon's Motion to Dismiss is hereby granted.
- (2) The Petition of the Competitive Carrier Coalition for Expedited Relief is hereby dismissed.
- (3) The Petition of AT&T Communications of Virginia, LLC, and TCG Virginia, Inc., for an Order Preserving Local Exchange Market Stability is hereby dismissed.
- (4) This consolidated matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Lydia R. Pulley, Vice President, Secretary, and General Counsel, Verizon Virginia Inc., 600 East Main Street, 11th Floor, Richmond, Virginia 23219; Mark Keffer, Esquire, AT&T Communications of Virginia, Inc., 3033 Chain Bridge Road, Room 3-D, Oakton, Virginia 22185-0001; Russell Blau, Esquire, Swidler Berlin Shereff Friedman, 3000 K Street, N.W., Suite

² We do not in this Order reach the arguments of the parties regarding the effects of *USTA II* and the TRS on the interconnection agreements and unbundling obligations.

300, Washington, D.C. 20007-5116; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and the Division of Communications.