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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 INTEGRA TELECOM OF)
WASHINGTON, INC.,)

4)

5 Complainant,)

6 vs.)

7)

8 VERIZON NORTHWEST, INC.,)

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10 Respondent.)

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DOCKET NO. UT-053038

Volume I

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10 A prehearing conference in the above matter
11 was held on August 10, 2005, at 1:30 p.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge THEODORA
14 MACE.

16 The parties were present as follows:

17 INTEGRA TELECOM OF WASHINGTON, INC., by JOHN
18 (JAY) P. NUSBAUM, Associate Regulatory Attorney, 1201
19 Northeast Lloyd Boulevard, Suite 500, Portland, Oregon
97232; telephone, (503) 453-8054.

20 VERIZON NORTHWEST, INC., by JUDITH A.
21 ENDEJAN, Attorney at Law, Graham & Dunn, 2801 Alaskan
22 Way, Suite 300, Seattle, Washington 98121; telephone,
23 (206) 340-9694.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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1 P R O C E E D I N G S

2 JUDGE MACE: Let's be on the record in Docket
3 No. UT-053038. This is the Complaint of Integra
4 Telecom of Washington, Inc., against Verizon Northwest.

5 This hearing today is in the nature of a
6 prehearing conference, and it's being convened on
7 August 10, 2005, at the offices of the Washington
8 Utilities and Transportation Commission in Olympia,
9 Washington. My name is Theodora Mace. I'm the
10 administrative law judge who has been assigned to this
11 case.

12 I would like at this point to take the oral
13 appearances of counsel now, beginning with the
14 Complainant.

15 MR. NUSBAUM: Good afternoon, Your Honor.
16 Jay Nusbaum for Integra Telecom, and sitting with me at
17 counsel table is Jason Konders, K-o-n-d-e-r-s, vice
18 president for operations of Integra in Washington.

19 JUDGE MACE: Mr. Nusbaum, since this is the
20 first appearance that counsel make in this proceeding,
21 I need to have the long form of your appearance, which
22 means I need to have your address, your phone number,
23 your fax number, and your e-mail address.

24 MR. NUSBAUM: I understand. My address is
25 1201 Northeast Lloyd Boulevard, Suite 500, Portland,

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1 Oregon, 97232. My telephone number is (503) 453-8054.
2 My e-mail address is jay.nusbaum@integratelecom.com.

3 JUDGE MACE: Did you give me your fax number?

4 MR. NUSBAUM: My fax number is (503)
5 453-8221.

6 JUDGE MACE: For Verizon?

7 MS. ENDEJAN: Thank you, Your Honor. Judy
8 Endejan from Graham and Dunn for Verizon Northwest,
9 Inc. My business address is Pier 70, 2801 Alaskan Way,
10 Seattle, Washington, 98121-1128. My phone number is
11 (206) 340-9694. My fax is (206) 340-9599. My e-mail
12 address is jendejan@grahamdunn.com.

13 JUDGE MACE: Let me ask again if there is
14 anyone on the conference bridge who wants to
15 participate in this proceeding today? Let the record
16 show I hear no response. Let me indicate for the
17 record that I've received no written petitions to
18 intervene in this proceeding, and it appears there is
19 no one who wishes to seek an oral petition to
20 intervene.

21 Let me ask the parties whether or not they
22 seek a protective order from the Commission in this
23 matter; Mr. Nusbaum?

24 MR. NUSBAUM: At this point, we haven't had
25 any reason to seek a protective order, so I don't see

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1 any need for it at this point, Your Honor.

2 JUDGE MACE: Verizon?

3 MS. ENDEJAN: There may be a need for a
4 protective order in this case. Based on the discovery
5 in the merger case, if Integra intends to request
6 discovery that deals with competitive CLEC information,
7 then we will need a protective order.

8 JUDGE MACE: I'll indicate that a protective
9 order will be entered. If you don't need it, then
10 that's fine, but if you do, you have it.

11 MR. NUSBAUM: Thank you, Your Honor. Is that
12 the standard protective order?

13 JUDGE MACE: Yes. Let me ask whether the
14 parties seek to engage in discovery in this case.

15 MR. NUSBAUM: Speaking for Integra, we would
16 seek to engage in discovery and ask that the discovery
17 rule be invoked.

18 JUDGE MACE: I'll indicate that the discovery
19 rule is invoked. The next item I want to address is
20 the question of a motion to dismiss. Verizon filed a
21 motion to dismiss. I've received a response from
22 Integra and a further response from Verizon. It
23 appears to me that the parties have covered almost all
24 of the bases in their pleadings. I would like to ask
25 if you have anything further or different that you want

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1 to bring up, anything that is not covered in what
2 you've filed so far; Ms. Endejan?

3 MS. ENDEJAN: No, Your Honor. I believe that
4 pretty much everything is contained in our moving
5 papers.

6 JUDGE MACE: Mr. Nusbaum?

7 MR. NUSBAUM: Well, Your Honor, I think the
8 only thing that I would address are the additional
9 cases that were cited in Verizon's reply, which we did
10 not have a chance to address, obviously, and briefly, I
11 would just that those involve situations that are
12 different, I think, from the situation that is before
13 the Commission at this point. In terms of
14 addressing --

15 JUDGE MACE: Let me say this -- I wanted to
16 ask both of you, actually -- I would like to hear a
17 little bit from both of you on the question of the
18 Trinco case and how that would apply to the situation,
19 but please feel free to address the other cases as
20 well.

21 MR. NUSBAUM: Thank you, Your Honor, and I
22 will be brief about that.

23 Starting with the Ninth Circuit case in
24 Verizon versus WorldCom, the thing that I would point
25 out about that case is that it does not say that it's

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1 improper for the Commission to consider a state law
2 claim in conjunction with a claim for breach of the
3 interconnection agreement.

4 JUDGE MACE: I agree with you. I took a look
5 at that. It talks about the fact that the Commission
6 can impose a penalty in that particular instance. As
7 far as I could tell, it doesn't talk about the
8 combination of state claims and interconnection
9 agreement claims, and I'll let you address that, if you
10 want to, Ms. Endejan.

11 MS. ENDEJAN: Your Honor, may I ask a
12 preliminary matter here? Were you intending to have
13 oral argument on the motion?

14 JUDGE MACE: No. I wanted to get from you
15 any further comment that you had. I'm not going to
16 make a ruling today, but I wanted to hear from you if
17 you had anything further.

18 MR. NUSBAUM: And in keeping with that, I
19 will try to refrain from making an argument, just
20 simply addressing that what I think are the distinction
21 points with the cases that were cited in the reply
22 brief.

23 With the Trinco case, Your Honor, I read
24 that, and I'm having trouble understanding how that
25 applies here, because to me it seems like a fairly

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1 straightforward case of interpreting the Sherman Act, I
2 believe, in that case, and the fact that there was no
3 additional cause of action that a consumer could invoke
4 to hold Verizon in that case responsible for alleged
5 violations of the Sherman Act.

6 And frankly, I don't have a lot to say on it
7 because I don't think it's pertinent here at all, and I
8 don't think that anything that Verizon has cited
9 addresses the issue before the Commission in this case,
10 which is can you have a complaint that alleges a
11 violation of the state statutes at issue at the same
12 time that it alleges a violation of the interconnection
13 agreement.

14 The MCI case that Verizon cites from 1998, I
15 would point out, occurred before the cases that we
16 cited in our response, which were later in time and
17 which did specifically consider violation of state law
18 in connection with the resolution of a claim that
19 provisions of an interconnection agreement were
20 violated as well. That's really all I have to say.
21 Thank you.

22 JUDGE MACE: Ms. Endejan, please don't repeat
23 what you've already written down, if you can avoid it,
24 but if you wanted to respond to Mr. Nusbaum briefly.

25 MS. ENDEJAN: Your Honor, I think I would

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1 reserve whatever I might say to oral argument in the
2 motion to dismiss, if you intend to have that.

3 JUDGE MACE: I did not intend to have oral
4 argument.

5 MS. ENDEJAN: Then I guess I would emphasize
6 in our reply the point being that the cases relied upon
7 by Integra really arise from they are trying to have it
8 both ways. They are trying to claim a cause of action
9 under the IC, the same time, the same conduct serving
10 as a basis for alleged state discrimination law claim.
11 I think the claim would not exist but for the 1996
12 Telecom Act that allowed for interconnection agreements
13 and required certain unbundling obligations.

14 So I think that is the starting point, and I
15 think that's the point of laying out the Trinco case is
16 how the Supreme Court viewed the potential conflict
17 between other laws and laws that are specifically
18 covered by the provisions of the Act, and that's the
19 case we've got here.

20 JUDGE MACE: Have you referred to the Trinco
21 case in any other proceeding at the Commission similar
22 to this one?

23 MS. ENDEJAN: I honestly can't tell you if
24 Verizon has ever done that because I haven't
25 represented Verizon in every case.

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1 JUDGE MACE: Any other jurisdiction where
2 you've been successful in bringing the Trinco case into
3 a situation like this in a state jurisdiction?

4 MS. ENDEJAN: I would have to research that
5 further.

6 JUDGE MACE: Anything else?

7 MS. ENDEJAN: No, I think that would be it.

8 JUDGE MACE: As I said, I am going to review
9 the cases and the arguments that you've made and enter
10 a written ruling on the motion to dismiss. I believe I
11 can have that done by August 31st, probably before
12 then, hopefully before then, but I'm thinking that that
13 would be a reasonable date to include in a schedule
14 today, and what I would like to have you do is to
15 discuss a schedule for proceeding in the chance that
16 the motion to dismiss is not granted.

17 So I'm going to need to have you flesh out
18 filing dates and hearing dates. So presumably, you
19 would want to wait until the motion to dismiss is ruled
20 on for the rest of your schedule. That makes sense,
21 and I would like to get some idea from you as you are
22 discussing this what you are thinking of in terms of a
23 hearing date so I can look at the Commission's calendar
24 and tell you whether or not it's reasonable for hearing
25 dates. Is there anything else we need to address

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1 before we go off the record to discuss scheduling?

2 MS. ENDEJAN: No.

3 MR. NUSBAUM: I would just add that there may
4 be a need for Integra to amend its Complaint to add an
5 additional instance that we just found out about, and I
6 say may. I don't know at this time, so I guess that's
7 something that I would like to build into the schedule
8 to the extent that becomes necessary.

9 JUDGE MACE: That's fine. All right; 20
10 minutes?

11 MR. NUSBAUM: That's fine.

12 MS. ENDEJAN: That should do it.

13 JUDGE MACE: We will adjourn for 20 minutes
14 while you discuss scheduling.

15 (Discussion off the record.)

16 JUDGE MACE: Let's be back on the record.
17 The parties have discussed scheduling while we've been
18 off the record, and they have agreed on the following
19 proposed schedule: September 12th is the filing for
20 Integra's testimony; October 12th, the filing date for
21 Verizon's responsive testimony. November 14th is the
22 date for rebuttal testimony.

23 November 29th is the date for a settlement
24 conference, and let me just say here that it's expected
25 that you all will arrange a location and you will

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1 conduct whatever you need to do in terms of
2 negotiations on your own. If you need some assistance
3 or you would like to have a settlement judge, you need
4 to contact me probably at least two weeks ahead of that
5 if you are feeling that that would be a helpful thing
6 so that we could assign somebody to that.

7 As the day for hearing, December 13th or
8 December 20th, but more likely December 13th, and then
9 I will also add to the schedule three weeks for initial
10 briefs, two weeks for reply and an initial target order
11 date.

12 This being the kind of case it is, I'm not
13 going to make a provision for a prehearing conference
14 just prior to the hearing, but I think I will send out
15 a notice asking you to submit witness lists and exhibit
16 lists and some estimate of your cross-examination time
17 prior to the hearing date so that we have that
18 information. I don't see a necessity for a further
19 prehearing conference unless you request one for some
20 reason.

21 Is there anything else we need to address?

22 MS. ENDEJAN: I don't believe so.

23 MR. NUSBAUM: No, thank you.

24 JUDGE MACE: Then thank you. We are
25 adjourned.

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1 (Prehearing conference adjourned at 2:10 p.m.)

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