

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

FOCAL COMMUNICATIONS)	
CORPORATION OF WASHINGTON,)	Docket No. UT-013019
)	
Petitioner,)	VERIZON’S MOTION TO DISMISS
)	FROM EXPEDITED REVIEW AND IN THE
v.)	ALTERNATIVE ANSWER TO PETITION
)	FOR ENFORCEMENT OF SECTION
VERIZON NORTHWEST INC.,)	252(i) AND MOTION TO TRANSFER TO
)	A NON-EXPEDITED DOCKET AND
Respondent.)	REQUEST FOR MEDIATION
)	

Pursuant to the Commission’s Interpretive and Policy Statement in Docket No. UT-990355 and WAC 480-09-530, Verizon Northwest Inc. (“Verizon”) submits this Motion to Dismiss from Expedited Review and in the Alternative Answer to Petition for Enforcement of Section 252(i) filed by Focal Communications Corporation of Washington (“Focal”) on March 22, 2001. In addition, Verizon moves to transfer this matter to a non-expedited docket and requests mediation.

MOTION TO DISMISS FROM EXPEDITED REVIEW

This matter should be dismissed from expedited review. Verizon does not dispute that the Commission has the authority under WAC 480-09-530 to resolve disputes between parties concerning Section 252(i) of the Telecommunications Act of 1996. However, Focal is not attempting to adopt a WUTC-approved agreement pursuant to Section 252(i). Focal instead is attempting to “import” into Washington State a North Carolina interconnection agreement (the “Time Warner Agreement”) pursuant to Paragraph 32 of the FCC’s Bell Atlantic/GTE Merger Order and Merger Conditions – not 42 U.S.C. § 252(i). Neither the Commission’s Interpretive and Policy Statement related to Section 252(i) nor WAC 480-09-530 provide for expedited review of a foreign interconnection agreement being adopted under Paragraph 32.

By seeking expedited Commission review, Focal is attempting to “short circuit” an FCC review process in order to avoid a negative policy ruling by the FCC. Contrary to Focal’s assertions throughout the Petition, the FCC has not definitively ruled that Verizon must allow Focal to adopt each and every provision of the North Carolina Time Warner Agreement in Washington State. The FCC issued only an advisory letter in this regard, and that opinion is being appealed by Verizon. A copy of Verizon’s request for clarification is attached as Exhibit A. Focal also is participating in that review and appeal process. A copy of Focal’s response is attached as Exhibit B. Moreover, the FCC is poised to announce a formal policy on reciprocal compensation that may be less to Focal’s liking than the those contained in the Time Warner Agreement. In essence, Focal is attempting to use the Commission’s expedited procedures to get ahead of any final determination on the FCC’s advisory letter and policy announcements on reciprocal compensation. Certainly, WAC 480-09-530 – which does not even address Paragraph 32 of the Bell Atlantic/GTE Merger Order and Merger Conditions – was never intended for this purpose.

Although Verizon does not contest the Commission’s right to review this dispute pursuant to Paragraph 32 of the Bell Atlantic/GTE Merger Order and Merger Conditions, it cannot do so on an expedited basis. The WUTC’s rules permitting expedited relief address only the adoption of WUTC-approved contracts pursuant to 47 U.S.C. § 252(i). Pending the FCC’s review of Focal’s request for clarification of Paragraph 32 of the Bell Atlantic/GTE Merger Order and Merger Conditions, Focal could, of course, request adoption of a WUTC-approved agreement and seek expedited relief under the WUTC’s rules, if necessary.

For all of these reasons, this matter should be dismissed from the expedited docket.

**IN THE ALTERNATIVE, ANSWER AND MOTION TO TRANSFER
TO A NON-EXPEDITED DOCKET**

While this matter should not proceed on an expedited basis for the reasons stated, Verizon nevertheless answers the Petition as follows. Verizon likewise moves to transfer both the Petition and this Answer to a non-expedited docket. For the Commission's convenience, Verizon first repeats a paragraph from the Petition and then provides its response. It also uses the same paragraph numbering as the Petition.

1. Petitioner. Focal is a telecommunications company that has been registered and classified by the Commission as a competitive telecommunications company. Focal is authorized to provide switched and non-switched local exchange and long distance services in Washington.

Verizon admits the allegations in Paragraph No. 1 of the Petition.

2. Respondent. Verizon is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services throughout the State of Washington.

Verizon admits the allegations in Paragraph No. 2 of the Petition.

3. Commission Jurisdiction. The Commission has jurisdiction over this Petition and Respondent Verizon pursuant to 47 U.S.C. §§ 251-52, RCW 80.36.610, and WAC 480-09-530.

The allegations in Paragraph No. 3 of the Petition constitute legal conclusions to which no response is required under the applicable rules. Nonetheless, Verizon denies that this Commission has jurisdiction pursuant to 47 U.S.C. §§ 251-52, RCW 80.36.610 or WAC 480-09-530 over the issues raised in the Petition.

BACKGROUND

4. Lack of Current Interconnection Agreement. Focal opted-in to the interconnection agreement between Verizon and AT&T Communications of the Pacific Northwest, Inc. Verizon, however, terminated that agreement as of its September 24, 2000, expiration date. The parties maintain the services and facilities in existence as of that date under the terms and conditions of the expired agreement, but Verizon will not accept new orders from Focal pursuant to that agreement. Accordingly,

Focal currently does not have an effective interconnection agreement with Verizon in Washington.

Verizon denies the allegations in Paragraph No. 4 of the Petition, as phrased. Verizon acknowledges (1) that Focal opted-in to the Washington interconnection agreement between Verizon and AT&T Communications of the Pacific Northwest, Inc.; (2) that the underlying interconnection agreement terminated as of its September 24, 2000 expiration date; (3) that Verizon and Focal maintain the services and facilities in existence as of that date under the terms and conditions of the expired agreement; and (4) that Verizon to date has not accepted new orders from Focal pursuant to the expired agreement. However, Verizon denies that it will not accept any new orders from Focal. Verizon simply will not accept new orders pursuant to an expired agreement. Verizon desires to replace that agreement with a current agreement as soon as possible and to that end requests below that the Commission mediate the matter.

5. Bell Atlantic/GTE Merger Conditions. Among the conditions on FCC approval of the merger between Bell Atlantic and GTE (“*Merger Conditions*”) was the requirement that Verizon permit requesting telecommunications carriers in one state to opt-in to any interconnection agreement from another state to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i). *In re GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations*, CC Docket No. 98-184, FCC 00-221, Memorandum Opinion and Order, Appendix D, ¶ 32 (June 16, 2000) (“*Bell Atlantic/GTE Merger Order*”). The applicable section of the *Merger Conditions* is attached as Exhibit A.

Verizon denies the allegations in Paragraph No. 5 of the Petition, as phrased. Verizon acknowledges that when approving the Bell Atlantic/GTE Merger, the FCC required Verizon to permit requesting telecommunications carriers in one state to opt-in to certain terms and conditions contained in interconnection agreements from another state. Verizon denies, however, that a requesting carrier can adopt an agreement pursuant to the Bell Atlantic/GTE Merger Order and Merger Conditions to the same extent and under the same rules that would apply to a request under

47 U.S.C. § 252(i). For example, the Merger Conditions specifically provided that neither price nor state-specific performance measures are subject to the Merger Conditions. *In re GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations*, CC Docket No. 98-184, FCC 00-221, Memorandum Opinion and Order, Appendix D, ¶ 32 (June 16, 2000).

It is Verizon's belief that Focal filed the Petition primarily because it wants to use in the State of Washington a provision in a North Carolina interconnection agreement (the "Time Warner Agreement") pertaining to the interim payment of inter-carrier compensation on Internet-bound traffic. That interim provision in the Time Warner Agreement provided for the payment of such compensation only until the date of an FCC order in the pending declaratory ruling proceeding. The issue arises here because, while Verizon has acknowledged Focal's ability to adopt the majority of the provisions of the Time Warner Agreement, there are provisions that Verizon believes are not subject to the Merger Conditions' MFN obligations, including the provision that addressed compensation for Internet traffic. It is Verizon's position that the Time Warner Agreement's interim provision is not subject to the opt-in conditions set forth in the Bell Atlantic/GTE Merger Order and Merger Conditions for several independent reasons.

First, as set forth in Paragraph 32 of the Merger Conditions, Verizon's opt-in obligations extend only to interconnection arrangements, UNEs, or provisions of an interconnection agreement that are "*subject to 47 U.S.C. § 251(c) . . .*" Thus provisions that do not fall under Section 251(c) are not subject to the Merger Conditions MFN obligations and "fall out" of such an adoption. The obligation of local exchange carriers to pay one another reciprocal compensation for local traffic is found not in Section 251(c) but in Section 251(b) of the Act. Therefore, the Merger Conditions do

not, on their face, extend to the reciprocal compensation provisions of Verizon's interconnection agreements.

Second, even if these Merger Conditions were construed to encompass items subject to Section 251(b), they still would not obligate Verizon to permit the cross-state adoption of compensation terms pertaining to Internet traffic. In February of 1999, the FCC expressly found that Internet traffic is not local. The FCC is once again re-visiting that decision, but it is expected to issue an order soon reaffirming its prior decision. Consequently, Internet traffic is not subject to the reciprocal compensation requirements in Section 251(b).

Third, the Merger Conditions by their terms do not permit a requesting carrier to adopt an entire interconnection agreement as written. For example, neither price nor state-specific performance measures are subject to the Merger Conditions. *In re GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations*, CC Docket No. 98-184, FCC 00-221, Memorandum Opinion and Order, Appendix D, ¶ 32 (June 16, 2000). Despite Focal's sweeping statements to the contrary, therefore, certain provisions –including the reciprocal compensation provisions of Verizon's interconnection agreements – clearly were not intended to be subject to the Merger Conditions' MFN obligations and need not be made available as part of an “imported” agreement.

Fourth, Focal has other options. Rather than importing the Time Warner Agreement, Focal could, pursuant to section 47 U.S.C. § 252(i), pursue any number of interconnection agreements that presently exist in the State of Washington. Its decision to pursue the importation of the Time Warner Agreement before the FCC issues a final decision in response to Focal's request for clarification amounts to an end-run of the very FCC review that Focal itself initiated.

Finally, the FCC is currently considering the appropriate federal legal and policy response to the problems created when reciprocal compensation obligations are imposed on the ever-growing volume of one-way calls to the Internet. As the FCC considers whether and how to remedy the significant market distortions that result from imposing reciprocal compensation obligations on such traffic – and this Commission has already addressed reciprocal compensation issues with regard to Washington-specific agreements -- it makes no policy sense to exacerbate the problem by allowing Focal to import an interim provision from a North Carolina agreement.

6. Section 252(i) Request. By letter dated October 4, 2000, Focal requested to opt-in to the terms and conditions contained in the interconnection agreement between GTE South Incorporated and Time Warner Telecom in North Carolina (“Time Warner Agreement”) for use in the state of Washington, as required by the *Bell Atlantic/GTE Merger Order* and Section 252(i). A copy of the letter is attached as Exhibit B, and a copy of the Time Warner Agreement is attached as Exhibit C. Verizon refused Focal’s request, claiming that Verizon is not obligated to make all provisions from the Time Warner Agreement available to requesting carriers in other states.

Verizon neither admits nor denies the allegations in Paragraph No. 6 of the Petition regarding the contents of the October 4, 2000 letter because the letter is a document that speaks for itself and no further characterization is required. In response to the remaining allegations in Paragraph No. 6, however, Verizon denies the allegations as phrased. Verizon acknowledges that it denied Focal’s request to opt-in to the Time Warner Agreement insofar as the provision pertaining to the interim payment of inter-carrier compensation on Internet-bound traffic was concerned. Verizon incorporates by reference its responses to the allegations in Paragraph No. 5 in this regard.

7. FCC Proceedings. On November 9, 2000, Focal submitted a letter to the FCC Common Carrier Bureau requesting an interpretation of the most-favored nation (“MFN”) provisions in the *Bell Atlantic/GTE Merger Order*. Specifically, Focal requested that the FCC clarify that Verizon may not refuse to permit a requesting carrier to opt-in to an agreement because that agreement includes reciprocal compensation and other provisions governed by sections of the Telecommunications Act of 1996

("Act") other than Section 252(c). In its December 6, 2000, letter in response to Focal's request, Verizon contended that its obligation to provide terms and conditions from an agreement in one state to a carrier in another state is limited to interconnection arrangements and unbundled network elements subject to Section 251(c) and excludes reciprocal compensation and any obligations under other provisions of the Act.

Verizon neither admits nor denies the allegations in Paragraph No. 7 of the Petition regarding the contents of the documents described therein because the documents speak for themselves and no further characterization is required. Nonetheless, Verizon incorporates by reference its responses to the allegations in Paragraph No. 5.

8. FCC Decision. In a letter ruling dated December 22, 2000, the FCC rejected Verizon's interpretation of the *Bell Atlantic/GTE Merger Order*. The FCC reiterated that "the *Merger Conditions* expressly state that the rules and requirements of section 252(i) apply to all requests for interconnection arrangements and UNE's under the MFN provisions of the *Merger Conditions*. The MFN provisions expand the section 252(i) opt-in rights of CLECs by allowing CLECs to import interconnection arrangements (including entire agreements) from one state into another state, thereby reducing the time and expense of negotiating interconnection agreements." CC Docket No. 98-184, DA 00-2890, Letter from Common Carrier Bureau at 3 (Dec. 22, 2000) ("Letter Ruling"). The Letter Ruling further provides that, at a minimum, Verizon must permit the CLEC to opt-in to all undisputed provisions of an interconnection agreement and must "raise its views regarding the contested provision before the state commission instead of unilaterally limiting a CLEC's options under the MFN provisions." *Id.* A copy of the Letter Ruling is attached as Exhibit D.

Verizon neither admits nor denies the allegations in Paragraph No. 8 of the Petition regarding the contents of the FCC's advisory letter because the document speaks for itself and no further characterization is required. Verizon denies the remaining allegations in Paragraph No. 8, as phrased. Specifically, Verizon denies that the advisory letter represents a "ruling" of the FCC or is in any way binding upon the parties in this case. As noted in Paragraph No. 3 above, the advisory letter is the subject of a request for review and clarification filed by Verizon and attached hereto as Exhibit A. Focal's response is attached as Exhibit B.

9. Repeated Request. Following the issuance of the Letter Ruling, Focal repeated its request to opt-in to the Time Warner Agreement in Washington. Verizon responded by letters dated January 11, 2001.

Those letters ignore the Letter Ruling and reiterate Verizon's insistence that Focal accept additional "Verizon South Terms," including the restriction that "provisions from the Time Warner Telecom/Verizon South agreement that are not required pursuant to Section 251(c) of the Act shall not apply to Focal's adoption of the Verizon South Terms in the State of Washington." Verizon refuses to permit Focal to opt-in to the Time Warner Agreement in Washington unless Focal agrees to the Verizon South Terms and executes a "Supplemental Agreement" that substantially revises the terms and conditions contained in the Time Warner Agreement. A copy of the January 11, 2001 letters and Verizon's proposed Supplemental Agreement are attached as Exhibit E.

Verizon denies the allegations in Paragraph No. 9 of the Petition, as phrased. Verizon acknowledges that after the issuance of the advisory letter on December 22, 2000, Focal requested to opt-in to the North Carolina Time Warner Agreement in the State of Washington. Verizon acknowledges that it responded by letter dated January 11, 2001. Verizon neither admits nor denies the contents of the January 11, 2001 letter because the document speaks for itself and no further characterization is required. Likewise, Verizon neither admits nor denies the contents of the "Supplemental Agreement" because the document speaks for itself and no further characterization is required. Nevertheless, Verizon incorporates by reference its responses to the allegations in Paragraph No. 5.

10. Verizon Final Offer. Focal contacted Verizon after receiving Verizon's proposal and again requested that Verizon comply with the Letter Ruling, the *Merger Conditions*, and Section 252(i) and permit Focal to opt-in to the Time Warner Agreement without revisions other than Washington-specific pricing and Focal-specific contact information. Verizon refused, stating that its January 11, 2001 proposal represents Verizon's final offer to Focal.

Verizon denies the allegations in Paragraph No. 10 of the Petition.

11. Section 252(i). The Act requires Verizon to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier *upon the same terms and conditions as those provided in the agreement.*" 47 U.S.C. § 252(i) (emphasis added).

The allegations in Paragraph No. 11 of the Petition constitute legal conclusions to which no response is required under the applicable rules. Nonetheless, Verizon responds that there are

exceptions under the Act and incorporates by reference its responses to the allegations in Paragraph No. 5 above.

12. Merger Conditions. The *Bell Atlantic/GTE Merger Order* requires Verizon to “allow requesting telecommunications carriers in one state to opt-in to any interconnection arrangement or unbundled network element contained in an interconnection agreement from another state,” including an entire interconnection agreement. Letter Rule at 2. The FCC subsequently stated that “Verizon is incorrect in asserting that the reference to section 251(c) limits a CLEC’s opt-in rights under the MFN provisions of the *Merger Conditions*.” *Id.* The FCC clarified, “The phrase ‘interconnection agreement (including an entire agreement) subject to section 251(c)’ in the *Merger Conditions* merely refers to the type of agreement that is subject to this provision, namely, an interconnection agreement addressing the duties set forth in subsections 251(b) and 251(c).” *Id.* at 3.

Verizon neither admits nor denies the allegations in Paragraph No. 12 of the Petition regarding the contents of the FCC’s advisory letter because the document speaks for itself and no further characterization is required. Verizon denies the remaining allegations in Paragraph No. 12, as phrased, and incorporates by reference its responses to the allegations contained in Paragraph No. 8 above.

13. Commission Statement. Principle 2 in the Commission’s Interpretive and Policy Statement provides, “Except for changes in the names of the parties, internal references, or other minor changes, a requesting carrier that requests an existing agreement in its entirety, or to receive individual arrangements in an agreement, must adopt the original contract language verbatim.” *In re Implementation of Section 252(i) of the Telecommunications Act of 1996*, Docket No., UT-990355, Interpretive and Policy Statement (First Revision) ¶ 14 (April 12, 2000).

Verizon neither admits nor denies the allegations in Paragraph No. 13 of the Petition regarding the contents of the Commission’s Interpretive and Policy Statement because the document speaks for itself and no further characterization is required.

14. Verizon Violations. Verizon’s refusal to permit Focal to opt-in to the Time Warner Agreement is inconsistent with Section 252(i), the *Merger Conditions* in the FCC’s *Bell Atlantic/GTE Merger Order*, and the Commission’s Interpretive and Policy Statement. Federal and Washington law requires Verizon to make the Time Warner Agreement available to any requesting carrier in Washington in its entirety and verbatim, without substantive revision or amendment. Verizon is

violating state and federal law by refusing to make the Time Warner Agreement available in Washington unless Focal accepts additional terms and conditions and executes a substantial amendment to that agreement.

The allegations in Paragraph No. 14 of the Petition constitute legal conclusions to which no response is required under the applicable rules. To the extent a response is necessary, Verizon denies the allegations contained in Paragraph No. 14 and incorporates by reference its responses to the allegations contained in Paragraphs No. 5 and 8 above.

PRAYER FOR RELIEF

WHEREFORE, Focal prays for the following relief:

- A. An order from the Commission requiring that Verizon comply with Section 252(i), the *Merger Conditions* in the *Bell Atlantic/GTE Merger Order*, and the Commission's Interpretive and Policy Statement; specifically, an order requiring that Verizon permit Focal to opt-in to the Time Warner Agreement without revision, modification, or amendment except as follows:
 - (1) Submission of interim or permanent rates established by the Commission for access to, and interconnection with, Verizon's network in Washington; and
 - (2) Changes in the names of, and contact information for, the parties, the Commission, and the state; and
- B. Such other or further relief as the Commission finds just and reasonable.

Verizon denies that Focal is entitled to the relief it seeks in its Petition.

REQUEST FOR MEDIATION

As stated above, Verizon desires to implement a current Washington agreement with Focal as soon as possible, which will enable Focal to place new orders, should it need it. Verizon believes that Focal's attempt to import an interim North Carolina reciprocal compensation clause unnecessarily inhibits attaining this objective. Verizon further believes that the Commission

Policy Statement and rules that Focal attempts to invoke are not the best vehicle for attaining this objective.¹ Verizon requests that the Commission address this dispute through mediation.

WHEREFORE, Verizon requests that the Commission dismiss the Petition from expedited review and in the alternative deem this filing an Answer, grant Verizon's Motion to Transfer to a Non-Expedited Docket, and set this matter down for mediation.

DATED this 28th day of March, 2001.

Respectfully submitted,

Verizon Northwest, Inc.

By Its Attorneys

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¹ As stated in Verizon's Answer, since Focal's action is beyond the scope of sections 251 and 252, being supported (if at all) only by the Merger Conditions, the Commission's Policy Statement and rules do not actually apply to the Petition.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon Ms. Carole J. Washburn, Washington Utilities & Transportation Commission, 1300 S. Evergreen Park Drive SW, Olympia, WA 98504-7250 and Gregory J. Kopta, Davis Wright Tremaine LLP, 2600 Century Square, 1501 Fourth Avenue, Seattle, WA 98101-1688, via facsimile and/or hand delivery on March 28, 2001.

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Doc #: 208905; V. 4
Doc Name: Answer to Petition For Enforcement of Section 252(i)
Last Edit: 03/28/2001

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