

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

In the Matter of the Petition for	)	DOCKET NO. UT-043013
Arbitration of an Amendment to	)	
Interconnection Agreements of	)	ORDER NO. 12
	)	
VERIZON NORTHWEST INC.	)	ORDER ALLOWING VERIZON
	)	TO WITHDRAW ITS PETITION
with	)	AS TO 52 CARRIERS, DENYING
	)	WITHDRAWAL AS TO 18
COMPETITIVE LOCAL EXCHANGE	)	CARRIERS; DETERMINING
CARRIERS AND COMMERCIAL	)	EFFECT OF ORDER NO. 08 ON
MOBILE RADIO SERVICE	)	SPECIFIC INTERCONNECTION
PROVIDERS IN WASHINGTON	)	AGREEMENTS
	)	
Pursuant to 47 U.S.C. Section 252(b),	)	
and the <i>Triennial Review Order</i> .	)	
.....	)	

1 **Synopsis.** *This Order allows Verizon to withdraw from its arbitration petition 16 carriers that have terminated their agreements with Verizon, whose agreements do not contain UNE provisions, or who have otherwise stipulated agreements with Verizon making their participation in this proceeding unnecessary. The Order also allows Verizon to withdraw from its petition 36 other carriers identified in the proceeding, but that have not filed responses or raised additional issues in the proceeding. The Order denies Verizon’s attempt to withdraw from its petition 18 carriers, identified in Appendix A to this Order, who have responded to Verizon’s petition and raised additional issues. Finally, this Order finds that the agreements of the 18 carriers at issue are not subject to the Commission’s Order No. 08 in this proceeding.*

2 **Nature Of Proceeding.** This proceeding involves a petition Verizon Northwest Inc. (Verizon) filed with the Washington Utilities and Transportation Commission (Commission) requesting arbitration pursuant to 47 U.S.C.

§ 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Act), and the Federal Communications Commission's (FCC) Triennial Review Order.<sup>1</sup> The petition was served on all competitive local exchange carriers (CLECs) and Commercial Mobile Radio Service (CMRS) providers in Washington - 77 companies - that have entered into interconnection agreements with Verizon.

- 3 **Procedural History.** Verizon filed its arbitration petition with the Commission on February 26, 2004. On March 2, 2004, the D.C. Circuit entered its decision in *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*). In its decision, the D.C. Circuit vacated and remanded significant portions of the FCC's Triennial Review Order, but stayed the effect of its decisions for 60 days.
- 4 On June 15, 2004, the arbitrator, Administrative Law Judge Ann E. Rendahl, entered Order No. 05 in this proceeding. That Order denied several motions to dismiss Verizon's arbitration petition, and granted a motion to maintain status quo, requiring Verizon to "continue to provide all of the products and services under existing interconnection agreements with CLECs at the prices set forth in the agreements, until the Commission approves amendments to these agreements in this arbitration proceeding or the FCC otherwise resolves the legal uncertainties presented by the effect of the mandate in *USTA II*." Order No. 05, ¶ 55. Order No. 05 describes the earlier procedural history of this proceeding, which will not be repeated in this Order.
- 5 On June 18, 2004, Verizon filed a Petition for Review of Order Requiring Verizon to Maintain Status Quo. Advanced Telecom Group, Inc. (ATI), Covad

---

<sup>1</sup> *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. August 21, 2003) [Hereinafter "Triennial Review Order"].

Communications Company (Covad), and Centel Communications, Inc. (Centel), Sprint Communications (Sprint), and the Joint CLECs (Eschelon Telecom of Washington, Inc. (Eschelon), Integra Telecom of Washington, Inc. (Integra), Pac-West Telecomm, Inc. (Pac-West), Time Warner Telecom of Washington, LLC (Time Warner), and XO Washington, Inc. (XO)) filed answers to Verizon's petition on June 28, 2004. Verizon filed a reply on July 2, 2004. Verizon filed statements of supplemental authorities on June 29 and July 22, 2004.

- 6 On August 13, 2004, the Commission entered Order No. 08 in this proceeding upholding Order No. 05, which requires Verizon to maintain the status quo under its interconnection agreements. Order No. 08 also ordered Verizon to file with the Commission copies of interconnection agreements to which Verizon asserts the status quo order does not apply.
- 7 On August 20, 2004, the FCC issued its Interim Order and Notice of Proposed Rulemaking,<sup>2</sup> ordering parties to maintain the status quo as to certain unbundled network elements (UNEs) in their interconnection agreements for six months or until the FCC entered final rules in response to the *USTA II* decision.
- 8 On August 23, 2004, Verizon and other ILECs filed a mandamus petition with the D.C. Circuit Court of Appeals and later appealed the Interim Order to the Court.<sup>3</sup>
- 9 On September 15, 2004, Verizon filed with the Commission its Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties.

---

<sup>2</sup> *Unbundled Access to Network Elements, WC Docket No. 04-313, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (rel. August 20, 2004) [Hereinafter "Interim Order"]*

<sup>3</sup> *United States Telecom Ass'n et al. v. FCC*, Petition for Writ of Mandamus to Enforce the Mandate of this Court, No. 00-1012, (filed Aug. 23, 2004). See also *United States Telecom Ass'n et al. v. FCC*, No. 04-1320 (filed September 23, 2004).

- 10 On October 1, 2004, the Commission received four responses to Verizon's pleading from Sprint individually, the Joint CLECs (composed of Electric Lightwave, Inc. (ELI), Integra, Pac-West, Time Warner, and XO, and its affiliate Allegiance Telecom of Washington, Inc. (Allegiance)), the Competitive Carriers Group (composed of ATI, BullsEye Telecom, Inc. (BullsEye), Covad, and KMC Telecom V Inc. (KMC)), joined by Centel, and United Communications Inc. (UNICOM), and lastly from the Competitive Carrier Coalition (composed of Focal Communications Corporation of Washington (Focal) and McLeodUSA Telecommunications Service, Inc. (McLeodUSA)).
- 11 On October 6, 2004, the D.C. Circuit issued an order on its own motion holding in abeyance consideration of the ILECs' petition for mandamus until further order of the court.
- 12 On October 13, 2004, Verizon filed a reply to the various responses to its pleading.
- 13 **Party Representatives.** Timothy J. O'Connell, Stoel Rives, LLP, Seattle, Washington, represents Verizon. Edward W. Kirsch and Philip J. Macres, Swidler Berlin Shereff Friedman, LLP, Washington, D.C., represent the Competitive Carrier Coalition. Letty S.D. Friesen, AT&T Law Department, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc., and TCG Seattle (collectively AT&T). Andrew M. Klein, Kelley, Drye & Warren, LLP, Washington, D.C., represents the Competitive Carrier Group. Brooks E. Harlow, Miller Nash LLP, Seattle, Washington, and Hong Huynh, Miller Nash LLP, Portland, Oregon, represent Centel. Karen S. Frame, Senior Counsel, Denver, Colorado, represents Covad. Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents Electric Lightwave, Inc., New Edge Networks, Inc., Pac-West, Time Warner and XO. Dennis D. Ahlers, Senior Attorney, Minneapolis, Minnesota, represents Eschelon. Richard A. Pitt, attorney, Burlington, Washington, represents Northwest Telephone, Inc. Richard

A. Finnigan, attorney, Olympia, Washington, represents SBC Telecom, Inc. William E. Hendricks, III, Hood River, Oregon, represents Sprint. Michael E. Daughtry, Vice President of Operations, Bend, Oregon, represents UNICOM. Michel Singer Nelson, Regulatory Attorney, Denver, Colorado, represents WorldCom, Inc., and its subsidiaries in Washington n/k/a MCI, Inc. (MCI).

**MEMORANDUM**

- 14 **Verizon's Motion.** Verizon filed its petition for arbitration in this docket to amend its interconnection agreements with 77 carriers in Washington State to include decisions made in the FCC's Triennial Review Order. *Verizon's Identification of Specified Interconnection Agreements at 5; See also Verizon's February 26, 2004, Petition, Exhibit 1.* In response to Order No. 08 in this proceeding, Verizon provides to the Commission portions of interconnection agreements that it has entered with 54 carriers in Washington, asserting that these 54 agreements allow Verizon to automatically cease providing UNEs that are no longer subject to an unbundling obligation under Section 251(c)(3) and FCC regulations. *Verizon Identification of Specified Interconnection Agreements at 1.* Verizon also asserts that interconnection agreements with 16 other carriers have been terminated or do not require Verizon to provide UNEs. *Id. at 2.* Verizon filed notice to withdraw its petition for arbitration as to these 70 carriers asserting that Verizon does not need to amend the agreements for these carriers, leaving seven carriers remaining in the arbitration.<sup>4</sup> *Id. at 2, 5.*
- 15 First, Verizon asserts that the interconnection agreements of 16 carriers require no amendment in this proceeding as the agreements have been terminated, do

---

<sup>4</sup> The remaining seven CLECs with which Verizon seeks to arbitrate revised agreements include AT&T, Comcast Phone of Washington, LLC, Level 3 Communications, LLC, MCI, MCImetro Access Transmission Services, LLC, TCG Seattle, and WiTel Local Network, LLC, f/k/a Williams Local Network Inc. *See Exhibit B to Verizon's Identification of Specified Interconnection Agreements.*

not contain UNE provisions, or Verizon has entered into stipulations with the carriers to implement the Triennial Review Order.<sup>5</sup> *Id. at 4, n.4.*

16 Second, Verizon classifies the interconnection agreements of 54 other carriers into four groups, asserting that the interconnection agreements within each group have identical or substantially identical change of law provisions. *Id. at 5.* Verizon asserts that the agreements in all four groups include language that allows Verizon to cease providing access to a UNE once federal law allows it to do so. *Id.* Verizon asserts that the plain language of these agreements limits Verizon's obligations to those established by federal law. *Id. at 6.* Citing to Washington cases in contract law, Verizon asserts that all provisions of a contract must be given effect and that contracts must be read as a whole. *Id.*

17 Third, Verizon asserts that dispute resolution provisions in the 54 interconnection agreements do not preclude Verizon from ceasing to provide UNEs when they are no longer required, or from withdrawing its petition as to the 54 affected carriers. *Id. at 14-15.* Verizon asserts that requiring compliance with dispute resolution provisions would nullify provisions allowing for Verizon to discontinue or terminate UNEs under the contract, and that the general dispute resolution provisions do not apply to the specific provisions concerning termination, discontinuance or automatic effect of a change in law. *Id.* Verizon also argues that the dispute resolution provisions only apply in disputes arising under the agreement, and that Verizon's decision to withdraw its arbitration petition as to the 54 carriers is not a dispute arising under the agreement. *Id. at 15.*

---

<sup>5</sup> These 16 companies include Cellco Partnership and Verizon Wireless (one company), Broadband Office Communications Inc., DMJ Communications Inc., Gold-Tel Corporation, MetStream Communications, Inc., Winstar Wireless of Washington, Incorporated, AT&T Wireless Services, Inc., Cook Telecom, Inc., Metrocall Inc., Pacific Bell Wireless Northwest LLC d/b/a Cingular Wireless, T-Mobile USA Inc., US Cellular, US West Communications Inc.,

- 18 Verizon groups 25 agreements into Group 1, as similar to an agreement between Verizon and MCI WorldCom Communications Inc., as successor to Rhythms Links Inc. *Id. at 6, 9.* Group 2 includes six agreements with provisions similar to the Verizon-Sprint Communications Agreement. *Id. at 10-11.* Group 3 includes 17 agreements with provisions similar to the Verizon-AboveNet Communications Agreement. *Id. at 11-12.* Group 4 includes six agreements with provisions similar to those in the Verizon-Covad Agreement. *Id. at 12-13.* The carriers whose agreements fall within Groups 1 through 4 are identified in Appendix A to this Order.
- 19 Verizon asserts that the agreements in Group 1 contain a provision similar to a provision in the Rhythms Links agreement, Section 4.7, which provides:

Notwithstanding anything in this Agreement to the contrary, if as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment, benefit, otherwise required to be provided to Rhythms hereunder, then Verizon may discontinue the provision of any such Service, payment, or benefit. ... Verizon will provide thirty (30) days prior notice to Rhythms of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement ... or Applicable Law for termination of such service.

*Verizon-Rhythms Links Agreement, General Terms & Conditions § 4.7.* Verizon argues that the language “notwithstanding anything in this agreement to the contrary” implies that this section will apply even if there is language in the agreement that could be construed to require Verizon to continue to provide access to UNEs. *Verizon Identification of Specified Interconnection Agreements at 7.*

20 Verizon asserts that the Group 1 agreements also include a more specific provision allowing Verizon to terminate provision of UNEs upon a decision that Verizon is not obligated to provide the UNE:

Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to Rhythms, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNEs or Combination, Verizon may terminate its provision of such UNE or Combination to Rhythms. ...

*Verizon-Rhythms Links Agreement, UNE Attachment § 1.5.*

21 Verizon asserts that the effect of the Triennial Review Order and the *USTA II* decision is that ILECs are no longer obligated to provide certain UNEs, including unbundled mass-market switching, associated shared transport, and unbundled high capacity loops, transport and dark fiber. *Verizon Identification of Specified Interconnection Agreements at 7-8.* Verizon asserts that Sections 4.7 and 1.5 must be read to exclude the requirement that Verizon must amend the agreement prior to terminating its provision of UNEs. *Id. at 9.*

22 As to the Group 2 agreements, Verizon identifies language that it asserts would allow new regulations or judicial decisions to automatically supersede any conflicting terms of conditions of the agreement, specifically:

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 decision, and administrative rulings that subsequently may be prescribed by any federal state or local governmental authority having

appropriate jurisdiction. Except as otherwise expressly provided herein, such subsequently prescribed statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings will be deemed to automatically supersede any conflicting terms and conditions of this Agreement.

*Verizon-Sprint Agreement, Art. II, § 1.2.*

23 Verizon asserts that the following two provisions in the Group 3 agreements discuss the issue of how the parties will address changes in law:

[The parties] further agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time the Agreement was produced. Any modifications to those requirements will be deemed to automatically supersede any terms and conditions of this Agreement.

*Verizon-AboveNet Agreement, ¶ 35.*

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, or regulation.

*Id.*, ¶ 43. Verizon asserts that the two provision, when read together, require that any new regulations or judicial decision would automatically supersede terms in the agreement to the contrary, and that new terms would be put in writing afterwards to reflect the new obligations. *Verizon Identification of Specified Interconnection Agreements at 12.*

24 Verizon asserts that the Group 4 agreements contain two provisions that allow Verizon to cease providing access to UNEs no longer required by federal law:

[The parties] agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time the Agreement was produced. Any modifications to those requirements will be deemed to automatically supersede any terms and conditions of this Agreement. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state, or local governmental authority of appropriate jurisdiction. ...

*Verizon-Covad Agreement, ¶ 32.1.*

In the event [Verizon] is permitted or required to discontinue any Unbundled network Element provided to Covad pursuant to this Agreement during the terms of this Agreement or any extensions thereto, [Verizon] shall provide Covad 30 days advance written notice of such discontinuance, except as may be otherwise provided herein or required by applicable law. This provision will not alter either Party's right to any notification required by applicable law.

*Id.*, ¶ 32.2. Verizon asserts that timely written notice is all that is required for Verizon to discontinue UNEs that are no longer required under federal law.

*Verizon Identification of Specified Interconnection Agreements at 13.*

25 **Sprint's Response.** Sprint objects to Verizon's attempt to withdraw its petition as to a majority of the 77 named carriers as a means to avoid the Commission's Order No. 08 requiring Verizon to maintain the status quo under its interconnection agreements. *Sprint Response at 1.* Sprint requests the Commission deny Verizon's withdrawal as to Sprint. *Id. at 2.*

26 Sprint asserts that Verizon cannot unilaterally modify the UNE provisions of the Agreement without a negotiated or arbitrated written amendment to the Agreement or withdraw its petition as to Sprint. *Id. at 6.* Sprint quotes additional language in Article II, Section 1.2 of its agreement providing:

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 statute, regulation, rule, ordinance, judicial decision or administrative ruling. Should the Parties fail to agree on appropriate modification arising out of a change in law, within sixty (60) calendar days of such a change in law the dispute shall be governed by Section 3 of Article II.

*Id. at 3-4.* Sprint asserts that the change in law that Verizon claims has occurred would reasonably require a change in the terms and conditions of the Agreement, *i.e.*, a written modification pursuant to Section 1.2. *Id. at 4.* Sprint further asserts that the dispute resolution provisions of Section 3 of the Agreement would apply, requiring negotiation and arbitration of new language. *Id. at 4-6.*

27 Sprint relies on the Commission's Interpretive and Policy Statement Regarding Negotiation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 approved in Docket No. UT-960269, to assert that non-parties may be allowed to participate in arbitration proceedings, and that arbitrations are designed to resolve disputes in an efficient and economical manner. *Id. at 7-8.* Sprint asserts that it has attempted, but been unable, to resolve its disputes with Verizon in this arbitration, and that if the petition is withdrawn as to Sprint, it will be required, along with other CLECs, to pursue other duplicative proceedings to resolve its disputes with Verizon. *Id.*

- 28 Sprint asserts that the issues between Sprint and Verizon are the same as those that would remain for resolution in the arbitration if Verizon is allowed to withdraw its petition against the 70 carriers, in particular, whether the Triennial Review Order and the *USTA II* decision constitute a change in law. *Id. at 8*. Sprint asserts that it would be inefficient and contrary to public policy to allow Verizon to withdraw its petition as to Sprint. *Id.*
- 29 Finally, Sprint asserts that Section 252(b)(4)(C) of the Act requires state commissions to “resolve each issue set forth in the petition and response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, ...” *Id. at 8-9*. Sprint urges the Commission to prevent Verizon from determining the issue of the change in law outside of the arbitration proceeding, and to require Verizon to address the issues as to Sprint within the arbitration docket. *Id. at 9*.
- 30 **Joint CLECs’ Response.** The Joint CLECs, composed of ELI, Integra, Pac-West, Time Warner, and XO and its affiliate Allegiance, object to Verizon’s notice of withdrawal. *Joint CLECs’ Response at 2*. The Joint CLECs assert that Verizon has no legal authority to withdraw its petition as to the majority of CLECs, that Verizon misinterprets and misrepresents the effect of the language in the Joint CLECs’ agreements, and that Order No. 08 is consistent with the language in the Joint CLECs’ agreements. *Id. at 1-2*.
- 31 The Joint CLECs assert that Verizon’s pleading to withdraw its petition as to numerous CLECs is improper. *Id. at 2*. The Joint CLECs assert that Verizon filed only one petition against multiple parties and that Verizon’s notice of withdrawal is really a notice of dismissal, an action that only the Commission can take. *Id.* The Joint CLECs assert that the Commission’s rules allow parties to withdraw from proceedings only upon permission granted by the Commission, and that in order to dismiss a party, Verizon would need to file a motion to dismiss. *Id. at 2-4, citing WAC 480-07-380(3)*.

- 32 The Joint CLECs dispute Verizon’s claim that their interconnection agreements with Verizon allow Verizon to cease providing UNEs not subject to unbundling obligations. *Id. at 4*. The Joint CLECs assert that their agreements, which fall into Groups 3 and 4, provide for modifications of the agreement, in writing, to bring affected terms into compliance with changes in law, and as to Allegiance and Integra, require parties to resolve differences concerning modification pursuant to the dispute resolution provisions of the agreements. *Id. at 4-6*. The Joint CLECs assert that Verizon’s reading of the language in the agreements renders the written modification requirement meaningless. *Id. at 7-8*. The Joint CLECs assert that all language in the agreements must be interpreted to give effect, not just the “automatically supercedes” language. *Id. at 8*.
- 33 The Joint CLECs contest Verizon’s argument that there has been a change in law, asserting that state law, not just FCC rules, provide a legal basis for requiring Verizon to unbundle loop and transport facilities. *Id.* The Joint CLECs further argue that the decisions in the Triennial Review Order and *USTA II* cannot automatically supercede the terms and conditions of interconnection agreements without developing language to implement those decisions. *Id. at 9*.
- 34 Finally, the Joint CLECs assert that Verizon’s arbitration petition raises a number of issues from the Triennial Review Order, including obligations for Verizon that benefit its competitors, such as undertaking routine network modifications, and requirements for allowing combinations and commingling of UNEs with tariffed services. *Id. at 10*. The Joint CLECs assert that Verizon’s proposed amendment to interconnection agreements includes language to implement these new obligations. *Id. at 10-11*. Given this, the Joint CLECs assert that Verizon’s decision to withdraw its petition as to most CLECs is self-serving and denies the CLECs the benefits of recent federal developments. *Id. at 11*.

35 The Joint CLECs assert that language in the interconnection agreements must be interpreted to allow “any and all” changes in law to become effective immediately without written modification, not just changes that benefit Verizon, or that “any and all” changes in law become effective only after a written agreement. *Id. at 12*. The Joint CLECs assert that if the Commission allows Verizon to withdraw its petition as to the Joint CLECs, they would each be required to file a petition to enforce their interconnection agreements to develop the written modifications to their agreements to incorporate recent developments in federal law. *Id. at 13*.

36 **Competitive Carrier Group, Centel and UNICOM Response.** The Competitive Carrier Group (CCG), Centel and UNICOM (collectively the CCG CLECs), oppose Verizon’s withdrawal filing, and attempt to exclude certain carriers from the protection of the Commission’s status quo order. *CCG CLECs’ Response at 1-2*. The CCG CLECs assert that Verizon misinterprets the language in the CCG CLECs’ interconnection agreements, in violation of federal and state law. *Id. at 2*. The CCG CLECs assert that Verizon waived its claims that the CCG CLECs’ interconnection agreements do not require amendment when it filed its initial petition for arbitration. *Id.* The CCG CLECs also assert that any issues raised in the answer of CCG to Verizon’s petition must be considered in the arbitration pursuant to Section 252, as a non-petitioning party has the right to request a state commission address issues other than those raised in the petition. *Id. at 2-3*.

37 The interconnection agreements of the CCG CLECs fall into all four groups of agreements identified by Verizon. The CCG CLECs dispute Verizon’s claim that the Triennial Review Order and *USTA II* decision meet the standard for a change in law identified in the carriers’ respective agreements. *Id. at 3-6*. The CCG CLECs assert that these decisions are not “final and effective” given the legal developments since the Triennial Review Order was entered. *Id. at 4-5*. Specifically, the CCG CLECs assert that the FCC has entered its Interim Order and a Notice of Proposed Rulemaking and proposes to issue final rules before

the end of 2004. *Id. at 5.* The CCG CLECs assert that a number of parties appealed the USTA II decision to the U.S. Supreme Court, and that Verizon has filed a mandamus petition with the D.C. Circuit Court and has also appealed the Interim Order to that court. *Id.*

38 The CCG CLECs assert that, under the definition of Applicable Law in their interconnection agreements with Verizon, there has been no change in law. *Id. at 6-7.* The CCG CLECs assert that Applicable Law includes all laws and regulations of a governmental authority, including Washington state law and the Commission's Order No. 05. *Id. at 7-9.* The CCG CLECs assert that the Commission, not Verizon, must decide the extent of Verizon's obligations under Applicable Law. *Id. at 9.*

39 The CCG CLECs assert that their interconnection agreements require changes in law to be negotiated and implemented by modifying the agreement, in writing. *Id. at 10.* The CCG CLECs assert that both the FCC and this Commission have stated that Verizon cannot unilaterally cease providing UNEs or modify TELRIC rates. *Id. at 11-13, citing Triennial Review Order, ¶¶ 700, 701; Order No. 05 in Docket No. UT-043013.*

40 The CCG CLECs assert that the Telecommunications Act of 1996 requires that Verizon negotiate in good faith the terms and conditions for providing UNEs. *Id. at 14.* The CCG CLECs assert that Verizon's actions in withdrawing 70 CLECs from its petition for arbitration, but continuing to arbitrate with seven remaining CLECs is a violation of Section 252(i), as the 70 excluded CLECs will be at a competitive disadvantage to those CLECs who remain. *Id.*

41 The CCG CLECs assert that the interconnection agreements contain conflicting terms, *i.e.*, they contain extensive dispute resolution provisions, but appear to allow Verizon to act unilaterally without the dispute resolution process. *Id. at 15.* The CCG CLECs assert that the Commission must consider the context in which

the language was negotiated, including the conduct of the parties, and the reasonableness of the parties' interpretations. *Id. at 16*. The CCG CLECs also assert that Verizon's interpretation of the agreements is unreasonable and would result in an unconscionable contract in violation of Washington law. *Id. at 17-18*.

42 The CCG CLECs assert that Verizon waived its opportunity to withdraw parties from the arbitration by naming in its arbitration petition all 77 CLECs with which it has agreements in Washington, and then resisting the efforts of respondents to dismiss the petition. *Id. at 18*. The CCG CLECs assert that Verizon is abusing the arbitration process by withdrawing numerous respondents only to avoid the effect of the Commission's Order No. 05. *Id. at 18-19*.

43 **Competitive Carrier Coalition Response.** The Competitive Carrier Coalition, or CCC, filed a letter with the Commission asserting that the CCC is not opposed to the withdrawal of CLECs from Verizon's petition, as it continues to believe Verizon's petition is premature. *CCC Letter at 1*. The CCC asserts, however, that it does not agree with Verizon's interpretation of change of law provisions in CCC member interconnection agreements, and requests that the Commission not interpret those provisions in the abstract. *Id.* The CCC asserts that where Verizon and a CLEC disagree as to whether an unbundling obligation remains, the issue should be addressed through the dispute resolution process set forth in the agreement before Verizon discontinues any UNEs. *Id.*

44 The CCC requests that the Commission consider, and act consistently with, a hearing officer's order in the arbitration proceeding pending before the Vermont Public Service Board. *Id. at 1-2*. The CCC asserts that the hearing officer allowed Verizon to withdraw its petition as to numerous carriers, but provided that the Board will address in the arbitration those issues raised by other parties, and allowed the parties to continue to participate in the proceeding. *Id. at 2*. The CCC attaches the hearing officer's order to its letter.

- 45 **Verizon Reply.** In reply, Verizon argues that the responding CLECs' arguments about interpretation of the agreements are irrelevant, as this proceeding is an arbitration proceeding to amend agreements, not to interpret agreements. *Verizon Reply at 2.* Verizon asserts that a contract enforcement proceeding is the proper forum for interpreting agreements. *Id.* Verizon requests that the Commission not interpret the provisions of the affected interconnection agreements in this proceeding, but wait for the appropriate enforcement action to do so. *Id.* Verizon asserts that the agreements it has withdrawn from the petition allow it to discontinue the provision of UNEs upon notice, when no longer required by federal law, but recognizes that its ability to discontinue such UNEs is subject to the provisions of the FCC's Interim Order. *Id. at 2-3, n.1.*
- 46 Verizon objects to assertions by the responding CLECs that the Commission should not allow withdrawal because the CLECs will be required to pursue duplicative enforcement proceedings. *Id. at 3.* Verizon asserts that the CLECs are confusing this proceeding with an enforcement proceeding. *Id.* Verizon asserts that this does not prevent CLECs from objecting to Verizon's interpretation of agreements, but that Verizon no longer seeks amendment of their contracts. *Id.* Verizon asserts that there is no need for any enforcement actions at this time as it remains subject to the "transitional unbundling obligations imposed by the FCC's Interim Order." *Id. at 4.*
- 47 Verizon argues that this arbitration proceeding is not the appropriate forum for interpreting individual interconnection agreements. *Id.* Verizon relies on orders entered by the Vermont Public Service Board, the Rhode Island Public Utilities Commission, and the New York Public Service Commission reaching this same conclusion. *Id.*
- 48 Verizon opposes the arguments of the Joint CLECs and Sprint that it may not legally withdraw its petition. *Id. at 5.* Verizon reiterates that it no longer seeks to amend its interconnection agreements with 70 of the 77 CLECs named in its

initial petition for arbitration. *Id.* Verizon asserts that there is no issue for the Commission to decide as to those CLECs. *Id.*

49 Verizon requests that the Commission refrain from interpreting the language in specific interconnection agreements in this proceeding. If the Commission chooses to do so, Verizon argues that the language allowing it to unilaterally discontinue providing UNEs is not inconsistent with the dispute resolution language. *Id. at 6.* Verizon asserts that no amendment is necessary when a change in law eliminates an obligation, as the change in law strikes the obligation from the agreement. *Id.* Verizon asserts that written modifications to agreements are required when new obligations are imposed by changes in law. *Id.*

50 Finally, Verizon asserts that withdrawing or dismissing certain CLECs from the petition will not circumvent the Commission's Order No. 08, because the Order only concerns those parties subject to arbitration. *Id. at 7.* Verizon asserts that those carriers withdrawn from the petition have no amendments to approve and no issues to arbitrate. *Id.* Verizon asserts that the 70 CLECs are not harmed as Verizon will give them at least 90 days notice of any intent to discontinue provision of UNEs, and the CLECs have recourse to institute enforcement proceedings against Verizon. *Id. at 8.*

51 **Discussion and Decision.** Verizon submitted its pleading, captioned "Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties," in response to the Commission's Order No. 08. That Order required Verizon to file specific interconnection agreements with the Commission to determine whether the agreements were subject to the status quo provisions of the Order, and to avoid the "generic" determinations prohibited under *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114 (9<sup>th</sup> Cir. 2003). Verizon identifies 54 agreements in its pleading that contain language which Verizon asserts removes the agreements from the requirements of Order No. 08. In

addition, Verizon states that it withdraws its petition as to 70 carriers, leaving only seven carriers remaining in the arbitration.

52 Verizon's filing raises several issues for resolution. First, may Verizon unilaterally withdraw its petition as to 70 of 77 carriers originally named in the petition? Specifically, must Verizon seek Commission approval for withdrawal, and what limitations, if any, do Section 252 of the Act and Commission rules place on a request for withdrawal? Second, what is the effect of the FCC's Interim Order on the issues raised in Verizon's pleading? Third, given that the Commission required Verizon in Order No. 08 to file specific interconnection agreements to determine whether the agreements were subject to the Order, must the Commission interpret provisions in the agreements to make that determination?

53 **Withdrawal.** The Commission's procedural rule governing arbitrations, WAC 480-07-630, provides that the arbitrator may "exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law." See WAC 480-07-630(11)(b). The rule also provides that "Arbitration under this section should be characterized by fairness, cooperation and openness between or among the parties, and is designed to resolve disputes openly and economically." WAC 480-07-630(2). The rule further allows non-parties to participate in an arbitration proceeding upon a showing of compelling public interest. WAC 480-07-630(3).

54 It is reasonable and necessary in this proceeding to apply other provisions of the Commission's procedural rules to ensure an orderly and fair proceeding. Under the Commission's rules, a party may withdraw voluntarily from a proceeding only after filing a written motion and after receiving permission from the Commission. See WAC 480-07-380(3). As the Joint CLECs' response indicates, Verizon's notice of withdrawal is akin to a motion to dismiss parties, as Verizon

seeks to remove parties from the proceeding, without the parties seeking a voluntary withdrawal.<sup>6</sup> Verizon has not requested permission to withdraw or filed a motion to dismiss, but has merely provided notice of withdrawal.

55 Section 252(b)(4) requires that state commissions limit consideration in the arbitration to issues raised in the petition and any responses, and “resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement.” *47 U.S.C. § 252(b)(4)(A) and (C)*. As the Joint CLECs and CCC assert, to the extent that a responding party has raised issues in addition to those raised by Verizon in its petition, the Commission must address those issues under Section 252(b)(4). It would not be appropriate under Section 252(b)(4) to remove or dismiss parties from the arbitration who have actively participated in the proceeding and have raised additional issues related to implementation of the Triennial Review Order.

56 In this proceeding, Verizon filed a petition for arbitration naming all 77 carriers in Washington with which it has entered interconnection agreements. Verizon contested motions to dismiss the petition filed by a number of affected carriers. A number of carriers have responded to Verizon’s original and first amended petition, and many have raised additional issues in their responses.<sup>7</sup> Verizon has amended its petition three times by including additional language as additional developments occurred at the federal level in the dispute over the FCC’s Triennial Review Order. Verizon now withdraws its petition as to 70 carriers on

---

<sup>6</sup> Verizon concedes in its reply that it seeks to dismiss parties from the proceeding. *See Verizon Reply at 7.*

<sup>7</sup> The following parties named in the original petition filed responses raising additional issues: AT&T, the Competitive Carrier Coalition (at that time composed of Focal, Allegiance, DSL.net Communications LLC, d/b/a DSL.net (DSL.net), Integra, Adelphia Business Solutions Operations, Inc. (Adelphia), Pac-West, ICG Telecom Group Inc. (ICG), and McLeodUSA), the Competitive Carrier Group (composed at that time of BullsEye, ATI, Comcast, Covad, Global Crossing Local Services, Incorporated (Global Crossing), KMC, and Winstar Communications, Inc. (Winstar)), Centel, MCI, Sprint, UNICOM, and XO.

the basis of its interpretation of its interconnection agreements with these carriers, but requests that the Commission not interpret the provisions in the agreements. Verizon also asserts that the Commission need not interpret the provisions of the agreements as Verizon has simply determined it no longer seeks to amend the agreements of these 70 carriers.

57 Once a party brings itself before the Commission and requests arbitration before the Commission, it may not withdraw the petition or dismiss parties from a petition without seeking Commission approval. To allow otherwise would be to unlawfully delegate the Commission's authority under Section 252 to arbitrate agreements. Such practice would allow petitioning parties to burden competitors with the expense of a proceeding and then merely withdraw the petition.

58 Sprint, the Joint CLECs, and the CCG CLECs assert various procedural and equitable reasons for why the Commission should not allow Verizon to withdraw its petition as to them or other CLECs. The CCC asserts that withdrawal is appropriate, but requests that the Commission allow parties who have raised additional issues to continue to participate in the proceeding. The CCC relies on a hearing officer's decision in a similar arbitration proceeding before the Vermont Public Service Board.<sup>8</sup>

59 The Vermont Order finds that if Verizon no longer seeks to amend its agreements with certain carriers, there is no longer a party advocating revisions to agreements before the Vermont Public Service Board, *i.e.*, there is no longer a controversy before the Board. *Vermont Order at 3*. The Order declines to interpret the language Verizon cites as the reason for withdrawal, stating that the

---

<sup>8</sup> See *Petition of Verizon New England Inc., d/b/a Verizon Vermont, for arbitration of an amendment to interconnection agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio service providers in Vermont, pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order*, Vermont Public Service Board Docket No. 6931, Order Re: Verizon Motion of Withdrawal (Aug. 25, 2004) [Hereinafter "Vermont Order"].

purpose of the proceeding is not to interpret existing agreements. *Id.* The Order allows Verizon to withdraw its petition as to the carriers, except for those carriers that raised additional issues in the arbitration. *Id. at 4.* The Order relies on the requirements of Section 252(b)(4)(C) in finding that issues remain as to these carriers for the Board to arbitrate. *Id. at 4-5.* The Order allows the carriers to remain as parties and to participate fully in the arbitration of issues in the proceeding, not just the additional issues they raise. *Id. at 5.*

60 Having considered Verizon's pleadings, those of the responding parties, and the Vermont Order, it appears appropriate to allow Verizon to withdraw its petition as to the majority of the 70 carriers it identifies in Exhibit A to its initial pleading. In particular, Verizon establishes sufficient justification to allow withdrawal for the 16 carriers that have terminated their interconnection agreements with Verizon, whose agreements do not contain UNE provisions, or that have entered into stipulations with Verizon.<sup>9</sup>

61 As to the remaining 54 carriers identified by Verizon, the course of action adopted by the hearing officer in Vermont and recommended by the CCC is a reasonable one. Eighteen of the remaining 54 carriers responded to Verizon's petition, raised additional issues, and substantially participated in the proceeding.<sup>10</sup> There remain issues in dispute between Verizon and the 18 carriers, which issues the Commission is obligated to consider pursuant to Section 252(b)(4)(C). Denying withdrawal is consistent with the Commission's procedural rules, which provide that arbitration proceedings should be characterized by fairness and designed to resolve disputes economically. *See WAC 480-07-630(2).*

---

<sup>9</sup> These 16 carriers are identified in note 5, above.

<sup>10</sup> Adelphia, ATI, Allegiance, BullsEye, Centel, Covad, DSL.net, Focal, Global Crossing, KMC Telecom, ICG, Integra, McLeodUSA, Pac-West, Sprint, UNICOM, Winstar, and XO. These carriers are indicated in bold print on Appendix A to the Order.

62 Verizon's notice of withdrawal is denied as to these 18 carriers, who may continue to participate as parties to the proceeding by addressing the issues raised both by Verizon and the responding parties. Verizon may withdraw its petition as to the remaining 36 carriers identified on Appendix A to this Order.

63 As requested by Verizon, the Commission will not interpret the provisions of the interconnection agreements for purposes of determining whether Verizon may withdraw its petition as to certain carriers. If any carrier is aggrieved by actions Verizon may take in the future pursuant to its interpretation of interconnection agreements, the carrier may file a petition for enforcement pursuant to the Commission's procedural rules. It is likely that any resolution reached in this arbitration proceeding will be a model that may eliminate the need for, or reduce the number of issues to be addressed in, any enforcement proceedings.

64 **Effect of the Interim Order.** In its Interim Order, issued after the Commission entered Order No. 08 in this proceeding, the FCC required ILECs to maintain the status quo under their interconnection agreements by continuing to provide "unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004." *Interim Order*, ¶ 1. The requirements of the Interim Order apply until the effective date of FCC final rules or six months after the Interim Order is effective, *i.e.*, March 13, 2004. *Id.* The D.C. Circuit has held in abeyance indefinitely the ILECs' petition for writ of mandamus relating to the Interim Order, presumably until the FCC issues final rules.

65 Any carrier with an interconnection agreement in effect as of June 15, 2004, is now subject to the FCC's Interim Order, regardless of whether the carrier remains a party this arbitration. Those carriers withdrawn from Verizon's petition will, however, no longer remain subject to the Commission's status quo order, Order No. 08. While the status quo provisions of the FCC's Interim Order

are more limited than the Commission's requirements in Order No. 08, the Interim Order requires ILECs to avoid changes to interconnection agreements relating to mass-market switching, enterprise market loops, and dedicated transport until the FCC issues final rules following the *USTA II* decision.

66 **Application of the Status Quo Order to Remaining Parties.** The question that remains is whether the Commission's Order No. 08 applies to the interconnection agreements of the 18 carriers discussed above. The Commission required Verizon in Order No. 08 to file specific interconnection agreements to determine whether the agreements were subject to the Order. Verizon filed 70 such agreements, of which 18 agreements remain in consideration in this arbitration.

67 Verizon requests that the Commission not interpret the provisions in the agreements, asserting that interpretation of agreements is appropriate for enforcement proceedings but not for arbitration proceedings. By its petition for review of Order No. 05, and filing of agreements pursuant to Order No. 08, however, Verizon requires that the Commission address the terms of the specific agreements to avoid making a generic decision.

68 The eighteen carriers fall within all four groups of agreements that Verizon identifies, as set forth in Appendix A to this Order. It is clear from a review of the language in Exhibit C to Verizon's pleadings that Verizon may take certain actions under these agreements upon a change in law that relieves Verizon of certain obligations. For example, while Section 4.6 of the Group 1 agreements provides for renegotiation and amendment of the agreement in writing upon general changes in law, the language in Section 4.7 of the Group 1 agreements addresses not just a general change in law, but specifically any change in law that removes obligations as to Verizon. *See, e.g., Agreement between Verizon and MCI WorldCom Communications, Inc, as successor to Rhythms Links Inc.*

- 69 The language in Article II, Section 1.2, of the Group 2 agreements provides that “subsequently prescribed statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings will be deemed to automatically supersede any conflicting terms and conditions of the Agreement,” and that “to the extent required or reasonably necessary,” the parties must modify the agreement in writing. *See, e.g., Agreement between Verizon and Sprint Communications Limited Partnership, § 1.2.*
- 70 The language in the Group 3 and 4 agreements is very similar, providing that “any modifications to [legal] requirements will be deemed to automatically supersede any terms and conditions of this Agreement.” *See Agreement between Verizon and AboveNet Communications, Inc., §35; Agreement between Verizon and Covad Communications Company, §32.1.* The Group 4 agreements, however, contain a specific provision, Section 32.2, allowing Verizon, when permitted by law, to discontinue providing UNEs to CLECs upon 30 days notice. *Agreement between Verizon and Covad Communications Company, §32.2.* The language in both agreements provides for modification of the agreement in writing “to the extent required by” a change in law. *See Agreement between Verizon and AboveNet Communications, Inc., §43; Agreement between Verizon and Covad Communications Company, §32.1.*
- 71 Having reviewed this language, it appears that the interconnection agreements of the 18 carriers are not appropriately subject to Order No. 08 in this proceeding. Whether or not the carriers now agree this is appropriate, the agreements allow Verizon to take unilateral action under the agreements upon certain changes in law, and the parties may subsequently amend the agreements to address the changes in law. If the parties disagree as to whether there is a change in law or do not agree about language necessary to implement the change in law, the parties can pursue the remedies available in dispute resolution provisions. As noted above, all carriers that have interconnection agreements with Verizon

effective on June 15, 2004, are subject to the status quo order in the Interim Order.

72 Whether the decisions in the Triennial Review Order and the *USTA II* decision effect a change in law that would trigger the provisions of the agreements is an issue to be addressed on its merits in the arbitration. This Order declines to determine this issue, but defers the issue for resolution later in the proceeding.

### **FINDINGS OF FACT**

73 Having discussed above in detail the documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse among the parties and the reasons and bases for those findings and conclusions, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

- 74 (1) Verizon Northwest, Inc. is an incumbent Local Exchange Company, or ILEC, providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 75 (2) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, and to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996.

- 76 (3) On February 26, 2004, Verizon Northwest Inc. filed an arbitration petition with the Commission seeking to arbitrate an amendment to the interconnection agreements of 77 carriers.
- 77 (4) The following carriers filed responses to Verizon Northwest Inc.'s petition and raised additional issues for arbitration: Adelpia Business Solutions Operations, Inc., Advanced TelCom Group, Inc., Allegiance Telecom of Washington, Inc., AT&T Communications of the Pacific Northwest and TCG Seattle, BullsEye Telecom Inc., Centel Communications, Inc., Comcast Phone of Washington LLC, Covad Communications Company, DSL.net Communications LLC, d/b/a DSL.net, Focal Communications Corporation of Washington, Global Crossing Local Services, Incorporated, ICG Telecom Group Inc., Integra Telecom of Washington, Inc., KMC Telecom V Inc., MCI WorldCom Communications, Inc., McLeodUSA Telecommunications, Inc., Pac-West Telecomm, Inc., Winstar Communications, Inc., Sprint Communications, United Communications, Inc., and XO Washington, Inc.
- 78 (5) On August 13, 2004, the Commission entered Order No. 08 in this proceeding upholding Order No. 05, which requires Verizon Northwest Inc. to maintain the status quo under its interconnection agreements.
- 79 (6) The Federal Communications Commission entered its Interim Order and Notice of Proposed Rulemaking on August 20, 2004.
- 80 (7) On September 15, 2004, Verizon Northwest Inc. filed its Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties in response to Order No. 08, and attached portions of the agreements of 54 carriers.

- 81 (8) The agreements of the 54 carriers included in Exhibit C to Verizon Northwest Inc.'s pleading can be classified into four groups of agreements, such that certain language in the agreements in each group is similar, if not identical.
- 82 (9) The Commission received responses to Verizon Northwest Inc.'s pleading on October 1, 2004, from Sprint Communications, the Joint CLECs, the Competitive Carriers Group joined by Centel Communications, Inc., and United Communications Inc., and from the Competitive Carrier Coalition.
- 83 (10) Verizon Northwest Inc. filed a reply to the various responses on October 13, 2004.

**CONCLUSIONS OF LAW**

84 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 85 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 86 (2) The arbitrator in an arbitration proceeding before the Commission may "exercise all authority reasonable and necessary to conduct arbitration under the provisions of [the Commission's rule governing arbitrations], the commission's orders on arbitration procedure, and other provisions of law." *WAC 480-07-630(11)(b)*.

- 87 (3) Arbitration proceedings before the Commission should be characterized by fairness and designed to resolve disputes efficiently and economically. *See WAC 480-07-630(2).*
- 88 (4) The Commission's procedural rule allowing a party to withdraw voluntarily from a proceeding before the Commission only after filing a written motion and after receiving permission from the Commission applies to arbitration proceedings. *WAC 480-07-380(3).*
- 89 (5) State commissions may not remove or dismiss a non-petitioning party from an arbitration filed pursuant to Section 252(b) if the non-petitioning party raised additional issues in response to the petition for arbitration, as state commissions are required to resolve all issues presented in the arbitration, including those identified in response. *See 47 U.S.C. § 252(b)(4)(C).*
- 90 (6) Verizon Northwest Inc. has demonstrated sufficient justification to allow the withdrawal from its arbitration petition those carriers who have terminated agreements with Verizon Northwest Inc., whose agreements do not contain UNE provisions, or who have reached a stipulation with Verizon Northwest Inc.
- 91 (7) There remain issues in dispute between Verizon Northwest Inc. and 18 carriers who raised additional issues in response to the arbitration petition, beyond those raised in the petition.
- 92 (8) If Verizon does not seek to amend its agreements with certain carriers who have not raised additional issues in response to the arbitration, there are no remaining issues in dispute as to those carriers.

- 93 (9) Any carrier that is no longer subject to Order No. 08 in this proceeding, remains subject to the requirements of the Federal Communications Commission's Interim Order.
- 94 (10) The language in interconnection agreements provided by Verizon Northwest Inc. in Exhibit C to its Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties, allow Verizon Northwest Inc. to discontinue or cease providing services under these interconnection agreements upon a change in law that relieves Verizon Northwest Inc. of the obligation to provide the service.
- 95 (11) Given the language in the interconnection agreements provided by Verizon Northwest Inc. in Exhibit C, the interconnection agreements of the following carriers are not appropriately subject to Order No. 08 in this proceeding: Adelphia Business Solutions Operations, Inc., Advanced TelCom Group, Inc., Allegiance Telecom of Washington, Inc., AT&T Communications of the Pacific Northwest and TCG Seattle, BullsEye Telecom Inc., Centel Communications, Inc., Comcast Phone of Washington LLC, Covad Communications Company, DSL.net Communications LLC, d/b/a DSL.net, Focal Communications Corporation of Washington, Global Crossing Local Services, Incorporated, ICG Telecom Group Inc., Integra Telecom of Washington, Inc., KMC Telecom V Inc., MCI WorldCom Communications, Inc., McLeodUSA Telecommunications, Inc., Pac-West Telecomm, Inc., Winstar Communications, Inc., Sprint Communications, United Communications, Inc., and XO Washington, Inc.

**ORDER**

**The Commission Orders**

- 96 (1) Verizon Northwest Inc. may withdraw from its petition for arbitration in Docket No. UT-043013 the following 16 carriers: Cellco Partnership and Verizon Wireless, Broadband Office Communications Inc., DMJ Communications Inc., Gold-Tel Corporation, MetStream Communications, Inc., Winstar Wireless of Washington, Incorporated, AT&T Wireless Services, Inc., Cook Telecom, Inc., Metrocall Inc., Pacific Bell Wireless Northwest LLC d/b/a Cingular Wireless, T-Mobile USA Inc., US Cellular, US West Communications Inc., Washington RSA No. 8 Limited Partnership, Eschelon Telecom of Washington, Inc., and Marathon Communications, Inc.
- 97 (2) Verizon Northwest Inc. may withdraw from its petition for arbitration the 36 carriers identified in Appendix A to this Order that are not listed in bold typeface.
- 98 (3) Verizon Northwest Inc.'s notice of withdrawal is denied as to the following 18 carriers: Adelphia Business Solutions Operations, Inc., Advanced TelCom Group, Inc., Allegiance Telecom of Washington, Inc., BullsEye Telecom Inc., Centel Communications, Inc., Covad Communications Company, DSL.net Communications LLC, d/b/a DSL.net, Focal Communications Corporation of Washington, Global Crossing Local Services, Incorporated, ICG Telecom Group Inc., Integra Telecom of Washington, Inc., KMC Telecom V Inc., McLeodUSA Telecommunications, Inc., Pac-West Telecomm, Inc., Winstar Communications, Inc., Sprint Communications, United Communications, Inc., and XO Washington, Inc.

- 99 (4) Order No. 08 in this proceeding does not apply to the interconnection agreements of Adelpia Business Solutions Operations, Inc., Advanced TelCom Group, Inc., Allegiance Telecom of Washington, Inc., BullsEye Telecom Inc., Centel Communications, Inc., Covad Communications Company, DSL.net Communications LLC, d/b/a DSL.net, Focal Communications Corporation of Washington, Global Crossing Local Services, Incorporated, ICG Telecom Group Inc., Integra Telecom of Washington, Inc., KMC Telecom V Inc., McLeodUSA Telecommunications, Inc., Pac-West Telecomm, Inc., Winstar Communications, Inc., Sprint Communications, United Communications, Inc., and XO Washington, Inc.

Dated at Olympia, Washington, and effective this 19<sup>th</sup> day of November, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL  
Arbitrator

**APPENDIX A**

**Group 1 Agreements (Rhythms):**

1-800-RECONEX Inc.

Budget Phone, Inc.

**BullsEye Telecom Inc.\***

**Centel Communications, Inc.**

Ciera Network Systems Inc.

Comm South Companies Inc.

DPI Teleconnect LLC

**DSLnet Communications LLC, d/b/a/ DSL.net**

Ernest Communications Inc.

Excel Telecommunications Inc., d/b/a Excel

Granite Telecommunications

**ICG Telecom Group Inc.**

MCI WorldCom Communications, Inc. (as successor to Rhythms Links Inc.)

NCI DATA.com Inc.

New Access Communications, LLC

Northwest Telephone Inc.

NOS Communications Inc., d/b/a International Plus

Preferred Carrier Services Inc., d/b/a Phones For All and Telefonos Para Todos

SBC Telecom Inc.

Tel West Communications LLC

**United Communications Inc., d/b/a UNICOM**

VarTec Telecom Inc., d/b/a VarTec Telecom

Westgate Communications LLC

**Winstar Communications LLC**

Z-Tel Communications Inc.

**Group 2 Agreements (Sprint):**

**KMC Telecom V Inc.**

Metropolitan Telecommunications of Washington Inc.

PowerTelNET Communications Inc.

Premiere Network Services Inc.

---

\* The 18 carriers that appear in bold print remain parties to this arbitration proceeding.

QuantumShift Communications Inc.  
**Sprint Communications Limited Partnership**

**Group 3 Agreements (AboveNet):**

AboveNet Communications Inc.  
**Adelphia Business Solutions Operations Inc.**  
**Advanced TelCom Group Inc.**  
American Fiber Network Inc.  
Computers 5\*, d/b/a LocalTel Communications  
Electric Lightwave Inc.  
**Focal Communications Corporation of Washington**  
Fox Communications Corp.  
**Global Crossing Local Services, Incorporated**  
HighSpeed.Com LLC  
International Telecom Ltd.  
O 1 Communications of Washington LLC  
**Pac-West Telecomm Inc.**  
RCN Telecom Services Inc.  
Time Warner Telecom Inc.  
Weatherspoon Telephone LLC  
**XO Washington Inc.**

**Group 4 Agreements (Covad):**

**Allegiance Telecom of Washington Inc.**  
**Covad Communications Corporation**  
**Integra Telecom of Washington Inc.**  
Ionex Communications North Inc.  
**McLeodUSA Telecommunications Services, Inc.**  
New Edge Network Inc. d/b/a new Edge Networks