

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. 14
)	
VERIZON NORTHWEST INC.	)	ORDER GRANTING, IN PART,
	)	JOINT MOTION; CANCELING
with	)	INITIAL AND RESPONSIVE
	)	BRIEFS (Scheduled for January 5,
COMPETITIVE LOCAL EXCHANGE	)	2005, and February 4, 2005);
CARRIERS AND COMMERCIAL	)	REQUIRING SIMULTANEOUS
MOBILE RADIO SERVICE	)	BRIEFS ON RIPENESS OF ISSUES
PROVIDERS IN WASHINGTON	)	(Due on Friday, January 21, 2005)
)	
Pursuant to 47 U.S.C. Section 252(b),)	
and the <i>Triennial Review Order</i> .)	
.....)	

1 **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 Triennial Review Order.¹ The petition was served on all competitive local exchange carriers (CLECs) and Commercial Mobile Radio Service (CMRS) providers in Washington that have entered into interconnection agreements with Verizon.

¹ *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”].

- 2 **PROCEDURAL HISTORY.** On November 19, 2004, both Verizon and a group of CLECs filed with the Commission “joint issues lists.” Noting that the lists did not clearly identify whether a hearing was required or that the parties agreed on the issues to be addressed, the Arbitrator scheduled a prehearing conference for December 16, 2004.
- 3 During the conference, the parties agreed that no hearing was necessary in the proceeding. The parties also discussed a joint motion by AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services (TCG Seattle) (collectively AT&T) and WorldCom, Inc. and its subsidiaries in Washington (n/k/a MCI, Inc.) for an extension of time to file briefs until January 5, 2005, and the uncertainties presented by the FCC’s announcement of new unbundling rules in a press release on December 15, 2004. The FCC has not yet entered an order identifying or explaining the new rules.
- 4 Finding that some issues presented in Verizon’s amended petition for arbitration are not likely to be affected by the FCC’s new unbundling rules, the Arbitrator in Order No. 13 in this proceeding bifurcated consideration of these issues, and required simultaneous initial briefs to be filed on January 5, 2005, with responsive briefs to be filed on February 4, 2005.
- 5 On December 30, 2004, AT&T, MCI, Advanced TelCom, Inc. (ATI), BullsEye Telecom, Inc. (BullsEye), Covad Communications Company (Covad), and KMC Telecom V Inc. (KMC), filed a Joint Motion for Stay of Procedural Order No. 13 and Petition for Interlocutory Review, requesting further extension of time and noting that the parties have not agreed on the issues to be briefed on January 5, 2005.

6 On January 3, 2005, counsel for Verizon, AT&T, MCI, ATI, BullsEye, Covad, KMC, the Competitive Carrier Coalition, XO Washington, Inc. (XO), Pac-West Telecomm, Inc. (Pac-West), and Integra Telecom of Washington, Inc. (Integra), participated in a conference call to discuss the motion. The Arbitrator took the matter under advisement. Following the conference call, Verizon electronically submitted its response to the Joint Motion, as well as a draft issues list indicating the parties' positions on when to brief issues pending in the proceeding.

7 **APPEARANCES.** Timothy J. O'Connell, Stoel Rives, LLP, Seattle, Washington, and Scott Angstreich, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, D.C., represent Verizon. Edward W. Kirsch, Swidler Berlin, Shereff Friedman, LLP, Washington, D.C., represents Focal Communications Corporation of Washington and McLeodUSA Telecommunications Services, Inc. (collectively the Competitive Carrier Coalition). Letty S.D. Friesen, AT&T Law Department, Denver, Colorado, and Michelle Bourianof, Austin, Texas, represent AT&T. Heather T. Hendrickson, Kelley, Drye & Warren, LLP, Washington, D.C., represents ATI, BullsEye, Covad, and KMC (collectively the Competitive Carrier Coalition). Karen S. Frame, Senior Counsel, Denver, Colorado, represents Covad. William E. Hendricks, III, Hood River, Oregon, represents Sprint Communications Company, LLP. Michel Singer-Nelson, Senior Attorney, Denver, Colorado, MCI. Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents XO, Pac-West, and Integra.

8 **JOINT MOTION.** AT&T, MCI, ATI, BullsEye, Covad, and KMC (Joint Movants) filed the Joint Motion asserting that the parties have not been able to develop an agreed issues list or agree on the bifurcation of issues given the intervening holidays, and that the parties are in substantial disagreement. *Joint Motion*, ¶¶ 4-5, 6. The Joint Movants assert that the FCC's press release and as yet released order announcing new unbundling rules create questions that may affect resolution of issues in the proceeding. *Id.*, ¶¶ 3, 9-14.

- 9 The Joint Movants request that the Commission stay the schedule set forth in Order No. 13 and set a briefing schedule after the FCC releases its order on new unbundling rules. *Id.*, ¶ 5. In the alternative, the Joint Movants request briefing on bifurcation of the issues and which issues are ripe for briefing. *Id.*, ¶ 7.
- 10 In response, Verizon opposes the Joint Motion and asserts that Arbitrator previously rejected the same relief the Joint Movants request. *Verizon Response at 1*. Verizon asserts that the Joint Movants seek only to delay, for as long as possible, the implementation of federal rules effective in October 2003. *Id.*, at 2. Verizon argues that certain decisions in the Triennial Review Order were upheld by the D.C. Circuit in its *USTA II* decision or were not challenged by any party. *Id.*, at 4-5. Verizon asserts that there is no basis for delaying arbitration of these rulings. *Id.*, at 5.
- 11 Verizon argues that the arbitration proceeding has been delayed long enough, but agrees to defer briefing for now on all issues that are directly related to the FCC's forthcoming rules. *Id.*, at 4-6. Verizon argues that many of the issues identified in the issues list attached to its response concern the mechanism for implementing rules, but do not necessarily relate to the new rules. *Id.*, at 6-7. Verizon asserts that delaying the briefing schedule will only reward the CLECs' efforts to delay the proceeding. *Id.*, at 7-10. Verizon also assert that the Joint Motion does not meet the Commission's requirements for interlocutory review. *Id.*, at 10.
- 12 ***Discussion and Decision.*** During the December 16, 2004, conference, AT&T, MCI, and other CLECs opposed bifurcation and requested an extension of time beyond January 5, 2005, to file initial briefs in view of the impact of the FCC's proposed new rules on the issues pending in the proceeding. *TR 371, line 11 - TR 373 line 19*. Verizon supported an extension of time until January 5, 2005, as the extension of time would allow the parties to develop an agreed to issues list, and

that such a list would result in better briefing of the issues to the Commission.
TR 369, line 12 –TR 370, line 3.

- 13 The Arbitrator encouraged the parties during the conference to work towards developing an agreed issues list based upon the efforts in other states. In order to move the case along, the Arbitrator scheduled initial briefs to be filed on issues unrelated to the FCC's recent decision by January 5, 2005, with responsive briefs due by February 4, 2005, but agreed to consider an extension given the holidays and that development of an agreed issues list may be delayed in other states. *TR 388, lines 15-25; TR 389, lines 16-20.*
- 14 It is encouraging that the parties have identified the issues to be addressed in the proceeding. It is clear from the Joint Motion, Verizon's response, and the attached list of issues, however, that bifurcating the issues in the proceeding for briefing has created yet another dispute between the parties, *i.e.*, what issues are ripe for decision. Requiring the parties to brief issues by tomorrow when the parties have not agreed upon the universe of issues to be briefed is not an efficient use of the parties' or the Commission's resources. The deadline for initial briefs must therefore be extended or cancelled.
- 15 Given the Arbitrator's willingness in Order No. 13 to consider a further extension of time, the Joint Motion is considered a formal request for an extension of time.
- 16 It is unclear when the FCC may release its order on the new unbundling rules. The Commission's rules require extensions of time until a date certain. For that reason, the request in the Joint Motion for an extension of time for briefing until after the FCC's new rules have been released is denied.
- 17 The parties continue to discuss whether issues are ripe for discussion now, or should be deferred for briefing after the FCC enters its order. A review of the

issues list attached to Verizon's response indicates that briefing on some issues can clearly be deferred, but that the parties dispute the value of briefing other issues now. Without more information from the parties, the Arbitrator is not able to determine whether or not issues are ripe for briefing, or whether bifurcation is really an appropriate option.

- 18 Given the disagreement among the parties, it is not a workable solution to require parties to file briefs on the merits by tomorrow on the issues they find ripe for briefing now, and to then respond to another party's arguments on the merits and ripeness. Although the parties are aware of each other's positions on ripeness and bifurcation of issues, the quality of the briefing the Commission will receive would not be as good, and the proceeding would not be as efficient, as if the parties brief only the issue of the ripeness of the issues. After reviewing the parties' arguments on ripeness, the Arbitrator can then determine whether bifurcation of issues is appropriate, and if so, which issues should proceed regardless of the status of the FCC's new rules and any litigation that may result from those rules.
- 19 The Joint Movant's alternative request for briefing on ripeness of issues is granted. An agreed list of issues must be filed with the Commission by Friday, January 14, 2005. Briefs on the ripeness of those issues for briefing on a bifurcated basis must be filed with the Commission by Friday, January 21, 2005. The deadlines for initial briefs on the merits scheduled for January 5, 2005, and responsive briefs scheduled for February 4, 2005, are cancelled. By separate notice, the Arbitrator will schedule a prehearing conference to address the remaining procedural schedule in the proceeding.

20 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 4th day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge