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

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

January 11, 2005

VIA E-MAIL AND OVERNIGHT MAIL

Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transportation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Re: Docket No. UT-043013 –

Dear Ms. Washburn:

Please find enclosed an original and six copies of ***Motion for Reconsideration of Order No. 14*** and a ***Certificate of Service***. Please note that this motion requests modification of January 14 and 21, 2005, deadlines imposed by Order No. 14; Verizon therefore requests expedited consideration of this motion.

Thank you in advance for your assistance in this regard.

Sincerely,

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

Timothy J. O'Connell

Enclosures

cc: ALJ Ann Rendahl
Parties of Record

1 **BEFORE THE**

2 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

3 In the Matter of the Petition for
4 Arbitration of an Amendment for
5 Interconnection Agreements of

6 VERIZON NORTHWEST INC.

7 with

8 COMPETITIVE LOCAL EXCHANGE
9 CARRIERS AND COMMERCIAL
10 MOBILE RADIO SERVICE
11 PROVIDERS IN WASHINGTON

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

Docket No. UT-043013

MOTION FOR RECONSIDERATION OF
ORDER NO. 14

**EXPEDITED CONSIDERATION
REQUESTED**

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13 Verizon Northwest Inc. (“Verizon”) respectfully requests that the Arbitrator reconsider
14 Order No. 14 Granting, in Part, Joint Motion; Canceling Initial Responsive Briefs; Requiring
15 Simultaneous Briefs on Ripeness of Issues (“Order 14”). In support of this motion, Verizon
16 states:

17
18 1. Order 14 largely grants the CLECs’ Joint Motion for Stay of Procedural Order
19 No. 13 and Petition for Interlocutory Review (“the Joint Motion”). The Joint Motion sought
20 further postponement of opening briefs in this matter, beyond the January 5 briefing date the
21 CLECs themselves requested.¹ The Joint Motion claimed that the parties could not reach
22 agreement as to which issues that should be briefed at this time and which might be deferred
23 pending release of the FCC’s Order memorializing the permanent unbundling rules it adopted on
24 December 15, 2004. Based on the CLECs’ arguments, the Arbitrator set a January 21 date for
25

26 ¹ Joint Motion for Extension of Time to File Initial Briefs, filed December 9, 2004.

1 the parties to file briefs designating which issues were ripe for briefing now and which should be
2 deferred until after the FCC issues its Order. The agreed-upon issues list is to be filed on
3 January 14.

4 2. Verizon asks the Arbitrator to reconsider the decision to require ripeness briefs,
5 because such briefing will likely be a waste of time and effort for the parties and the Arbitrator.
6 The CLECs' proposal for these briefs on issues to be briefed was based on their arguments that
7 they could not brief some of the issues without first seeing the FCC's Order. The CLECs do not
8 disagree that all issues will be ripe for briefing once the FCC issues its Order, which is expected
9 soon. On January 4, the FCC told the D.C. Circuit that it "expects to release its order
10 promulgating the new rules in approximately one month." (FCC's Motion to Dismiss Petition
11 for Writ of Mandamus, No. 00-1012 (D.C. Cir.), filed Jan. 4, 2004, at 3.) Therefore, the timing
12 for consideration of the ripeness briefs is the same as the expected timing of the FCC Order
13 itself. Because the FCC Order will moot ripeness questions, there is no need for the parties to
14 spend time drafting the briefs or for the Arbitrator to waste her time considering them. Verizon
15 thus asks the Arbitrator to cancel the ripeness briefs, recognizing that the parties will brief all
16 issues once the FCC's Order is issued.

17 3. As the Arbitrator knows, Verizon maintains that there is no need to wait for the
18 FCC's Order to brief *any* of the disputed issues relating to Verizon's *Triennial Review Order*
19 ("TRO"). Verizon's Amendment does not presume any particular outcome of the FCC's
20 rulemaking. Rather, it sets forth a mechanism to ensure that changes in unbundling rules are
21 incorporated into interconnection agreements without the need for protracted proceedings like
22 this one.
23
24
25
26

1 4. Nevertheless, Verizon made a good faith effort to comply with the Arbitrator's
2 earlier instruction to identify the issues that would not be affected by the FCC's Order, and was
3 prepared to file its brief on those issues on January 5. The CLECs, however, have not shown
4 similar good faith. Their request to delay the January 5 briefing date was just the latest in a
5 series of baseless procedural maneuvers designed to delay implementation of binding federal
6 law.
7

8 5. Indeed, developments in other states show that at least some of the parties
9 exaggerated the scope of disagreement on issues that could be briefed at this time. Here, for
10 example, AT&T argued that 24 of the 26 issues on the Florida issues list could not be briefed
11 without first seeing the FCC's Order. In Florida, however, AT&T and other CLECs identified
12 only 15 of the 26 issues as being affected by the FCC's Order—with AT&T taking opposite
13 positions on the ripeness of the routine network modification issue (number 22) in Washington
14 (where it argued the issue would not be affected by the FCC Order) and Florida (where AT&T
15 claimed it would be affected).² The CLECs' inconsistent statements show a lack of conviction as
16 to any principle other than delaying implementation of federal law.
17

18 6. Verizon reminds the Arbitrator that the TRO took effect over 15 months ago, yet
19 the CLECs have refused to implement even the TRO rulings that were either upheld by the D.C.
20 Circuit or not challenged in the first place. These preemptive federal rulings include, among
21 others, the elimination of unbundling requirements for OCn loops, OCn transport, enterprise
22 switching, the feeder portion of the loop on a stand-alone basis, signaling networks and virtually
23

24 ² See *In Re: Petition for Arbitration of Amendments to Interconnection Agreements With Certain*
25 *Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon*
26 *Florida Inc.*, Docket No. 040156-TP, Florida Public Service Commission, Joint Motion to Modify Procedural
Schedule, filed January 4, 2005. Of course, as in Washington, Verizon's position in Florida is that there is no need
to wait until release of the FCC's Order before briefing any of the issues identified for resolution.

1 all call-related databases; and the determination that the broadband capabilities of hybrid copper-
2 fiber loops and fiber-to-the-premises facilities are not subject to unbundling. The FCC's
3 permanent unbundling rules *will not affect these rulings at all*, and the CLECs have never
4 offered any excuse for failing to reflect them in their contracts, or to at least move forward on the
5 in arbitrations.

7 7. The ripeness briefs will only give the CLECs an opportunity for additional delay,
8 without advancing progress toward an Amendment at all. Because the briefs will be pointless in
9 view of the pending issuance of the FCC's Order, Verizon asks the Arbitrator to cancel them.

10 8. Verizon also asks the Arbitrator to explicitly admonish the CLECs not to engage
11 in any delaying or obstructionist tactics with regard to the issues list due Friday, January 14. As
12 the Arbitrator recognized in Order 14 (at 5) "the parties have identified the issues to be addressed
13 in the proceeding"—that is, the Florida list of issues³—so filing the list should simply be a
14 ministerial task. This is the same list (with slight, state-specific variations) that AT&T and the
15 other CLECs have agreed to in other states (most recently, Vermont and Rhode Island), and the
16 list the parties used here to designate issues for briefing when briefs were still due on January 5.

18 9. Verizon understands the difficulty facing the Arbitrator. This case raises highly
19 contested issues, and Verizon appreciates the Arbitrator's efforts to move the matter forward.
20 The CLECs have, however, sought at every turn to delay these proceedings, repeatedly moving
21 to dismiss outright, stay, delay or postpone matters. It is abundantly clear that the CLECs will
22 not cooperate in any effort that might move the case forward. Therefore, predicating any further
23 actions on agreement between the parties is unlikely to be a useful exercise.

25 ³ As Verizon has explained, however, it opposes the inclusion of the batch hot cut issue tentatively included
26 in the issues list in Florida, and Verizon Florida has asked the Prehearing Officer there to remove it. *See* Verizon
Florida Inc.'s Petition for Reconsideration of Order Establishing Procedure, at 7-10, filed Dec. 23, 2004.)

1 10. Verizon therefore requests that the Arbitrator modify the procedure suggested by
2 Order 14. Verizon respectfully requests that the Arbitrator rescind the requirement for briefing
3 on ripeness. Verizon asks the Arbitrator to set a schedule requiring opening briefs on all issues
4 raised by this case, following the Florida Issues List (with the hot cuts exception Verizon noted),
5 on March 11, 2005 (closely following the date the Massachusetts Department of
6 Telecommunications and Energy recently set for briefing on non-cost issues). Responsive
7 briefing would be due April 1, 2005 (again, closely following the Massachusetts schedule). Of
8 course, the Arbitrator may convene a prehearing conference to discuss this schedule, if
9 necessary, to address unanticipated events or delays.

11 11. Verizon respectfully requests that the Arbitrator cancel the ripeness briefs, which
12 will likely be moot very soon after they are written. Verizon further asks the Arbitrator to set a
13 procedural schedule in accordance with Verizon's suggestions here.

15 DATED: January 11, 2005,

17 Aaron M. Panner
18 Scott H. Angstreich
19 KELLOGG, HUBER, HANSEN,
20 TODD & EVANS, P.L.L.C.
21 Sumner Square
22 1615 M Street, N.W., Suite 400
23 Washington, D.C. 20036
24 (202) 326-7900
25 (202) 326-7999 (fax)

Respectfully submitted,



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

Counsel for Verizon Northwest Inc.