

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of)	
)	DOCKET NO. UT-041127
THE JOINT PETITION FOR)	
ENFORCEMENT OF)	
INTERCONNECTION)	VERIZON'S MOTION
AGREEMENTS WITH VERIZON)	TO STRIKE
NORTHWEST INC.)	
_____)	

VERIZON'S MOTION TO STRIKE

Verizon Northwest Inc. (Verizon) hereby moves to strike certain portions of the Joint Petition and its supporting affidavits. In support of this motion, Verizon states as follows:

1. The only issue the Joint Petition purports to raise in this docket is whether Verizon breached its interconnection agreements by refusing to provide unbundled packet switching out of its Mt. Vernon packet switch.

2. In a previous proceeding in a different docket (Docket No. UT-043013), certain Joint Petitioners claimed that they would suffer harm because of Verizon's actions. These allegations of harm were heard and addressed in Order No. 10 in Docket No. UT-043013. In that order, the Administrative Law Judge instructed the Joint Petitioners to file a petition for enforcement to address the *merits* of their breach of contract claim. The Joint Petitioners did so in this docket.

3. In affidavits filed in support of their petition, several Joint Petitioners once again present allegations of harm. Specifically, paragraph 7 of the affidavit of Daniel Wigger (ATI) states that ATI will be unable to compete in the Mt. Vernon market

because of its increased costs. Likewise, paragraphs 6 and 8 of the affidavit of Michael Daughtry (UNICOM) state that UNICOM relies on Verizon's UNE-P product to provide service and that UNICOM's gross profit margin will be reduced because of Verizon's actions. Also, paragraphs 8-10 of the affidavit of Sherry Lichtenberg (MCI) state, among other things, that MCI cannot place resale orders, cannot process certain orders, and that its customers will be harmed by higher resale prices.

4. These allegations should be stricken. They relate to the alleged harm suffered by the CLECs because of Verizon's actions and their use of (or alleged inability to use) Verizon's resale product. This alleged harm, however, is not an issue in this proceeding. See State v. Rice, 48 Wn. App. 7, 12 (Ct. App. Div. 1 1987) (evidence is relevant only if it proves or disproves a fact that is of consequence to the issue before the court; and, evidence which is not relevant is not admissible); see also 5 Wash. Prac., Evidence Law and Practice § 401.2 (4th ed.) (same). In other words, the answer to the question whether Verizon has the legal right not to unbundle its packet switch (which it does) is not dependent on any "harm" the Joint Petitioners allegedly suffer due to Verizon's exercise of that right. Id.

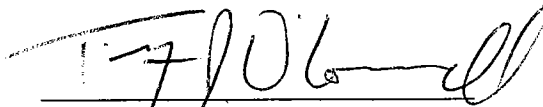
5. In short, Verizon requests that the following material be stricken from the aforementioned affidavits and the Joint Petition itself:

- a. Wigger affidavit, paragraph 7, strike the second and third sentences.
- b. Daughtry affidavit, paragraph 6, strike the third sentence; and paragraph 8, strike everything after the first sentence.

- c. Lichtenberg affidavit, paragraph 6, strike the third sentence; paragraph 8, strike everything after the first sentence; and strike all of paragraphs 9 and 10.
- d. Joint Petition, paragraph 11, strike the second sentence; and paragraph 25, strike the phrase “as well as descriptions of the harm caused to the parties as a result of Verizon’s breach of its interconnection agreements.”

6. If the Commission does not strike all the material listed above, then Verizon requests that (a) the entire transcript of the September 9, 2004 hearing in Docket No. UT-043013 be included in this docket and (b) Verizon be permitted to file counter-affidavits.

Respectfully submitted,



Timothy J. O'Connell
John H. 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.

September 27, 2004