BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment for Interconnection Agreements of VERIZON NORTHWEST INC. with COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON Pursuant to 47 U.S.C. Section 252(b), And the *Triennial Review Order*	Docket No. UT-043013 VERIZON'S REPLY TO AT&T'S PETITION FOR REVIEW OF ORDER NO. 17

1. Verizon Northwest, Inc. ("Verizon") replies to the Petition for Review filed by AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services (collectively, "AT&T") on August 8, 2005. AT&T asks the Commission to reverse certain aspects of the Arbitrator's rulings with respect to routine network modifications in her Report and Decision ("Report") issued in this arbitration on July 8, 2005. First, AT&T asks the Commission to find that no interconnection agreement amendment is necessary to implement the FCC's new routine network modification requirement (Issue 22). Second, it asks the Commission to accept AT&T's definitions of dark fiber, DS1 and DS3 loops that the Arbitrator rejected (Issue 9).

2. The Commission should deny AT&T's requests for review, because the Arbitrator made no mistake of fact or law on these points.

I. The Arbitrator Correctly Concluded that the Amendment Must Include Terms to Implement the Routine Network Modification Requirement Imposed in the TRO (Issue 22)

3. AT&T contends that: "It was legal error for the ALJ to conclude that an amendment to the ICA is necessary to obligate Verizon to perform routine network modifications. There should be no need to amend the ICA to reflect Verizon's obligation to provide routine network modifications because that requirement pre-dated the TRO." AT&T Petition at 4 (emphasis deleted).

4. AT&T is wrong, and its request for review is inconsistent with its own proposals for routine network modification terms in the Amendment.

5. Under the FCC's Rules adopted in the *Triennial Review Order*, "[a] routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers."[1] An ILEC must make routine network modifications as necessary to permit CLECs access to loop and transport UNEs where the requested facilities have already been constructed. 47 C.F.R. § 51.319(a)(8)& (e)(5); *TRO*, ¶ 484.

6. These routine network modification rules did not exist before the FCC adopted them in the *TRO*. As Verizon explained in its Reply Brief (at 52-53), in the Notice of Proposed Rulemaking initiating the *Triennial Review*, the FCC asked whether it had the authority to adopt a network modification requirement and if so, whether it should do so, and what the parameters of any such requirement should be.[2] In the *TRO*, the FCC

[1] 47 C.F.R. § 51.319(a)(8)(11); Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 227 (2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) *("USTA II"), cert. denied, NARUC v. United States Telecom Ass'n,* 125 S.Ct. 313, 316, 345 (2004).

[2] *See* Notice of Proposed Rulemaking, *Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781, at 22805, ¶ 52 (Dec. 20, 2001) ("To the extent that we continue to require unbundling of high-capacity loops (DS1s and above), do we have the authority to require incumbent LECs

concluded that it could and should impose a routine network modification requirement (*id.*, ¶ 633) and adopted the above-cited rules. In doing so, the FCC observed that "[t]he routine modification requirement *that we adopt today* resolves a controversial competitive issue that has arisen repeatedly." *TRO*, ¶ 632 (emphasis added). In short, the FCC made clear that, in the *TRO*, it considered for the first time, and then adopted, a new requirement. It did not "simply clarif[y] Verizon's existing obligation," as AT&T claims. AT&T Petition at 4.

7. AT&T offers no *TRO* citations to support its theory. Instead, it argues that the D.C. Circuit, in its *USTA II* decision, recognized that "there has been no 'change in law' that would necessitate an amendment to the ICA." AT&T Petition at 4. The D.C. Circuit did no such thing. To the contrary, the Court reviewed the routine network modification requirements *adopted in the TRO*[3] and found that the FCC had acted consistently with the Act in establishing a distinction between a "routine modification" and the kind of "superior quality" network alteration struck down by the Eighth Circuit in 1997. *USTA II*, 359 F.3d at 578 (emphasis added). The Court did not address at all the matter of amending interconnection agreements to implement the *TRO*'s network modification rules.

8. Neither *USTA II,* the *TRO,* nor any other FCC decision supports AT&T's novel theory that the Act itself imposed the routine network modification requirement reflected in the *TRO*. AT&T Petition at 5. Under that theory, no amendment would be necessary

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to engage in the activities necessary to activate such loops that are not currently activated in the network, such as attaching any necessary electronics to the loop facility? If we do have this authority, should we impose such a requirement? From both a legal and policy perspective, what should be the limits of any such requirement?")

[3] "In the Order under review, the Commission 'require[d] incumbent LECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed.'" *USTA II*, 359 F.3d at 577.

to implement the FCC's routine network modification obligation, because, according to AT&T, ILECs had that obligation since the Act took effect in 1996 (and existing interconnection agreements would presumably have contained the necessary implementation terms).

9. Contrary to AT&T's suggestion, however, the Act is not a set of self-implementing unbundling rules, and it says nothing about routine network modifications. Rather, Congress directed the FCC to "establish regulations to implement the requirements" of section 251, including "determining what network elements should be made available" on an unbundled basis.[4] In that regard, the FCC determined that loop and transport facilities must be unbundled in certain circumstances and in accordance with certain parameters. The routine network modification requirement it adopted in the *TRO* is one such parameter. *See TRO*, ¶ 633. Before the FCC imposed that requirement, it did not exist. And because it did not exist before the *TRO*, the parties' interconnection agreements do not address it. As a result, the FCC directed carriers to use the section 252 negotiation and arbitration process to amend those agreements to implement the new requirements it imposed in the *TRO*, including the routine network modification obligation. *See TRO*, ¶¶ 700-05.

10. Indeed, AT&T itself proposed routine network modification provisions in its *TRO* Amendment. And despite its argument that the Arbitrator committed "legal error" by requiring an amendment to implement the FCC's routine network modification rules, AT&T does not ask the Commission to delete or change the routine network modification

[4] *See* 47 U.S.C. § 251(d), "Implementation."

terms the Arbitrator adopted for the *TRO* Amendment.[5] Nor does it seek to add any contract language suggesting that the routine network modification obligation existed before the FCC adopted it. In fact, it is not clear what relief, if any, AT&T is seeking. Its request for review of the Arbitrator's resolution of Issue 22 has nothing to do with development of the *TRO* Amendment itself, which is the only purpose of this proceeding. The Commission could dismiss AT&T's request on this basis alone, without even reaching the merits of its erroneous argument. Either way, the Commission should adopt the Arbitrator's resolution of Issue 22.

II. The Commission Should Approve the Arbitrator's Recommended Definitions for Dark Fiber Loop, DS1 Loop, and DS3 Loop (Issue 9)

11. The Arbitrator adopted Verizon's definitions of "Dark Fiber Loop," "DS1 Loop," and "DS3 Loop," because they more closely track the FCC's definitions of these terms than the CLECs' proposed definitions do. *See* Order, ¶¶ 166, 176. The Arbitrator expressly rejected AT&T's definitions because they inappropriately refer to routine network modifications. She explained that an element's definition should not include "terms or conditions for availability, *i.e*, what is available or required through routine network modifications." Order, ¶ 166.

12. AT&T does not allege any specific error of fact or law in the Arbitrator's resolution of Issue 9. It just disagrees with the Arbitrator's decision. It argues that "routine network modifications simply are a mechanism for providing access to high capacity and dark fiber loops," so "they should be included in the definition those loops, to avoid the potential of disputes as to their availability in the future." AT&T Petition at 3.

[5] In fact, AT&T's request for review of the Arbitrator's rulings on Issue 9 asks the Commission to *add* routine network modification references to the Amendment.

13. Adopting AT&T's definitions would promote, rather than avoid, disputes about Verizon's network unbundling obligations. As a drafting matter, the Arbitrator correctly concluded that there is no reason for the definition of elements to include the terms or conditions governing their availability. Verizon's obligation to perform routine network modifications is already addressed in the substantive routine network modification language the Arbitrator adopted in the context of Issue 22. As noted, AT&T has not challenged that language, which requires Verizon to perform routine network modifications to permit access to already-constructed DS1 and DS3 Loops, to the extent required by the FCC's Rules. Order, ¶ 484 (approving Verizon's section 3.5, with minor modifications). Nor has AT&T challenged the Arbitrator's recommendation for the parties to include the "FCC's full definition of 'Routine Network Modifications'" in the Amendment. Order, ¶ 227. Given these specific provisions describing the scope and nature of Verizon's routine network modification obligation, there is no reason to insert a confusing and potentially conflicting routine network modification requirement in the loop definitions themselves.

14. In addition, AT&T's reference to routine network modifications in the Dark Fiber Loop definition is inconsistent with the FCC's unbundling rules. AT&T's definition purports to require Verizon to provide access to dark fiber loops to the extent that fibers "can be made spare and continuous via routine network modifications." AT&T Am., § 2.6. This reference to making new dark fiber loops available through routine network modifications incorrectly suggests that Verizon has a continuing obligation to provide new dark fiber loops. But the FCC eliminated the dark fiber unbundling obligation in the

Triennial Review Remand Order, [6] and prohibited CLECs from adding any new dark fiber loops beyond the March 11, 2005 effective date of the *TRRO*.[7] Obviously, Verizon has no obligation to perform routine network modifications to make new dark fiber loops available because it has no obligation to make new dark fiber loops available at all. Verizon must only serve the embedded base of dark fiber loops until they are transitioned to non-UNE alternatives before September 11, 2006. *TRRO*, ¶ 197. Because AT&T's language improperly suggests that Verizon must provide *new*, unbundled dark fiber loops, it is inconsistent with binding federal law, and must be rejected.

15. The Commission should deny AT&T's request to approve the AT&T loop definitions the Arbitrator rejected. The Arbitrator correctly decided that Verizon's loop definitions more accurately reflect the FCC's definitions, which do not include any references to routine network modifications.

* * *

16. Verizon asks the Commission to deny AT&T's Petition and adopt the Arbitrator's rulings AT&T has challenged.

Respectfully submitted on August 18, 2005.

By: _____

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[6] *See* Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, ¶ 182 (FCC rel. Feb. 4, 2005) ("*TRRO*") ("we find that requesting carriers are not impaired on a nationwide basis without access to unbundled dark fiber loops").
[7] *Id.*, ¶¶ 195-97.

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of August, 2005, served the true and correct original, along with the correct number of copies, of ***Verizon's Reply to AT&T's Petition for Review of Order No. 17*** and ***Certificate of Service*** upon the WUTC, via the method(s) noted below, properly addressed as follows:

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I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 18th day of August, 2005, at Seattle, Washington.

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