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David L. Rice
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May 6, 2004

VIA FEDERAL EXPRESS

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
Post Office Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: Docket No. UT-043027 – VCI Company’s Notice Regarding Adoption of
Interconnection Agreement

Dear Ms. Washburn:

VCI Company (“Vilaire”) responds to Verizon Northwest, Inc.’s (“Verizon”) opposition to Vilaire’s adoption of the interconnection agreement between Tel West Communications, LLC and Verizon approved by this Commission in Docket UT-990305 (“Tel West Agreement”). Verizon’s objection is groundless because (1) Vilaire proposes to adopt the Tel West Agreement on the same terms and conditions as that agreement is made available to Tel West, (2) Verizon has not shown that the proposed adoption is discriminatory or contrary to the public interest, and (3) Vilaire’s request to adopt the Tel West Agreement is timely. The Commission should approve Vilaire’s adoption over Verizon’s objections.

I. Background

On March 15, 2004, Vilaire notified Verizon that Vilaire wished to adopt the Tel West Agreement. Verizon on April 5th sent Vilaire a letter refusing to allow the adoption unless Vilaire signed a statement containing additional terms and conditions not included in the Tel West Agreement. See Attachment 1. This statement required Vilaire to agree with Verizon’s legal position regarding the FCC’s Triennial Review Order (“TRO”)¹, unbundling, reciprocal compensation, bankruptcy law, and other issues. Verizon’s demand modified the Tel West Agreement and thus was illegal. Vilaire made several efforts to correct this deficiency with Verizon. Verizon’s contract negotiators were slow to respond and in some cases did not respond

¹ Report and Order and Order on Remand, CC Docket Nos. 01-338, et al., FCC 03-36 (rel. August 21, 2003).

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at all. So Vilaire filed a notice with this Commission on April 22nd stating that Vilaire was adopting the Tel West Agreement under Section 252(e) of the Telecommunications Act. Verizon objected to Vilaire's adoption in a April 30th letter to this Commission ("Verizon Letter), and Vilaire now responds.

II. Verizon's objection to Vilaire's adoption of the Tel West Agreement is groundless.

Verizon objects to Vilaire's adoption because Vilaire refused to agree to the new terms and conditions listed above that are not part of the Tel West Agreement. See Verizon Letter at 1 and Attachment 1, pp. 1-5. Verizon's demand is contrary to Section 252(i) of the Telecommunications Act, which requires Verizon to make an existing interconnection agreement available to other CLECs "upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i)(emphasis added). In contrast, Vilaire's request complies with Section 252(i) because Vilaire agreed to adopt the same agreement that Verizon currently has with Tel West. See Attachment 2. Vilaire agrees to accept the outcome of the pending Verizon arbitration proceeding dealing with the Tel West Agreement and will participate in that proceeding if required. See Docket UT-043013.


Verizon has also not shown that the proposed adoption is contrary to the public interest or discriminatory. The Commission will reject a proposed adoption only if it finds that the agreement "discriminates against any carrier not a party to the agreement, or if the agreement is not consistent with the public interest, convenience and necessity." WUTC Interpretive and Policy Statement at ¶ 31, Docket UT-990355 (2000)("Policy Statement"). Verizon cites no discrimination and no damage to the public interest caused by Vilaire's request. The fact that Verizon is already providing service to Tel West under the Tel West Agreement shows that these concerns have no merit. Rather than identifying relevant issues, Verizon complains that Vilaire cannot enter the existing Tel West Agreement because the TRO changed the interpretation of it. But the interpretation of the Tel West Agreement is a different issue from whether Vilaire may adopt it under Section 252. Verizon cannot use regulatory uncertainty, which is always present in this area of the law, to force Vilaire to accept Verizon's interpretation of the law.

Verizon also alleges that the Tel West agreement is too old to adopt because the agreement was only available for a "reasonable period of time" after the agreement was approved (Verizon Letter at 1), but Verizon distorts this standard. "The 'reasonable period of time' during which arrangements in any interconnection agreement (including entire agreements) must be made available for pick and choose by a requesting carrier extends until the expiration date of that agreement." Policy Statement at ¶ 16. The expiration date of the Tel West Agreement is January 14, 2005, almost a year from now, so Vilaire's request is timely. Moreover, World Communications adopted the Tel West Agreement three months ago in Docket UT-043000. If World Communications could adopt the Tel West Agreement in January, then it Vilaire can adopt it three months later.

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Since Verizon's objections are meritless, it appears that Verizon's true goal is to delay Vilaire's ability to interconnect and serve new customers. This serves Verizon's interests alone, not the public interest. If the Commission allows Verizon to force Vilaire to accept Verizon's interpretations of law as a precondition of interconnection, then the Commission can expect more abuses of the interconnection negotiation process in the future. Accordingly, the Commission should find that Vilaire's proposed adoption of the Tel West Agreement is in the public interest and should be granted.

Very truly yours,



David L. Rice

cc: Mr. Bob Shirley, WUTC
Mr. Stan Efferding, VCI Company
Mr. Richard Potter, Verizon Northwest, Inc.
Mr. Timothy O'Connell, Stoel Rives

ATTACHMENT 1

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets



Wholesale Markets
600 Hidden Ridge, HQE03D52
P.O. Box 152092
Irving, TX 75038

Phone 972-718-5988
Fax 972-719-1519
john.c.peterson@verizon.com

April 5, 2004

Mr. Stan Efferding
President
VCI Company
3875 Steilacoom Blvd. SW #A
Lakewood, WA 98499

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Efferding:

Verizon Northwest Inc. ("Verizon"), a Washington corporation, with principal place of business at 1800 41st Street, Everett, Washington 98201, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), VCI Company ("VCI"), a Washington corporation, with principal place of business at 3875 Steilacoom Blvd. SW #A, Lakewood, Washington 98499, wishes to adopt the terms of the Interconnection Agreement between Tel West Communications, LLC ("Tel West") and Verizon that was approved by the Washington Utilities & Transportation Commission (the "Commission") as an effective agreement in the State of Washington, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand VCI has a copy of the Terms. Please note the following with respect to VCI's adoption of the Terms.

1. By VCI's countersignature on this letter, VCI hereby represents and agrees to the following five points:
 - (A) VCI adopts (and agrees to be bound by) the Terms of the Tel West/Verizon agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that VCI shall be substituted in place of Tel West Communications, LLC and Tel West in the Terms wherever appropriate.

(B) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), or that is otherwise not required by both 47 U.S.C. Section 251(c)(3) and 47 C.F.R. Part 51. Moreover, Verizon, on February 26, 2004, filed a petition at the Washington Utilities & Transportation Commission to arbitrate amendments to interconnection agreements (including the Terms) with respect to the Triennial Review Order ("TRO Arbitration"). Once the Commission issues an effective order approving an amendment with respect to the Triennial Review Order in the TRO Arbitration (an "Approved Amendment"): 1) the terms of such Approved Amendment shall be deemed to amend this adoption effective on the effective date of such Commission order, 2) VCI agrees to be bound by the terms of such Approved Amendment effective on the effective date of such Commission order, and 3) Verizon and VCI shall execute an amendment to this adoption to memorialize that this adoption is amended by the terms of such Approved Amendment effective on the effective date of such Commission order; provided, however, failure by either party to do so shall not be cited as a basis for contesting the effectiveness of the provisions in 1) and 2) above.

(C) Notice to VCI and Verizon as may be required under the Terms shall be provided as follows:

To: VCI Company
Attention: Stan Efferding
3875 Steilacoom Blvd. SW #A
Lakewood, WA 98499
Telephone Number: 206-419-5948
Facsimile Number: 253-475-6328
Internet Address: vilarie@comcast.net

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

- (D) VCI represents and warrants that it is a certified provider of local telecommunications service in the State of Washington, and that its adoption of the Terms will cover services in the State of Washington only.
 - (E) In the event an interconnection agreement between Verizon and VCI is currently in effect in the State of Washington (the "Original ICA"), this adoption shall be an amendment and restatement of the operating terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.
 - (F) Verizon's standard pricing schedule for interconnection agreements in the State of Washington (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to VCI's adoption of the Terms. VCI should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.
2. VCI's adoption of the Tel West Terms shall become effective on April 19, 2004. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by an authorized officer of VCI. The term and termination provisions of the Tel West/Verizon agreement shall govern VCI's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on January 14, 2005.
 3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does

not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of VCI's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny VCI's adoption and/or application of the Terms, in whole or in part, at any time:
 - (a) when the costs of providing the Terms to VCI are greater than the costs of providing them to Tel West;
 - (b) if the provision of the Terms to VCI is not technically feasible; and/or
 - (c) to the extent that Verizon otherwise is not required to make the Terms available to VCI under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.¹ Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.² Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.³ In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection

¹ Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, *remanded, WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

² For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

³ *See, e.g.*, 47 C.F.R. Section 51.809(c).

agreement to the extent that such provisions provide compensation for Internet traffic.⁴

7. Should VCI attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.
8. In the event that a voluntary or involuntary petition has been or is in the future filed against VCI under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and VCI's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of VCI resulting from VCI's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

⁴ *FCC Internet Order* ¶ 82.

SIGNATURE PAGE

Please arrange for a duly authorized representative of VCI to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON NORTHWEST INC.

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D, E and F of paragraph 1:

VCI COMPANY

(SIGNATURE)

(PRINT NAME)

c: M. Miller – Verizon

ATTACHMENT 2

David L. Rice
david.rice@millernash.com

April 22, 2004

HAND DELIVERED

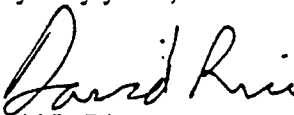
Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
Post Office Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: Request For Approval of Adoption of Interconnection Agreement

Dear Ms. Washburn:

VCI Company ("Vilaire") requests Commission approval of an interconnection agreement ("Agreement") between Vilaire and Verizon Northwest, Inc. ("Verizon"), whereby Vilaire will fully adopt the terms and conditions of the existing interconnection agreement between Tel West Communications, LLC and Verizon that was approved in Docket UT-990305. The Agreement does not discriminate against non-party carriers and is consistent with the public interest, convenience, and necessity. Further, this Agreement is consistent with applicable statutory requirements and Commission orders regarding interconnection issues. Vilaire respectfully requests that the Commission approve the Agreement expeditiously.

Very truly yours,


David L. Rice

cc: Mr. Stan Efferding, VCI Company
Ms. Michelle Miller, Verizon's Contract Management