

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

VERIZON COMMUNICATIONS, INC., AND
MCI, INC.

For Approval of Agreement and Plan of Merger

DOCKET NO. UT-050814

INTEGRA TELECOM'S MOTION TO
COMPEL

**EXPEDITED CONSIDERATION
REQUESTED**

I. INTRODUCTION

1. Verizon has flatly refused to provide information to Intervenor Integra Telecom of Washington, Inc. ("Integra") that is not only relevant but is *necessary* for the Commission to determine whether the proposed merger is in the public interest. The Commission is required to consider the proposed merger's effect on competition to determine whether the merger is in the public interest. In furtherance of that inquiry, Integra submitted data requests to Verizon that seek information regarding Verizon's wholesale performance. Integra will use the information to support its testimony that Verizon's wholesale performance with its competitors such as Integra is inadequate and impedes competition in Washington, and that, absent conditions, the merger is only likely to make Verizon's wholesale performance worse. Verizon, however, does not believe that Integra, and thus the Commission, is entitled to information relating to wholesale performance and competition in Washington. Verizon refused to provide any substantive response to 90 percent of Integra's data requests despite their clear relevance to one of the key issues in this proceeding. Verizon's objections are meritless, and the Commission should compel Verizon to respond to Integra's data requests.

II. ARGUMENT

2. Integra is a facilities-based competitive LEC and is a major competitor with Verizon in the former GTE territory in Washington. Integra believes it is the largest purchaser of UNEs in the former GTE territory. As such, Integra has a particular interest in the outcome of this proceeding, which would result in a combined entity with even more market power than Verizon currently possesses. In Verizon's own words, the proposed merger would create a much larger company that intends to compete much more vigorously with companies like Integra. In fact, the Joint Application is replete with references to the "strong competitor" that will result from the proposed merger. *See* Joint Application at 13 (the merger "will create a far stronger company with the ability to thrive and grow in the intensely competitive communications industry," and will "enhance the companies' ability to compete for and serve large businesses and government customers"), 16 (merger would result in a "strong competitor").

3. Integra continually has problems with Verizon's wholesale performance. The problems Integra encounters on an almost daily basis range from incorrect information regarding the presence and location of loops, to refusing to port numbers unless the customer also cancels DSL service (in blatant violation of federal law), to requiring competitors to provide service using facilities that are inferior to those used by Verizon. This list is not exhaustive; in fact, new grievances are added to the list regularly that are either never resolved by Verizon or resolved after much delay and inconvenience for Integra and the end user. These problems hinder Integra's ability to provide effective service to Washington residents in direct competition with Verizon.

4. Unfortunately, Verizon apparently is unaccountable for its poor wholesale service quality. Integra is unaware of any Commission regulations, orders, or statutes that impose any particular wholesale service quality standards on Verizon in Washington.¹ This lack of accountability shows in Verizon's interactions with Integra. Integra has extraordinary difficulty getting Verizon's attention on matters that are crucial to Integra. Business-to-business communication has proven ineffective or inordinately slow in resolving these issues. Filing individual complaints is not a desirable or economical way to resolve each issue that arises, although Integra has been forced to file one complaint recently in Washington after getting no satisfactory resolution from Verizon, and Integra may be forced to file more in the near future.² Integra has anecdotal evidence that some carriers avoid competing with Verizon entirely simply because Verizon makes it so difficult to compete.

5. As a solution, Integra believes that Verizon should be required to meet specific wholesale service quality standards set by the Commission. Regulatory wholesale service quality standards would provide the certainty necessary to encourage more robust competition in Washington.

6. This merger docket is the ideal forum in which to set those standards, or at least begin the process of setting those standards. The Commission considered wholesale service quality when it examined the merger between Qwest Communications and U S WEST just a few years ago. In fact, the Commission approved the merger after the applicants entered into a settlement agreement that provided for particular wholesale service quality standards.

¹ In one data request, Integra asks Verizon to identify any wholesale service standards it follows in Washington. Verizon objected and flatly refused to answer even that straightforward question.

² *Integra Telecom of Washington, Inc. v. Verizon Northwest, Inc.*, WUTC Docket No. 053038.

7. In considering whether the Qwest/U S WEST merger was in the public interest, the Commission measured its potential impact on competition. “As in prior merger cases, we must be concerned here with whether the transaction might distort or impair the development of competitive markets where such markets can effectively deliver affordable, efficient, reliable, and available service.”³ The Commission must apply the same standard here and, accordingly, must consider the Verizon/MCI proposed merger’s impact on competition. It is beyond question, therefore, that data requests relating to Verizon’s wholesale performance and the effect of the merger on competition – which are exactly the data requests submitted by Integra – are relevant to this proceeding.

8. It is not just this Commission that is concerned with the proposed merger’s effect on competition. In its white paper dated July 6, 2005, the New York Public Service Commission Staff noted the “overarching concern that in a post-merger environment, there may be less incentive for Verizon to address deficiencies in wholesale service quality, specifically for smaller carriers, and in particular carriers now obtaining services through commercial agreements.” White Paper at 55.⁴ Staff continued:

Ultimately, the success of multiple wireline carriers and intermodal competition will provide the most efficient mechanism to apply downward pressure on retail rates. *Therefore, it is important to address to affects [sic] of the merger on the opportunity for carriers to receive adequate wholesale service quality. Absent carriers having the size and resources of AT&T and MCI, the remaining CLECs will be hard pressed to assemble the resources required to address any wholesale shortcomings resulting from substandard wholesale service quality.*

White Paper at 55 (emphasis added).

³ *In re Application of US WEST, Inc. and Qwest Communications Int’l, Inc.*, Ninth Supp. Order Approving and Adopting Settlement Agreements and Granting Application, ¶ 27 (WUTC Docket No. UT-991358 June 19, 2000).

⁴ The White Paper can be found at:
[http://www3.dps.state.ny.us/pscweb/webfileroom.nsf/Web/086FC6C29DB258D2852570360078F0B1/\\$File/05-c-0237.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/webfileroom.nsf/Web/086FC6C29DB258D2852570360078F0B1/$File/05-c-0237.pdf?OpenElement).

9. New York PSC Staff then tentatively concluded that “the merger has the potential to impact wholesale service quality and availability,” that “Verizon may have less incentive to fulfill its obligations to provide good wholesale service quality in a post-merger environment,” and that the NYPSC should increase its monitoring of wholesale service quality performance after the merger. White Paper at 56.

10. It is significant that these concerns arise in New York, a state in which Verizon is *already* subject to wholesale service quality standards, unlike in Washington.

11. Imposing wholesale service quality standards as a condition for approving a merger is effective at protecting and fostering competition. Qwest’s wholesale systems and procedures now are better than those of Verizon in almost every way. In its testimony, Integra will present evidence that Qwest is far easier to work with than Verizon and that Integra is better able to compete in Qwest’s territory than in that of Verizon mostly because of those differences. Integra believes that difference is directly attributable to Qwest’s accountability as a result of the wholesale service quality standards it agreed to as part of its merger, which this Commission determined were in the public interest.

12. Despite clear Commission precedent, Verizon does not believe that wholesale service quality is relevant to this docket. Verizon flatly refused to provide *any* responsive information to approximately 69 of Integra’s 77 data requests, all of which are designed to obtain information about Verizon’s wholesale performance to support Integra’s testimony on that issue. (Pursuant to WAC 480-07-405(3), a copy of Verizon’s responses to Integra’s data requests is attached.)

13. Instead, in most cases, Verizon simply objects as follows: “See Verizon’s General Objections and its Specific Objection.”⁵ Verizon’s general objections include twelve separate and distinct objections that range from calling for the disclosure of privileged information to argumentative. Verizon does not specify which of the twelve objections within the general objections applies. Therefore, for most of the data requests, Verizon not only does not provide any substantive information, it also does not provide a specific reason for its refusal to provide any information. It is simply impossible for Integra to respond to Verizon’s objections to each of Integra’s data requests. However, as described above, the requests are relevant to this proceeding, and Verizon should be compelled to respond to them.

14. Verizon’s “specific objection” relates to the fact that there is currently pending a dispute between Integra and Verizon that involves Verizon’s provisioning of inferior facilities to Integra to serve certain customers in Washington. Verizon objects that requests relating to the “factual and legal issues” of that case “have nothing to do with the transaction between Verizon and MCI.” To the contrary, those issues are relevant to this proceeding. They involve Verizon’s deficient wholesale performance and its effect on competition, and the Commission clearly considers the effect on competition when it determines whether a merger is in the public interest. Verizon’s “specific objection” is not a basis for refusing to provide responsive information in this case.

15. Moreover, only approximately 13 data requests involve the issues that Integra has raised in its complaint in docket UT-053038. Yet Verizon asserts its “specific objection” as one ground for refusing to provide any information for approximately 48 data requests,

⁵ See Verizon responses to data requests 17-21, 28-33, 35-45, 47-53, 55-63, 65-73, and 76.

far more than actually involve the same issues as Integra's complaint. The Commission should require Verizon to respond to all of Integra's data requests.

16. Verizon also objects to Integra data requests nine through 15 on the ground that they call for legal conclusions. Those data requests ask specific questions regarding whether Verizon is obligated to follow any wholesale service quality standards. Indeed, data requests 13 and 14 ask whether Verizon follows any wholesale standards – regardless of whether they are required to by statute, regulation, or order – and, if so, to identify those standards.⁶ There is no “legal conclusion” involved in answering the questions regarding whether wholesale service standards exist; instead, Integra merely asks Verizon to admit facts, which is expressly permitted by WAC 480-07-400(c)(iii). Apparently, Verizon needs to be compelled to do so.

III. CONCLUSION

17. The Commission should compel Verizon to respond to each Integra data request that Verizon has refused to answer. Verizon's objections are baseless and do not justify Verizon's refusal to provide information to 90 percent of Integra's data requests, all of which relate to Verizon's poor wholesale performance. Integra will use the information provided by Verizon to demonstrate that Verizon's poor wholesale performance has an adverse effect on competitors like Integra and, ultimately, the citizens of the state of Washington, and that Verizon's merger with MCI likely will only make Verizon's wholesale performance worse, not better. Thus, the information sought by Integra is crucial for the Commission to determine the proposed merger's effect on competition, which is one important element of gauging whether the proposed merger is in the public

⁶ Data request 13 provides: “Does Verizon follow any standards for providing unbundled network elements to competitive LECs on a wholesale basis in Washington?”

interest. The Commission should compel Verizon to provide such significant responsive information.

18. Pursuant to WAC 480-07-425, Integra made a good faith effort to informally resolve this discovery dispute with Verizon, but the parties were unable to resolve the dispute.

Dated this 25 day of July, 2005.

INTEGRA TELECOM


By: 

Jay Nusbaum

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Portland, Oregon this 26th day of July, 2005.



John (Jay) P. Nusbaum

Jonathan C. Thompson
Assistant Attorney General
State of Washington
1400 S Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128

Judith Endejan
Graham & Dunn PC
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128

Charles H. Carrathers
Vice President & General Counsel
Verizon Northwest
600 Hidden Ridge
Irving, TX 75038

Sherry F. Bellamy
Vice President & Assoc. Gen. Cnsl.
Verizon Corporate Services Corp.
1515 North Courthouse Rd., Ste.
500
Arlington, VA 22201

Robert P. Slevin
Associate General Counsel
Verizon Corporate Services Corp.
1095 Ave. of the Americas, Rm.
3824
New York, NY 10036

Andrew B. Clubock
Kirkland & Ellis LLP
655 Fifteenth Street NW, Suite
1200
Washington, DC 20005

Arthur Butler
Ater Wynne
601 Union Street
Seattle, WA 98101-2327

Michel Singer Nelson
Senior Attorney
MCI, Inc.
707 17th Street
Denver, CO 80202

Marsha A. Ward
Vice President, State Regulatory
MCI, Inc.
6 Concourse Parkway, Suite 600
Atlanta, GA 30328

Simon ffitch
Ass't Attorney General
Office of the Attorney General
900 Fourth Ave.
Suite 2000
Seattle, WA 98164

Gregory J. Kopta
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Gregory T. Diamond
Senior Counsel
Covad Communications Co.
7901 Lowry Blvd.
Denver, CO 80230

John O'Rourke
Director
Citizens Utility Alliance
212 W. 2nd Ave., Suite 100
Spokane, WA 99201