

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Petition for
Enforcement of Interconnection
Agreements With Verizon Northwest,
Inc.

DOCKET NO. UT-041127

COMMISSION STAFF'S
RESPONSE TO VERIZON'S
MOTION FOR JUDGMENT ON
THE PLEADINGS

1 The Washington Utilities and Transportation Commission (Commission) Staff
(Staff) files this response to the Verizon Northwest, Inc.'s (Verizon) motion for
judgment on the pleadings. As argued below, Verizon's legal analysis is wrong and the
Commission should deny its motion.

I. INTRODUCTION

2 This matter broadly involves the Commission's authority to enforce the terms of
interconnection agreements between incumbent local exchange carriers (ILECs) and
competitive local exchange carriers (CLECs) negotiated or arbitrated pursuant to
Section 252 of the federal Telecommunications Act of 1996 (federal Act). In this docket,
the Commission is asked to resolve the legal issue of whether Verizon must adhere to
the provisions of interconnection agreements obligating it to provide unbundled

switching to CLECs when it replaces one switch with another switch that performs identical switching functions.

3 In responding to Verizon's motion on the pleadings, Staff addresses the federal law issues raised by Verizon's motion. Staff will not address whether Verizon must continue to provide the CLECs with unbundled switching pursuant to the terms of specific interconnection agreements, which is an issue better addressed by the parties to those agreements.

II. BACKGROUND AND TERMINOLOGY

4 At issue in this docket is switching.¹ Specifically, the issue is whether Verizon must provide unbundled access to packet switches for the provision of local switching for voice traffic. The issue arose when Verizon replaced its Nortel DMS-100 switch at its Mount Vernon central office with a Nortel Succession switch.²

5 A telephone call traditionally has been accomplished by establishing "dedicated circuits between telephone users through a maze of local circuit switches and connecting trunks, which ensures sufficient bandwidth between the two users for the duration of a telephone call."³ The circuit bandwidth is allocated for the duration of the

¹ "Switching" is defined as: "Connecting the calling party to the called party. This may involve one or many physical switches." Newton's Telecom Dictionary, at 663 (17th ed. 2001). "Switches" are the devices that perform the switching function. *Id.* at 662.

² Declaration of Robert Williamson, ¶ 6. (Attached hereto as Exhibit A).

³ *Id.*, ¶ 9.

call, making the traditional public switched telephone network (PSTN) a “connection-oriented” network.⁴

6 Packet switching “divides information into individual packets of digital bits, which are individually transmitted. The packets may be switched via different routes but ultimately arrive at the correct destination where they are assembled.”⁵ Unlike the traditional circuit-switched voice network, packet networks are “connectionless,” in that there is no end-to-end connection circuit created for each telephone call.⁶

7 “Asynchronous transfer mode (ATM)” is technology that “combines the best advantages of both circuit-switching (for constant bit rate services such a voice and image) and packet-switching (for variable bit rate services such as data and full motion video) technologies. The result is the bandwidth guarantee of circuit switching combined with the high efficiency of packet switching.”⁷

8 Although the Nortel DMS-100 switch relies on TDM technology and the Nortel Succession switch relies on ATM technology as the core fabric for switching voice calls, both are connection-oriented switches.⁸ The ATM technology employed by the Nortel

⁴ *Id.*

⁵ *Id.*, ¶ 10.

⁶ *Id.*

⁷ Newton’s Telecom Dictionary, at 61(17th ed. 2001).

⁸ Declaration of Robert Williamson, ¶ 11.

Succession switch is connection-oriented because it creates virtual circuits that assign bandwidth for the duration of a call.⁹ “The functionality of the new Verizon ATM switch fabric is the exact same functionality that the FCC uses to define local circuit switching . . .”¹⁰ In addition, “a DSLAM is still required at the Mount Vernon site to provide DSL and there is no physical connection between the packet switch required by DSL and the new ATM switch fabric.”¹¹ The new switch does not provide any advanced services.¹² Therefore, the change in switches at Verizon’s Mount Vernon central office has not resulted in a change in switching functionality for local voice traffic.¹³

III. ARGUMENT

9 The federal Act requires ILECs, like Verizon, “to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, unbundled access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section

⁹ *Id.*

¹⁰ *Id.*, ¶ 19.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, ¶¶ 18-19.

252.”¹⁴ Congress authorized the Federal Communications Commission (FCC) to determine which network elements ILECs would be required to unbundled, by considering, at a minimum, whether CLEC access to such elements is (1) necessary, and (2) the failure to provide access to such elements would impair the CLEC’s ability to provide services.¹⁵ Contrary to Verizon’s motion, the FCC continuously has required ILECs, like Verizon, to provide unbundled access to the local switching function for voice traffic.¹⁶

A. The FCC Requires Unbundled Access to the Switching Function for Local Voice Switching

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In its motion, Verizon argues strenuously that the “FCC consistently has precluded” state commissions from requiring ILECs to provide unbundled access to packet switches.¹⁷ Verizon contends that the FCC has held that packet switches are not subject to the unbundling requirements of the federal Act, regardless of the function they serve.¹⁸ Verizon is wrong. Rather, the FCC consistently has required ILECs to provide unbundled access to local switching for voice traffic.

¹⁴ 47 U.S.C. § 251(c)(3).

¹⁵ *Id.*, § 251(d)(2).

¹⁶ See Verizon Mot. at 4-9

¹⁷ *Id.*

¹⁸ *Id.*, ¶ 39.

1. The FCC's Local Competition Order

11

In its *Local Competition Order*,¹⁹ the FCC made plain that local switching is a network element subject to the unbundling requirement of Section 251 of the federal Act. The FCC stated that ILECs "must provide local switching as an unbundled network element."²⁰ The FCC defined the local switching unbundled network element (UNE) as follows:

We define the local switching element to encompass line-side and trunk-side facilities plus features, functions, and capabilities of the switch. The line-side facilities include the connection between the loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to trunks. It also includes the same basic capabilities that are available to the incumbent LEC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistances. In addition, the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions. Thus, when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per line basis. . . .²¹

¹⁹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 et al.*, CC Docket Nos. 96-98 *et al.*, First Report and Order, 11 FCC Rcd. 15,499, FCC 96-325 (1996) (*Local Competition Order*).

²⁰ *Id.*, ¶ 410.

²¹ *Id.*, ¶ 412.

12 In the *Local Competition Order*, the FCC declined to adopt a national rule to
require ILECs to unbundle data switching performed by packet switches.²² The FCC
determined that it lacked sufficient information to take such action.²³

13 In its motion, Verizon rewrites the *Local Competition Order* by trying to cast the
unbundling requirement in terms of equipment, rather than functionality.²⁴ Contrary to
Verizon's motion, the FCC plainly held that the features, functions, and capabilities
define the switching UNE, not the device performing those features, functions, and
capabilities.²⁵

2. The UNE Remand Order

14 The FCC reaffirmed its requirement that ILECs unbundled local switching in the
UNE Remand Order.²⁶ However, the FCC articulated an exception to the local switching
unbundling rule:

²² *Id.*, ¶ 427.

²³ *Id.* In the *Local Competition Order*, the FCC had responded to arguments that its rules should include data switching by packet switches in the local switching UNE. *Id.*, ¶ 407; see also *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Comments of AT&T Corp., at 20 n.18 (May 16, 1996); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Comments of MCI Telecommunications Corp., at 18 (May 16, 1996); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Comments of Telecommunications Carriers for Competition, at 39 (May 16, 1996).

²⁴ Verizon's Mot., ¶ 9.

²⁵ *Local Competition Order*, ¶¶ 410-12.

²⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC

We find, however, that an exception to this rule is required under certain market circumstances. We find that, where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as the enhanced extended link (EEL), requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs).²⁷

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In the *UNE Remand Order*, the FCC addressed the question of “whether there is any basis for treating network elements used in the provisioning of packet-switched advanced services any differently than those used in the provisioning of circuit-switched voice services.”²⁸ Once again, the FCC defined the UNE in terms of the switching function, not the device used to perform that function: “We define packet switching as the function of routing individual data units, or ‘packets,’ based on address or other routing information contained in the packets. The packet switching network element includes the necessary electronics (e.g. routers and DSLAMs).”²⁹ Thus, the FCC defined packet switching as the functionality used in the provision of advanced services. The *UNE Remand Order* further confirms this definition.

Rcd. 3696, FCC 99-238, ¶ 253 (1999) (*UNE Remand Order*) (“[W]e require incumbent LECs to provide local switching as an unbundled network element.”).

²⁷ *Id.*, ¶ 253; see also *id.*, ¶ 278.

²⁸ *Id.*, ¶ 300 (quoting *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Second Notice of Proposed Rulemaking, 14 FCC Rcd. 8694, FCC 99-70, ¶ 35 (1999)) (emphasis added).

²⁹ *Id.*, ¶ 304.

In the *UNE Remand Order*, the FCC focused on the ability of CLECs to provide advanced services without access to the ILECs packet switching functionality:

We decline at this time to unbundle the packet switching functionality, except in limited circumstances. Among other potential factors, we recognize that the presence of multiple requesting carriers providing service with their own packet switches is probative of whether they are impaired without access to unbundled packet switching. The record demonstrates that competitors are actively deploying facilities used to provide advanced services to serve certain segments of the market – namely, medium and large business – and hence they cannot be said to be impaired in their ability to offer service, at least to these segments without access to the incumbent’s facilities. In other segments of the market, namely residential and small business, we conclude that competitors may be impaired in their ability to offer service without access to incumbent LEC facilities due, in part, to the cost and delay of obtaining collocation in every central office where the requesting carrier provides service using unbundled loops. We conclude, however, that given the nascent nature of the advanced services marketplace, we will not order unbundling of the packet switching functionality as a general matter.³⁰

Verizon misstates the FCC’s *UNE Remand Order* by replacing the FCC’s plain language of “advanced services” with the words “packet switches.”³¹ The FCC decided that ILECs were not required to unbundle the advanced services switching functionality. The FCC did not relieve ILECs of their obligation to unbundle local

³⁰ *Id.*, ¶ 306 (emphasis added).

³¹ Compare Verizon’s Mot., ¶ 10, with *UNE Remand Order*, ¶ 307. The FCC stated, “Competitive LECs and cable companies appear to be leading the incumbent LECs in their deployment of advanced services.” *UNE Remand Order*, ¶ 307. Verizon rewords the FCC’s statement to say, “This decision was based in part on the fact that CLECs and cable companies were ‘leading the incumbent LECs’ in deploying packet switches . . .” Verizon’s Mot., ¶ 10 (quoting *UNE Remand Order*, ¶ 307).

switching by using a packet switch to provide the same function as a circuit switch within the traditional PSTN.

3. The Triennial Review Order

18 The FCC retained the definition of packet switching from the *UNE Remand Order* in its *Triennial Review Order*.³² In that Order, the FCC further explained that it would not require the unbundling of packet switching “because it is the type of equipment used in the delivery of broadband.”³³

19 In addition, the FCC made plain in the *Triennial Review Order* that CLECs remain impaired in their ability to access ILECs’ voice-grade local loops, and “a crucial function of the incumbent’s local circuit switch is to provide a means of accessing the local loop.”³⁴ The FCC concluded that CLECs are impaired without access to unbundled local circuit switching.³⁵ Therefore, given the FCC’s function-oriented definition of switching, Verizon must provide CLECs with unbundled access to the local voice switching function, regardless of the device used to provide the functionality.

³² *In the Matter for Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338 *et al.*, Further Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16,978, FCC 03-36, ¶ 535 (2003) (*Triennial Review Order*). See also *id.*, ¶ 537 & n.1645 (defining packet switching as a component of advance services by including routers and DSLAMs and applying the conclusion of non-impairment to both the mass market and enterprise market.).

³³ *Id.*, ¶ 541.

³⁴ *Id.*, ¶ 439.

³⁵ *Id.*, ¶ 447.

B. This Commission Must Adhere to the FCC's Determination That ILECs Must Offer CLECs Unbundled Access to the Local Voice Switching Functionality.

20 In its Motion, Verizon contends that this Commission has no authority to find the existence of a network element and make a finding as to whether CLECs would be impaired in their ability to provide service without access to the element.³⁶ Neither Verizon's contention nor its arguments in support of that contention are relevant to the issue. The FCC already has determined that Verizon must provide CLECs with unbundled access to the local switching functionality. The Commission must abide by the FCC's decision. The question in this docket is whether the Commission is authorized to relieve Verizon of this obligation simply because Verizon changes the device it uses to provide that functionality.

C. ILECs Must Offer Unbundled Access to Local Switching, Even When the Function Is Performed By a Switch Capable of Packet Switching.

21 Contrary to Verizon's arguments, the FCC has not determined that packet switches are not subject to the unbundling requirements of Section 251 of the federal Act even when those switches are used for voice service. Verizon contends that the FCC has "expressly rejected" the requirement that ILECs unbundled local switching if done by equipment that performs packet switching. Verizon is wrong.

22 In making its argument, Verizon grossly overstates the FCC's orders regarding packet switching. As stated above, the *Local Competition Order*, the *UNE Remand Order*,

³⁶ Verizon's Mot., ¶ 39.

and the *Triennial Review Order* all affirm ILECs' obligation to provide local switching for voice service. Verizon makes much of the FCC's rejection – in a footnote – of MCI's motions for reconsideration and clarification of the *UNE Remand Order*.³⁷ MCI had petitioned the FCC to reconsider its decision not to require ILECs to provide unbundled access to DSLAMs and packet switching, because CLECs would be impaired in their ability to provide advanced services without that access.³⁸ Later, MCI had requested that the FCC clarify the unbundling requirement set forth in Rule 51.319(c)(3)(B) to require ILECs to unbundled packet switching capability in locations where the ILEC provides advanced services equipment when a requesting carrier cannot collocate advanced services equipment to that location.³⁹ MCI also had requested the FCC to require unbundled access to packet switches where the ILEC uses packet switching to provide voice service.⁴⁰ In the footnote to *Triennial Review Order* the FCC denied MCI's motions because the FCC had determined not to require unbundling of advanced services.⁴¹ As stated above, in the *Triennial Review Order*, the FCC declined to order

³⁷ Verizon's Mot., ¶ 44 (citing *Triennial Review Order*, ¶ 288, n.833).

³⁸ MCIWorldcom Pet. for Reconsideration, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, at 9-12 (filed Feb. 17, 2000).

³⁹ MCIWorldcom Pet. for Clarification, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, at 13 (filed Feb. 17, 2000).

⁴⁰ *Id.* at 2-3.

⁴¹ *Triennial Review Order*, ¶ 288, n.833 ("Because we decline to require unbundled access to packet-switching equipment, we deny WorldCom's petitions for reconsideration and clarification requesting that

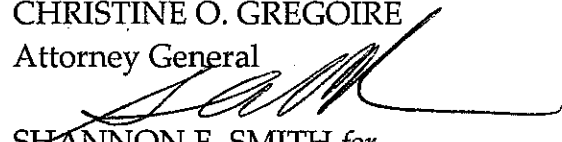
unbundling of packet switching as an advanced services functionality.⁴² The FCC did not relieve ILECs of their obligation to provide unbundled local switching for voice traffic.

IV. CONCLUSION

23 Verizon must provide CLECs with unbundled access to its local switches in order for CLECs to provide local voice service. The FCC made plain its intent to relieve ILECs from any obligation to provide access to packet switching for advanced services. Nothing in the FCC's unbundling orders relieves ILECs of the obligation to provide access to local voice switching, even if that functionality is accomplished by equipment that can be (but is not in fact) used to provide packet switching for advanced services. Accordingly, the Commission should deny Verizon's motion for judgment on the pleadings.

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we unbundled packet-switching equipment, DSLAMs, and other equipment used to deliver DSL service."). It is worth noting that the FCC made this statement in the section of the *Triennial Review Order* addressing the unbundling requirement for hybrid loops, not local switching for voice traffic.

⁴² *Id.*, ¶¶ 539-41.