

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

In the Matter of the Petition for)	
Arbitration of an Amendment to)	
Interconnection Agreements of)	
)	
VERIZON NORTHWEST, INC.)	DOCKET NO. UT- 043013
)	
with)	AT&T’S MOTION TO DISMISS
)	VERIZON’S UPDATED
COMPETITIVE LOCAL EXCHANGE)	PETITION ISSUES REGARDING
CARRIERS AND COMMERCIAL)	USTA II
MOBILE RADIO SERVICE PROVIDERS)	
IN WASHINGTON)	
)	
Pursuant to 47 U.S.C. § 252(b), and the)	
<i>Triennial Review Order</i>)	

Pursuant to Order No. 3 in the above-captioned proceeding, AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively “AT&T”) hereby submit their Motion to Dismiss Verizon Northwest, Inc.’s (“Verizon”) Updated Petition for Arbitration. As grounds therefore, AT&T states as follows:

1. In its updated Petition, Verizon improperly seeks arbitration of alleged changes of law contained in the recent *USTA II*¹ decision. As the Commission well knows, the Court of Appeals for the District of Columbia stayed its *USTA II* decision, and thus, there exists no change of law to arbitrate here. Furthermore, Verizon has utterly failed to comply with its obligations under the AT&T/Verizon interconnection agreement provisions that address implementing changes in law and the Act.²

¹ *United States Telecom Assoc. v. FCC*, No. 00-1012, 2004 WL 374262 (D.C. Cir. Mar. 2, 2004).

² 47 U.S.C. § 252(b)(5) (requiring good faith negotiation).

2. By its terms the *USTA II* decision will not take effect until at least 60 days after issuance, and perhaps for even longer. The Court stayed the effect of its decision until the *later* of: (i) denial of any petition for rehearing or rehearing en banc; or (ii) 60 days from March 2, 2004. There is a strong likelihood that during this period the D.C. Circuit's decision may be stayed pending review by the United States Supreme Court, by a rehearing en banc in the D.C. Circuit or it may be changed by new action from the FCC.

3. Verizon, acknowledging the likelihood of a stay, attempts to address this contingency in its updated petition by including language in Section 6 that would, in turn, stay the *USTA II* portions of its proposed interconnection amendment.³ This Commission has enough work to do to arbitrate the issues that are in fact ripe for review; it makes little sense to arbitrate issues that have not yet matured and may, in fact, never come to pass. The only reasonable course is to wait, as many interconnection agreements require, for applicable law to actually change and for the parties attempts to negotiate amended language before initiating a dispute about what that law means and what effect it has on the rights of the parties.

4. Not only is this the most sensible course, it is also the course required under Verizon's agreement with AT&T. Verizon cannot invoke contractual provisions permitting renegotiation in the event of a material change in legal obligations, where the "change" upon which Verizon relies has not occurred. Section 9.3 of the AT&T/Verizon interconnection agreement, in pertinent part, defines "change of law" as "judicial or other legal action" that "materially affects any material term" of the agreement. Until *USTA II* takes effect it cannot and does not materially affect anything.

³ Verizon Updated Petition at 1 – 2.

5. If *USTA II* does take effect after the Court's self-imposed stay, Verizon must comply with Section 9.3 before initiating an arbitration proceeding.⁴ Section 9.3 provides as follows:

If any *effective* legislative, regulatory, judicial or other legal actions, including a change in *Applicable Law*, materially affects any material terms of this Agreement, or the ability of AT&T or [Verizon] to perform any material terms of this Agreement, AT&T or [Verizon] may, *on thirty (30) days written notice* (delivered not later than 30 days following the date on which such action has become effective) request that such term(s) be renegotiated, and the parties agree to so negotiate in good faith such mutually acceptable new term(s). If agreement is not achieved within thirty (30) days, either party may request *mediation*, in which case the parties shall submit to voluntary *mediation*.⁵

As of its filing of the updated Petition, Verizon had not complied with the requirements of this provision.

6. Moreover, the "Update to Petition" itself is barren of any explanation or basis for the changes it makes; rather, it simply recites the proposed changes. For example, without any support in (or even cite to) the *USTA II* decision, Verizon summarily amends the agreement to make its obligation to provide mass market local switching "conditional." AT&T cannot meaningfully respond to this requested

⁴ As a threshold issue in any arbitration concerning *USTA II*, Verizon will bear the burden of establishing that *USTA II* constitutes a "change of law." See *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383 (1992) (party seeking to modify consent decree bears burden of demonstrating changed circumstances). Verizon will not be able to meet this burden because, among other reasons, *USTA II* does not alter Verizon's obligations to provide UNEs and UNE combinations, obligations which remain well grounded in federal law and as a result of the GTE/Bell Atlantic Merger Order. This issue alone will require substantial briefing by the parties and, as a result, should not be joined with the TRO Amendment arbitration which is required to move on an expedited time line.

⁵ § 9.3 emphasis added.

amendment without some understanding of Verizon's basis for creating a netherworld of "conditional" obligations.⁶

7. As described above, the *USTA II* decision has not yet taken effect, and thus, no "change of law" exists. Verizon's "Update to Petition" is, as a result, grossly premature. By the plain terms of Section 9.3, Verizon is not entitled even to request a renegotiation until, at the very earliest, the *USTA II* self-imposed stay has been lifted and no other stay (by the Supreme Court or the D.C. Circuit *en banc*) has issued.

8. Even after any stays are lifted Verizon must request renegotiation with AT&T and thereafter the parties must negotiate in good faith. Section 9.3 mandates that either AT&T or Verizon "may request mediation, in which case the parties shall submit to voluntary mediation." Furthermore, if no party requests mediation, pursuant to 47 U.S.C. §252, the parties would then seek arbitration of the contested terms by the state commission under the relevant statutory timeframes. Thus, at the very least, Verizon's "Update to Petition" is not close to being ripe under the terms of the agreement and law. Therefore, the Commission should dismiss Verizon's "updated" issues and not, at Verizon's request, assist it in breaching its contract with AT&T.

⁶ Thus, Verizon failed to comply with 47 U.S.C. § 252(b)(2)(requiring Verizon to supply the Commission with all relevant documentation outlining the unresolved issues, which is impossible for Verizon to accomplish since it has not addressed these issues with AT&T).

Conclusion

For the reasons stated above, AT&T respectfully requests that the Commission dismiss or strike Verizon's "Update to Petition."

Respectfully submitted this 13th day of April, 2004.

**AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC. AND
AT&T LOCAL SERVICES ON
BEHALF OF TCG SEATTLE AND TCG
OREGON**

By: _____

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