

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division  
Carrier Oversight & Programs Branch**

**RESOLUTION T- 17546  
December 15, 2016**

**R E S O L U T I O N**

**Resolution T-17546 Approves the Executed Internet Protocol Multistate Agreements Submitted by Verizon California, Inc. in Advice Letter No. 12725 as Interconnection Agreements Pursuant to § 252 of the Federal Telecommunications Act**

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**SUMMARY**

This resolution approves the Executed Internet Protocol Multistate Agreements submitted by Verizon California, Inc. in accordance with Ordering Paragraph No. 6 of Decision 15-12-005 as Interconnection Agreements pursuant to § 252 of the Federal Telecommunications Act.

This resolution also directs Frontier Communications Corporation to file applicable Verizon California, Inc. Multistate Internet Protocol Agreements it has assumed under Adoption Agreements and/or any New Agreements executed with parties to the agreements.

**BACKGROUND**

The California Public Utilities Commission (Commission), in Decision (D.) 15-12-005 approved the joint application of Frontier Communications Corporation, Frontier Communications of America, Inc., Verizon California Inc., Verizon Long Distance, LLC., and Newco West Holdings, LLC., for approval of the sale and transfer of Verizon California, Inc. together with certain assets held by it and the customer accounts of Verizon Long Distance, LLC., in the service territory of Verizon California, Inc., to Frontier Communications Corporation.

As a condition of its approval, the Commission imposed certain conditions on the sale and transfer of the described property in addition to approving various related settlement agreements between Frontier Communications Corporation and protesters. Ordering Paragraph No. 6 of the Decision required Verizon California, Inc. to file an advice letter (AL) "requesting approval in accordance with § 252 of the Federal Telecommunications Act for each of its executed Internet Protocol agreements for the exchange of voice traffic to which Frontier Communications Corporation will succeed." Only if approved by the Commission would Frontier Communications Corporation be required to make the agreements available for opt-in by other carriers.

On February 26, 2016, Verizon California, Inc. filed a Tier 3 AL, No. 12725<sup>1</sup>, wherein it filed under seal 11 Multistate agreements for Verizon Services Corp. (VSC). The filed agreements were entered into on behalf of itself and its incumbent local exchange carrier (ILEC) subsidiaries and affiliates operating within the United States from time to time for the exchange of voice traffic in internet protocol (IP VoIP).

Verizon California, Inc. also disclosed in its filing that of the 11 Multistate Agreements:

- Six have not been implemented, i.e., Verizon California, Inc. and the parties to the agreements have not and are not exchanging IP voice traffic under the Multistate IP Agreement and no facilities or arrangements have been put in place to allow for the exchange of traffic under the agreement, and
- Five Multistate IP Agreements have been implemented but in some instances, the party to the agreement has not interconnected in California.

Frontier Communications Corporation and Verizon California, Inc. are seeking the consent of the parties to the agreements to complete Frontier's adoption of the Multistate IP Agreements in California, Texas and Florida, after closing of the transaction. The consent of the parties to the agreements is to be secured through:

- Notices and an Adoption Agreement to be signed by the five parties to the agreements that have implemented the Multistate IP Agreements acknowledging that Frontier Communications Corporation will assume the agreements and that Frontier Communications Corporation and the parties to the agreements will be bound by the applicable Multistate IP Agreement in California, Texas and/or Florida.
- Notices were sent to four parties to the agreements (one of which is a party to two of the agreements) that have not implemented the Multistate IP Agreements, informing them that the transaction is scheduled to close on or about March 31, 2016 and that after closing Verizon California, Inc. will no longer be able to implement the agreements with respect to the transferred ILECs. Frontier Communications Corporation is prepared to adopt the applicable Multistate IP Agreement for California, Florida and/or Texas if the other party is interested in doing so. One of the parties to the agreements has given notice of the termination of its agreement.

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<sup>1</sup> Although OP No. 6 required Verizon California, Inc. to submit a Tier 1 AL, it submitted a Tier 3 AL. Under General Order 96-B industry Rules 7.3 and 8.1, interconnection agreements are to be filed as Tier 3 ALs. Verizon California, Inc. consulted the Communications Division (CD) and CD confirmed that the filing be submitted as a Tier 3 AL.

- To the extent that any of the parties to the agreements execute the Adoption Agreement and agree to be bound by the terms and conditions in the Multistate IP Agreements in California, Frontier Communications Corporation has informed Verizon California, Inc. that it will file the Adoption Agreements with the Commission.
- If parties to the agreements inform Frontier Communications Corporation that they do not wish to enter into adoption agreements, Frontier Communications Corporation will notify the Commission accordingly.

Thus, Verizon California, Inc. requests that the Commission only review the executed and filed Frontier Communications Corporation Adoption Agreements, and not the Multistate IP Agreements accompanying AL No. 12725.

On March 3, 2016, the Communications Division (CD) sent an email to Verizon California, Inc. asking that it submit a supplement to the AL attaching a proposed protective order that declared such information to be confidential, or attach a proposed protective order with their AL filing. In addition, the supplemental filing should follow the steps outlined in § 9.3 of GO 96-B "Procedure for Establishing Confidentiality".

On March 8, 2016, Verizon California, Inc. filed AL No. 12725A as a supplement to AL No. 12725 in accordance with CD's instructions. In its supplemental filing, Verizon California, Inc. also filed redacted versions of the Multistate IP Agreements concealing the identity of the parties to the agreements and requested that the fully un-redacted copies of the 11 Multistate IP Agreements filed with the Commission on February 26, 2016, be held under seal in the Commission's files for at least three years.<sup>2</sup>

AL No. 12725 and AL No. 12725A were noticed on the Commission's Daily Calendar on March 7, and March 18, 2016, respectively.

On March 18, 2016, Comcast Corp. and its subsidiary, Comcast IP Phone II, LLC, submitted a protest to AL No. 12725 and AL No. 12725A, portions of which were submitted under seal per Public Utilities Code (PU) Code § 583 and General Order (GO) 66-C. Comcast asserted that the Verizon-Comcast Agreement is a commercial agreement and that if the terms of the agreement were revealed, Comcast would be placed at an unfair business disadvantage. Comcast further stated that:

- The Commission exclude the Verizon-Comcast Agreement from any disposition/resolution issued in connection with AL No. 12725 or alternatively, determine that approval of the Verizon-Comcast Agreement is not required irrespective of the Commission decision on the treatment of IP traffic-exchange agreements,

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<sup>2</sup> According to Verizon the disclosure of the redacted information would subject the parties to the Multistate IP Agreements to an unfair business disadvantage, in contravention of General Order 66-C, Section 2.2(b).

- The Verizon-Comcast Agreement should not have been submitted to the Commission as part of Verizon's ALs as it is not a contract to which Frontier Communications Corporation can or will succeed following the closing of the Verizon-Frontier transaction, and
- Comcast has not agreed to any voluntary partial assignment of the Comcast-Verizon Agreement to Frontier Communications Corporation. The absence of such consent, together with Verizon's inability to assign the Agreement unilaterally, confirms that Frontier Communications Corporation will not become a party to the Agreement. As a result, any exchange of voice traffic directly between Comcast and Frontier Communications Corporation in IP format will occur only pursuant to a newly-negotiated agreement. If Comcast has not entered into a new IP traffic-exchange agreement with Frontier Communications Corporation by March 31, 2016, (the anticipated Verizon-Frontier closing date), Comcast will work with Verizon California, Inc. and Frontier Communications Corporation to ensure the continuous exchange of voice traffic.

Finally, Comcast requested that the Commission direct Verizon California, Inc. to redact the effective dates of the IP traffic-exchange agreements it submitted with the Supplemental AL as this threatens to reveal the identities of parties to the agreements.

On March 25, 2016, Verizon California, Inc. submitted a response to the protest of Comcast Corp and Comcast IP Phone II, LLC, where it agreed with Comcast that the Commission should not review or approve the Comcast Agreement (and all other agreements submitted in AL No. 12725 and AL No. 12725A because only the executed and filed agreements between Frontier and the parties to the agreements (after closing of the transaction) should be reviewed. Alternatively, Verizon California, Inc. opined that if the Commission were to review the MultiState Agreements, it should determine that they are not interconnection agreements subject to approval under 47 United States Code (U. S. C.) § 252.

Further, Verizon California, Inc. disagreed with Comcast on the following points:

- Whether Frontier Communications Corporation can succeed the Agreements. According to Verizon California, Inc., it is one of the VSC subsidiaries on whose behalf the Comcast Agreement was entered into and Frontier Communications Corporation will be indirectly acquiring the stock and all operations of Verizon California, Inc. Until Comcast and Frontier Communications Corporation enter into their own Agreement, Frontier California (formerly Verizon California, Inc.) will have contractual rights under the Comcast Agreement.
- Whether the effective dates of the Agreements should be redacted. Verizon California, Inc. has no objection to filing revised agreements with the effective dates redacted if directed to do so by the Commission.

## DISCUSSION

In determining whether the 11 Multistate Agreements are interconnection agreements, CD used the following standards:

- § 251 of the Federal Telecommunications Act<sup>3</sup>,
- Whether the template satisfies the standard of § 252 of the Federal Telecommunications Act<sup>4</sup>, and
- Whether the same template was used for the 11 submitted Multistate Agreements.

The Communications Division also considered other factors that may impact the determination of whether the Multistate Agreements should be submitted to the Commission for approval and made available for opt-in by other carriers, as follows:

- Commission jurisdiction over Internet Providers - Applicability of Commission's Resolution ALJ-257 Implementing the Provisions of § 252 of the Federal Telecommunications Act of 1996 (November 19, 2010),
- Applicability of Federal Communications Commission (FCC) ruling on Broadband Internet Access Services (BIAS),
- Comcast's Protest.

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<sup>3</sup> Section 251 of the Federal Telecommunications Act sets a standard of what constitutes an Interconnection Agreement:

“(2) INTERCONNECTION.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—  
“(A) for the transmission and routing of telephone exchange service and exchange access;  
“(B) at any technically feasible point within the carrier's network;  
“(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and  
“(D) 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 252.

<sup>4</sup> While Verizon CA did not submit signed copies of the Multistate Agreements requested by parties during the conduct of the proceeding, it submitted a template of an IP interconnection agreement. In D. 15-12-005 (pp. 55 and 56), the Commission found that, if executed, the IP Agreement template constitutes an agreement that meets the § 252 standard.

The following factors are discussed below.

*I. On the Executed Multistate Agreements and the IP Template*

The Communications Division finds that the 11 agreements submitted by Verizon California, Inc. in its AL filing conform to the § 251 definition of interconnection agreements in so far as they concern an ongoing obligation to provide resale, number portability, dialing parity, access to rights of way, and reciprocal compensation.

The Communications Division notes that Part 23 of the IP template as well as the Executed Agreements<sup>5</sup> state:

“23.1 Parties agree that this Agreement is not subject to Sections 251, 252, or 271 of the Act, including without limitation, any requirement to negotiate, mediate, or arbitrate this Agreement pursuant to Section 252 of the Act, or to file this Agreement with any state utility commission, the FCC or elsewhere.

23.2. In the event the Parties are required to file this Agreement pursuant to Section 252 of the Act and one or more state utility commissions rejects (or will not approve) this Agreement, either Party may: (a) terminate this Agreement on five (5) Business Days written notice; or (b) request negotiation of an amendment to remove services from this Agreement that are provided in the State(s) where this Agreement was rejected (or was not approved).”

However, Part 23 cannot supersede §§ 251 and 252 of the Federal Telecommunications Act.

*II. On the Commission’s Jurisdiction over Internet Providers - Applicability of Commission’s Resolution ALJ-257 Implementing the Provisions of § 252 of the Federal Telecommunications Act of 1996 (November 19, 2010)*

Existing Commission Rules on Interconnection under Rule 1.3 of Res. ALJ-257 specify that only carriers with existing Certificates of Public Convenience and Necessity (CPCN) and applicants that have pending CPCN applications are entitled to make use of § 252 processes.<sup>6</sup> The same section, however, states “Any entity that is not required to have a CPCN but qualifies as a ‘telecommunications carrier’ that is authorized to provide telecommunications services” consistent with the Act, may utilize the procedures set

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<sup>5</sup> This language appears in either part 23 or part 24 of the executed agreements.

<sup>6</sup> Rule 1.3. of Resolution ALJ – 257 states “Only those carriers which have already been granted a Certificate of Public Convenience and Necessity (CPCN) for providing local exchange service, or which have an application pending with at this Commission for a CPCN providing local exchange service, are entitled to make use of Section 252 processes described in this rules. Parties shall include in their filing, the decision number of the decision which granted them a CPCN or the application number if a CPCN application is pending. Any entity that is not required to have a CPCN but qualifies as a “telecommunications carrier” that is authorized to provide “telecommunication services” to the public consistent with the Act, may utilize the procedures set forth in Rule 7.”

forth in these rules. With the adoption by the FCC of the Open Internet Order<sup>7</sup> declaring Broadband Internet Access Service as a telecommunications service, a carrier that provides this service may now utilize this procedure.

*III. On the Applicability of FCC ruling on Broadband Internet Access Service (BIAS) as a Telecommunications Service*

The FCC, in *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling and Order, GN Dkt 14-28 (FCC 15-24), adopted Feb. 26, 2015, rel. Mar 12, 2015 (Open Internet Order), ruled that:

...Broadband Internet Access Service is a telecommunications service and subject to sections 201, 202 and 208 (along with key enforcement provisions). As a result, commercial arrangements for the exchange of traffic with a broadband internet access provider are within the scope of Title II, and the Commission will be able to hear disputes raised under sections 201 and 202 on a case-by-case basis: an appropriate vehicle for enforcement where disputes are primarily over commercial terms and that involve some very large corporations, including companies like transit providers and Content Delivery Networks (CDNs), that act on behalf of smaller edge providers.<sup>8</sup>

*IV. On the Protest of Comcast*

The Communications Division disagrees with Comcast for the following reasons:

- At the close of the transaction, Frontier Communications Corporation will have contractual rights over the Comcast Agreement as a result of the acquisition of the stock and all operations of Verizon California, Inc.
- It is not necessary for Verizon to re-submit the agreements with the effective dated redacted as effective dates of the agreements by themselves will reveal the identities of the parties.

**RECOMMENDATION**

The Communications Division recommends that the Commission approve the 11 IP Multistate Agreements filed by Verizon California, Inc. and that they be classified as interconnection agreements as defined in §§ 251 and 252 of the Federal Telecommunications Act. However, as the sale and transfer of Verizon California, Inc. to Frontier Communications Corporation closed on March 31, 2016, CD recommends that Frontier Communications Corporation file by AL only those IP Multistate Agreements it

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<sup>7</sup> FCC, in *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling and Order, GN Dkt 14-28 (FCC 15-24), adopted Feb. 26, 2015, rel. Mar 12, 2015

<sup>8</sup> Open Internet Order, ¶ 29.

has assumed under Adoption Agreements and/or any New Agreements for approval and opt-in by other carriers.

### COMMENTS

In compliance with Public Utilities Code § 311(g), a notice of availability was e-mailed on November 15, 2016, informing all parties on AL No. 12725 service list of the availability of the draft of this resolution for public comment at the Commission's website at <http://www.cpuc.ca.gov/documents/>. This notice also informed parties that the final conformed Resolution adopted by the Commission will be posted and be available at this same website.

### FINDINGS

1. The California Public Utilities Commission (Commission), in Decision (D.) 15-12-005 approved the joint application of Frontier Communications Corporation, Frontier Communications of America, Inc., Verizon California Inc., Verizon Long Distance, LLC., and Newco West Holdings, LLC., for approval of the sale and transfer of Verizon California, Inc. together with certain assets held by it and the customer accounts of Verizon Long Distance, LLC, in the service territory of Verizon California, Inc., to Frontier Communications Corporation. The Commission, however, imposed certain conditions on the sale and transfer of the described property and also approved various related settlements between Frontier Communications Corporation and parties.
2. Ordering Paragraph 6 of D. 15-12-005 required Verizon California, Inc. to file an Advice Letter "requesting approval in accordance with § 252 of the Federal Telecommunications Act of each of its executed Internet Protocol agreements for the exchange of voice traffic to which Frontier Communications Corporation will succeed."
3. On February 26, 2016, Verizon California, Inc. filed a Tier 3 Advice Letter (AL) No. 12725 submitting 11 IP Multistate agreements Verizon Services Corp. entered into on behalf of itself and its incumbent local exchange carrier subsidiaries and affiliates operating within the United States from time to time for the exchange of voice traffic in internet protocol.
4. Advice Letter 12725 was filed under seal pursuant to and subject to the protections afforded by Public Utilities (PU) Code § 583 and General Order (GO) 66-C.
5. Frontier Communications Corporation and Verizon California, Inc. are seeking the consent of the parties to the agreements to complete Frontier Communications Corporation's adoption of the Multistate Internet Protocol (IP) Agreements in California, Texas and Florida after closing of the transaction.

6. On March 18, 2016, Comcast Corp. and its subsidiary, Comcast IP Phone II, LLC submitted a protest to AL No. 12725 and AL No. 12725A, portions of which were submitted under seal per PU Code § 583 and GO 66-C. In its protest, Comcast requested the following: 1) the Comcast Agreement is a commercial agreement, 2) the exclusion of the Verizon - Comcast Agreement from any disposition of AL No. 12725, 3) the Verizon-Comcast Agreement is not a contract to which Frontier Communications Corporation can succeed, and 4) Comcast has not agreed to any voluntary assignment of the Verizon - Comcast Agreement to Frontier.
7. The Communications Division reviewed the Agreements submitted and found that:
  - The Multistate Agreements submitted by Verizon California, Inc. are interconnection agreements as defined in § 251 of the Federal Telecommunications Act,
  - The Federal Communications Commission (FCC) in its Open Internet Order declared broadband Internet access service (BIAS) providers to be telecommunications carriers, and found that commercial arrangements for the exchange of traffic with a BIAS provider are within the scope of Title II. As such, a carrier that provides this service may now utilize the procedures set out in the Commission's Rules on Interconnection, Rule 1.3 of Res. ALJ-257, and
  - Part 23 of the IP template as well as the Executed Multistate Agreements stating that the agreement is not subject to §§ 251, 252, or 271 of the Act cannot supersede the Act, or the Commission's authority to determine whether any agreement is subject to the Commission's interconnection process as prescribed in Resolution ALJ -257.
8. The Commission should approve the 11 Multistate Internet Protocol Agreements filed by Verizon California, Inc. as interconnection agreements as defined in §§ 251 and 252 of the Federal Telecommunications Act.
9. As the sale and transfer of Verizon California, Inc. to Frontier Communications Corporation closed on March 31, 2016, the Commission should direct Frontier Communications Corporation to file through an advice letter those IP agreements it has assumed under Adoption Agreements and/or any New Agreements for approval and opt-in by other carriers.

**THEREFORE, IT IS ORDERED** that:

1. The Commission approves the Multistate Internet Protocol Agreements filed by Verizon California, Inc. in Advice Letter No. 12725 as interconnection agreements subject to § 252 of the Federal Telecommunications Act.
2. Frontier Communications Corporation is directed to file applicable Verizon California Internet Protocol agreements it has assumed under Adoption Agreements and/or any New Agreements executed with parties to the agreements.

This resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 15, 2016. The following Commissioners approved it:

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TIMOTHY J. SULLIVAN  
Executive Director