

Decision **DRAFT DECISION OF ALJ THOMAS** (Mailed 12/31/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Verizon Advanced Data Inc. (U 6454 C) to Transfer Intrastate Advanced Data Services Assets and California Customer Base, Withdraw Service and Cancel its CPCN.

Application 01-11-014  
(Filed November 13, 2001)

Application of Verizon California Inc. (U 1002-C) for Approval to Transfer Intrastate Advanced Data Service Assets to Verizon Advanced Data Inc.

Application 00-09-028  
(Filed September 1, 2000)

**OPINION GRANTING IN PART AND DENYING IN PART  
PETITION TO MODIFY DECISION 03-06-044**

We grant in part and deny in part the June 23, 2004 petition to modify Decision (D.) 03-06-044 filed by Covad Communications Company, MCI, Inc., AT&T Communications of California, WorldCom, Inc. and The Utility Reform Network (collectively, Covad *et al.*). We close the proceeding, but allow the parties to seek to have the proceeding reopened once federal uncertainty regarding the competitive issues raised in this proceeding is resolved.

In D.03-06-044, we granted Application (A.) 01-11-014 of Verizon Advanced Data Inc. (VADI) to reintegrate its advanced data services into Verizon California Inc. (Verizon). D.03-06-044 set up Phase 2 of this proceeding to consider the competitive issues Covad *et al.* raised in their protest to the

application, but stayed commencement of that phase because of uncertainty at the federal level regarding Verizon's line sharing obligations, as set forth below. We provided that any party could ask us to lift the stay, but noted that if we did not lift the stay of Phase 2 within one year of the effective date of D.03-06-044, A.01-11-014 would be closed automatically.

In their original protest, Covad *et al.* expressed concern that if VADI were not maintained as a separate affiliate, it would receive preferential treatment from Verizon, such as the ability to reserve space in central offices and remote terminals, at the expense of competitive local exchange carriers (CLECs). We deferred the competitors' concerns to Phase 2 based on our finding that,

There is regulatory uncertainty at the federal level as to whether ILECs will be required to offer CLECs line-sharing over fiber-fed loops. Thus, we are unable at this time to determine what FCC policy is regarding some of the competitive issues the protesting parties raise, and whether the FCC will leave room for state commissions to impose competitive obligations on ILECs in their provision of advanced services. [Footnote omitted.] To preserve scarce Commission resources and ease logistics, we believe it prudent to await the FCC's decision on this question so as to help us determine whether to consider imposing various line-sharing obligations, and in what forum (*i.e.*, the line-sharing proceeding or A.01-11-014) to impose them.

We stayed commencement of Phase 2 of A.01-11-014 until after the FCC issued its *Triennial Review Order* (TRO). The FCC has since done so, but we agree with the assertion of Covad *et al.* in the petition to modify that the TRO does not

resolve the issues they raise, and that there is still uncertainty at the federal level as to the extent of Verizon's line sharing obligations.<sup>1</sup>

Covad *et al.* ask us to extend the deadline for a party to ask us to lift the stay of Phase 2 or for us to automatically close the proceeding to three months after the U.S. Supreme Court has ruled on any appeal of the TRO. While Verizon disagrees that there are competitive issues to resolve, it nonetheless agrees to the extension Covad *et al.* seek.

We prefer to close this proceeding at this time, because it is unclear if this will ever be the forum to resolve the issues Covad *et al.* raise. However, we will allow Covad *et al.* to seek to reopen this proceeding under a relaxed standard. If the federal uncertainty related to the competitive issues in this proceeding abates, and Covad *et al.* determine that this is an appropriate proceeding in which to seek resolution of the competitive issues they raise, they may ask the Commission to reopen this proceeding. We will treat any such request liberally, and err in favor of reopening the proceeding.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the rules of Practice and Procedure.

Verizon California Inc. filed comments on the draft decision on January 20, 2005. The competitors did not file comments. Verizon disagrees that there is uncertainty at the federal level regarding Verizon's line-sharing

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<sup>1</sup> The TRO is on review in the federal courts. *See United States Telecom. Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

obligations, and urges the Commission not to adopt a relaxed standard under which the Commission may view a future motion to reopen. While the federal courts may have ruled out certain line sharing obligations, local exchange carriers' obligation to share access to the high frequency portion of the loop is still an open question. Moreover, the relaxed standard is appropriate since we did not respond to the competitive concerns at the time we issued D.03-06-044. Therefore, we do not change the findings of the draft decision here.

**Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

**Finding of Fact**

There is regulatory uncertainty at the federal level as to whether ILECs will be required to offer CLECs line-sharing over fiber-fed loops.

**Conclusion of Law**

It is best to resolve the issues the protesting parties raise in A.01-11-014 at a later time, when we have more regulatory certainty regarding the ILECs' obligations in this area, and to preserve scarce Commission resources and ease logistics.

**O R D E R****IT IS ORDERED** that:

1. We grant in part and deny in part the petition of Covad Communications Company, MCI, Inc., AT&T Communications of California, WorldCom, Inc. and The Utility Reform Network (collectively, Covad *et al.*) to modify Decision (D.) 03-06-044. We close the proceeding, but allow the parties to seek to have the

proceeding reopened once federal uncertainty regarding the competitive issues raised in this proceeding is resolved.

2. If the federal uncertainty related to the competitive issues in this proceeding abates, and Covad *et al.* determine that this is an appropriate proceeding in which to seek resolution of the competitive issues they raise, they may ask the Commission to reopen this proceeding. We will treat any such request liberally, and err in favor of reopening the proceeding.

3. These proceedings are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.