

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*.

Application 04-03-014
(Filed March 10, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING
EXTENSION OF TIME TO FILE RESPONSES TO ARBITRATION REQUEST**

On March 10, 2004, Verizon California Inc. (Verizon) filed the above captioned application as a petition for arbitration (petition) with a large number of competitive local exchange carriers (CLEC) and commercial mobile radio service providers pursuant to both Section 252 of the Telecommunications Act of 1996 and Commission Resolution ALJ-181, the current procedures adopted by the Commission to implement interconnection agreement negotiation and arbitration requests under Section 252.

The purpose of the petition is, as articulated by Verizon, to “initiate a consolidated arbitration” that “implements the changes in incumbents network unbundling obligations promulgated in the Federal Communications Commission’s (FCC) Triennial Review Order and affirmed by the D.C. Circuit Court of Appeals in *United States Telecom Ass’n v. FCC*, Nos. 00-0012 et al., 2004 WL 374262 (D.C. Cir., March 2, 2004)” (the DC Circuit opinion). The list of

impacted CLECs numbers approximately 140 and the list of issues for which Verizon requests arbitration is spread over twelve topic areas.

On March 19, 2004, Verizon filed a document denominated “Amendment to Petition for Arbitration of Verizon California Inc.” (amendment) which amended portions of the petition to reflect additional changes Verizon believes necessary as a result of the DC Circuit opinion. In addition to filing the amendment, Verizon proposes that the Commission allow affected respondent carriers to respond 25 days from the date of the filing of the amendment rather than 25 days from the date of filing of the petition. (Letter from Elaine Duncan, March 19, 2004.)

The timing of this arbitration is apparently premised on a request for negotiation Verizon provided to each affected carrier. This followed the issuance by the FCC of the Triennial Review Order (TRO), which established certain procedures for its implementation. Verizon represents that negotiations commenced on October 2, 2003 by reason of a letter it sent to each affected carrier on that date. While Verizon states it is filing this petition pursuant to the arbitration window established by Section 252 and the TRO, specifically paragraph 703 (Petition at 6), I note that paragraph 703 indicates that the Section 252(b) timeline is to be the default “for modification of interconnection agreements that are silent concerning change-of-law and/or transition timing.”

This arbitration request comes at a very challenging time for the Commission. The resources of our own staff, as well as those of Verizon and many other carriers, are deeply invested in concluding what are generally referred to as the “90 day” and “9 month” processes for resolving unbundled network element impairment issues directed by the TRO. (See Administrative Law Judge Ruling Denying Motion of Verizon to Stay Proceeding, R.95-04-043/

I.95-04-044, March 16, 2004.) The DC Circuit opinion directly impacted those processes, at least in terms of the explicit role that states may have *vis a vis* the FCC. The final outcome is, however, as yet uncertain. The court stayed its own decision for 60 days and the filing and ultimate outcome of reconsideration requests or appeals that may be pursued is as yet unknown.

Verizon acknowledges the possibility that some subsequent modifications may be necessary. Verizon states: “In addition, although Verizon’s amendment is intended to implement the unbundling rules reflected in the Triennial Review Order, it also recognizes the possibility of changes in Verizon’s unbundling obligations under federal law. As such, Verizon expects that any revisions necessary to conform the amendment to changes in federal law during the course of this proceeding (either because of issuance of the court’s mandate or further litigation in the D.C. Circuit or Supreme Court) will be relatively minor.”

“Relatively minor” may or may not be an accurate assessment of the future. What is certain, however, is that the TRO litigation is not conclusively completed and may soon enter a new stage. Given this state of affairs and the current burdens on all parties in our own TRO implementation efforts, it seems a questionable use of limited resources to undertake an arbitration related to TRO implementation on a piecemeal basis, whether the subsequent stages will be minor or not.

Given this, I am going to do two things.

First, I concur with Verizon’s recommendation that the date for responses to the arbitration petition should be delayed. However, because I believe it will be useful to obtain comments to assist in determining what course to take with this petition for arbitration, I will delay the date for filing responses to the arbitration to a date to be determined.

Second, I am going to request comments on whether this arbitration needs to be pursued at this time or whether the Commission should consider dismissing it without prejudice. This would be until all issues related to interconnection agreement modifications flowing from the TRO can be, as a complete package, reasonably addressed through negotiation by all affected parties and then, to the extent necessary, be a subject of a petition for arbitration. To ensure that this determination can be made expeditiously, comments should be filed and served within 15 days of the date of this ruling. Reply comments, if necessary shall be filed and served within 5 days of the date for filing comments.

THEREFORE IT IS RULED that,

1. Responses to the petition for arbitration filed by Verizon California Inc. (Verizon) as Application 04-03-014 and the amendment to that petition filed on March 19, 2004 will have their due date deferred to a date to be determined.

2. Verizon and respondent competitive local exchange carriers and commercial mobile service carriers are invited to file comments on whether this arbitration should proceed as filed or be dismissed without prejudice until such time that negotiations on all interconnection agreement modifications related to implementation of the Federal Communications Commission's Triennial Review Order (TRO) can be addressed following the conclusion of litigation concerning the TRO. Comments shall be filed and served within 15 days from the date of this ruling and reply comments may be filed and served within five days after the date for service of comments.

Dated March 29, 2004, at San Francisco, California.

/s/ PHILIP SCOTT WEISMEHL

Philip Scott Weismehl, Assistant Chief
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling Granting Extension of Time to File Responses to Arbitration Request on all parties of record in this proceeding or their attorneys of record.

Dated March 29, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.