

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE, INC., FOR ARBITRATION)
OF AN AMENDMENT TO INTERCONNECTION AGREE-)
MENTS WITH COMPETITIVE LOCAL EXCHANGE)
CARRIERS AND COMMERCIAL MOBILE RADIO) PSC DOCKET NO. 04-68
SERVICE PROVIDERS IN DELAWARE PURSUANT TO)
SECTION 252 OF THE COMMUNICATIONS ACT OF)
1934, AS AMENDED, AND THE *TRIENNIAL REVIEW*)
ORDER (FILED FEBRUARY 20, 2004))

ORDER NO. 6539

AND NOW, this 11th day of January 2005;

WHEREAS, the Commission, by PSC Order No. 6419 (May 18, 2004), suspended this docket until after June 15, 2004, to not only allow carriers an additional period for negotiations about commercial contracts related to network elements but also to allow the Commission to see whether the FCC's *Triennial Review Order*¹ might be subject to further judicial review by the Supreme Court, after such order was vacated (and remanded) in part by the United States Court of Appeals for the District of Columbia Circuit in its *USTA II* decision;

AND WHEREAS, various parties have reported that, with limited exceptions (as addressed below), negotiations have not yielded new agreements nor amendments to the parties' existing interconnection agreements;

¹Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, etc.*, 18 FCC Rcd. 16978 (Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), vacated in part and remanded, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004) ("*USTA II*"), three cert. petitions denied under various names, 125 S.Ct. 313 (Oct. 12, 2004) (Nos. 04-12, 04-15 & 04-18).

AND WHEREAS, in August 2004, the FCC adopted *interim* unbundling rules to govern incumbent local exchange carriers' unbundling obligations until the FCC would adopt permanent unbundling rules in response to the remand in *USTA II*; ²

AND WHEREAS, on September 20, 2004, Verizon Delaware Inc. ("VZ-DE") filed a "Notice of Withdrawal of Petition for Arbitration" with this Commission in which VZ-DE dismissed 77 competitive local exchange carriers ("CLECs") and wireless providers from this proceeding and identified 12 carriers³ with whom it continues to seek arbitration in this docket;

AND WHEREAS, VZ-DE has reached agreements with Nextel Communications of the Mid-Atlantic Inc. ("Nextel") and Southwestern Bell Mobile Systems, LLC, d/b/a Cingular Wireless ("Cingular"), and those carriers now seek dismissal from the case;

AND WHEREAS, on October 12, 2004, the United States Supreme Court denied *certiorari* review for all petitions seeking review of *USTA II*, effectively ending all challenges to that judicial ruling;

AND WHEREAS, by a memorandum dated November 30, 2004, the Hearing Examiner in this docket recommended that the Commission: (a) lift its suspension in this docket; (b) approve VZ-DE's dismissal of the CLECs identified in its September 20, 2004 "Notice of Withdrawal" (but without stating any position on VZ-DE's rationale for withdrawing this

²Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-179 (rel. Aug. 20, 2004) ("*Interim Order*").

³The carriers are listed in Ordering Paragraph No. 4 below, with the exception of Cingular, which is now dismissed as a party in Ordering Paragraph No. 3.

action against those carriers); (c) dismiss the carriers who have reached agreements with VZ-DE in this matter; and (d) return this case to the Hearing Examiner to set a procedural schedule for considering all the remaining issues raised by the submissions;

AND WHEREAS, at its public meeting on December 15, 2004, the FCC voted to adopt new permanent unbundling rules, along with several accompanying "transition" provisions, in response to the *USTA II* remand;⁴

AND WHEREAS, although the FCC has now voted to adopt new rules governing an incumbent carrier's unbundling obligations, it has not, as of yet, released an order explaining its announced decision and has not, as of yet, released the text of those new rules;

AND WHEREAS, in a filing made on January 4, 2005 with the Court of Appeals for the District of Columbia Circuit, the FCC announced that it "expects to release its order promulgating the new rules within approximately one month;"

AND WHEREAS, given the continued uncertainty about when the text of the new unbundling rules (and the exact content of any related "transition" provisions) may be forthcoming from the FCC, the Commission believes that this docket should now move forward along the lines outlined in the Hearing Examiner's memorandum;

AND WHEREAS, while the Commission now reactivates this docket (in a slightly altered form), the Commission expressly reserves to itself, and to the assigned Hearing Examiner, the right to later re-chart the course of these proceedings as well as the issues to be considered, in

⁴Press Release, *FCC Adopts New Rules for Network Unbundling Obligation of Incumbent Local Phone Carriers* (FCC Dec. 15, 2004).

light of the findings, determinations, or rulings which might be contained in the FCC's eventual written order adopting new permanent unbundling rules and attendant transition provisions;

Now, therefore, **IT IS ORDERED:**

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the suspension of this docket earlier ordered in PSC Order No. 6419 (May 18, 2004) is hereby lifted and this case is now returned to Senior Hearing Examiner William F. O'Brien to set a procedural schedule and conduct such proceedings that he deems appropriate to the nature of the proceeding. Hearing Examiner O'Brien is specifically delegated the authority to re-assign this matter to another Hearing Examiner, if he deems such assignment appropriate.

2. That Nextel Communications of the Mid-Atlantic Inc., is hereby dismissed from this proceeding, based on the Stipulation dated April 9, 2004 between VZ-DE and Nextel, which was submitted to the Commission with VZ-DE's letter dated April 14, 2004, requesting Nextel's dismissal.

3. That Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless, is hereby dismissed from this proceeding, based on the Stipulation dated October 27, 2004 between VZ-DE and Cingular, which was submitted to the Commission with VZ-DE's letter dated November 24, 2004, requesting Cingular's dismissal.

4. That the carriers subject to Verizon Delaware Inc.'s September 20, 2004 "Notice of Withdrawal of Petition for Arbitration" are hereby withdrawn from this proceeding, without prejudice to their ability to file their own petitions related to, or arising from,

disputes regarding their Delaware interconnection agreements. In particular, by this Order, the Commission does not take any position, make any ruling, nor express any view concerning the terms within any of the interconnection agreements with such withdrawn carriers, including specifically any of the terms which might have been cited by VZ-DE in its Notice related to when VZ-DE may discontinue providing certain unbundled network elements under such agreements. This Order shall not foreclose any carrier from filing a proceeding or action, either before the Commission or in any other appropriate forum, asking for an interpretation or construction of the terms of any such interconnection agreement. The CLECs now remaining as parties in this matter are:

- a.) AT&T Communications of Delaware, LLC;
- b.) ATX Licensing Inc., d/b/a ATX Telecommunications Services, Inc.;
- c.) IDT America Corp.;
- d.) MCIMetro Access Transmission Services, LLC;
- e.) Metropolitan Telecommunications of Delaware, Inc.;
- f.) Qwest Communications Corporation;
- g.) Spectrotel, Inc., d/b/a Plan B Communications;
- h.) Sprint Communications Company, L.P.;
- i.) Universal Access Inc.;
- j.) US LEC of Pennsylvania Inc.; and
- k.) Volo Communications of Delaware, Inc.

5. That the Commission reserves to itself, and expressly confers upon the Hearing Examiner, the right to change the course of, and schedule entered in, this proceeding after the Federal Communications Commission releases its written order explaining its December 15, 2004 decision adopting new unbundling rules and related transition provisions.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary