

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PETITION OF DIECA)
COMMUNICATIONS INC., d/b/a COVAD COMMUNI-)
CATIONS COMPANY, D-TEL LLC, SNIP LINK LLC,)
XO COMMUNICATIONS SERVICES, INC., f/k/a)
XO DELAWARE, INC., AND XTEL COMMUNICATIONS,)
INC., FOR AN AMENDMENT TO INTERCONNECTION)
AGREEMENTS WITH VERIZON DELAWARE INC.,) PSC DOCKET NO. 05-164
PURSUANT TO SECTION 252(B) OF THE)
COMMUNICATIONS ACT OF 1934, AS AMENDED,)
THE *TRIENNIAL REVIEW ORDER* AND THE)
TRIENNIAL REVIEW REMAND ORDER)
(FILED MAY 16, 2005))

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. 6642

AND NOW, this 24th day of May, 2005;

WHEREAS, the Commission, by PSC Order No. 6539 (Jan. 11, 2005), granted Verizon Delaware Inc.'s ("VZ-DE") September 20, 2004 "Notice of Withdrawal of Petition for Arbitration" in PSC Docket No. 04-68 to withdraw some seventy-seven carriers from this proceeding, without prejudice to their ability to file their own petitions related to, or arising from, disputes regarding their Delaware interconnection agreements; and

WHEREAS, pursuant to PSC Order No. 6539, the Commission did not foreclose any carrier dismissed from PSC Docket No. 04-68 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 interconnection agreement; and

WHEREAS, the CLECs remaining as parties to PSC Docket No. 04-68¹ after VZ-DE's withdrawal request was approved were:

- (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.; and

WHEREAS, on May 16, 2005, DIECA Communications Inc., d/b/a Covad Communications Company, D-Tel LLC, SNIp LiNK LLC, XO Communications Services, Inc., f/k/a/ XO Delaware, Inc., and XTel Communications,

¹By letter dated March 18, 2005, the Hearing Examiner assigned to the case requested that the remaining parties to Docket 04-68 notify her whether they intended to be "active" or "passive" parties. Active parties would fully participate in the litigation of this docket by filing pleadings, testimony and briefs, and participating in evidentiary hearings and oral arguments. On the other hand, passive parties would only receive correspondence, including briefs, concerning the case from the Commission, the Hearing Examiner, and the parties. Passive parties would, of course, be permitted to attend any evidentiary hearings, but they would not be permitted to present or conduct cross-examination of witnesses. Of the parties permitted to remain in the case, only AT&T Communications of Delaware, LLC, US LEC of Pennsylvania Inc., and IDT America Corp. chose to be active parties. The passive parties are Metropolitan Telecommunications of Delaware, Inc., d/b/a MelTel, Sprint Communications Company L.P., ATX Communications, Inc., Qwest Communications Corporation, MCImetro Access Transmission Services LLC, Spectrotel, Inc., d/b/a Plan B Communications, and ATX Licensing Inc., d/b/a ATX Telecommunications Services, Inc.

Inc.² (collectively "Petitioners"), filed a Petition for Arbitration of an Amendment to its Interconnection Agreement with VZ-DE; and

WHEREAS, on May 16, 2005, Petitioners also filed a Motion to Consolidate their Petition for Arbitration in PSC Docket No. 05-164 with the Petition for Arbitration filed by VZ-DE in PSC Docket No. 04-68; and

WHEREAS, in their Motion for Consolidation, Petitioners contend that consolidation of their Petition to Arbitrate with that under consideration in PSC Docket No. 04-68 would conserve the Commission's resources and promote administrative efficiency because the issues presented for arbitration in PSC Docket No. 05-164 are identical to those presented by the parties in their revised joint issues matrix³ in PSC Docket No. 04-68. See PSC Docket No. 05-164, Petitioners' Motion for Consolidation at ¶ 6; and

WHEREAS, the issues presented in the consolidated Joint Issues Matrix submitted by the active parties in PSC Docket No. 04-68 and in the Petitioners' Petition to Arbitrate in PSC Docket No. 05-164 involve, among other things, VZ-DE's obligation to implement the unbundling rules adopted in the Triennial Review Order⁴ and the Triennial Review Remand Order;⁵ and

²DIECA Communications Inc., d/b/a Covad Communications Company, D-Tel LLC, SNIp LiNK LLC, XO Communications Services, Inc., f/k/a/ XO Delaware, Inc., and XTel Communications, Inc., are all the competitive local exchange carriers formed under the laws of the State of Delaware.

³On April 8, 2005, the active parties in PSC Docket No. 04-68 jointly proposed a revised and consolidated Joint Issues Matrix as requested by the Hearing Examiner on March 18, 2005.

⁴Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent*

WHEREAS, on May 17, 2005, VZ-DE responded to the Petition to Arbitrate and the Motion to Consolidate in PSC Docket No. 05-164 by stating, with conditions, that it is "willing to agree to the consolidation of the new arbitration petition and proposed amendment with the instant proceedings [PSC Docket No. 04-68]; and

WHEREAS, while the Commission expressly reserves to itself, and to the assigned Hearing Examiner, the right to revise or re-chart the course of these proceedings as well as the issues to be considered, in light of the findings, determinations, or rulings which might be contained in any future written orders of the FCC or in any order of the federal courts construing the FCC's orders 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 Motion to Consolidate filed by the Petitioners in PSC Docket No. 05-164 is granted and PSC Docket No. 05-164 and PSC Docket No. 04-68 are hereby consolidated.

2. That, Ruth Ann Price is designated as Hearing Examiner for these cases pursuant to the terms and provisions of 26 Del. C. § 502 and 29 Del. C. ch. 101. Hearing Examiner Price shall compel the

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).

⁵In the *Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-3338), Order on Remand, FCC 04-290 (released February 4, 2005).

parties to submit such briefs, documents, reports, and testimony, and shall schedule and conduct, upon due notice, such public evidentiary hearings and oral arguments as may be necessary to develop a full and complete record concerning these Petitions. Thereafter, Hearing Examiner Price shall report to the Commission her proposed findings of fact and recommendations based on the record and evidence presented. In addition, pursuant to Rules 19 and 21 of the Commission's Rules of Practice and Procedure, Hearing Examiner Price is specifically authorized to grant or deny any future motions and/or petitions for intervention. In addition, Hearing Examiner Price is specifically delegated the authority to determine, under 26 Del. C. § 102A, the form and manner of any public notice to be given for such further evidentiary hearings.

3. 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 in light of any future orders of the FCC or any applicable orders of the federal courts interpreting the FCC's rules and regulations regarding its unbundling rules and related transition provisions.

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

BY ORDER OF THE COMMISSION:

Chair

PSC Dockets Nos. 05-164 and 04-68,
Order No. 6642 Cont'd.

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary