

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF A PETITION BY ACN)
COMMUNICATIONS SERVICES, INC., ATX)
LICENSING, INC., CAVALIER TELEPHONE)
MID-ATLANTIC, LLC, CAPITAL TELECOMMU-)
NICATIONS, INC., FOCAL COMMUNICATIONS)
CORPORATION OF DELAWARE, AND XO DELA-)
WARE, INC., FOR AN EXPEDITED ORDER) PSC DOCKET NO. 04-222
THAT VERIZON DELAWARE INC., REMAIN)
REQUIRED TO PROVISION UNBUNDLED NET-)
WORK ELEMENTS AT EXISTING RATES AND)
TERMS PENDING THE EFFECTIVE DATE OF)
AMENDMENTS TO THE PARTIES' INTERCON-)
NECTION AGREEMENTS)
(FILED JUNE 9, 2004))

ORDER NO. 6649

AND NOW, this 7th day of June, 2005;

WHEREAS, on June 9, 2004, a coalition of seven competitive local exchange carriers ("Petitioners"), as identified in the above caption, filed a "Petition for an Expedited Order," seeking a Commission Order stating that Verizon Delaware Inc. ("VZ-DE") remains required to provide unbundled loops, transport, and switching network elements at existing rates and terms pending approval of any amendments to the carriers' interconnection agreements;¹ and

WHEREAS, on June 17, 2004, VZ-DE moved to dismiss the Petition on the grounds that under the D.C. Circuit's *USTA II* decision,² VZ-DE is no longer required to provide certain unbundled network elements

¹On June 17, 2004, AT&T Communications of Delaware, Inc., and TCG Delaware Valley, Inc., filed a response in support of the Petition. VZ-DE filed a response thereto on July 30, 2004.

²*United States Telecom Ass'n. v. FCC*, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004).

("UNEs") and that, in any event, VZ-DE has committed to continue providing such UNEs for a certain time period; and

WHEREAS, on July 1, 2004, the Petitioners objected to VZ-DE's motion on the grounds that it is unclear what effect the *USTA II* decision has on existing contracts and that the pending threat of VZ-DE's discontinuation of UNEs affects Petitioners' ability to attract and retain customers; and

WHEREAS, on February 4, 2005, the Federal Communications Commission ("FCC") released its "Order on Remand,"³ in which the FCC attempts to comply with *USTA II* and further delineates the UNEs that incumbent local exchange carriers ("ILECs") must lease at cost-based ("TELRIC") prices to competing local exchange carriers ("CLECs") and provides a transitional pricing structure for those UNEs that ILECs are no longer required to lease; and

WHEREAS, many of the pricing issues raised by the Petitioners have been addressed by the FCC in its Order on Remand; and

WHEREAS, several of the issues raised by Petitioners may overlap with those issues currently under consideration in PSC Docket No. 04-68, which is VZ-DE's request for arbitration of an amendment to its interconnection agreements with twelve Delaware CLECs, and which the Commission has recently consolidated with PSC Docket No. 05-164, which is the arbitration petition filed by five other CLECs in May 2005;⁴

³*In the Matter of: Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Dckt. No. 04-313 & CC Dckt. No. 01-338, Order on Remand, FCC 04-290 (FCC adopted Dec. 15, 2004; rel. Feb. 4, 2005) ("Order on Remand").

⁴See PSC Order No. 6642 (May 24, 2005). PSC Docket No. 04-68 involves VZ-DE's arbitration petition with AT&T Communications of Delaware, LLC; ATX

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

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby dismisses the June 9, 2004 Petition for an Expedited Order filed by ACN Communications Services, Inc., ATX Licensing, Inc., Cavalier Telephone Mid-Atlantic, LLC, Capital Telecommunications, Inc., Focal Communications Corporation of Delaware, and XO Delaware, Inc., without prejudice to the Petitioners' ability to raise any unresolved issues from their Petition either in separate arbitration petitions (or complaint proceedings) or, for those petitioners involved in PSC Docket No. 04-68 (as consolidated with PSC Docket No. 05-164), in such docket.

2. 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

Licensing Inc., d/b/a ATX Telecommunications Services, Inc.; IDT America Corp.; MCImetro Access Transmission Services, LLC; Metropolitan Telecommunications of Delaware, Inc.; Qwest Communications Corporation; Spectrotel, Inc., d/b/a Plan B Communications; Sprint Communications Company, L.P.; Universal Access Inc.; US LEC of Pennsylvania Inc.; and Volo Communications of Delaware, Inc. PSC Docket No. 05-164 involves the arbitration petition filed by 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, Inc.

PSC Docket No. 04-222, Order No. 6649 Cont'd.

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary