

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. 6419

This 18th day of May, 2004, the Commission determines and Orders the following:

I. BACKGROUND

1. On February 20, 2004, Verizon Delaware Inc. ("VZ-DE") filed a "Petition for Arbitration." By that document, VZ-DE asked the Commission to initiate a single consolidated arbitration proceeding to amend all the Delaware interconnection agreements currently existing between VZ-DE and 70-some competitive local exchange carriers ("CLECs") and at least 14 commercial mobile radio service ("CMRS") providers. According to VZ-DE, amendments to all these interconnection agreements are now necessary because of the changes in an incumbent's unbundling obligations announced by the Federal Communications Commission ("FCC") in its 2003 "Triennial Review Order."¹ In the TRO, the FCC revised (mostly downward) the "unbundled

¹Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report & Order and Order on Remand and Further NPRM, 18 FCC Rcd. 16978 & 18 FCC Rcd. 19020 (errata) (2003) (FCC 03-36) ("TRO").

network elements ("UNEs")" that an incumbent local exchange carrier (such as VZ-DE) must make available to other carriers under the provisions of 47 U.S.C. § 251(c)(3). Moreover, VZ-DE said, the FCC's directives in the "Transition Period" portion of the TRO dictated not the need to file its arbitration petition, but the timing for its submission to this Commission.²

2. VZ-DE included with its original arbitration petition a proposed "Amendment to the Interconnection Agreement" to be added to each interconnection agreement. In VZ-DE's view, its Amendment would bring the present contracts into conformity with the various substantive rulings in the TRO, either by adding new terms or overriding inconsistent present provisions. A little over three weeks later, VZ-DE filed an "update" to its earlier petition. In this March 19th submission, VZ-DE proposed a revised template for its "Amendment" to the interconnection agreements. VZ-DE represented that the revisions in this "updated" template reflected the changes wrought to the TRO by the Court of Appeals for the District of Columbia Circuit. That Court, in a March 2, 2004 opinion, had struck down a number of the FCC's rulings about the obligation to provide particular UNEs, while sustaining other FCC determinations.³

²VZ-DE said that its petition was directed at amending only those interconnection agreements that require VZ-DE to provide UNEs. VZ-DE admitted that some of the carriers named as respondents in its petition might not have such type of an agreement. However, VZ-DE said it would leave it to further discussions with individual carriers to sort out whether any particular agreement did not include UNE provisions and, hence, would not need to be amended.

³United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004). In several instances, the Court found that the FCC had acted impermissibly by sub-delegating to the States the decision-making authority over questions of "impairment" in the context of a particular "granular" market. The Court

3. A large number, but not all, of the CLECs listed as respondents in Exhibit 1 to VZ-DE's original petition filed responses to VZ-DE's consolidated arbitration request and later "update." Some CLECs answered individually; others as part of one of two "competitive carrier coalitions."⁴ The responses raised a gamut of issues, from factual disputes about who in fact had acted in "good faith" in past negotiations to detail questions about whether VZ-DE's proposed Amendment accurately captured the TRO rulings. For example, several of the CLECs (in the context of their own case) vehemently denied the assertions in VZ-DE's petition that the CLECs had not responded to VZ-DE's initial call for negotiations concerning changes to interconnection agreements in light of the TRO. Some of the CLEC filings sought dismissal, arguing that VZ-DE's petition lacked the recitals and documentation required by either federal law or this Commission's § 252 Guidelines.⁵ In other filings, CLECs pointed out that, in numerous instances, the UNE changes announced in the TRO had

initially decided to withhold its mandate until the later of its denial of any request for a rehearing or 60 days after the March 2nd opinion date. On April 13, 2004, the Court, upon the consent motion of the FCC, extended the stay of its mandate through June 15, 2004. United States Telecom Ass'n v. FCC, No. 00-1012, Per Curiam Order (D.C. Cir. April 13, 2004).

⁴The carriers submitting responses are listed in Exhibit A to this Order. Only three CMRS carriers filed any type of response to the petition. Two CMRS carriers, each a subsidiary of Verizon said, by letter, that a stipulation of dismissal with VZ-DE would soon be forthcoming. The third CMRS carrier, Nextel Communications of the Mid-Atlantic, Inc., authorized VZ-DE to file a stipulation with the Commission. That document asks the Commission to dismiss Nextel as a respondent in VZ-DE's arbitration proceeding.

⁵See 47 U.S.C. § 252(b)(2)(A)-(B). See also "Guidelines for Negotiations, Mediation, Arbitration, and Approval of Agreements Between Local Exchange Telecommunications Carriers," Guideline 9 (adopted by PSC Order No. 4245 (July 23, 1996)).

remained in a state of flux due to the Court of Appeals' decision, and the possibility of even further judicial review. In light of that, these CLECs suggested, it would not only be premature but inefficient for the Commission to now move forward on VZ-DE's petition and attempt to construct (via arbitration) long-term amendments to interconnection agreements. Several CLECs, grouped in one coalition, argued - in a somewhat similar vein - that VZ-DE's petition had to be dismissed in light of a condition imposed on Verizon (then Bell Atlantic) as part of the FCC's approval of its 1999 merger with GTE. As these CLECs see it, the FCC's TRO inquiry was a successor proceeding to the FCC's earlier (1999) UNE Remand and Line Sharing Orders and that, under a condition in the GTE Merger Order, Verizon remains obligated to provide the UNEs made available under those earlier two orders until all judicial review of those orders (and now the successor TRO) has ended. At the detail level, almost all of the responding CLECs challenged the content and language of various terms in VZ-DE's proposed Amendment templates. Many of the carriers offered (somewhat varying) redlined, revised mark-ups of VZ-DE's proposals or advanced their own stand-alone variations. In particular, many of the responding CLECs focused on the provisions in VZ-DE's Amendment templates related to "routine network modifications." According to the CLECs, those provisions initially relate to "clarifications," not "changes," announced by the FCC in the TRO. And the CLECs contested VZ-DE's proposed pricing schedule for the various network modification services. They also opposed VZ-DE's proposal (contained in terms within its Amendment templates) to exempt its performance in

provisioning loops and transport requiring such "routine modifications" from standard provisioning intervals or other performance measures and remedies. On the procedural side, several of the CLECs supported a single consolidated proceeding as the vehicle to change their interconnection agreements; but another objected to being wrangled into a unitary arbitration that might involve issues not relevant to that CLEC's particular existing agreement. Finally, in both VZ-DE's petition and the CLECs' responses, the carriers include numerous "reservations of rights," which purportedly allow the carrier to later change its position or chart a different course on a particular issue.

4. As might be expected, the various responses from the CLECS caused VZ-DE to file replies. In some instances, VZ-DE offered its own recitation of the chronology of the negotiations with a particular CLEC. Responding to claims that its petition was procedurally defective, VZ-DE argued that its original petition adequately complied with the statutory and regulatory requirements for an arbitration filing (given the unique context of the TRO) and, even if there might be omissions, such shortcomings would not justify outright dismissal of its petition. On the question of the continued applicability of the cited BA/GTE merger Order condition, VZ-DE asserted that any obligation it had under the merger Order condition to continue to provide the UNEs identified in the earlier UNE Remand and Line Sharing Orders had ended with the judicial review of those Orders. And even if it did not end at that time, the condition had already lapsed under

the time limits contained within the merger Order, or had been trumped by the later directives in the TRO.

5. In turn, VZ-DE's replies engendered more submissions from the CLECs. Those documents again challenged VZ-DE's factual assertions about the course of negotiations and offered arguments why the BA/GTE merger condition still governed VZ-DE.⁶

6. Like many neighboring utility commissions,⁷ this Commission has struggled with trying to get a handle-hold on a process to be followed in this proceeding. It is a proceeding which, as of now, involves a large number of parties, multiple agreements, and a large number of contested issues. The struggle has been made more difficult by the present uncertainty surrounding the validity of the relevant substantive rules announced in the TRO. The Court of Appeals found some of the FCC's TRO rules valid, others invalid or inadequately supported. Yet such might not be the end of the matter; losers before the Court of Appeals might still ask the Supreme Court to step in and

⁶The Commission does not intend the above summary to be a comprehensive recounting of the various defenses and disputes and the parties' positions. Rather, it is offered simply to highlight the number and varied nature of the disputes, arguments, and counter-arguments which now surround VZ-DE's arbitration filing. Given that the Commission here decides to hold this matter in abeyance for a short period, it is not necessary to now delve into the details of any of the contentions. The Commission emphasizes that it does not, by this Order, resolve (or decide) any of the various motions or arguments which have so far been advanced in this proceeding.

⁷Verizon filed similar arbitration petitions in most of the other states in its mid-Atlantic and Northeast footprint, as well as in California. So far, the commissions in those jurisdictions have, or are considering, a wide range of responses to the Verizon petitions, ranging from dismissals without prejudice to substantive rulings on various "threshold" defenses.

provide its last word as to the validity of a particular TRO directive.⁸

7. This Commission first looked at this matter at its April 6, 2004 public meeting. At that time, the Commission considered a Staff draft Order. That Order would have, in part, dismissed CMRS carriers from the proceeding, directed various parties to file memoranda on several threshold issues, and imposed a "hiatus" period for further negotiations between VZ-DE and the respondent CLECs. However, during consideration of Staff's proposal, a somewhat collateral dispute arose between VZ-DE and Staff about the Commission's "jurisdiction" over CMRS carriers in this particular context. Staff contended that the Commission's authority (as defined by state law) would not support the Commission compelling a normally "non-jurisdictional" CMRS carrier to accede to non-consensual changes to its negotiated interconnection agreement. In contrast, VZ-DE asserted that both federal and state law empower the Commission to take such action. At Staff's suggestion, the Commission remitted Staff's draft Order for further reworking, and granted VZ-DE the opportunity to file written arguments about the reach of the Commission's authority over CMRS carriers in the interconnection context.

⁸As of this date, it is not certain whether any party to the federal TRO proceedings, or the FCC, will ask the Supreme Court to review the Court of Appeals' ruling. Nor is it clear exactly which portions of the Court's opinion or the TRO will be the focus of such certiorari requests. Finally, it is similarly unclear whether any petitioning entity will seek, or indeed be granted, a further stay of the Court of Appeals' mandate.

II. THE FCC'S REQUEST FOR "COMMERCIAL" NEGOTIATIONS AND VZ-DE'S MOTION TO HOLD THE PROCEEDINGS IN ABEYANCE

8. At about the same time that this Commission was considering Staff's draft Order, all five of the FCC Commissioners called upon incumbents and CLECs to begin intensive, good faith negotiations to arrive at commercially reasonable arrangements for the availability of UNEs. To foster this effort, the FCC indicated that if carriers would sign onto its proposal, it would then ask the Court of Appeals to extend the date for the issuance of its mandate to allow time for such negotiations. When incumbents and most CLECs responded favorably to the FCC's call, the FCC successfully obtained a further forty-five day stay of the Court's mandate. See n. 4 above. Thus, as of now, the Court of Appeals' mandate will issue on June 15, 2004.

9. On May 7, 2004, VZ-DE filed a motion asking this Commission to hold this proceeding in abeyance until after June 15, 2004. In making such request, VZ-DE reiterates that, in its view, these arbitration proceedings and the commercial negotiations called for by the FCC constitute separate undertakings with distinct purposes. However, it suggests that a pause in this proceeding - with a tolling of any of the time limits set forth in 47 U.S.C. § 252(b) - would be worthwhile. It would allow all carriers, VZ-DE included, to focus their resources and attention on the commercial negotiations called for by the FCC, without the "distraction" of simultaneous litigation over "non-substantive matters" in the arbitration proceedings.

**III. SUSPENSION OF FURTHER PROCEEDINGS WITH THIS
MATTER TO BE REVISITED AFTER JUNE 15, 2004**

10. The Commission now decides to suspend further official action related to VZ-DE's arbitration petition until after June 15, 2004. After that date, the Commission will once again revisit this proceeding (with its various filings) in light of the situation then prevailing. While this determination is consistent with the request made by VZ-DE in its May 7th motion, the Commission does not expressly grant that motion. Rather, the Commission enters this suspension directive on its own motion. Indeed, the action taken now - which allows carriers to focus on achieving negotiated resolutions - is consistent with the "further negotiation" proposal contained in Staff's original draft Order which the Commission considered more than a month ago.⁹

11. The suspension period, although now relatively short, provides several advantages. Initially, and primarily, it offers VZ-DE and the competing carriers a further opportunity to resolve their interconnection disputes without this Commission's intervention. Indeed, even if the "commercial" negotiations do not lead to an agreement in particular instances, those further negotiations will likely narrow - or at least identify - the significant differences

⁹Because the Commission's present action was foreshadowed by the discussions surrounding Staff's draft Order at the April 6th meeting, the Commission does not feel it is necessary to await submissions from CLECs responding to VZ-DE's motion before entering this suspension directive. The Commission specifically notes that no CLEC appeared at the April 6th meeting to "oppose" the "further negotiations" directive which was part of Staff's initial draft Order.

between particular carriers. Secondly, there is a decent chance that by the end of June, the Commission will have a clearer view of the course, or outcome, of any further judicial review and, hence, the stability of the directives announced in the TRO. By that date, the Commission will likely be able to discern what TRO directives will, or will not, be offered to the Supreme Court for further review. And by late June, the Commission most likely will know whether the Supreme Court has further postponed the issuance of the Court of Appeals' mandate.

12. Of course, no carrier - VZ-DE or CLEC - should take this suspension directive as a signal to put its Delaware interconnection issues on a back burner. Like the FCC Commissioners, this Commission calls on VZ-DE and each CLEC to focus their efforts on achieving mutually acceptable comprehensive contracts. The Commission hopes that in these negotiations, the carriers do not lose sight of the real overall goal. The lawyers may speak in terms of access to a particular UNE as either a "§ 251(c) obligation," a "§ 271 checklist requirement," or a "voluntary commercial offering," with terms (and indeed the appropriate supervising authority) turning on the particular category assigned. But the Commission believes that what VZ-DE and the CLECs want - now - is certainty arising from a comprehensive contract: an agreement which settles (on reasonable terms) all aspects of the two carriers' future relationships. The suspension period here permits all carriers further time to work towards that goal of comprehensive contracts.

13. The Commission does not now set forth what will happen in this proceeding after June 15th. Rather, after that date, the Commission will, on its own motion, revisit this proceeding and determine what further actions are then appropriate.

14. Finally, the Commission's suspension directive is not absolute. Below, the Commission does enter some directives, and issues some forewarnings. The directives, the Commission believes, will clear away some nagging underbrush without unduly draining the carriers' resources that should be committed to continued negotiations. The forewarnings are offered as food for thought to the carriers. They do not pre-judge any issue, but suggest undertakings that - if this matter must later move forward - might go a long way in simplifying the Commission's task of resolving the multitude of issues presented so far.

A. Request for Memoranda from CMRS Providers

15. First, Staff and VZ-DE have now offered differing views on whether this Commission has jurisdiction to enter Orders against CMRS providers in this particular context. Staff suggests no, offering that the Commission's authority under state law extends only to the supervision of "public utilities," and that the state Public Utility Act explicitly defines such term to exclude CMRS carriers ("cellular" telecommunications carriers). Thus, Staff says, the Commission lacks the authority to compel a CMRS provider to now appear or to comply with any ruling that might ensue in this arbitration proceeding initiated by VZ-DE. In contrast, VZ-DE argues that the provisions of 26 Del. C. § 703(4) expand the Commission's regulatory reach in the

context of the interconnection regime established by the 1996 federal Telecommunications Act and, hence, allow its arbitration to proceed here against CMRS providers. To allow the Commission to better appreciate all sides of the issue, the Commission will send a copy of this Order to the CMRS providers listed in Part I of Exhibit B and ask that each of them provide, via memorandum, its views on the Commission's "jurisdiction" and authority over CMRS providers in this particular context. The CMRS carrier should file its memorandum with this Commission within twenty (20) days of this Order. The CMRS provider should also serve a copy of its memorandum on VZ-DE.¹⁰

B. Directive to Non-Certificated Carriers to File Memoranda

16. In its original petition, VZ-DE sought arbitration to amend each of its Delaware interconnection agreements. VZ-DE listed in its Exhibit 1 to that request, the names of the carriers who are parties to its Delaware agreements. Staff reports that four carriers included in VZ-DE's Exhibit 1 have - at some time in the past - abandoned their Certificates of Public Convenience and Necessity ("CPCN") that previously authorized them to offer local exchange services in this State. Those carriers are listed in Part II of Exhibit B to this Order. Similarly, Staff reports that several other carriers on VZ-DE's Exhibit 1 have not filed for, or have not yet been granted, such local exchange service CPCNs. Those carriers are listed in Part III of Exhibit B.

¹⁰The Commission's request will go to all the listed CMRS carriers, including the two Verizon subsidiaries and the Nextel provider. Of course, if all CMRS carriers are subsequently voluntarily dismissed from this proceeding, the jurisdictional issue about this Commission's authority over CMRS carriers will evaporate.

17. The Commission is not inclined to expend its time and resources deciding whether, and in what manner, to change the terms of an interconnection agreement when one party to such agreement has either chosen to abandon its local exchange certificate in this State or is not vigorously pursuing obtaining such a CPCN. If a CLEC is not licensed to operate within this State, the Commission has serious question whether it should expend its resources to review, and possibly revise, a Delaware agreement that such CLEC might never utilize. Then again, perhaps one of these non-certificated CLECs can provide a valid reason why it requires a Delaware interconnection agreement, and why the Commission should superintend that agreement, even though the CLEC continues to avoid the obligations required of a "public utility" under State law.

18. Consequently, the Commission directs each of the CLECs listed in Part II of Exhibit B to file and serve a memorandum explaining why the Commission should not deem that carrier's interconnection agreement no longer operative due to its earlier abandonment of its local exchange CPCN. Each listed carrier shall file such memorandum within twenty (20) days of this Order.¹¹ A copy of that filing should be served on VZ-DE and sent to any other party to this proceeding upon that other party's request.

¹¹Of course, if the Commission were later to enter such an Order, such ruling would not relieve the carrier, or VZ-DE, of any obligations or liabilities arising from such contract. In particular, it would not relieve the carriers of liabilities arising from the other parties' prior performance under the filed contract. Rather, the ruling would simply reflect that a non-certificated carrier should not expect this Commission to continue to stand ready to exercise supervisory authority over it, and its contracts, when such carrier continues to escape both the regulatory and financial responsibilities attendant to being a certificated carrier.

19. Similarly, the Commission directs each carrier listed in Part III of Exhibit B to file a memorandum explaining when it will acquire a local exchange CPCN in this State. If the carrier does not provide such a time frame, the carrier shall set forth in its memorandum explanations why it believes it should not be required to obtain such a CPCN and why it believes this Commission must continue to superintend its interconnection agreement even though it will not acquire a local exchange CPCN. Each listed carrier shall file such memorandum within twenty (20) days of this Order. A copy of that filing should be served on VZ-DE and sent to any other party to this proceeding upon that other party's request.

20. If a carrier does not file the memorandum directed in paragraphs 18 or 19 above, the Commission may enter an appropriate Order deeming that carrier's present interconnection agreement no longer operative.¹²

C. Directive to Previously Non-Responding Carriers to File Notices Related to Participation

21. As noted earlier, some non-CMRS carriers listed on Exhibit 1 to VZ-DE's February 2004 petition never filed any response to VZ-DE's request for arbitration.

22. The Commission directs each non-CMRS CLEC that has not filed, as of the date of this Order, any responsive pleading to VZ-DE's petition (either individually or as part of a coalition) to file and serve a notice reciting its intentions about participating in VZ-

¹²See n. 11.

DE's arbitration proceeding. Such notice shall be filed with the Commission and served on VZ-DE within fifteen (15) days of this Order. If the filing CLEC intends to participate in this matter, it shall include a brief summary of its position related to VZ-DE's petition. If the CLEC does not intend to participate, the notice shall so state and set forth what action the Commission should take with regard to that CLEC's interconnection agreement if VZ-DE's petition moves forward after the suspension period and the CLEC has chosen not to participate.

23. If a previously non-responding CLEC does not file a notice in response to the above explicit directive, the Commission may enter appropriate relief with regard to that CLEC without any further notice.

D. Food for Thought

24. The Commission has suspended further formal actions in this matter for a short period. When the Commission revisits the matter after such period, it would hope that the parties - both the CLECs and VZ-DE - will have narrowed the issues. As outlined above, the Commission expects that continued negotiations during the suspension period will, at the least, identify - if not narrow - both the procedural and substantive issues that the Commission might be called upon to decide. To that end, the Commission strongly suggests that carriers, during the suspension period, not only negotiate but carefully consider, and then re-consider, the issues they wish to press to the Commission for resolution.

25. For example, on the CLEC side, several CLECs have suggested that VZ-DE's call for amendments limiting the UNEs to be made available are not now appropriate given the UNE condition imposed on Verizon under the BA/GTE merger Order. VZ-DE argues that such UNE condition no longer prevails; the CLECs contend otherwise. On the one hand, it may be that by June 15, 2004 all judicial review of the TRO will have ended. If so, the merger condition will then have lapsed, even under the CLECs' reading of that Order. However, if by the June date, review is still a possibility, and if the CLECs continue to believe that the GTE merger condition continues to govern the scope of VZ-DE's UNE obligations, the Commission would hope that by that June date the CLECs will have taken their argument to the FCC for that agency's resolution. After all, the invoked condition was accepted, and imposed, by the FCC. The FCC, not this Commission, is surely in a better position to interpret the prior Merger Order, both as to the scope of the condition and its duration. Moreover, a single answer from the FCC, applicable throughout Verizon's footprint, would surely be preferable to a dozen or so state commissions offering their own (potentially conflicting) views on what the Merger Order requires.

26. VZ-DE should also take some measure of its positions. Staff has told the Commission that in its "Transition Provisions" in the TRO the FCC seemingly differentiated, in some aspects, how its UNE rulings were to be implemented in those instances where an interconnection agreement contains a "change of law" provision versus those cases where the contract is silent about such a procedure. VZ-DE, by filing a single consolidated arbitration petition, apparently

reads these same provisions in the TRO to endorse the universal use of not only the timeframes in 47 U.S.C. § 252(b) but, also the use of the § 252(b) arbitration mechanism, regardless of whether an agreement has an explicit "change of law" provision or not. Several CLECs have taken a contrary view, suggesting that VZ-DE has not complied with their particular contract's change of law process and mechanism. The Commission need not now decide whether VZ-DE's reading of the TRO is the correct one or not. Rather, the Commission would expect that during the suspension period, VZ-DE will not only once again scrutinize the FCC's "Transition Period" directives but also review the "change of law" provisions contained in the numerous agreements it now seeks to change. If a single or multiple arbitration must later go forward, the Commission does not - unless absolutely necessary - want to become bogged down in parsing the "change of law" language on one (or sixty) agreements in order to determine whether such provision applies and whether its process has been followed. Perhaps VZ-DE and the CLECs (or at least some of them) can agree that the § 252(b) format is the appropriate vehicle to be utilized. If they cannot reach such an accord, the Commission may eventually need to resolve whether contractual "change of law" provisions govern in the TRO context, either generally or under the language of particular contracts. If the Commission must make those decisions, the Commission expects that the parties will have already carefully constructed solid factual and legal bases that support their respective views.

27. Similarly, as noted earlier, VZ-DE and many CLECs have locked horns over several provisions in VZ-DE's proposed Amendment

templates relating to "routine network modification" activities. Many CLECs take issue with VZ-DE's proposed Pricing Attachment listing non-recurring charges for particular network modification activities. The CLECs argue that these charges are not necessary, given that VZ-DE already recovers the costs for such activities in other charges, or alternatively that the prices quoted are too high. In addition, several CLECs object to proposed language that would seemingly carve out VZ-DE's performance in provisioning loops or transport which might require such network modifications from standard provisioning intervals and other performance measures and remedies.

28. In the past, the Commission has determined recurring and non-recurring TELRIC rates for UNEs and related services in an SGAT-like generic proceeding, rather than in particular bilateral arbitration dockets. See PSC Dckt. No. 96-324, Phases I and II. So too, the Commission has over the past several years adopted (and later modified) the performance standards ("DE C2C Guidelines") and performance remedies ("DE PAP") applicable to VZ-DE's wholesale activities in proceedings conducted in PSC Dckt. No. 02-001. At first blush, it would seem to the Commission that it might be more efficient to consider the additional "routine network modification" rates that VZ-DE now proposes in the generic TELRIC rate proceeding docket. For similar reasons, the Commission suggests that PSC Dckt. No. 02-001 might be the better venue to consider what activities should, or should not, be subject to performance standards and measures contained in the DE C2C Guidelines and the DE PAP. By so moving those issues, the Commission would have access to the records already developed in

those other proceedings when considering VZ-DE's present "routine network modification" rates and provisioning exemption. Consequently, the Commission urges VZ-DE to consider whether it should move its network activities rate and performance proposals to these other proceedings. If VZ-DE chooses to do so, the Commission would expect that VZ-DE would make the appropriate filings in those other dockets soon after June 15. And the Commission would expect that those filings would come with adequate support. Thus, the Commission would expect that VZ-DE's "routine network modification" rate filing be supported with appropriate documents to establish that the proposed charges do not recover costs already included in other rates and that the proposed new rates meet the appropriate pricing standard. And the Commission would similarly expect that VZ-DE's performance measure filing would articulate why VZ-DE's performance in cases of provisioning elements involving routine network modifications should be exempted from scrutiny under performance standards.

NOW THEREFORE, IT IS ORDERED:

1. That, except for the actions described in paragraphs 3, 4, 5, and 6 below, further formal actions in this matter are hereby suspended, and held in abeyance, until after June 15, 2004. After such date, the Commission will enter further appropriate Orders concerning this proceeding. This Order, temporarily suspending further proceedings, does not determine any of the issues or motions previously filed by one or more parties in this matter.

2. That, during the period of suspension described in paragraph 1, the Commission encourages Verizon Delaware Inc., and each

other carrier named as a respondent in this proceeding, to undertake, or continue, good faith negotiations directed at: (a) reaching a comprehensive agreement to govern the terms of the carriers' interconnection and the terms for network access; or (b) narrowing the particular issues that might subsequently be the subject of dispute in this proceeding.

3. That the commercial mobile radio service providers listed in Part I of Exhibit B to this Order may file with the Commission the memoranda requested in paragraph 15 of the body of this Order. Such memorandum shall set forth that particular CMRS provider's views on whether this Commission has the "jurisdiction" and authority (under both federal and state law) which would allow the Commission (acting on Verizon Delaware Inc.'s petition) to modify or amend the previously approved interconnection agreement between that provider and Verizon Delaware Inc. Such memorandum may be filed with the Commission and served on Verizon Delaware Inc., within twenty (20) days from the date of this Order.

4. That each carrier listed in Part II of Exhibit B to this Order shall serve and file the document described in ¶ 18 in the body of this Order within twenty (20) days from the date of this Order.

5. That each carrier listed in Part III of Exhibit B to this Order shall serve and file the document described in paragraph 19 of the body of this Order within twenty (20) days of the date of this Order.

6. That each carrier that has a Delaware interconnection agreement with Verizon Delaware Inc., and which has not previously

submitted a response to Verizon Delaware Inc.'s petition for arbitration, shall serve and file the notice called for in paragraph 22 in the body of this Order within fifteen (15) days from the date of this Order.

7. That Senior Hearing Examiner William F. O'Brien is designated to act as a monitor of the proceedings called for by this Order. Hearing Examiner O'Brien is empowered to interpret this Order, both as to substance and deadlines, and, in the case of unanticipated voids, to direct further actions consistent with the directives in this Order.

8. 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/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

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CIAL MOBILE RADIO SERVICE PROVIDERS)
IN DELAWARE PURSUANT TO SECTION 252)
OF THE COMMUNICATIONS ACT OF 1934,)
AS AMENDED, AND TGE *TRIENNIAL REVIEW*)
ORDER (FILED FEBRUARY 20, 2004))

CARRIERS FILING RESPONSES TO
VERIZON DELAWARE INC.'S
PETITION FOR ARBITRATION

AT&T Communications of Delaware, LLC

MCI WorldCom Communications, Inc., MCIMetro Access
Transmission Services, LLC, & Intermedia
Communications, Inc.

Cavalier Telephone Mid-Atlantic, LLC

Cellco Partnership, d/b/a Verizon Wireless; Air
Touch Paging, d/b/a Verizon Wireless Messaging
Services

Competitive Carrier Coalition I, representing:

A.R.C. Networks, Inc.
Broadview Networks, Inc.
Business Telecom, Inc.
Comcast Business Solutions, Inc.
DIECA Communications, Inc., d/b/a
Covad Communications Co.
D-Tel LLC
Global Crossing Local Services Incorporated
IDT America Corp.
KMC Telecom V Inc.
LineSystems Inc.
SNiP LiNK LLC
Spectrotel, Inc.
Talk America Inc.
Winstar of Delaware, LLC

XO Delaware, Inc.

Competitive Carrier Coalition II, representing:

ACN Communications Services, Inc.
Adelphia Business Solutions Operations, Inc.,
d/b/a Telcove
ATX Licensing, Inc.

Capital Telecommunications, Inc.
DSLnet Communications, LLC
Focal Communications Corporation of Pennsylvania
ICG Telecom Group, Inc.
Level 3 Communications, LLC
Lightship Telecom LLC
LightWave Communications LLC
PaeTec Communications Inc.

Nextel Communications of the Mid-Atlantic, Inc.

Sprint Communications Company, L.P.

US LEC of Pennsylvania, Inc.

E X H I B I T "B"

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., FOR ARBI-)
TRATION OF AN AMENDMENT TO INTERCON-)
NECTION AGREEMENTS WITH COMPETITIVE)
LOCAL EXCHANGE CARRIERS AND COMMER-) PSC DOCKET NO. 04-68
CIAL MOBILE RADIO SERVICE PROVIDERS)
IN DELAWARE PURSUANT TO SECTION 252)
OF THE COMMUNICATIONS ACT OF 1934,)
AS AMENDED, AND TGE *TRIENNIAL REVIEW*)
ORDER (FILED FEBRUARY 20, 2004))

PART I

CMRS/CELLULAR CARRIERS

Air Touch Paging
Aquis Wireless Communications, Inc.
Arch Wireless Operating Company, Inc.
AT&T Wireless Services, Inc.
Cellco Partnership
Dover Radio Page, Inc.
Metrocall, Inc.
Network Services LLC
Nextel Communications of the Mid-Atlantic Inc.
Omnipoint Communications Enterprises L.P.
PhillieCo L.P.
Southwestern Bell Mobile Systems LLC
Washington/Baltimore Cellular Limited Partnership
Weblink Wireless, Inc.

PART II

CARRIERS THAT HAVE ABANDONED LOCAL EXCHANGE CARRIER CERTIFICATES

1-800-Reconex Inc.
Essex Communications Inc.
Lightwave Communications LLC
RCN Telecom Services of Delaware Inc.

PART III

**CARRIERS THAT HAVE NOT ACQUIRED
A FINAL LOCAL EXCHANGE CERTIFICATE**

ACC National Telecom Corp. (no CPCN Order)
American Fiber Network, Inc. (no filing)
Dark Air Corporation (no filing)
Global Crossing Local Services Inc. (no filing)
Net Carrier Telecom Inc. (no bond)
Transbeam (awaiting tariffs and bonds)
Premiere Network Services (pending)