

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF VERIZON-RHODE ISLAND :
FOR ARBITRATION OF AN AMENDMENT TO :
INTERCONNECTION AGREEMENTS WITH : DOCKET NO. 3588
COMPETITIVE LOCAL EXCHANGE CARRIERS :
AND COMMERCIAL MOBILE RADIO SERVICE :
PROVIDERS IN RHODE ISLAND TO IMPLEMENT :
THE TRIENNIAL REVIEW ORDER AND TRIENNIAL :
REVIEW REMAND ORDER :

ORDER APPROVING COMPLIANCE FILINGS

On February 23, 2004, as allowed by the Telecommunications Act of 1996 (“Telco Act”), Verizon-Rhode Island (“VZ-RI”) filed a petition with the Commission for arbitration to amend interconnection agreements (“ICAs”) between VZ-RI and competitive local exchange carriers (“CLECs”) in Rhode Island. VZ-RI claimed that the proposed amendment would implement changes in VZ-RI’s unbundling network obligations promulgated in the FCC’s Triennial Review Order (“TRO”). Two procedural arbitration decisions were issued, which limited the scope of the issues as well as the number of parties in this arbitration.¹ In accordance with the Public Utilities Commission’s (“Commission”) Regulations Governing Arbitration, Mediation, Review and Approval of Interconnection Agreements (“Arbitration Rules”), Steven Frias, Executive Counsel to the Commission, acted as Arbitrator in this matter.²

On August 20, 2004, the FCC issued its Interim Rules Order. VZ-RI and the CLECs engaged in further negotiation regarding the terms of an ICA Amendment. On

¹ Order Nos. 17960 (issued August 18, 2004) and 17802 (issued April 9, 2004).

² The procedural time limits contained in the Commission’s Arbitration Rules were waived by the parties during the Arbitration proceeding. The parties requested further time adjustments from the Commission following the issuance of the Arbitration Decision. The request for extension of time to file comments in response to the Arbitration Decision was granted. Therefore, in light of the requests from the parties, they are deemed to have waived any objection to the presumption in the Arbitration Rules that the Commission’s decision reviewing the parties’ comments in response to the final Arbitration Decision was made more than thirty days from the date of the Arbitration Decision.

September 15, 2004, VZ-RI, AT&T, and the Competitive Carrier Group (“CCG”) represented by the law firm of Adler, Pollock & Sheehan filed new ICA Amendments.³ On January 7, 2005, the parties filed a joint statement of issues to be arbitrated in this proceeding and on April 6, 2005, the parties agreed to two supplemental issues.⁴

On February 4, 2005, the FCC issued its Triennial Review Remand Order (“TRRO”), which addressed issues as to VZ-RI’s unbundling network obligations that had been reversed and/or remanded by the U.S. D.C. Circuit Court of Appeals.⁵ On March 29, 2005, AT&T, MCI, and the CCG filed revised ICA Amendments to reflect the TRRO decision. On April 8, 2005, VZ-RI, AT&T, MCI and the CCG filed their initial briefs. On April 29, 2005, the same four parties filed reply briefs. On May 31, 2005, oral argument was conducted at which VZ-RI, AT&T and CCG were represented.⁶

On November 10, 2005, the Arbitrator issued an Arbitration Decision addressing all issues raised by the parties.⁷ On December 13, 2005, the Arbitrator issued a Supplemental Arbitration Decision (“Supplemental Decision”) at the request of VZ-RI to clarify a provision of the Arbitration Decision.⁸

On December 5, 2005, DIECA Communications, Inc., d/b/a Covad Communications Company (“Covad”), one of the members of CCG, filed Initial Comments on the Arbitration Decision dated November 10, 2005, requesting review and rejection and/or clarification of three issues. On December 19, 2005, VZ-RI filed its

³ The CCG is composed of Choice One, Covad Communications Company and IDT America.

⁴ At a pre-hearing conference on January 18, 2005, the Arbitrator determined that two sub-issues for issue 17 addressing Performance Assurance Plan (“PAP”) metrics for hot cuts and Section 271 facilities were excluded from the arbitration.

⁵ United States Telecom Ass’n v. FCC, 359 F.3d 554 (D.C. Cir. 2004).

⁶ On June 3, 2005, at the request of the Arbitrator, VZ-RI filed comments addressing the appropriate definition for routine network modifications.

⁷ Order No. 18416 (issued November 10, 2005).

⁸ Order No. 18472 (issued December 13, 2005).

Response to the Comments of Covad. On January 31, 2006, at an Open Meeting, the Commission affirmed the Arbitration Decision as to all three issues.

On March 3, 2006, VZ-RI made two compliance filings; an ICA Amendment between VZ-RI and Cox which was not disputed (“Compliance Filing 1”) and an ICA Amendment between VZ-RI and CCG, which contained disputed language (“Compliance Filing 2”). The Commission received a letter from the Arbitrator that Compliance Filing 1 appeared to be in conformance with his Arbitration Decisions which were affirmed by the Commission in Order No. 18522. At its Open Meeting on March 3, 2006, the Commission approved the Compliance Filing 1 as being in conformance with the Arbitrator’s and the Commission’s prior findings.

On March 30, 2006, the Arbitrator conducted a hearing between VZ-RI and CCG to review the disputed language and clarify his findings. The parties were ordered to make another compliance filing within ten days of the hearing.⁹ On April 10, 2006, VZ-RI filed another proposed ICA which would govern the conduct of VZ-RI and CCG. In that letter, counsel for VZ-RI stated that “these parties have reached agreement on all terms of this proposed Amendment, and no language in this Amendment is shown as disputed.”¹⁰ (“Compliance Filing 3”). On April 12, 2006, the Arbitrator filed a letter with the Commission stating that the ICA Amendment was in compliance with all orders issued in this docket. At its Open Meeting held on April 13, 2006, the Commission approved Compliance Filing 3 as being in conformance with the Arbitrator’s and Commission’s prior findings.

⁹ Tr. 3/30/06.

¹⁰ VZ-RI’s Filing Letter, 4/10/06.

The parties shall file signed ICA Agreements within fourteen days of the issuance of this Commission Order.

Commission Findings

This is the end of a long process intended to implement the FCC's TRO and TRRO. The CLECs have had ample due process and ample opportunity to litigate this issue. Furthermore, given the fact that this process took over two years to reach completion, the CLECs have had ample opportunity to modify their respective business plans in order to prepare for the inevitable, namely, the Commission's implementation of preemptive federal law. As the Commission has stated previously, the time for litigation is over and the time for competition is now.

Accordingly, it is hereby

(18579) ORDERED:

1. The proposed ICA Amendment between Verizon New England, Inc., d/b/a Verizon Rhode Island and Cox Rhode Island Telcom II, L.L.C., filed on March 3, 2006, is hereby approved, consistent with the Arbitrator's and Commission Findings in Order Nos. 18416, 18502, and 18522.
2. The proposed ICA Amendment between Verizon New England, Inc., d/b/a Verizon Rhode Island and the Competitive Carrier Group, comprised of Choice One Communications, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, and IDT America Corp., filed on April 10, 2006, is hereby approved as consistent with the Arbitrator's and Commission Findings in Order Nos. 18416, 18502, and 18522.

3. The parties shall file signed ICA Amendments with the Commission within fourteen (14) days of the issuance of this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO OPEN MEETING DECISIONS ON MARCH 3, 2006 AND APRIL 13, 2006. WRITTEN ORDER ISSUED APRIL 25, 2006.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner

Mary E. Bray, Commissioner