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 COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERICAL MOBILE RADIO SERVICE PROVIDERS IN RHODE ISLAND TO IMPLEMENT THE TRIENNIAL REVIEW ORDER AND TRIENNIAL REVIEW REMAND ORDER	:	DOCKET NO. 3588

ORDER

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

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[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. In its written order, the Commission ordered the parties to file signed ICA Agreements within fourteen days of the issuance of its Order.

[9] Tr. 3/30/06.
[10] VZ-RI's Filing Letter, 4/10/06.

The Commission noted that this was to be the end of a long process intended to implement the FCC's TRO and TRRO. The CLECs 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 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 had stated previously, the time for litigation was over and the time for competition is now.

Following the Commission's ruling, on May 9, 2006, Covad filed a Motion for Relief from Commission Order No. 18579. In its Motion for Relief from Order, Covad argued that the Arbitrator had inappropriately ruled that VZ-RI may impose certain nonrecurring charges for routine network modifications that VZ-RI is obligated to perform. In other words, Covad maintained that it should not have to pay anything to VZ-RI for performing routine network modifications. Covad argued first, that the Arbitrator had dismissed such issues from the arbitration and second, that the Commission should require VZ-RI to file new TELRIC (Total Long Run Incremental Cost) studies to support its charges to CLECs. Covad argued that other states had required such filings. Covad also made the argument that even after a rate proceeding, VZ-RI would have to further negotiate the terms of the ICA before the rates could go into effect.

In its response, filed on May 22, 2006, VZ-RI argued that the Commission's Order No. 18579, approving the Compliance Filing was entered appropriately. VZ-RI argued that the Arbitrator did not approve any new rates for routine network modifications, but rather, allowed them to incorporate rates currently tariffed (previously

approved by the Commission) which are necessary pre-requisites to performing routine network modifications. Any new rates filed by VZ-RI would have to go through a wholesale rate proceeding performed by the Commission. This would allow Covad the opportunity to participate and challenge VZ-RI's filing. VZ-RI argued that no other state has required such filings for non-recurring activities for which VZ-RI already has approved rates on file.

A review of the Arbitrator's decision supports VZ-RI's position and supports the Commission's Order No. 18579.[11] Covad's objection at the Oral Argument of March 30, 2006 was to any "rates" VZ-RI tried to include under To Be Determined ("TBD"). The Arbitrator disallowed such inclusions in the ICA finding that those items would need to be approved through a wholesale rate case where all CLECs would have the opportunity to be included. This differs from rates already approved by the Commission as just and reasonable, where the CLECs had an opportunity to participate. These rates were allowed to be included. Any new rates or changes to current rates will go through a rate proceeding and will be incorporated through the parties' change of law provision. With regard to Covad's argument that it should not have to pay for routine network modifications, the Arbitrator ruled that the charges allowed in the ICA are those that were previously approved by the Commission and which are necessary to perform a routine network modification. In other words, these actions are precursors to the performance of the routine network modification.

The Commission notes that the Compliance Filing had been filed by VZ-RI with the consent of Covad. At its Open Meeting of June 22, 2006, the Commission denied Covad's Motion for Relief from Final Order because the Arbitrator's ruling and the

[11] See Transcript dated March 30, 2006, pp. 169-190.

Commission's affirmation of that ruling through its approval of the Compliance Filing is not inconsistent with the FCC's Triennial Review Order or the Triennial Review Remand Order and represents a holding which is just and reasonable. If VZ-RI wishes to add new tariffed services/rates or to change current wholesale rates, it will need to make a filing before the Commission for a full review, after which, such new rates will be incorporated into ICAs through change of law provisions. CLECs will have a full opportunity to participate and challenge such a filing before the Commission. Finally, yet another review of this docket shows that Covad has had ample due process before the Commission in this matter.

Accordingly, it is hereby

(18661) ORDERED:

1. The Motion of Covad Communications Company for Relief from Final Order is hereby denied.
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 with an effective date no later than April 25, 2006.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON JUNE 22, 2006. WRITTEN ORDER ISSUED JULY 12, 2006.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner

Mary E. Bray, Commissioner