

among other alternatives, allow competitors to place their line cards in its remote terminals is inefficient, technically infeasible, and a "system nightmare". Verizon recognizes the Commission's goal of ensuring DSL is available to as many customers as practical as soon as possible, and suggests we instead encourage it to assess the legal and operational possibilities of a Project Pronto, or end-to-end wholesale DSL service over digital loop carrier. It offers to allay fair competition concerns by agreeing to give all carriers, including its data subsidiary, access to any such offering simultaneously and on the same non-discriminatory terms and conditions.

Other parties oppose modification. AT&T and Rhythms defend state commissions' authority to require further unbundling of elements; AT&T points out that Verizon falls short by only one of the four FCC criteria for unbundled packet switching and urges--for future consideration--that a potential Verizon adoption of a Project Pronto-style architecture should not deny competitors next generation unbundled loops. Covad responds that the Order's menu does not require Verizon purchase of advanced services equipment; that Verizon's technical objections are not part of the record; and, with Rhythms, argues that installation of competitor-owned line cards is not packet switching and is eminently workable.

2. Discussion

The request for reconsideration is denied. The Order requires Verizon, pursuant to state law, to provide competitors the ability to serve their customers DSL where and as technically feasible. It imposes no unreasonable or illegal requirements upon the incumbent.

Verizon concedes the FCC unbundled packet switching requirement applies if it, or its subsidiary, begins to provide DSL to customers over digital loop carrier. In response to the

Order, by letter dated December 6, 2000, Verizon stated it had made no business plans to provide DSL to customers served by digital loop carrier; however, Verizon subsequently notified us of its business decision to develop its wholesale digital loop carrier-based DSL service. Included in its next steps, according to Verizon, is the solicitation of industry input.

Inasmuch as Verizon represents that it is proceeding with this offering, its request for reconsideration on preemption grounds is academic, and we do not reach its merits today.

We reiterate that the incumbent's obligations to afford competitors the ability to provide DSL to customers served over digital loop carrier under the Order remain in effect. Moreover, to ensure equitable conditions for Verizon and competitors to provide DSL to digital loop carrier customers we require Verizon, and invite competitors, to file a proposed schedule and work plan for implementation of wholesale services over digital loop carrier within 30 days of the issuance of this Order.

THE CONVERSENT PETITION

Conversent moves for reconsideration as to Verizon's provision of dark fiber pursuant to its tariff amendments, asserting its concerns were not directly addressed in the Order. Verizon opposes reconsideration, asserting the Commission considered and rejected Conversent's positions.

Conversent complained of deficiencies in the 916 tariff filing pertaining to the quality and availability of interoffice dark fiber. Conversent interpreted the tariff filing as allowing Verizon to provide dark fiber "as is" and not requiring it to improve transmission quality for a competitor's use. Verizon responded that it is not obligated to improve the

transmission characteristics of existing dark fiber²³, but that it would clean or retrofit connectors upon request at cost-based rates.²⁴ Conversent sought a requirement that Verizon connect fiber pairs in order to create new routes.²⁵ Conversent also protested that the availability of dark fiber office to office was not readily ascertainable and offered tariff language intended to allow competitors access to fiber layout maps of multiple wire centers.

Discussion

Conversent's request for clarification is granted, in order to explicate the underpinnings of the Order. However, the outcome will not be modified and therefore reconsideration is denied. First, we found that Verizon's position concerning dark fiber quality was consistent with the FCC UNE Remand Order and the July 2000 decision of the United States Court of Appeals for the Eighth Circuit.²⁶ The incumbent is obligated to provide access to existing dark fiber facilities, but not to improve them. Second, as to Conversent's request that Verizon be required to lay new fiber routes, we found this requirement also goes beyond the FCC regulations. We do, however, encourage parties to negotiate such arrangements in their interconnection agreements and to bring to the Commission's attention any instances where the lack of fiber connection inhibits the growth

²³ Verizon Post-hearing Brief, p. 2, et seq.

²⁴ Id., pp. 3 and 6.

²⁵ For example, assume a CLEC requests dark fiber from CO-A to CO-C and that Verizon has no existing dark fiber from A to C, but does have fiber from A to CO-B and from B to C. Conversent would have us require Verizon to connect the fiber at the intermediate office B in order to fulfill the CLEC request.

²⁶ *Iowa Utilities Bd. v. FCC*, at 757.

of local competition. Third, we expect that Verizon will fully cooperate with competitor requests for information to determine the availability of dark fiber, as set forth in the tariff, and see no need to require access to fiber layout maps at this time.

CONCLUSION

The Verizon petition, insofar as it seeks clarification of the Commission's October 31, 2000 Order concerning the wholesale provisioning of DSL-related services, is granted, and we clarify that we did not find that the high frequency portion of the UNE-P loop is, at this time, an unbundled network element. Insofar as Verizon seeks reconsideration of the terms of the Order its petition is denied, except as to its petition to reconsider the schedule for line splitting implementation, which is granted.²⁷

Insofar as the Conversent petition seeks reconsideration of the Order, it is denied; insofar as Conversent seeks clarification of the terms of the Order as to dark fiber-related issues, we clarify.

The Commission orders:

1. Verizon New York Inc.'s petition for reconsideration is granted in part and denied in part, as explained in this order.
2. Conversent Communications of New York, LLC's petition for rehearing is denied.
3. Verizon New York Inc.'s requests for clarification are granted, and Opinion No. 00-12 is clarified, as explained in this order.

²⁷ Verizon's offer to allow competitors to contract with its vendors to speed collocation and splitter augment orders is adopted, however, and the competitor counteroffer to employ non-Verizon vendors is referred to the Carrier Working Group.

4. To the extent Conversent Communications of New York, LLC seeks clarification, Opinion No. 00-12 is clarified, as explained in this order.

5. The schedule for completion of the OSS for line splitting, as described in this order, is adopted.

6. Verizon New York Inc. must file a schedule and work plan for DSL over digital loop carrier wholesale service implementation within 30 days of the issuance of this order.

7. The Carrier Working Group should report augment interval recommendations within 90 days of this order.

8. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary