

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 97(2)

In the Matter of)	
)	
COVAD COMMUNICATIONS COMPANY)	PUC STAFF'S COMMENTS
and VERIZON NORTHWEST INC.)	
)	
Adopting the Negotiated Interconnection)	
Agreement between NUI TELECOM, INC.)	
and VERIZON MARYLAND, INC. which was)	
previously approved by the Maryland Public)	
Service Commission, Submitted Pursuant to)	
Section 252(e) of the Telecommunications Act)	
of 1996.)	

RECOMMENDATION: REJECT AMENDMENT AS MOOT

The Public Utility Commission of Oregon's staff (Staff) submits the following comments regarding the interconnection agreement between Covad Communications Company (Covad) and Verizon Northwest Inc. (Verizon). Covad and Verizon filed the agreement with the Commission on May 17, 2005, as provided under Section 252(e) of the Telecommunications Act of 1996.

The cover letter of the filing submitted by Verizon and jointly signed by Covad state that the agreement is an "adoption" of the terms and is "adopting" the terms, respectively, of an agreement approved in the State of Maryland. The filing is pursuant to the Most Favored Nation (MFN) conditions that the Federal Communications Commission imposed on the Bell Atlantic/GTE Merger. See CC Docket No. 98-184. The MFN merger condition requires Verizon to offer of out of state agreements to other telecommunications providers, but it does not bind the Public Utility Commission of Oregon (Commission) to approve these agreements. While companies are free to use language and terms from whatever agreement they desire, it does not constitute an "adoption" upon filing with the Commission. The underlying agreement referenced in the filing, the Interconnection Agreement between Verizon Maryland, Inc. and NUI Telecom, Inc., is not an agreement previously approved by the Commission. Therefore, it cannot be processed as an adoption in Oregon.

The filing is not an adoption and Verizon holds that it is not a negotiated agreement. Staff views this filing as a Merger Most Favored Nation agreement filed pursuant to

FCC Order No. 00-221. Staff contends that the filing merits review as set forth in 252(e)(2)(A) of the Act. Staff makes no representations as to what the implications of such a filing constitutes.

The document was filed with the Commission on May 17, 2005. Page three of the cover letter states: "Covad's adoption of the Verizon Maryland Terms shall become effective on May 9, 2003." The filing states that the terms of the agreement between Covad and Verizon Northwest expired on September 19, 2004. The effective date and the date of expiration occurred prior to filing the amendment with, and approval or disapproval by, the Commission. Under Sections 252(a) and (e) of the Telecommunications Act of 1996, parties to an interconnection agreement are required to submit the agreement "to the State Commission" for approval or rejection. Agreements do not have force or effect until approved by the relevant state commission, in this case the Public Utility Commission of Oregon.

Staff has cautioned carriers to file agreements and amendments prior to the stated effective date and well before the termination date. Failure to do so leaves the parties operating under the negotiated terms without Commission approval. Such circumstances could be construed as discriminatory if no other carriers are able to access the agreement or amendment. Verizon has recently has filed several agreements untimely. Staff cautions Verizon that should a pattern of late filing develop, the Commission could seek penalties against the company.

This filing is one of a small group of agreements that Verizon discovered had not been filed when Verizon conducted a verification of all of its interconnection agreements. Verizon filed each agreement, including this one, as soon as the company was aware that it had not been filed with the Commission for approval. None of the agreements are unique in nature or contain any questionable provisions. However, this particular agreement is problematic because it already had expired before it was filed with the Commission. As indicated on page three of the cover letter at item two, which states: "Covad's adoption of the Verizon Maryland Terms is currently scheduled to expire on September 19, 2004.", the agreement was no longer in effect at the time it was filed. Staff could not find any indication of an evergreen clause included in the filing under which the agreement would still be valid. This presents an unusual situation.

Had this agreement been filed prior to the expiration date, Staff would have recommend approval. There is nothing in the filing that Staff finds discriminatory or inconsistent with the public interest had it been filed on time. This is the same type of MFN agreement that has been approved several times in the past. The only issue is that the term of the agreement has expired.

Although the agreement itself does not appear to discriminate against telecommunications carriers that are not party to the agreement, approval of an expired agreement is not consistent with the public interest, convenience, and necessity. There are no protections available to the parties by Commission approval since the terms of the agreement have already come and gone. After reviewing the filing under the standards established by the Telecommunications Act of 1996, Staff recommends the Commission reject the filing as moot.

Dated at Salem, this 7th day of June, 2005.

Celeste Hari
Telecommunications Analyst
Competitive Issues