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June 17, 2004

VIA E-MAIL and FEDERAL EXPRESS

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Post Office Box 47250
Olympia, WA 98504-7250

Re: ***In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest Inc.*, Docket No. UT-011219**

Dear Ms. Washburn:

On behalf of Verizon Northwest Inc. ("Verizon"), enclosed please find an original and eleven (11) copies of the Motion of Verizon Northwest Inc. to Terminate Proceeding. An additional copy is enclosed to be file-stamped and returned in the self- addressed envelope provided. Thank you for your assistance in this matter.

Sincerely yours,

Charles H. Carrathers III

cc: All Parties of Record, via e-mail and U.S. Mail

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by	)	DOCKET NO. UT-011219
VERIZON NORTHWEST INC.	)	MOTION OF VERIZON NORTHWEST INC. TO TERMINATE PROCEEDING

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MOTION OF VERIZON NORTHWEST INC.
TO TERMINATE PROCEEDING

On March 1, 2002, over the objection of Verizon Northwest Inc. ("Verizon"), the Commission issued its First Supplemental Order in this matter.[1/] That Order and subsequent Supplemental Orders compel Verizon to establish and file "as comprehensive a set of general terms and conditions as possible" for competing carriers to use in interconnecting with Verizon. [2/] This proceeding, however, is preempted by the Communications Act and should therefore be terminated.[3/]

Federal cases decided since the Commission initiated this matter make clear that the Communications Act preempts any state law basis for this proceeding. Most notably, in *Verizon North, Inc., v. Strand*[4/] and *Wisconsin Bell, Inc., v. Bie*,[5/] the United States Courts of

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1/ First Supplemental Order, *In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest Inc.*, Docket No. UT-011219 (March 1, 2002) ("*First Supplemental Order*").

2/ Third Supplemental Order, *In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest Inc.*, Docket No. UT-011219, at ¶ 15 (August 23, 2002) ("*Third Supplemental Order*").

3/ Communications Act of 1934, Ch. 652, 48 Stat. 1064, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151, *et seq.*) ("Communications Act" or "Act").

4/ 309 F.3d 935 (6th Cir. 2002), *cert. denied,* 538 U.S. 946, 123 S.Ct. 1649 (2003).

5/ 340 F.3d 441 (7th Cir. 2003), *cert. denied sub nom. WorldCom, Inc. v. Wisconsin Bell*, __ U.S. __, 124 S.Ct. 1075 (2004).

Appeals for the Sixth and Seventh Circuits both held that the Communications Act preempts state proceedings, like this one, that require carriers to bypass the interconnection agreement process.

This proceeding, moreover, has no basis in the Communications Act. The only provision addressing "SGATs," section 252(f)(1), applies only to Bell operating companies, which Verizon Northwest Inc. is not. And even if it were, section 252(f)(1) is a *voluntary* mechanism that provides no authority for this Commission to compel Verizon or any other company to produce an SGAT or similar filing. Nor does section 252(g) of the Communications Act, which permits consolidation of existing proceedings brought by individual carriers under section 252, authorize the Commission to create an omnibus proceeding *on its own motion.*

Accordingly, Verizon respectfully moves the Commission to terminate this proceeding.

BACKGROUND

This proceeding originated in the course of the Commission's generic cost proceeding, Docket No. UT-003013, when the Commission ordered Verizon to file proposed terms and conditions regarding microwave entrance facilities.[6/] In compliance with that order, Verizon filed tariff sheets stating terms and conditions for microwave entrance facilities (Advice No. 997) on July 2, 2001. The Commission opened the present docket to review those tariff sheets.

On November 27, 2001, the Commission invited parties in this docket and in the generic cost proceeding to comment on whether the Commission should broaden the scope of issues to require Verizon to establish a tariff or other statement of generally available terms

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6/ Twenty-Second Supplemental Order, *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements and Transport and Termination*, Docket No. UT-003013 (June 14, 2001).

regarding its provisioning of other network elements.[7] Verizon filed comments and reply comments directing the Commission's attention to section 252(f) of the Communications Act, which makes clear that section 252(f)(1)'s SGAT mechanism applies only to Bell operating companies, and in any event is completely voluntary.[8] Verizon also informed the Commission that, as of December 2001, it had entered into over 100 agreements with CLECs through the negotiation or arbitration provisions of the Act. Verizon urged the Commission not to compel Verizon to adopt an SGAT, contrary to the plain language of section 252(f), particularly given that a CLEC lacking the resources to negotiate or arbitrate its own agreement had more than 100 existing agreements available for adoption.

Despite Verizon's comments, on March 1, 2002, the Commission issued its First Supplemental Order, broadening the scope of issues in this proceeding to include terms and conditions governing CLECs' interconnection with Verizon's network. In response to Verizon's argument that section 252(f) of the Act precluded the Commission from ordering Verizon to establish an SGAT, the Commission clarified that Staff was "not asking the Commission to literally establish an 'SGAT.'"[9] Rather, the Commission stated that it was requiring Verizon to "establish tariffs made up of terms and conditions for select

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[7] The Commission later described such a proceeding as "analogous to Commission Docket No. UT-003040 in which the Commission is reviewing Qwest Corporation's (Qwest) proposed Statement of Generally Available Terms and Conditions, colloquially abbreviated to SGAT." *First Supplemental Order* ¶ 4.

[8] 47 U.S.C. § 252(f)(1) ("A *Bell operating company may* prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State . . . .") (emphasis added). *See* Comments of Verizon Northwest Inc., *In the Matter of the Continued Costing and Pricing of UNEs; In the Matter of Verizon Northwest Inc.'s Terms and Conditions Regarding Microwave Entrance Facilities*, Docket Nos. UT-003013, UT-011219, at 1-3 (filed Dec. 5, 2001); Reply Comments of Verizon Northwest Inc., *In the Matter of the Continued Costing and Pricing of UNEs; In the Matter of Verizon Northwest Inc.'s Terms and Conditions Regarding Microwave Entrance Facilities*, Docket Nos. UT-003013, UT-011219, at 1-2, 4-5 (filed Dec. 21, 2001).

[9] *First Supplemental Order* ¶ 9.

interconnection and network elements," pursuant to state law.[10/] And although the Commission's First Supplemental Order stated that neither the Commission nor Staff sought to require an "SGAT" per se, the Commission's Third Supplemental Order stated that this was precisely the goal of the proceeding. According to the Commission, "[t]he parties generally agreed that the goal of the process for this case would be to develop a statement of generally available terms (SGAT) for use in interconnection agreements between all interested CLECs and Verizon."[11/]

The parties proceeded with negotiations under the Commission's original and revised procedural schedules.[12/] As soon as the parties began negotiating the various sections of Verizon's model agreement in January 2003, problems with joint CLEC negotiations emerged. The participating CLECs attempted to submit a comprehensive replacement to Verizon's proposed terms, contrary to the Commission's First and Third Supplemental Orders and the parties' understanding of how negotiations would proceed.[13/] Participating CLECs also indicated that they wished to submit *separate* counterproposals to Verizon's proposed terms.

Once the parties resolved their issues regarding the procedure for negotiation, they attempted, with little success, to negotiate the individual sections of Verizon's proposal. As negotiation of each section concluded, a significant number of unresolved issues remained.

10/ *Id.*

11/ *Third Supplemental Order* ¶ 8.

12/ Currently, the parties are proceeding under the procedural schedule set forth in the Commission's Eighth Supplemental Order. In this order, the Commission extended the procedural schedule to promote efficiency and avoid the duplication of resources that would ensue from negotiating unbundled network elements while the Commission simultaneously conducted *Triennial Review* proceedings. Eighth Supplemental Order, *In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest Inc.*, Docket No. UT-011219, at ¶ 4 (October 7, 2003).

13/ In the First and Third Supplemental Orders, the Commission ordered the parties to commence negotiations with *Verizon*'s model interconnection agreement. *Third Supplemental Order* ¶ 20; *First Supplemental Order* ¶ 24.

Discussions stretched months later than the agreed-upon timeline, as a number of the participating CLECs missed deadlines, requiring the parties' deadlines to be extended again and again. On several occasions, an insufficient number of CLECs made themselves available for scheduled negotiations calls, requiring the calls to be postponed. Many issues continue to exist that could be resolved but for one CLEC's concern with language agreed to by every other participating party.

After two years and "completion" of the negotiation of the resale, interconnection, and general terms and conditions sections of Verizon's proposed agreement, the parties have close to 100 unique issues still in dispute. And the parties will most likely need to revisit these sections because they have not addressed these issues for several months, while the passage of time and rapid pace of change in the telecommunications industry may have altered the parties' positions on various issues.

Meanwhile, at least one other participating CLEC has simultaneously pursued separate negotiations with Verizon in Washington. During the time this proceeding has been pending, other participating CLECs have also negotiated and/or arbitrated agreements with Verizon for use in other states. This is particularly relevant because, as a result of the Bell Atlantic/GTE merger order, Verizon makes a template agreement that is suitable for multi-state negotiation available to CLECs and has now done so for the better part of four years.[14/] Verizon's one-on-one negotiations with the participating CLECs have proven much more

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14/ *See* Memorandum Opinion and Order, *Application of GTE, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032 ¶ 306 (2000) (providing that, as a condition of the Bell Atlantic/GTE merger, "Bell Atlantic/GTE will make a sample generic multi-state agreement available to any requesting carrier no later than 60 days after the merger closing" and that "[c]arriers may elect that generic agreement for any number of Bell Atlantic/GTE states, or may negotiate a different multi-state agreement with Bell Atlantic/GTE.").

fruitful than the negotiations in this proceeding, since the parties generally can address each other's concerns individually and come to a more expeditious resolution.

CLECs also have had the option not to negotiate with Verizon at all and instead adopt an existing agreement between Verizon and another carrier. In the State of Washington alone, there are numerous interconnection agreements with Verizon available for competing carrier adoption, providing more than a sufficient contracting opportunity for those CLECs lacking the resources or the desire to negotiate and arbitrate.[15/]

Thus, as a practical matter, this proceeding has been unproductive and unnecessary since CLECs have ample options for interconnection, whether they desire to negotiate individually with Verizon or not. As explained below, this proceeding is also illegal and, therefore, should be terminated.

ARGUMENT

I. To the Extent Based on State Law, This Proceeding Is Preempted by the Communications Act.

This proceeding is preempted by the negotiation and arbitration procedures set out in sections 251 and 252 of the federal Communications Act. Any state law or regulation that conflicts with federal law is preempted, "whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose."[16/] In either case,

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15/ Statistics published by the Commission demonstrate that CLECs have taken advantage of their adoption rights and the other options for interconnection that are permitted by the Act. *See* www.wutc.wa.gov/webdocs.nsf/be4e5cc09d8c87408825650200778c6b/4c477f1c1b35c215882566be0082e9ca/$FILE/Interconnection%20Agreement%20Order%20with%20links. This information shows that a majority of interconnection agreements are successfully negotiated, that relatively few must be arbitrated, and that virtually none have required arbitration in recent years. *Id.* The historical data also show that CLECs have taken advantage of the wide range of agreements available to them for adoption. *Id.*

16/ *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992); *see also Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("Even without an express provision for preemption, . . . state law is naturally preempted to the extent of any conflict with a federal statute.").

"[t]he central question in preemption analysis is always 'whether Congress intended that federal regulation supersede state law.'"[17] In the Communications Act, Congress has been clear that any "state's requirement[]" is preempted if it is "inconsistent with" the Act.[18]

Since the initiation of this proceeding, two federal appellate courts and a federal district court have all held that state commission orders compelling incumbent local exchange carriers ("LECs") to engage in the kind of proceedings that the Commission has ordered here are inconsistent with, and therefore preempted by, the Communications Act.

1. *Verizon North, Inc. v. Strand*

In *Verizon North, Inc., v. Strand*,[19] Verizon brought suit against the commissioners of the Michigan Public Service Commission ("MPSC") to strike down a commission order requiring Verizon "'to file tariffs offering its network elements and services for sale on fixed terms to all potential entrants without the necessity of negotiating an interconnection agreement.'"[20] Like the Commission's order in this case, the MPSC order would have permitted competing LECs to purchase Verizon's network elements and services "directly off of the tariff menu, obviating the need to negotiate or arbitrate and interconnection agreement."[21]

In striking down the commission's order, the District Court explained that, with the 1996 amendments, Congress designed a "deregulatory process" that relies "in the first instance on private negotiations to set the terms for implementing new duties under the

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[17] 309 F.3d at 940 (quoting *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986)).

[18] 47 U.S.C. § 261(c). Section 261(b) applies this same "not inconsistent with" test to existing and new state regulation.

[19] 309 F.3d 935 (6th Cir. 2002).

[20] *Id.* at 939 (emphasis omitted) (citing *Verizon North, Inc. v. Strand*, 140 F. Supp. 2d 803, 809 (W.D. Mich. 2000)).

[21] *Id.* at 939-40.

Act."[22] The district court found that process compelled by the MPSC's order improperly allowed competing LECs to purchase Verizon's network elements and services from a set menu without ever having to use "the private, *party-specific* negotiation and arbitration system created by Congress" under sections 251 and 252.[23] The MPSC process "evade[d] the exclusive process required by the 1996 Act, and effectively eliminate[d] any incentive to engage in private negotiation, which is the centerpiece of the Act."[24] As a result, the District Court held that the order was inconsistent with and preempted by the Act.

The Sixth Circuit affirmed the District Court, holding that while the Act "permits a great deal of state commission involvement in the new regime it sets up for the operation of local telecommunications markets in America," the MPSC tariff proceeding was inconsistent with the provisions of the Act because it completely ignored and bypassed the detailed process for interconnection set out by Congress.[25] In invalidating the commission's order, *Strand* rejected the argument that the agreement process set out in section 252 is merely "one option for achieving interconnection" and that state commissions are free to create and

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[22] *Verizon North, Inc., v. Strand*, 140 F. Supp. 2d 803, 810 (W.D. Mich. 2000), *aff'd in relevant part*, 309 F.3d 935 (6th Cir. 2002).

[23] *Id.* (emphasis added).

[24] *Id.*

[25] *Verizon North, Inc.*, 309 F.3d at 944. In *U.S. West Communications, Inc. v. Sprint Communications Co., L.P.*, the U.S. Court of Appeals for the Tenth Circuit distinguished between alternative state law schemes that are separate from interconnection agreements and state law regimes that are incorporated into interconnection agreements. 275 F.3d 1241 (10th Cir. 2002). In that case, the Colorado Public Utilities Commission approved an arbitrated interconnection agreement containing a provision permitting Sprint to order services from Qwest's tariff (the "tariff opt-in provision"). *Id.* at 1252-53. The *US West* court distinguished *Strand* from that case on the basis that the CLEC's decision to purchase services from Qwest's tariff "does not result in abandonment of the interconnection agreement between [the CLEC] and Qwest," but rather "[t]he parties remain bound by the interconnection agreement at all times, as anticipated by the Act." *Id.* at 1251. Unlike the tariff opt-in provision in *US West*, this proceeding *does* bypass and result in "abandonment" of the interconnection agreement procedure contemplated by the Act and is thus federally preempted.

compel alternative methods for competitors to acquire network elements and services from incumbents.[26/]

2. *Wisconsin Bell, Inc. v. Bie*

In *Wisconsin Bell, Inc., v. Bie*,[27/] the U.S. Court of Appeals for the Seventh Circuit also held that a state commission could not impose a system that bypassed the need for individual interconnection agreements. Outside of any particular contract dispute, Wisconsin's public utility commission ordered Wisconsin Bell to file tariffs setting forth the price and other terms on which competing LEC's could contract for interconnection with Wisconsin Bell's local network. Judge Posner, writing for the panel, explained that whether states may create such alternative methods through which competitors can obtain interconnection rights again depends upon whether those alternative methods "interfere with" or are "inconsistent with" with the federal procedure: "if they are inconsistent, they are preempted."[28/]

The *Bie* court concluded that the Wisconsin commission's order "*has* to interfere with the procedures established by the federal act" in that it "places a thumb on the negotiating scales by requiring one of the parties to the negotiation, the local phone company, but not the other, the would-be entrant, to state its reservation price, so that bargaining begins from there."[29/] The court found that, in effect, the commission's tariff procedure "short-circuits negotiations, making hash of the statutory requirement that forbids requests for arbitration until 135 days after the local phone company is asked to negotiate an interconnection

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26/ *Verizon North, Inc.*, 309 F.3d at 944.

27/ 340 F.3d 441 (7th Cir. 2003).

28/ *Id.* at 443.

29/ *Id.* at 444 (emphasis in original). Indeed, the *Bie* court suggested that merely complicating the federal scheme is enough: "At the very least, the tariff requirement complicates the contractual route by authorizing a parallel [state] procedure." *Id.*

agreement."[30] Consequently, like the *Strand* court, the Seventh Circuit found that because the commission's order "enable[d] would-be entrants to bypass the federally ordained procedure" it was unlawful and preempted.[31]

3. *MCI Telecomms. Corp. v. GTE Northwest, Inc.*

In *MCI Telecomms. Corp. v. GTE Northwest, Inc.*,[32] the U.S. District Court for the District of Oregon also rejected a system similar to the one the Commission is attempting to impose here. That court held that a state commission's tariff requirement conflicted with the Act because it would have required incumbents to offer their services to competitors "via a procedure that bypasses the Act entirely and ignores the procedures and standards that Congress has established."[33] The Oregon District Court found that the state commission had "dispensed with the interconnection agreement altogether and is allowing CLECs to order services 'off the rack' without an interconnection agreement."[34]

4. *This Proceeding*

In this docket, the Commission has established a proceeding that, like the regimes under *Strand, Bie* and *MCI*, is inconsistent with the Communications Act. While the Act provides an arbitration option in cases in which negotiations fail, the parties must first negotiate for at least 135 days, underscoring the Act's "clear preference" for negotiated agreements.[35] Only where, after 135 days, private negotiation fails to produce a satisfactory

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30 *Id.* at 445 (citing 47 U.S.C. § 253(b)(1)).

31 *Id.*

32 41 F. Supp. 2d 1157 (D. Or. 1999).

33 *Id.* at 1178.

34 *Id.*

35 *MCI Telecomms. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 500 (3d Cir. 2001) ("Section 252 sets up a preference for negotiated interconnection agreements"). *See also MCI Telecomms. Corp. v. BellSouth Telecomms. Inc.*, 298 F.3d 1269, 1270 (11th Cir. 2002) ("Negotiation is the preferred method for determining the proper level of access and price.").

interconnection agreement does the Communications Act invite state commissions into the local competition contracting process as a binding arbitrator.[36/]

By contrast, the very purpose of this proceeding is to provide competing LECs with a way to bypass section 251 and 252's specific negotiation requirements and, in effect, to proceed directly to an agreement produced, not by the negotiation and arbitration processes set forth in the Act, but by a state-run proceeding outside of the Act. But if Congress had wanted to use state-run proceedings to force all incumbent LECs to create and file a standard set of model terms available to all CLECs, it could have done so. Congress chose instead to encourage the parties to determine the terms and conditions of interconnection through individualized, private negotiation wherever possible, and for state regulatory forces to intervene only after those negotiations have been given a chance to succeed. Indeed, as the U.S. Court of Appeals for the Ninth Circuit has explained, the very "point of § 252 is to replace the comprehensive state and federal regulatory scheme with a more market-driven system that is self-regulated through *negotiated interconnection agreements*."[37/]

Thus, the Commission should terminate this proceeding because, like the regimes under *Strand*, *Bie* and *MCI*, this proceeding is unlawful under the Communications Act.

II. The Communications Act Provides No Authority for this Proceeding.

This proceeding also lacks any justification under federal law. Though the First Supplemental Order makes clear that the Commission is really compelling a state law tariff

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[36/] 47 U.S.C. § 252(b)(1). Even then, the state commission may become involved in the contracting process only if one of the parties to the negotiation expressly invites it to become involved via a petition under section 252(b)(1). Moreover, once invited, section 252(b)(4) limits the commission's role as arbitrator to consideration of just those issues set forth in the parties' petition and response, and section 252(c) provides that the arbitration must meet the standards set forth in section 251 and any regulations promulgated by the FCC pursuant to section 251.

[37/] *Pacific Bell v. Pac West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9th Cir. 2003) (emphasis added).

proceeding,[38] which is preempted under *Strand* and *Bie*, the Commission has also pointed to sections 252(f) and 252(g) of the Act as possible justifications. But neither of these sections of the Act provides any federal authorization for these proceedings.

First, section 252(f) cannot justify a general "SGAT"-like proceeding. As a former GTE company (rather than a former Bell Atlantic company), Verizon Northwest is not a "Bell operating company" subject to the SGAT provision of the Act. *See* 47 U.S.C. § 252(f). Under section 153(4) of the Act, the term "Bell operating company" comprises twenty specific companies listed in section 153(4)(A) and any successor or assign of those companies that provides wireline telephone exchange service. 47 U.S.C. § 153(4). Verizon is neither one of the entities listed in section 153(4)(A), nor a successor or assign of one of those companies. Consequently, section 252(f)(1) does not apply to Verizon.[39]

Even if it were, section 252(f) of the Act provides for the *voluntary* establishment of SGATs. 47 U.S.C. § 252(f) ("A Bell operating company *may* prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.") (emphasis added).[40] Nothing in

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[38] *First Supplemental Order* ¶ 19 ("It is a basic element of state law that service offerings to the public of regulated services by telecommunications companies must be made by tariff. RCW 80.36.100-.130. The requirement that Verizon NW make its offerings by means of tariffs that other carriers can elect is not inconsistent with the Act or with any FCC rules.").

[39] *See Verizon North, Inc. v. Strand*, 309 F.3d 935, 943 (6th Cir. 2002) ("§ 252(f) is not at issue in the present case, because Verizon is not a Bell operating company"); *MCI Telecommunications Corp. v. GTE Northwest, Inc.* 41 F. Supp. 2d 1157, 1178 (D. Or. 1999) (finding that GTE, Verizon NW's predecessor in interest, "is not a Bell operating company").

[40] This Commission apparently agrees. In an order concerning a multi-state workshop on the subject of Qwest's proposed entry into the interLATA market, the Iowa Utilities Board quotes this Commission as having stated affirmatively that section 252(f)'s SGAT is a "voluntary filing." Reconsideration of Conditional Statement Regarding Qwest Performance Assurance Plan, *Re U S WEST Communications, Inc. n/k/a Qwest Corporation*, Docket Nos. INU-00-2 & SPU-00-11, p. 24 (Iowa Utilities Board June 7, 2002), *available at* 2002 WL 1486384 (quoting the Washington UTC's statement that "[s]ection 252(f) of the Act provides

that section, or anywhere else in the Communications Act, authorizes a state commission to *compel* a company to prepare and file an SGAT.[41/] From the outset, Verizon has made it clear that it does not voluntarily submit to this proceeding, and consequently this proceeding is not authorized under section 252(f).[42/]

Second, section 252(g) does not furnish authority for the Commission to devise alternative methods for the negotiation and arbitration of interconnection agreements.[43/] Rather, section 252(g) provides a procedural mechanism for state commissions to consolidate proceedings *when parties have already commenced arbitrations under section 252.* Here, no party has commenced arbitrations according to the requirements of section 252. Moreover, section 252(g) expressly limits its application to situations in which consolidation is "not inconsistent with the requirements of this Chapter."[44/] As explained above, this proceeding, which seeks to create a regime alternative to sections 251 and 252, is inconsistent with the requirements of the Act.

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that a Bell Operating Company 'may prepare and file with the state commission a statement of generally acceptable terms and conditions.' The SGAT is also a 'voluntary' filing, yet Qwest has not disputed the Commission's authority to order changes to the SGAT.").

41/ *See MCI Telecomms. Corp. v. GTE Northwest, Inc.*, 41 F. Supp. 2d 1157, 1178 (D. Or. 1999) (finding that § 252(f) gives a Bell operating company the option to file an SGAT, but does not authorize a Commission to compel such a filing, and noting that GTE is not an RBOC).

42/ *See, e.g.*, Comments of Verizon Northwest Inc., *In the Matter of the Continued Costing and Pricing of UNEs; In the Matter of Verizon Northwest Inc.'s Terms and Conditions Regarding Microwave Entrance Facilities*, Docket Nos. UT-003013, UT-011219, at 3 (filed Dec. 5, 2001) ("Because Verizon NW does not intend to offer a SGAT, its terms and conditions should continue to be developed through the interconnection agreement process.")

43/ *See First Supplemental Order* ¶ 19 (suggesting that this proceeding is proper under section 252(g)).

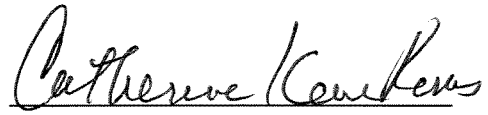
44/ *See* 47 U.S.C. § 252(g).

CONCLUSION

The Commission should cease to pursue this inefficient and legally unsound alternative to the procedures contemplated by sections 251 and 252 of the Communications Act and immediately terminate this proceeding.

June 17, 2004

Respectfully submitted,



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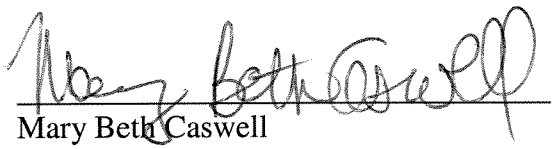
CERTIFICATE OF SERVICE

I hereby certify an original and eleven (11) copies of the foregoing Motion of Verizon Northwest, Inc. to Dismiss and Terminate Proceeding were sent by overnight mail and one copy sent by electronic mail to Ms. Carole J. Washburn, Executive Secretary, Washington Utilities & Transportation Commission, 1300 S. Evergreen Park Drive SW, Post Office Box 47250, Olympia, WA 98504-7250 and to the following by regular and electronic mail:

DATED this 17th day of June, 2004



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