MILLER | NASH LLP
ATTORNEYS AT LAW

Miller Nash LLP
www.millernash.com
4400 Two Union Square
601 Union Street
Seattle, WA 98101-1367
(206) 622-8484
(206) 622-7485 fax

3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3699
(503) 224-5858
(503) 224-0155 fax

500 E. Broadway, Suite 400
Post Office Box 694
Vancouver, WA 98666-0694
(360) 699-4771
(360) 694-6413 fax

Brooks E. Harlow
brooks.harlow@millernash.com

May 4, 2004

HAND-DELIVERED

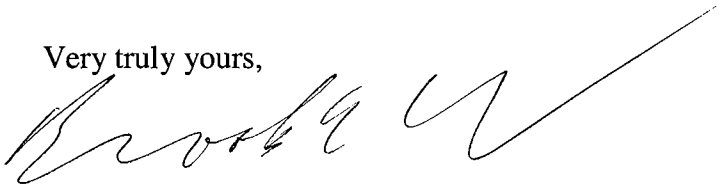
Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: Docket No. UT-043013

Dear Ms. Washburn:

Enclosed, for filing, are an original and 16 copies of the Reply of Advanced Telecom Group Inc.; Bullseye Telecom Inc.; Comcast Phone of Washington LLC; DIECA Communications, Inc. d/b/a Covad Communications Company; Global Crossing Local Services Inc.; KMC Telecom V Inc.; and Winstar Communications LLC ("Competitive Carrier Group" f/k/a "Competitive Carrier Coalition") in the above-referenced docket.

Very truly yours,



Brooks E. Harlow

cc w/enc: Parties of Record

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order	Docket No. UT-043013 REPLY OF ADVANCED TELECOM GROUP INC.; BULLSEYE TELECOM INC.; COMCAST PHONE OF WASHINGTON LLC; DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY; GLOBAL CROSSING LOCAL SERVICES INC.; KMC TELECOM V INC.; AND WINSTAR COMMUNICATIONS LLC ("COMPETITIVE CARRIER GROUP" F/K/A "COMPETITIVE CARRIER COALITION")

The above-referenced entities (hereinafter the "Competitive Carrier Group" or "CCG", f/k/a Competitor Carrier Coalition or CCC), by their undersigned counsel and pursuant to the procedural schedule adopted in this proceeding, hereby provide their reply to Verizon Northwest Inc.'s Response to Collective Motions to Dismiss ("Verizon Response") filed in the above-captioned proceeding on April 27, 2004.[1] Also, although not part of the CCG, Centel Communications, Inc. joins in and supports this reply.

INTRODUCTION AND SUMMARY

The Verizon Response, quite simply, fails to move the ball forward in this proceeding, and must be rejected by the Commission. Instead of constructively addressing the issues in dispute and proposing means through which they might be resolved, Verizon attempts

[1] Docket No. UT-043013, Response and Exhibits of Verizon Northwest Inc. to Collective Motions to Dismiss (filed April 27, 2004).

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4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

to assess blame for the failure of negotiations to make any progress whatsoever.[2] Unfortunately for Verizon, however, it bears the lion's share of the blame. The statement in Verizon's response that there "is nothing more Verizon could have done to . . . take advantage of the *TRO's* changes" speaks volumes, and clearly manifests the company's intent to apply the Triennial Order in as one-sided a fashion as possible.[3]

The issue now, however, is how to move forward. In order to conduct this proceeding in the most efficient and effective manner, the Competitive Carrier Group proposes that the Commission consider only those issues on which the law is settled (i.e., those issues not subject to the *USTA II*[4] stay) and then concern itself with the issues currently in play in a subsequent, second phase once the *USTA II* issues are resolved. While the Commission considers these issues and the interplay of all state and federal law (including section 251 of 1934, as amended[5]), it would be highly inappropriate for Verizon to attempt to change the *status quo* as it relates to UNE availability.

I. THE "NEGOTIATION" PROCESS

As noted in the Answer of the CCG, Verizon filed its petition without describing the status of interconnection agreements with individual CLECs or its failure to negotiate, and without an adequate description or definition of the issues that this Commission should consider. Although Verizon laments the timing of certain CLEC responses to its proposed interconnection agreement amendment,[6] the Commission should recognize at the outset that Verizon has failed to engage any of the Competitive Carrier Group members in real negotiations – either individually

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[2] Verizon actually suggests that the Commission "enter an order finding that all of the remaining CLECs failed to negotiate in good faith" (*Verizon Response* at 9) and attaches an affidavit attacking the members of the Competitive Carrier Group despite the fact that the CCG did not even make a motion to dismiss.

[3] *Verizon Response* at 9. The language used throughout Verizon's proposed amendment, that Verizon will provide access to a given UNE "in accordance with, but only to the extent required by 47 U.S.C. §251(c)(3) and 47 C.F.R. Part 51" further buttresses this view.

[4] *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (Order rel. March 2, 2004) ("*USTA II*")

[5] 47 U.S.C. § 151, *et. seq.* ("Act").

[6] *See, e.g., Verizon Response* at 4.

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4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

or collectively. In fact, Verizon's corresponding failure to negotiate with a non-CCG member (Sprint) caused another state commission to grant Sprint's motion to dismiss it from the arbitration on that ground.[7]

Verizon's own October 2, 2003 letter (on which the company relies as having commenced the "negotiations") did not even contain a proposed amendment. Rather than e-mailing an editable, electronic draft Amendment that invites negotiation, Verizon's generic letter suggested that interested CLECs should contact Verizon to begin the process of negotiations, and ultimately posted an un-editable draft Amendment with neither references to provisions of the Triennial Review Order[8] nor to sections of any the interconnection agreements Verizon proposed to modify.

To the extent it has taken time for CLECs to make counterproposals to Verizon's amendment, the explanation is equally obvious. Verizon propounded a completely one-sided, generic amendment that failed to comport with applicable law. Due to the patent insufficiency of Verizon's proposal, carriers were forced to develop counterproposals true to the TRO in a format consistent as much as practicable with Verizon's format. This was a large undertaking.

Verizon, however, never responded to the amendment proposed by members of the Competitive Carrier Group,[9] and did not make any effort to establish a negotiation schedule

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[7] Rhode Island PUC, Docket No. 3588, *Procedural Arbitration Decision*, at 6, 21-22.

[8] Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003) (*Triennial Order or TRO*), *corrected by Errata*, 18 FCC Rcd 19020 (2003), *appealed sub. nom, United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (Order rel. March 2, 2004).

[9] The amendment contained in Tab A to the Answer filed in this proceeding initially was prepared by some of the carriers that are joining this Reply (that group included Advanced TelCom Group, Inc., A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, BridgeCom International, Inc., Broadview Networks, Inc., Bullseye Telecom, Inc., Comcast Phone, LLC and its Subsidiaries, Conversent Communications, LLC, Cordia Corporation, Covad Communications Corporation and DIECA Communications, Inc., d/b/a Covad, DSCI Corporation, Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc., KMC Telecom III LLC, KMC Telecom V, Inc., KMC Data LLC,

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after the CCG members provided substantive responses to Verizon.[10] Instead of spending the month of February in negotiations, right up until the arbitration petition deadline of March 10th, Verizon opted to file, on February 26th, an unquestionably premature Petition for Arbitration. Then, on March 18th, Verizon filed an updated version of its draft TRO Amendment through which it attempted to appropriate the *USTA II* ruling for its sole benefit.[11] Verizon's one-sided incorporation of the *USTA II* holding into its proposed amendment demonstrates yet another attempt to strip away more of Verizon's section 251 obligations and must be rejected by this Commission.

Verizon asserts that, "The October 2 Notice could have been any clearer in making available an amendment and inviting all parties to engage in negotiations with Verizon. . . ." But saying it is so does not make it so. The October 2 Notice never says **Verizon** wants to "negotiate" or seeks "negotiations." Rather, it merely offers Verizon's proposed contract amendments for execution: "Carriers seeking to amend their interconnection agreements should . . . contact Verizon to proceed with completion of the contracting process." This language suggests two things. First it suggests that amendment was optional, only for carriers "seeking to amend." Second, is suggests that amendments we offered on a take it or leave it bases. It does not refer to an option to negotiate, only to complete the "contracting process," i.e., to get the documents prepared, signed, and filed with state commissions for approval.

Metropolitan Telecommunications, Inc., VeraNet Solutions, and XO Communications, Inc.). Winstar Communications LLC engaged in separate negotiations with Verizon. Winstar issued a proposal in October to Verizon proposing to defer negotiation of a TRO Amendment until Verizon developed a final Interconnection Agreement template to replace Winstar's expired interconnection agreement. Verizon has failed to adequately respond to Winstar's proposal.

[10] *See* Correspondence from Andrew M. Klein, Kelley Drye & Warren LLP, to Anthony M. Black, Verizon (dated April 30, 2004), attached hereto as Exhibit A.

[11] Docket No. UT-043013, Update to Petition for Arbitration of Verizon Northwest Inc. (filed March 18, 2004) ("Verizon Update").

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TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

At least some CLECs interpreted the language Verizon relies on exactly as it reads, not as an invitation to negotiate.[12] Such an interpretation is reasonable based on Verizon's October 2 Notice alone. The interpretation became even more reasonable when Verizon failed to follow up to schedule the negotiations it now claims it "clearly" demanded.[13]

Verizon apparently relies on the statement in the October 2 Notice that the TRO itself, "provides that October 2, 2003 shall be deemed to the notification request date for contract amendment negotiations." This language, however stands alone only as a statement of Verizon's interpretation of the TRO. It fails to state **Verizon's intent** to commence negotiations. Again, this is how at least some CLECs interpreted the Notice.[14] And again, Verizon did nothing to eliminate this ambiguity by following up with the CLECs to schedule actual negotiations.[15] Since section 252 of the Communications Act provides that carriers commence negotiations, not the FCC, it is not possible to construe Verizon's mere reference to a provision in the TRO as a request for negotiations, particularly given the lack of follow up by Verizon.

II. THE COMMISSION MUST CONSIDER AND APPLY ALL APPLICABLE LAW IN THIS PROCEEDING

In light of Verizon's obligations under applicable law, Verizon's responsibility to provide access to UNEs remains unchanged – regardless of the outcome of the Triennial Review Order and related appeals. A fundamental component of this obligation is, of course, the requirement that UNEs continue to be priced at TELRIC.[16] Quite simply, Verizon may not withhold access to UNEs without violating applicable law – including section 251 of the Act,

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[12] *See, e.g.*, Response of Centel to Verizon Petition, ¶5 (April 12, 2004).
[13] *See, e.g., Id.* at ¶6.
[14] *See, e.g.*, Response of Centel to Verizon Petition, ¶6 (April 12, 2004).
[15] *See, e.g., Id.*
[16] Even if the Commission were to conclude that Verizon is required to provide access to network elements on something other than a "Unbundled Network Element" or "UNE" basis, as discussed below, it must still require access utilizing a similar cost-based methodology (which may vary depending on the source of authority relied upon). The term "UNE," as used in these Comments, will denote 251(c)(3) elements, while non-UNEs will simply be referred to as network elements.

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TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

Washington Law, the conditions of the *Bell Atlantic/GTE Merger Order*,[17] and the parties' interconnection agreements. The Act clearly preserves and protects Washington's independent authority to ensure continued access to unbundled elements in furtherance of competition.[18] Furthermore, Washington law clearly provides that this Commission can order unbundling at rates based on total service long run incremental costs.[19] The Commission should exercise that authority to require that Verizon continue to make available all networks elements, and mandate that the *status quo* shall be maintained while the Commission exercises its authority.

A. Section 251 of the Act Requires Access to Unbundled Network Elements Regardless of the Status of Federal Rules

The Communications Act remains applicable, with or without implementing federal rules (as we have now witnessed several times). The Telecommunications Act of 1996 requires ILECs to interconnect with and make unbundled network elements available to

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[17] *GTE Corporation Transferor, and Bell Atlantic Corporation Transferee, for Consent to Transfer of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket 98-184*, Memorandum Opinion and Order, 15 FCC Rcd 14032, FCC 00-221, ¶316 (June 16, 2000) (*BA/GTE Merger Order*). These merger conditions require, *inter alia*, that Verizon continue to provide access to UNEs and combinations pursuant to the FCC's UNE Remand Order (CC Docket 96-98, FCC 99-238) until such time as those requirements are replaced following a "final, non-appealable judicial decision." *BA/GTE Merger Order* Appendix D, ¶ 39. While some carriers have sought, in other jurisdictions, to dismiss Verizon's Petition for Arbitration based in part on the *BA/GTE Merger Order* conditions, the Competitive Carrier Group submits that the Board should not dismiss Verizon's Petition based on the merger conditions but should instead consider the merger condition requirements together with the TRO and the other requirements of state and federal law.

[18] *See, e.g.*, 47 U.S.C. §§251(d) and 261(b) and (c).

[19] *See* Fourth Supplemental Order Rejecting Tariff Filing and Ordering Refilings; Granting Complaints, In Part ("Interconnection Order"), *WUTC v. U S West Communications, Inc.*, WUTC Docket No. UT-94164, et al. at 15 and 51 (Oct. 30, 1995). *See also* RCW 80.36.140 ("Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title."). *See also*, RCW 80.36.080 ("All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, ... shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.").

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4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

competitive carriers. The Act stated – and still requires – that access to elements is mandated wherever necessary and where carriers would be impaired without such access.[20] Only Congress may amend the Act, and it has not done so. Thus, the Act still governs, and it requires access to network elements on an unbundled basis.

The fact that the FCC's rules were, in substantial part, vacated and remanded in *USTA II* is of little or no consequence in terms of the ILEC obligation to provide access to network elements. Since the Act itself contains the requirement that ILECs provide "nondiscriminatory access to network elements," any lack of implementing rules does not mean that the ILEC can deny access to the UNEs.

In terms of filling the void that may be created by vacatur of the federal rules, the states have authority to act. Congress, in fact, envisioned that both the FCC and state commissions would take action to implement the access obligations. Section 251(d)(3) of the Act, entitled "Preservation of State access regulations" provides as follows:

> In prescribing and enforcing regulations to implement the requirements of this section, the [Federal Communications] Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that
>
> (A) ***establishes access and interconnection obligations*** of local exchange carriers;
>
> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.[21]

Thus, the Act protects state action that promotes the unbundling objectives of the statute, and prohibits the FCC from interfering with such action. In this instance, further FCC rulemakings could not preclude the enforcement of action by this Commission to ***establish*** unbundling obligations provided such action is consistent with the unbundling requirements in section 251 and would not prevent implementation of its pro-competitive requirements.

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[20] 47 U.S.C. § 252

[21] 47 U.S.C. § 251(d)(3).

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4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

Similarly, section 252(e)(3) of the Act, entitled "Preservation of authority," explicitly states that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements."[22]

In reviewing essentially the same issues, a Maine PUC Hearing Examiner appropriately concluded, following a thorough and well-reasoned legal analysis, that State Commissions may order additional unbundling without running afoul of the Act.[23] A State Commission mandate, "which requires an ILEC to unbundle portions of its network not required by the FCC, should be considered consistent with the federal regime in that it imposes additional, not contradictory, requirements on the ILEC."[24] A state would therefore be completely justified in adding to the federally-mandated list of elements. "Indeed, there is nothing about requiring Verizon to provide access to the UNE requested . . . that would preclude Verizon from meeting its federal unbundling requirements nor would it require Verizon to take action that would be considered illegal by the FCC."[25]

Accordingly, the Act clearly preserves and protects Washington's independent authority to ensure continued access to unbundled elements in furtherance of competition. The Commission should exercise that authority to preserve the *status quo* for all networks elements.

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[22] 47 U.S.C. § 252(e)(3).

[23] *Public Utilities Commission Investigation of Skowhegan OnLine Inc.'s Proposal for UNE Loops*, Docket No. 2002-704, Addendum to Examiner's Report, dated February 17, 2004. (*Maine Decision*) On April 1, 2004, the Maine PUC issued Part I of its Order in that docket, stating in part that "we find that Verizon must provide CLECs with access to the SOI subloop. Verizon may file prices, terms and conditions for the SOI subloop that are consistent with the pricing rule established in our June 30, 2003 Order in Docket No. 2002-578. Pending approval of those prices and schedules, Verizon must provide the SOI subloop at the current TELRIC rate for loops. Verizon must make the new subloop available to SOI and other CLECs no later than April 30, 2004." Part II of that Order has now been issued as well.

[24] *Id.* at page 13.

[25] *Id.*

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TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

B. The BA/GTE Merger Conditions Require *Status Quo* Access to UNEs

Verizon must continue to provide access to the full set of network elements – as UNEs – pursuant to the terms of the FCC's *Bell Atlantic/GTE Merger Order.*[26] These merger conditions require, *inter alia*, that Verizon continue to provide access to UNEs and combinations pursuant to the FCC's UNE Remand Order[27] "until the date on which the [FCC]'s orders in those proceedings, ***and any subsequent proceedings***, become final and non-appealable."[28] In terms of cementing the ongoing nature of this commitment, the merging parties expressly committed to honor this voluntarily-offered (and FCC sanctioned) condition until "the date of a final, non-appealable judicial decision."[29]

Clearly, with the *Triennial Order* acting squarely on the UNE Remand Order (and thus being a subsequent proceeding), and that Order currently in limbo by virtue of the *USTA II* decision, the stay of that mandate, and likely appeal, the UNE Remand Order has in no way been replaced by final FCC action or a "final, non-appealable judicial decision." As a result, Verizon must continue to offer UNEs pursuant to the UNE Remand Order, and the Commission must consider the *Bell Atlantic/GTE Merger Order* requirements together with the mandates of other state and federal law and order Verizon's full compliance with each.

Thus, in sum, the Commission must reject Verizon's proposed amendment, that purports to implement the TRO and *USTA II* decision, as neither Verizon's Petition nor the Verizon Update is consistent with the ILEC's obligations under section 251.[30] It must, instead, proceed with this arbitration and maintain the *status quo* during its pendency.

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[26] *BA/GTE Merger Order*, 15 FCC Rcd 14032, FCC 00-221 (June 16, 2000).
[27] FCC CC Docket 96-98, FCC 99-238.
[28] *Id.*, ¶ 316; *see also id.*, App. D, ¶ 39.
[29] *BA/GTE Merger Order,* Appendix D, ¶ 39.
[30] Given the complexity of incorporating the TRO into an Amendment, Verizon should be required to annotate its amendment to reference provisions of the TRO, rules, or other authority upon which it ostensibly relies to support its language.

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TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

III. THE COMMISSION MUST ESTABLISH AN EFFICIENT, TWO-PHASE PROCESS FOR THE ARBITRATION

The Commission should establish efficient procedures for this arbitration, that address the TRO, state law, and other federal law requirements (including the *BA/GTE Merger Order* obligations) in order to minimize duplication of effort and promote the most efficient use of Commission (and competitive carrier) resources. With those goals in mind, the Competitive Carrier Group respectfully requests that the Commission take the following steps. First, the Commission should maintain this current docket to assert its jurisdiction over all of the issues naturally related to the parties' interconnection agreements. These issues, as noted above and previously in the Competitive Carrier Group's Answer, are much broader than the limited subset Verizon has attempted to frame in its Petition. Since the interconnection agreements contain terms and conditions for access to network elements on bases other than section 251(c)(3), any attempt to amend the terms must likewise include an assessment of those ongoing obligations. Since state law as a basis for requiring access to elements was specifically preserved by Congress when it amended the Act in 1996,[31] and since one of the primary purposes of section 251 is to mandate access to network elements, it would be nearly impossible for action by this Commission requiring access to network elements to be declared inconsistent with that section. The very fact that this arbitration was brought by Verizon at the state level under the federal Act is tacit recognition of the federal-state partnership woven into the Act.

Second, as detailed above, the Commission should issue a standstill order that maintains the *status quo* (regarding access to the UNEs themselves) under existing interconnection agreements until such time as the Commission ultimately approves an interconnection agreement amendment that reflects all applicable law. Such a standstill order is necessary to preserve business arrangements under existing interconnection agreements pending

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[31] *See, e.g.*, 47 U.S.C. 251(d)(3).

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TELEPHONE (206) 622-8484
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601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

completion of the arbitration and approval by the Commission of a lawful amendment. This order will serve to minimize uncertainty and potential disruption, and promote an orderly transition to the new interconnection agreement terms that reflect all applicable law, including the TRO, state law and the *BA/GTE Merger Order*. Finally, such an action would promote administrative efficiency by preventing duplicative petitions necessitating concurrent dockets.

Third, in order to determine the impact of *USTA II* and ascertain whether the D.C. Circuit's holding will be subject to Supreme Court review and/or further stay, the Commission should hold those issues that are affected by the *USTA II* decision in abeyance until they are resolved. Once the *USTA II* issues are settled, the Commission should direct the parties to attempt a negotiated agreement to address these issues, with oversight by Commission Staff, as appropriate, over a subsequent 135-day period (the timeframe set forth in section 252). To the extent the parties cannot reach a negotiated agreement, the parties would submit to the Commission a jointly-developed issues list at the end of that 135-day period, which would trigger a second phase of the arbitration proceeding.

While the process described above takes place, the Commission should concurrently – and immediately – take action on two related items that were not affected by *USTA II*. The Commission must order Verizon to comply with its preexisting and ongoing obligations to provide access to elements even where routine network modifications are required. Although Verizon claims that this is a "*new* legal requirement,"[32] that is clearly not the case. In fact, footnote 17 of Verizon's own Response demonstrates the fallacy of its argument.[33] In that footnote, Verizon notes that it was, pre-TRO, already required to perform work in connection with its obligation to provide UNEs, and that the TRO clarification was in the nature of an expansion of those requirements.[34]

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[32] *Verizon Response*, at 20.

[33] *Id.*

[34] *Id.* Certainly, if Verizon had no obligations to undertake any routine maintenance pre-TRO, then its non-recurring charges would be, by direct implication, severely overstated.

MILLER NASH LLP
ATTORNEYS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

While the FCC in the TRO clarified Verizon's obligations in this respect, that clarification can in no way be considered a change in law that must be incorporated into an amendment before it becomes binding. In fact, the FCC's justification for issuing that clarification was to prevent incumbents from delaying competitor access to facilities.[35] Thus, permitting Verizon to shirk its legal obligations by claiming that an amendment is necessary would frustrate the intent of the rule and continue to severely limit competition. Verizon itself asserts that the routine network modifications requirement is "of critical importance."[36] Another state commission already has wisely rejected one Verizon's delay tactics – the company's claim that it is entitled to some additional fees for doing work already built into existing rates.[37] We respectfully submit that this Commission should do the same.

Similarly, the Commission must also require that Verizon comply with the clarified UNE commingling requirements. As with the FCC's clarification regarding network modifications noted above, the FCC clarified the terms under which carriers may commingle elements and services, in order to avoid further confusion and delay. The FCC determined, in no uncertain terms, that "a restriction on commingling would constitute an 'unjust and unreasonable practice' under section 201 of the Act" and an "undue and unreasonable prejudice or advantage" under section 202, and would be violative of the "the nondiscrimination requirement in section 251(c)(3).[38] The FCC specifically required ILECs to effectuate commingling immediately, through modifications of their interstate access tariffs – noting even the penalties for noncompliance.[39] The Commission should likewise order that Verizon comply immediately with these requirements.

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[35] *See, e.g.*, TRO at ¶ 639, and footnote 1939, finding Verizon's current policy to be "discriminatory on its face."

[36] *Verizon Response* at 18.

[37] *See, Petition of Cavalier Telephone*, Virginia SCC Case No. PUC-2002-000887 (January 28, 2004).

[38] TRO at ¶ 581.

[39] *Id.*, ¶ 581 and fn. 1791.

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ATTORNEYS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

CONCLUSION

There is no doubt that the confluence of issues arising from the implementation of TRO, the DC Circuit's decision in *USTA II*, and the interconnection and access requirements of the Act, the *BA/GTE Merger Order* and state law make for a complex proceeding. The approach presented herein – which splits the issues based on those that are firm and those yet to be settled – provides the Commission with a lawful means to efficiently resolve the issues presented in a way that minimizes disruption to existing businesses and the consumers that are served by the carriers that comprise the CCG in Washington. Accordingly, the Commission should commence an arbitration proceeding directly on those issues on which the law is settled and address immediately the network modification and UNE commingling issues.

Consistent with the foregoing, the Competitive Carrier Group requests that the Commission should reject Verizon's amendment and instead:

1. Assert its jurisdiction over the matters at issue;

2. Issue a standstill order that maintains the UNE availability *status quo* until such time as the Commission approves an interconnection agreement amendment;

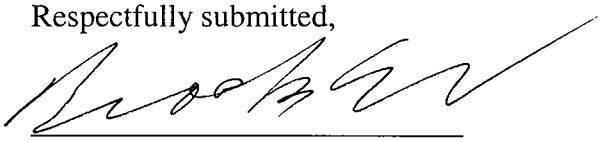
3. Immediately implement the FCC's clarifications that Verizon must perform routine network modifications to provision UNE orders and permit commingling of UNEs, and address Verizon's *BA/GTE Merger Order* access and pricing obligations, which were not affected by *USTA II*, and

4. Hold all issues impacted by *USTA II* in abeyance until those issues are resolved and then direct the parties to reach a negotiated agreement, with oversight by Commission Staff as appropriate, over a subsequent 135-day period. To the extent the parties cannot reach a negotiated agreement, the parties should submit to the Commission a jointly-developed issues list at the end of that period, which would trigger another phase of the arbitration proceeding to address those issues.

MILLER NASH LLP
ATTORNEYS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

DATED this 4th day of May, 2004.

Respectfully submitted,



Brooks E. Harlow
WSB No. 11843
Fax: (206) 622-7485
brooks.harlow@millernash.com

Attorneys for Centel Communications, Inc.

Genevieve Morelli
Andrew M. Klein
Heather T. Hendrickson
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)
gmorelli@kelleydrye.com
aklein@kelleydrye.com
hhendrickson@kelleydrye.com
Counsel to the Competitive Carrier Group

Dated: May 4, 2004

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9800

FACSIMILE

(202) 955-9792

www.kelleydrye.com

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA

DIRECT LINE (202) 887-1257

E-MAIL: AKlein@KelleyDrye.com

Admitted in New York, New Jersey and the District of Columbia

April 30, 2004

VIA EMAIL AND UPS OVERNIGHT

Anthony M. Black
Assistant General Counsel
Verizon
1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Re: Interconnection Agreement Negotiations and Arbitrations

Mr. Black:

This letter is in response to your correspondence dated March 15, 2004. Since, at the time of your communiqué, your company had already petitioned for arbitration and my firm had already filed Answers in many of the jurisdictions, I saw no need to respond in this duplicative fashion and was content to have the State Commissions resolve the issues you had placed before them.[1] As Verizon has now filed your letter in at least one of the pending arbitration proceedings, however, I feel compelled to respond in order to set the record straight.

As noted in my letter of January 30, 2004, the Proposed Amendment attached thereto and submitted on behalf of the carriers named therein accurately reflects the Federal Communications Commission's Triennial Review Order, and was sent in accordance with Verizon's request that each carrier respond to the Verizon proposal by "proposing any specific changes it wishes to the amendment." Since Verizon's proposed terms were so far removed from any reasonable interpretation of the company's obligations under the Triennial Review

[1] While I appreciate your apology for failing to serve this firm as counsel to many of the carriers against whom Verizon petitioned for arbitration, the "only practical alternative" excuse put forth by Verizon is simply unavailing. Verizon has an undeniable obligation to serve counsel who have appeared for parties in a given matter, in addition to any other individuals it chooses to serve. Although Verizon's D.C. counsel has been quite good about sending copies of pleadings, it is reasonable to expect that Verizon has undertaken sufficient measures to ensure that all Verizon filings, including those made directly by Verizon's regional counsel, are also being properly served.

Order and other applicable law, it was absolutely necessary for this firm to undertake a substantial re-write of Verizon's unreasonable terms. That process did, indeed, take time.

What Verizon's position incorrectly assumes, however, is that Verizon is the only party that may propose terms. Webster's dictionary defines negotiation as "a conferring, discussing, or bargaining to reach agreement;" as Verizon is well aware, that conferring, discussing or bargaining is generally preceded, in this context, by an exchange of drafts and the holding of negotiating sessions during which the parties discuss their respective terms. For whatever reason, Verizon failed to follow that paradigm here. Thus, while Verizon attempts to criticize clients of this firm for submitting "what amounts to almost an entire rewrite of Verizon's draft amendment" (which, as noted above, was necessitated by Verizon's failure to promulgate lawful terms in the first instance), Verizon has itself failed completely to either offer its own response to the Proposed Amendment or identify which provisions it asserts are "contrary to applicable law."

If Verizon is indeed serious about negotiating at this point, I would expect that the company will identify those areas of the Proposed Amendment with which it takes issue. Should Verizon decline to do so, we are contented to leave it to the State Commissions to determine, in the pending arbitration proceedings, that the terms we have proposed are unquestionably more reflective of the state of applicable law than are Verizon's.

Finally, it is entirely irrelevant that some CLECs have chosen to execute your amendment, as carriers are free to forego their legal rights should they choose to do so. Competitive carriers have many rights (and Verizon many obligations) under interconnection agreements and applicable law, and it is our intent to continue to represent carriers to ensure that those rights and obligations are enforced, and that any settlements reached contain appropriate terms.

Please do not hesitate to contact me should you wish to discuss this matter further.

Sincerely yours,

Andrew M. Klein

CERTIFICATE OF SERVICE
UT-043013

I hereby certify that a true and correct copy of the foregoing has been provided via United States first-class mail in sealed envelopes, postage fully prepaid to the following parties:

DIRECTOR – CONTRACT PERFORMANCE & ADMINISTRATION
VERIZON WHOLESALE MARKETS
600 HIDDEN RIDGE
IRVING TX 75038

RICHARD POTTER
VICE PRESIDENT
VERIZON NORTHWEST INC
PUBLIC POLICY AND EXTERNAL AFFAIRS
1800 - 41ST STREET
EVERETT WA 98201

VICE PRESIDENT AND
ASSOCIATE GENERAL COUNSEL
VERIZON WHOLESALE MARKETS
1320 N. COURT HOUSE ROAD, FLOOR 8
ARLINGTON VA 22201

TIMOTHY J O'CONNELL
STOEL RIVES
600 UNIVERSITY ST.
STE 3600
SEATTLE WA 98101

AARON M PANNER
KELLOG, HUBER, HANSEN,
TODD & EVANS, P.L
1615 M STREET NW, STE 400
WASHINGTON DC 20036-3209

PRESIDENT
TEL WEST COMMUNICATIONS, LLC
3701 S. NORFOLK STREET, STE 300
SEATTLE WA 98118

GENERAL COUNSEL
T-MOBILE USA INC
12990 SE 38TH ST.
BELLEVUE WA 98006

JOHN P ANDRIST
PRESIDENT
NCI DATA.COM, INC.
700 B OKOMA DRIVE
OMAK WA 98841

IRINA ARMSTRONG
REGULATORY CONTACT
METROPOLITAN TELECOMMUNICATIONS
OF WASHINGTON
44 WALL STREET, FL 14TH
NEW YORK NY 10005

SCOTT BEER
ICG TELECOM GROUP, INC.
GOVERNMENT AND EXTERNAL AFFAIRS
161 INVERNESS DRIVE WEST
ENGLEWOOD CO 80112

ROBERT BENSON
TARIFF SUPPORT
FOX COMMUNICATIONS CORP.
5210 CARILLON POINT
KIRKLAND WA 98033

PENNY H BEWICK
NEW EDGE NETWORK, INC
D\B\A NEW EDGE NET
3000 COLUMBIA HOUSE BLVD., STE 106
VANCOUVER WA 98661

LON E BLAKE
DIRECTOR OF REGULATORY AFFAIRS
ADVANCED TELCOM, INC.
3723 FAIRVIEW INDUSTRIAL DR. SE.
SALEM OR 97302

KIMBERLEY A BRADLEY
SENIOR DIRECTOR OF REGULATORY AFFAIRS
WINSTAR COMMUNICATIONS, LLC
1850 M STREET, N.W., STE 300
WASHINGTON DC 20036

MICHAEL J BRADSHAW
POWERTELNET COMMUNICATIONS, INC.
PO BOX 1150
PROSSER WA 99350

BERNARD CHAO
COVAD COMMUNICATIONS COMPANY
110 RIO ROBLES
SAN JOSE CA 95134-1813

STEVEN C CLAY
PRESIDENT
NEW ACCESS COMMUNICATIONS, LLC
801 NICOLLET MALL, STE 350
MINNEAPOLIS MN 55042

TOM COOK
COOK TELECOM, INC.
2963 KERNER BLVD.
SAN RAFAEL CA 94901

JOHN COONAN
WASHINGTON RSA NO. 8 LIMITED
PARTNERSHIP
C/O INLAND CELLULAR TELEPHONE COMPANY
PO BOX 171
ROSLAND WA 98941

DALE CROUSE
PRESIDENT
PREMIERE COMMUNICATIONS SYSTEMS, INC.
4509 INTERLAKE AVE. N
110
SEATTLE WA 98103

CHRIS CROWE
PAC-WEST TELECOMM, INC.
1776 MARCH LANE
STE 250
STOCKTON CA 95207

MICHAEL E DAUGHTRY
UNITED COMMUNICATIONS, INC.,
D/B/A UNICO
497 SW CENTURY DR., STE 200
BEND OR 97702

BARBARA FILLINGER
REGULATORY MANAGER
IONEX COMMUNICATIONS NORTH, INC.
2020 BALTIMORE
KANSAS CITY MO 64108

LETTY FRIESEN
ATTORNEY AT LAW
AT&T COMMUNICATIONS
OF THE PACIFIC NORTHWEST
1875 LAWRENCE STREET, FL 15
DENVER CO 80202

RUDOLPH GEIST
O1 COMMUNICATIONS OF WASHINGTON, LLC
770 L ST., STE 960
SACRAMENTO CA 95814

MR GEOFF GEORGE
GENERAL MANAGER
MARATHON COMMUNICATIONS, INC.
1550 N 34TH ST, # 200
SEATTLE WA 98109-2904

BECKY GIPSON
DIRECTOR
EXCEL TELECOMMUNICATIONS, INC
REGULATORY AFFAIRS DEPARTMENT
1600 VICEROY DRIVE
DALLAS TX 75235

JOHN GLICKSMAN
VICE PRESIDENT/GENERAL COUNSEL
ADELPHIA BUSINESS SOLUTIONS OPERATIONS
ONE NORTH MAIN ST.
COUDERSPORT PA 16915

KEN GOLDSTEIN
METROCALL, INC.
6677 RICHMOND HIGHWAY
ALEXANDRIA VA 22306

ROBERT T HALE
PRESIDENT/CEO
GRANITE TELECOMMUNICATIONS, LLC
234 COPELAND STREET
QUINCY MA 02169

KEN HANKS
SENIOR TAX ANALYST
INTERNATIONAL TELCOM, LTD.
417 - 2ND AVENUE WEST
SEATTLE WA 98119

KARINE HELLWIG
SPRINT COMMUNICATIONS COMPANY L.P.
6390 SPRING PKWY
MS: KSOPHT010-Z2400
OVERLAND PARK KS 66251-2400

SCHULA HOBBS
DIRECTOR OF REGULATORY AFFAIRS
DSLNET COMMUNICATIONS, LLC
545 LONG WHARF DRIVE, FL 5
NEW HAVEN CT 06511

KAREN JOHNSON
CORPORATE REGULATORY ATTORNEY
INTEGRA TELECOM OF WASHINGTON, INC.
19545 N.W. VONNEUMANN DR.
STE 200
BEAVERTON OR 97006

REX KNOWLES
XO WASHINGTON, INC
1111 EAST BROADWAY
SALT LAKE CITY UT 84111

DEANNE LAIDLER
US CELLULAR:
8410 W. BRYN MAWR STE 700
CHICAGO IL 60631

ARTHUR L MAGEE
COMPTROLLER
BUDGET PHONE, INC.
PO BOX 19360
SHREVEPORT LA 71149

SAM G MAROPIS
ASSOCIATE DIRECTOR
REGULATORY/MUNICIPAL AFFAIRS
SBC TELECOM, INC.
1010 N. ST. MARY'S, ROOM 13K
SAN ANTONIO TX 78215

ROBERT E HEATH
VICE PRESIDENT
AMERICAN FIBER NETWORK, INC.
9401 INDIAN CREEK PARKWAY, STE 140
OVERLAND PARK KS 66210

TRE HENDRICKS
ATTORNEY AT LAW
UNITED TELEPHONE COMPANY
OF THE NORTHWEST
902 WASCO STREET
HOOD RIVER OR 97031

WILLIAM P HUNT III
VICE PRESIDENT, PUBLIC POLICY
LEVEL 3 COMMUNICATIONS, LLC
1025 EL DORADO BLVD
BROOMFIELD CO 80021

DENNIS KELLEY
DIRECTOR OF OPERATIONS
(PROVISIONING)
1-800-RECONEX, INC. (T633)
2500 INDUSTRIAL AVENUE
HUBBARD OR 97032

GREGORY J KOPTA
DAVIS WRIGHT TREMAINE
2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE WA 98101-1688

TRUDY M LONGNECKER
TARIFF & REGULATORY ANALYST
RCN TELECOM SERVICES, INC.
105 CARNEGIE CENTER
PRINCETON NJ 08540

DIMITRI MANDELIS
PRESIDENT
COMPUTERS 5*, INC., D/B/A LOCALTEL
341 GRANT RD.
EAST WENATCHEE WA 98802

PAUL MASTERS
ERNEST COMMUNICATIONS, INC.
6475 JIMMY CARTER BLVD.
STE 300
NORCROSS GA 30071

FELICIA MAYO
POINT OF CONTACT
COMM SOUTH COMPANIES, INC.
REGULATORY AFFAIRS
8035 EAST R.L. THORNTON FREEWAY, STE 410
DALLAS TX 75228

REBECCA MCGREW
POINT OF CONTACT
CIERA NETWORK SYSTEMS, INC.
1250 WOOD BRANCH PARK DRIVE, STE 600
HOUSTON TX 77079

DANIEL MELDAZIS
SENIOR MANAGER REGULATORY AFFAIRS
FOCAL COMMUNICATIONS CORPORATION
OF WASHINGTON
200 NORTH LASALLE ST., STE 1100
CHICAGO IL 60601

ANDREW METCALFE
PRESIDENT
NORTHWEST TELEPHONE, INC.
1630 N. WENATCHEE AVE., STE 9
WENATCHEE WA 98801

JILL MOUNSEY
DIRECTOR-EXTERNAL AFFAIRS
AT&T WIRELESS SERVICES, INC.
7277 164TH AVE. NE
REDMOND WA 98052

CARL NICKENS
SR. COUNSEL
PACIFIC BELL WIRELESS NORTHWEST, LLC
5565 GLENRIDGE CONNECTOR, STE 1700
ATLANTA GA 30346

JON PESNELL
CONTROLLER
PREFERRED CARRIER SERVICES, INC. (T953)
14681 MIDWAY ROAD, STE 105
ADDISON TX 75001

HEATHER QUALEY
DIRECTOR OF PRODUCT MARKETING,
TELEPHONY
METSTREAM COMMUNICATIONS, INC.
1815 NW 169TH PLACE, STE 4060
BEAVERTON OR 97006

BOB MCCOY
GENERAL COUNSEL
WILLIAMS LOCAL NETWORK, INC.
4100 ONE WILLIAMS CENTER
TULSA OK 74172

RANDALL C MEACHAM
SENIOR MANAGER - GOVERNMENT AFFAIRS
KMC TELECOM V, INC.
1755 N. BROWN ROAD
LAWRENCEVILLE GA 30043

BECKI MERKEL
COST ACCOUNTANT II
MCLEODUSA TELECOMMUNICATIONS SVCS.
6400 C ST., SW
P.O. BOX 3177
CEDAR RAPIDS IA 52405-3177

NICOLE MIZELL
REGULATORY SPECIALIST
VARTEC TELECOM, INC.
1600 VICEROY DRIVE
DALLAS TX 75235

CATHERINE MURRAY
MANAGER, REGULATORY AFFAIRS
ESCHELON TELECOM OF WASHINGTON, INC.
730 SECOND AVENUE SOUTH, STE 1200
MINNEAPOLIS MN 55402

WILLIAM OBERLIN
BULLSEYE TELECOM, INC.
25900 GREENFIELD ROAD, STE 330
OAK PARK MI 48237

DAVID M PIKOFF
VICE PRESIDENT
DPI-TELECONNECT, L.L.C.
2997 LBJ FREEWAY, STE 225
DALLAS TX 75234

TERESA S REFF
SENIOR FINANCIAL ANALYST
GLOBAL CROSSING LOCAL SERVICES, INC.
REGULATORY AFFAIRS
1080 PITTSFORD VICTOR ROAD
PITTSFORD NY 14534

JILL SANFORD
SENIOR ATTORNEY
ABOVENET COMMUNICATIONS, INC
360 HAMILTON AVENUE
WHITE PLAINS NY 10601

THOMAS SAWATZKI
HIGHSPEED.COM LLC
6W ROSE ST.
STE 500
WALLA WALLA WA 99362

TIMOTHY M SEAT
Z-TEL COMMUNICATIONS, INC.
601 S. HARBOUR ISLAND BLVD, STE 220
TAMPA FL 33602

MICHEL SINGER NELSON
ATTORNEY
WORLDCOM, INC.
707 17TH ST., STE 4200
DENVER CO 80202

ELEANOR SPILLMAN
VICE PRESIDENT OPERATIONS/
CORP. COUNSEL
GOLD TEL
16212 BOTHELL WAY SE, # F-107
MILL CREEK WA 98012

DAVID L STARR
DIRECTOR, REGULATORY COMPLIANCE
ALLEGIANCE TELECOM OF WASHINGTON, INC.
9201 NORTH CENTRAL EXPRESSWAY
DALLAS TX 75231

RICHARD STEVENS
PRESIDENT
CENTEL COMMUNICATIONS, INC.
PO BOX 25
GOLDENDALE WA 98620-0025

LANCE TADE
ELECTRIC LIGHTWAVE, INC
4 TRIAD CENTER, STE 200
SALT LAKE CITY UT 84180

MARY TAYLOR
REGULATORY MANAGER
AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST
2120 CATON WAY SW, STE B
OLYMPIA WA 98502

MARY TAYLOR
TCG SEATTLE
2120 CATON WAY SW, STE 3
OLYMPIA WA 98502

BRIAN THOMAS
TIME WARNER TELECOM OF WASHINGTON LLC
223 TAYLOR AVENUE N.
SEATTLE WA 98109

WOODY TRAYLOR
BROADBAND OFFICE COMMUNICATIONS, INC.
2900 TELESTAR CR.
FALLS CHURCH VA 22182

LADONNA TRUELOCK
DMJ COMMUNICATIONS, INC.
2525 N. GRANDVIEW, STE 900
ODESSA TX 79761

DUDLEY UPTON
CELLCO PARTNERSHIP
1300 I ST. NW, STE 400
WASHINGTON DC 20005

ROWENA VALLE
NOS COMMUNICATIONS, INC. (T1022)
TARIFF AND REGULATORY AFFAIRS
4380 BOULDER HIGHWAY
LAS VEGAS NV 89121-3002

DICK VAN AGGELEN
QUANTUMSHIFT COMMUNICATIONS, INC.
101 ROWLAND WAY
STE 300
NOVATO CA 94945

SULTAN WEATHERSPOON
WEATHERSPOON TELEPHONE, LLC
16410 NE 32ND STREET
VANCOUVER WA 98682

RHONDA WEAVER
DIRECTOR OF GOVERNMENT AFFAIRS &
TELEPHONE
COMCAST PHONE OF WASHINGTON, LLC
440 YAUGER WAY SW
OLYMPIA WA 98502-8153

RICK WEAVER
REGULATORY CONTACT
WESTGATE COMMUNICATIONS, LLC
PO BOX 1903
BREWSTER WA 98812

KAREN SHORESMAN FRAME
COVAD COMMUNICATIONS COMPANY
7901 LOWRY BLVD.
DENVER CO 80320

SIMON FFITCH
OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL
900 4TH AVENUE STE 2000
SEATTLE WA 98164

EDWARD KIRSCH
SWIDLER BERLIN SHEREFF FRIEDMAN LLP
300 K STREET NW
STE 300
WASHINGTON DC 20007-5116

ANDREW M KLEIN
KELLEY DRYE & WARREN, LLP
1200 19TH STREET, NW
STE 500
WASHINGTON DC 20036

RICHARD A PITT
Representing Northwest Telephone, Inc.
12119 JACQUELINE DRIVE
P.O. BOX 667
BURLINGTON WA 98233

DATED at Seattle, Washington this 4th day of May, 2004.

Marcia Kording

Marcia Kording, Secretary