BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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&T'S RESPONSE TO VERIZON'S MOTION TO TERMINATE PROCEEDING

AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon (collectively "AT&T") hereby submit this Response to Verizon Northwest Inc.'s ("Verizon") Motion to Terminate Proceedings. While AT&T does not agree with Verizon's assertions that the Washington Commission is preempted from conducting the above-captioned proceeding, AT&T does not object to the termination of this proceeding for practical reasons. In support of its position, AT&T states as follows:

INTRODUCTION

1. In its Motion, Verizon asserts that the Commission is preempted "by the negotiation and arbitration procedures set out in sections 251 and 252 of the federal Communications Act"[1] and points to two Circuit Court opinions—neither of which are the Ninth Circuit—as legal support. Setting aside the Circuit Court opinions for a moment, it is curious to note that when Verizon wants to avoid the requirements of sections 251 and 252 for purposes of holding a mass arbitration to amend multiple interconnection agreements in relation to the *Triennial Review Order* it has no problem finding Commission authority to do so.[2] But here, when the Commission seeks to do essentially the same thing, Verizon asserts preemption. AT&T is concerned with

[1] *In the Matter of the Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest, Inc.,* Motion of Verizon Northwest, Inc. to Terminate Proceeding, Docket No. UT-011219 (June 17, 2004) (hereinafter "Verizon Motion").
[2] *See e.g.,* pending Docket No. UT-043013.

Verizon's efforts to twist State and Federal law to meet its needs. Once tied in knots, there may be no way for the parties generally appearing before this Commission to understand or ever apply any "procedural" precedent in this State. Consequently, AT&T recommends that the Commission terminate this proceeding, but for reasons other than what Verizon asserts.

ARGUMENTS

2. Verizon's most recent attempt to terminate this proceeding is based largely upon two Circuit Court opinions: (1) *Wisconsin Bell, Inc. v. Bie*,[3] and (2) *Verizon North, Inc. v. Strand*.[4] In both cases the Courts struck down the Commissions' attempt to have Wisconsin Bell and Verizon substitute tariff filings for individually negotiated interconnection agreements. The Court in *Wisconsin Bell* summarized the issue well when it stated:

> Whether as the district judge ruled the state's tariff-filing order is preempted by the provisions of the federal act creating the contractual route to interconnection depends on whether the state requirement interferes with the federal *procedure*. … A conflict between state and federal law, even if it is not over goals but merely over methods of achieving a common goal, is a clear case for invoking the federal Constitution's supremacy clause to resolve the conflict in favor of federal law … .[5]

In the *Wisconsin Bell* case, the Court noted further that the tariff process "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 agreement."[6] This is precisely what Verizon did in its *Triennial Review*

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[3] *Wisconsin Bell, Inc. v. Bie,* 340 F.3d 441 (6th Cir. 2002), *cert. denied*, ___ U.S.___ ; 124 S.Ct. 1075 (2004).
[4] *Verizon North, Inc. v. Strand,* 309 F.3d 935, *cert denied.,* 538 U.S. 946 (2003).
[5] *Wisconsin Bell, Inc.,* 340 F.3d at 443 (emphasis added); *cf. Verizon North, Inc.,* 309 F.3d 940.
[6] *Wisconsin Bell,* 340 F.3d at 445.

amendment proceeding[7] by combining numerous competitors into a single *en mass* arbitration without strictly adhering to the requirements of sections 251 and 252 of the Act.

3. If, as the cases Verizon cites, preclude commissions from "short-circuiting" the negotiation process, then this Commission cannot allow Verizon to engage in a mass *Triennial Review* arbitration with every competitor in the State because it will necessarily "short-circuit" the negotiation process required, at least as these Courts have concluded, under the Act. Furthermore, if the Commission does adopt the reasoning of the Courts cited by Verizon and terminates this proceeding, it should—as a legal matter on its own motion—revisit its decision to conduct a mass arbitration regarding Verizon's *Triennial Review* amendments and terminate that proceeding as well.

4. Alternatively, and more appropriately, AT&T suggests that the Commission simply terminate this proceeding as duplicative of others currently pending before the Commission. When, and if, competitors are in a position to arbitrate interconnection agreements, they will bring their disputes to the Commission at the appropriate time.

CONCLUSION

5. As Verizon notes in its Motion, the above-captioned proceeding has been a long and arduous process. That process was made all the more difficult because Verizon demanded that the competitors start from scratch with a Verizon model agreement that other Commissions and competitors have successfully negotiated and arbitrated to change, but Verizon would not adopt any of those changes here in Washington. Clearly, Verizon is an unwilling participant, which makes the negotiation

[7] Pending Docket No. UT-043013.

process all the more difficult. Consequently, AT&T believes its resources could be better spent in other proceedings wherein Verizon has some incentive to compromise. Thus, AT&T does not object to the termination of this proceeding.

Respectfully submitted this 28th day of June, 2004.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

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