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December 21, 2001

VIA FEDEX

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

Re: Continuing Costing and Pricing Proceeding, Docket No. UT-003013
Verizon Microwave Collocation Terms, Docket No. UT-011219

Dear Ms. Washburn:

Pursuant to the Notice dated December 7, 2001, in the above-referenced dockets, XO Washington, Inc. ("XO"), Focal Communications Corporation of Washington ("Focal"), and Electric Lightwave, Inc. ("ELI") (collectively "Joint CLECs") provide the following Response Comments. With one exception, all commenting parties support the proposal that the Commission broaden the scope of issues in Docket No. UT-011219 to include all terms governing competitors' access to, and interconnection with, the network of Verizon Northwest Inc. ("Verizon"). The sole exception is Verizon, but Verizon fails to provide any legitimate basis for its opposition.

Verizon's opposition rests primarily on its claims that Verizon has no intention of filing a Statement of Generally Available Terms ("SGAT"), and that the Commission cannot compel Verizon to do so. Verizon's "I don't want to and you can't make me" approach not only lacks persuasive appeal, it is incorrect as a matter of law. Verizon correctly observes that under Section 252(g) of the federal Telecommunications Act of 1996 ("Act"), an SGAT filing is permissive, not mandatory, but Verizon completely ignores the Commission's authority under state law.

Washington law fully authorizes the Commission to establish terms and conditions for Verizon's provisioning of service, including service to competitors:

Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, . . . that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, . . . 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.

RCW 80.36.140. While the Washington statute does not use the term “SGAT,” an SGAT is nothing more than the “rules, regulations or practices” by which Verizon provides service to competitors. State law, if not federal law, provides the Commission with more than ample authority to develop an SGAT or comparable set of default terms and conditions for Verizon’s provisioning of wholesale service in Washington.

Federal law, at a minimum, specifically permits the Commission to exercise its authority under Washington law. Section 251(d)(3) of the Act expressly preserves “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.” A Commission order requiring Verizon to file and maintain an SGAT subject to Commission review and oversight easily satisfies these requirements.

Such an order would establish access and interconnection obligations in the form of an SGAT. The Commission’s objective would be to ensure that the SGAT is consistent with the requirements of Section 251 of the Act, as well as the Act as a whole, just as the Commission has required Qwest’s SGAT to be consistent with the requirements of federal, as well as state, law. Carriers could still negotiate and/or arbitrate individual interconnection agreements with Verizon under Section 252 of the Act, but the SGAT would provide a swifter, far less expensive alternative. The Commission has more than ample legal authority to require Verizon to offer wholesale services through an SGAT.

Verizon also claims, without elaboration or explanation, that the interconnection agreement “process has worked successfully, and allows the Commission to address Verizon NW’s terms and conditions through the established negotiation and arbitration process.” Verizon Comments at 3. The Joint CLECs explained in their initial comments that this process has been successful for Verizon but not for CLECs or the public interest in Washington. Except in the AT&T/MCI-GTE arbitration in 1996, the Commission has had no opportunity to address or substantively review Verizon’s terms and conditions. The other two arbitrations initiated by ELI in 1998 and ATTI in 1999 were not comprehensive but addressed only a few discrete issues. The initial terms of all of these arbitrated agreements, moreover, have expired, and none is available for opt-in by other carriers.

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As a result, carriers seeking to establish terms and conditions for access to, and interconnection with, Verizon's network must negotiate and/or arbitrate their own agreements. Such a prospect is daunting. Particularly in the current economic climate, CLECs have insufficient resources to negotiate, much less arbitrate, terms and conditions on an individualized basis. Verizon capitalizes on these circumstances by proposing a template agreement that has changed drastically following the merger of BellAtlantic and GTE and ignores most, if not all, of the FCC and Commission orders implementing the Act. Attached to these comments by way of example is a copy of the interconnection (including reciprocal compensation) terms from Verizon's latest template agreement, which do not reflect any of the Commission's (or FCC's) prior determinations on these issues.

The Joint CLECs share Commission Staff's concern with the disparity between Qwest's SGAT and the terms and conditions under which Verizon offers the same wholesale service, even though both companies have identical obligations under Section 251. Most, if not all, of the issues raised in Docket Nos. UT-003022 and UT-003040 are the same issues that CLECs have with Verizon. The resolution of those issues should also be the same. Accordingly, the Commission should establish terms and conditions for access to, and interconnection with, Verizon's network based on Qwest's SGAT, modified as necessary to reflect Verizon-specific nomenclature and processes.

XO, Focal, and ELI appreciate the opportunity to comment on these issues. Please contact me if you have any questions about these comments.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

cc: Service List