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

Re: Proposed Emergency Rule - WAC 480-120-083, Cessation of Certain
Telecommunication Services

Dear Ms. Washburn:

Verizon Northwest Inc. has the following comments on proposed WAC 480-120-083, Cessation of Certain Telecommunications Services circulated by e-mail from the Commission Staff on April 23, 2001.

No. 1. This Rule Should Not be Adopted on an Emergency Basis.

In order to invoke the Emergency Rule authorization provisions of RCW 34.05.350, an emergency must be declared justifying dispensing with the public notice and comment requirements of the Washington Administrative Procedure Act. The requirements are very important because [t]he “purpose of rulemaking procedures is to assure that members of the public can participate meaningfully in the development of agency policy that affects them.” See “The Washington Administrative Procedural Act”, 64 WL Rev. 781, 791 (1989).

The Commission Staff has presented no factual basis for the adoption of this Emergency Rule so as to avoid the public notice and comment requirements. The only purported justification for the Rule came from a report in a trade magazine which stated that a Commission Staff member explained that NorthPoint Communication, Inc.’s recent shutdown, and the departure of Verizon Select Services Inc. (“VSSI”), prompted the Commission to address the issue. The circumstances of both of these companies do not warrant an Emergency Rule. First, NorthPoint provided DSL service, which is not one of the “covered services” in the proposed Rule. Second,

the departure of VSSI was authorized more than four months ago by this Commission in Docket UT-001863, which provided for an orderly exiting of the market after appropriate notice to customers and the provision of opportunities for customers to obtain alternative local exchange service. Verizon is aware of no other companies on the brink of shutting down in Washington State which could have an impact on public health, safety of general welfare. Without such facts, this Commission should not proceed on an emergency basis. If it wishes to adopt such a rule, such rule should proceed through regular rulemaking channels. This rule should not be adopted without additional input from impacted industry members and the public.

No. 2. Other Carriers Should Not Be Forced to Take Customers From Exiting CLECs.

If adopted, this Rule could force local exchange companies such as Verizon to serve as a default carrier for customers who have not chosen Verizon and who would not be obligated to pay Verizon for providing services for up to forty-five (45) days. Such a forced arrangement has profound implications for both the carriers and the customers and, any rule requiring such an arrangement should not be adopted hastily. Verizon should not be forced to take exiting CLEC customers and maintain service to them except pursuant to an ILEC's obligation to provide service to qualified new applicants who will pay for the services they receive. Subsection 8 of the Proposed Rule would require Verizon to accept customers who would not otherwise qualify for service. Subsection 8 does not require that a telecommunications company be compensated for either recurring or non-recurring charges for providing a "lost covered service." Being obligated to provide such a service for up to forty-five (45) days without recompense could have huge financial implications for a company such as Verizon, forcing its other rate payers to pay for the costs of customers who made a competitive choice in selecting another carrier. The Rule does not provide any mechanism whatsoever for a company such as Verizon to protect itself from the serious financial implications of serving customers who will not pay them for recurring and non-recurring charges, who may run up substantial toll charges and who may not have qualified for service in the first place because of delinquent accounts or poor credit. This proposed rule also imposes new obligations upon ETCs and raises questions about the Commission's selection of which carrier will be tagged with providing service for "stranded" customers.

No. 3. The Rule has Numerous Technical Problems.

Technically, the Proposed Rule simply will not work if a CLEC exiting the market is facilities based, because such CLEC customers would have no underlying carrier to continue providing service for the proposed interim forty-five (45) day period. The rule fails to distinguish between facilities and non-facilities based providers and the different issues associated with switching customers from each type of carrier.

Furthermore, if the underlying carrier, or ETC, is required to serve customers in such a forced arrangement, then the forced carrier should not be subject to some of the proposed new stringent service quality or credit rules currently under consideration at the Commission. It would be grossly unfair for a carrier to be forced to accept a huge number of customers all at once. The overall confusion and delays associated with processing their orders and providing services within the called for five (5) day period. would leave a company such as Verizon susceptible to significant service credits or penalties for activity for which it is not responsible.

While other significant technical problems remain in the draft language.¹ The proposed Emergency Rule has significant technical and operational problems which require further consideration. Adopting this Rule would set extremely bad public policy and would place the Commission on a path which may be difficult to change in subsequent rulemakings on the subject of cessation of service by exiting carriers.

No. 4. In a Competitive Market Consumers Should Take Responsibility For Their Competitive Choices

This Rule is a paternalistic, outdated approach to dealing with an inevitable issue which must arise in a competitive market where carriers have freedom to enter and exit and customers have competitive choice. If a customer makes the decision to select a CLEC as a provider for whatever reason, the customer runs the risk that his or her competitive choice may not work out. The responsibility should be placed upon the customers – not companies – for insuring that customers have the “covered services” addressed by this Rule.

No. 5. As a Practical Matter, The Rule May Not be Enforceable.

Companies forced to go out of business may do so consistent with the provisions of Federal Bankruptcy Law. The Proposed Rule may interfere with a debtor’s rights under those laws to cease operations. This Commission may have not authority to interfere with the cessation or wind down of a business under federal law. Again, given the rush “time frame” associated with this Proposed Emergency Rule, Verizon has not had the time to investigate the potential implication of this Rule under Federal Bankruptcy Law. Practically, if a company has gone out of business it is doubtful that the Commission could enforce the notice obligations required by the new Rule.

In conclusion, Verizon urges the Commission to not take action on an emergency basis to adopt a poorly crafted Rule which will establish bad public policy and precedent in this state. Verizon, or any other carrier, should not be forced to take defaulting CLEC customers. To do so would not even be consistent with the precedent set by this Commission in granting VSSI’s petition to

¹ For instance, the information called for by Sub. 3(b) is normally never provided directly to customers. In addition, Verizon does not know what “circuit identification records” means?

Carole J. Washburn
April 24, 2001
Page 4

exit the market which did not require Qwest Communications, Inc. to accept VSSI's customers in their service territory. Establishing a rule at odds with this Commission Order, at odds with competitive market place and at odds with Federal Law should not be adopted.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC

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