BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of:	)	
Unbundled Loop and Switching Rates;	)	Docket No. UT-023003
the Deaveraged Zone Rate Structure; and	)	
Unbundled Network Elements,	)	
Transport and Termination	)	
(Recurring Costs)	)	
______________________________	)	

OPENING POST-HEARING BRIEF OF

XO WASHINGTON, INC., AND PAC-WEST TELECOMM, INC.

July 15, 2004

1. XO Washington, Inc. ("XO"), and Pac-West Telecomm, Inc. ("Pac-West") concur in the Opening Post-Hearing Brief of AT&T Communications of the Pacific Northwest, Inc., except for the sections concerning switching costs, on which XO and Pac-West take no position. XO and Pac-West, however, are providing this Opening Post-Hearing Brief to address the appropriate rate for reciprocal compensation for the exchange of local traffic between Verizon Northwest Inc. ("Verizon") and competing local exchange companies ("CLECs").

2. The Commission should establish a per minute of use reciprocal compensation rate based on the *entire* costs that Verizon incurs to provide local and (as applicable) tandem switching. The Commission used just such a methodology to establish Verizon's current reciprocal compensation rates, as well as the reciprocal compensation rates for local traffic exchanged with Qwest Corporation ("Qwest"). Nothing in the record in this docket justifies departure from that methodology.

3. Verizon, however, proposes a reciprocal compensation rate that is significantly *lower* than the rate Verizon proposes for UNE local switching. Verizon attempts to justify this novel proposal by claiming that the "additional cost" recovery standard for reciprocal compensation under Section 252(d)(2) is different than the UNE cost recovery standard in Section 252(d)(1). Ex. 201TC (Verizon Panel Direct) at 94-95. Verizon contends that the "additional costs" to be recovered through reciprocal compensation do not include "getting started" switching investments, such as "switch processor and memory, test equipment, maintenance equipment, office spares, and other miscellaneous equipment." *Id.* at 95, n.43. Verizon's proposal finds support neither in the law or the record.

4. Verizon cites no legal authority for the proposition that the pricing standards under Section 252(d)(1) and 252(d)(2) are substantially different – which is not surprising in

light of the fact that federal law is to the contrary. The FCC has consistently maintained that the methodologies used under both statutory standards are the same, and this Commission has established switching rates accordingly.[1] Indeed, until this proceeding, both Qwest and Verizon consistently advocated in the prior cost dockets that reciprocal compensation rates and UNE local switching rates should be established at the same level, even when reciprocal compensation was not at issue. Verizon cannot credibly contend that the legal position it took in prior dockets is somehow no longer applicable now.

5. Verizon's own evidence, moreover, is inconsistent with Verizon's proposal. Verizon provides no empirical basis for determining that the level of reciprocal compensation does not impact switching "getting started" costs. To the contrary, one of Verizon's switching panel witnesses testified that Verizon does not even know the number of reciprocal compensation minutes that cross Verizon's switches in Washington but conceded, "If you were to remove reciprocal compensation traffic from the traffic mix, certainly the demand would go down and this may require less resources, because you're building a smaller switch." Tr. at 916 (Verizon Mazziotti). In other words, Verizon would incur lower "getting started" costs, which therefore must be considered "additional costs" to be recovered in reciprocal compensation rates.

6. The methodology that Verizon uses to determine overall switching costs is also inconsistent with Verizon's proposal. Verizon determines such costs by dividing the total switching investment by the total number of minutes – including local, toll, and reciprocal compensation minutes – that cross Verizon's switches. *Id*. at 913-14. Verizon concedes that because it calculates the same cost for every minute of use, Verizon would under-recover its switching costs by charging a lower rate for reciprocal compensation. *Id*. at 918. Verizon

[1] *E.g., In re Implementation of the Local Competition Provisions in the Telecommunications Act*

simply shrugs off this lost as “the way the game is played.” *Id*. Verizon is not nearly so sanguine when it comes to allegedly under-recovering costs through UNE rates. Indeed, Verizon claims that any UNE rates that are substantially lower than those proposed by Verizon would result in the taking of Verizon’s property without just compensation. In light of the fact that the reciprocal compensation rates the Commission establishes will also apply to payments that Verizon must make to CLECs, Verizon obviously derives a benefit from reciprocal compensation rates that are substantially below Verizon’s costs.

7. The per minute of use charge that Verizon proposes for UNE local switching should be used as the reciprocal compensation rate, regardless of the Commission’s determination of the appropriate rate structure for UNE local switching. Every intercarrier compensation mechanism is structured on a per minute of use basis, including compensation for Internet Service Provider bound traffic and both intra- and inter-state switched access. Reciprocal compensation for the exchange of local traffic should use the same structure to ensure competitive neutrality, as well as to minimize potential arbitrage opportunities. State commissions that have adopted flat-rated UNE local switching thus have also maintained per minute of use reciprocal compensation rates.[2] The Commission should similarly establish per minute of use reciprocal compensation rates without regard to UNE local switching rate structure.

---

of 1996, CC Docket No. 96-98, FCC 96-325, First Report and Order ¶ 1054 (Aug. 8, 1996).

[2] *See*, *e.g.*, Utah Pub. Serv. Comm’n Docket No. 01-049-85, Report and Order (May 5, 2003); Ill. Commerce Comm’n Docket Nos. 96-0486 and 96-0569, Order. The proposed order in California also incorporates this rate structure.

8. Accordingly, the Commission should establish per minute of use reciprocal compensation rates that are set to recover the same level of switching costs (but not necessarily through the same rate structure) as UNE local switching rates.

RESPECTFULLY SUBMITTED this 15th day of July, 2004.

DAVIS WRIGHT TREMAINE LLP
Attorneys for XO Washington, Inc., and Pac-West Telecomm, Inc.

By ______________________________
Gregory J. Kopta