BEFORE THE WASHINGTON 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 COMMISSION STAFF'S RESPONSE TO VERIZON'S PETITION FOR REVIEW OF ORDER DENYING MOTION TO TERMINATE PROCEEDING

1 Verizon's petition for review of the Order Denying Motion to Terminate Proceeding (Ninth Supplemental Order) essentially repeats the arguments the company made in its original motion to terminate this proceeding, to which Staff responded on June 28, 2004. Staff agrees with the Ninth Supplemental Order's conclusion that the Commission has the requisite authority to conduct this proceeding under state statutes. That authority is clearly referenced in the Order (*see* ¶¶ 10-11 and fn. 4 and 5). This proceeding is also consistent with federal law, particularly section 251(d)(3) of the 1996 Telecommunications Act, which expressly preserves state authority to enact regulations establishing access and interconnection

obligations of local exchange carriers. The federal cases cited by Verizon[1] are distinguishable and do not support its claims here. Those cases held that the state commission may not bypass the interconnection agreement process altogether when establishing terms and conditions for interconnection. The Commission in this docket is not proposing to do that, but rather will incorporate the terms and conditions resulting from this docket into the parties' interconnection agreements (or make those agreements subject to such terms and conditions). Staff's arguments on these points are set forth in full in Staff's response of June 28, 2004, and they are consistent with the Ninth Supplemental Order's findings and conclusions as to the Commission's authority to conduct this proceeding under state and federal law.

2 Verizon raises one new issue in its petition for review. On July 8, 2004, the FCC rescinded its previous "pick-and-choose" rule, which had allowed a CLEC to opt-in to a portion of an interconnection agreement entered into between an ILEC and another CLEC. The new rule, which the FCC calls the "all-or-nothing" rule, requires CLECs that wish to opt-in to another carrier's interconnection agreement to adopt the entire agreement. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Second Report and Order, FCC 04-164, CC Docket No. 01-338 (July 8, 2004) ("FCC Order"). The FCC found that the all-

[1] *Verizon North, Inc. v. Strand,* 309 F.3d 935 (6th Cir. 2002), and *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003).

or-nothing rule will "promote more give-and-take negotiations," and in particular, will encourage ILECs to make trade-offs in negotiations that they were reluctant to make under the pick-and-choose rule, since a third-party CLEC under the prior rule could obtain equivalent benefits from the ILEC without making any trade-off at all. FCC Order, at ¶¶ 2, 12, 13.

3 Verizon argues that the FCC's elimination of the pick-and-choose rule, which applied to negotiations between ILECs and CLECs, in turn precludes this Commission from developing and enforcing terms and conditions for interconnection with Verizon. This simply does not follow. The FCC was specifically interpreting section 252(i) of the Telecommunications Act. The Commission's actions here, by contrast, are authorized under section 251(d)(3) of the Act. That section provides that state commissions retain the authority to establish and enforce obligations for access to, and interconnection with, local exchange company networks, as long as those obligations are consistent with the requirements of section 251, and do not substantially prevent implementation of the requirements of that section and the purposes of Part II [*i.e.*, sections 251-261] of the Act.

4 Nothing in the FCC's Order indicates any intent to preempt the actions of state commissions in establishing interconnection terms and conditions. Simply because one carrier may no longer choose individual terms from another carrier's

interconnection agreement does not mean that state commissions are thereby precluded from establishing and enforcing interconnection terms in a proceeding such as the present docket. Yet that is the very logic of Verizon's position, for under the company's argument, any order that this Commission might issue to "establish access and interconnection obligations of local exchange carriers," would ostensibly violate the Act, thus completely eviscerating section 251(d)(3). There is no indication that the FCC intended such a result, particularly since its Order does not even reference this section, or the subject of state access and interconnection obligations. Verizon's argument is not well taken and should be rejected.

5 For the reasons set forth above, as well as those detailed in Staff's previous response of June 28, 2004, Verizon's petition for review of the Ninth Supplemental Order should be denied.

DATED this 29th day of July, 2004.

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