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August 19, 2004

VIA E-MAIL and FEDERAL EXPRESS

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

Re: *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

Dear Ms. Washburn:

On behalf of Verizon Northwest Inc. ("Verizon"), enclosed please find an original and twelve (12) copies of the Reply of Verizon Northwest Inc. to Answers to Verizon's Petition for Review. The additional copy is enclosed to be file-stamped and returned in the self-addressed envelope provided. Thank you for your assistance in this matter.

Sincerely yours,

John L. Flynn

cc: All Parties of Record, via e-mail and U.S. Mail

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	)	DOCKET NO. UT-011219
	)	REPLY OF VERIZON NORTHWEST INC. TO ANSWERS TO VERIZON'S PETITION FOR REVIEW
VERIZON NORTHWEST INC.	)	

REPLY OF VERIZON NORTHWEST INC. TO ANSWERS TO VERIZON'S PETITION FOR REVIEW

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Aug. 19, 2004

1. Pursuant to this Commission's August 10, 2004 Notice, Verizon Northwest Inc. ("Verizon") submits the following Reply to the Answers to Verizon's Petition for Review.[1/] The Answers misapply both federal and state law and mischaracterize the impact of the FCC's repeal of the "pick and choose" rule to suggest erroneously that this Commission may continue to compel Verizon to participate in this proceeding.[2/] The Commission has no such authority, under either federal or state law, and continuing with this proceeding defeats the "meaningful, give-and-take negotiations envisioned by the Act" and protected by the FCC's abolition of the pick and choose rule.[3/]

2. The FCC's recent Order eliminating the "pick and choose" rule makes especially clear that the Act preempts this proceeding. The FCC's Order requires that carriers either negotiate interconnection agreements individually or adopt existing agreements *in their entirety*.[4/] The Order therefore effectively negates the proffered justification for the current proceeding — that CLECs will incorporate (*i.e.*, pick and choose) parts of the "template

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1/ Only three of the CLECs participating in this proceeding—Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc.— filed an Answer to Verizon's Petition for Review. The majority of the CLECs did not oppose either Verizon's original Motion to Terminate the Proceedings or this Petition for Review.

2/ The Responding CLECs appear to have mistaken the universal template that this proceeding seeks to create for the "rules, regulations or practices" referred to by RCW 80.36.140. However, as Verizon has explained previously, Washington law authorizes the Commission to determine reasonable rules and practices only *after* holding a hearing. *See* RCW 80.36.140. And Verizon's existing terms cannot violate RCW 80.36.140 because they implement sections 251 and 252 of the federal Communications Act, and this Commission has found Verizon's interconnection agreements to be just and reasonable by approving them.

3/ Second Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-164, CC Docket No. 01-338, at ¶ 10 (adopted July 8, 2004) ("FCC Order").

4/ *See, e.g.*, FCC Order ¶¶ 1, 30.

agreement" into existing interconnection agreements. As a result, this proceeding is unquestionably a "parallel proceeding" that provides an alternative route around sections 251 and 252 in violation of the Act.[5/]

3. The attempts of the Responding CLECs and Staff to evade the FCC's elimination of the pick and choose rule are unpersuasive.[6/] In eliminating the pick and choose rule, the FCC explained that allowing competitive carriers to pick and choose among provisions of agreements had resulted in "the adoption of largely standardized agreements with little creative bargaining to meet the needs of both the incumbent LEC and the requesting carrier."[7/] Requiring an incumbent carrier to submit to the forced adoption of "model" terms, and allowing competitive carriers to pick and choose favorable provisions from that agreement, will only discourage carriers from making "trade-offs in negotiations," since "third-party CLEC[s] could obtain equivalent benefits from the ILEC without making any trade-off at all."[8/] The express goal of this proceeding, therefore, would yield exactly the result the FCC has made illegal by eliminating the pick and choose rule.

4. The fact that the Order does not address specifically a "template" agreement, as the CLECs contend, only highlights the fact that such form agreements legally do not exist and

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[5/] *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 444 (7th Cir. 2003), *cert. denied sub nom. WorldCom, Inc. v. Wisconsin Bell*, __ U.S. __, 124 S.Ct. 1075 (2004); *see also, e.g., Verizon North, Inc. v. Strand*, 309 F.3d 935, 943 (6th Cir. 2002), *cert. denied*, 538 U.S. 946 (2003).

[6/] Responding CLECs' Answer ¶ 11; Staff's Answer ¶¶ 3-4.

[7/] FCC Order ¶ 12.

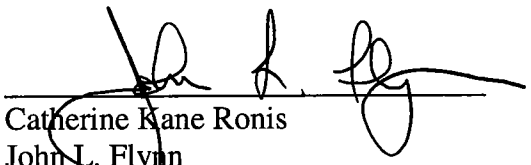
[8/] Staff's Answer ¶ 2 (citing FCC Order ¶¶ 2, 12, 13).

are not within the prescribed processes contemplated by the FCC.[9/] Tellingly, in all their briefing, neither the Staff nor any responding CLEC has pointed to any other state proceeding resembling this one. It is therefore hardly surprising that the FCC did not address such an agreement in its Order eliminating the pick and choose rule. This Commission cannot create some new kind of "agreement" outside the Act that end-runs the FCC's Order by allowing carriers to engage in the pick and choose practices that the FCC rejected.

5. For the reasons explained above, and in Verizon's Petition for Review, the Commission should accordingly and immediately terminate this proceeding.

August 19, 2004

Respectfully submitted,



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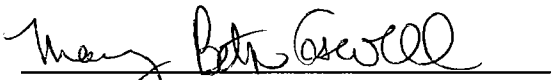
9/ In this vein, the Responding CLECs are also incorrect in their assertion that this forced SGAT proceeding does not conflict with section 252(f) because, as Verizon has pointed out, section 252(f) applies only to Bell Operating Companies ("BOCs"). Responding CLECs' Answer ¶ 10. To the contrary, sections 252(f)'s limitation to BOCs doubles the conflict. The Act does not contemplate that Verizon Northwest Inc. would file an SGAT in the first instance because it is not a BOC. And, even if section 252(f) did apply to Verizon, it could not be *compelled* to file an SGAT because doing so under section 252(f) is left to the BOC's voluntary discretion. Thus, this proceeding conflicts with section 252(f) for at least two independent reasons. *See* 47 U.S.C. § 252(f) ("A *Bell operating company may* prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State . . . .") (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that an original and twelve (12) copies of the foregoing Reply of Verizon Northwest Inc. to Answers to Verizon's Petition for Review were sent by overnight mail and one copy was sent by electronic mail to Ms. Carole J. Washburn, Executive Secretary, Washington Utilities & Transportation Commission, 1300 S. Evergreen Park Drive SW, Post Office Box 47250, Olympia, WA 98504-7250; and one copy was sent by regular mail and electronic mail to the following :

DATED this 19th day of August, 2004



Mary Beth Caswell

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