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STATE OF WASH.
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Via Overnight Delivery

Ms. Carole J. Washburn
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive, SW
Olympia, WA 98504-7250

Re: *UT-023003*

Dear Ms. Washburn:

Enclosed please find twelve copies plus an original of Verizon Northwest Inc.'s Response to Petition for Reconsideration of XO Washington, Inc. and Pac-West Telecomm, Inc.

Copies have been served to all parties of record via overnight delivery.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,

William R. Richardson, Jr.

William R. Richardson, Jr. *WTR*

Enclosures

Cc: All Parties of Record

BEFORE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of: Unbundled Loop and Switching Rates; the Deaveraged Zone Rate Structure; and Unbundled Network Elements, Transport, and Termination	Docket No. UT-023003
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**RESPONSE TO PETITION FOR RECONSIDERATION
OF XO WASHINGTON, INC. AND PAC-WEST TELECOMM, INC.**

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March 7, 2005

INTRODUCTION

Verizon Northwest Inc. (“Verizon NW”), pursuant to WAC 480-07-850, hereby responds to the Petition for Reconsideration (“PFR”) of the Commission’s Twenty-Fourth Supplemental Order, issued on February 9, 2005 (the “*Order*”), filed by XO Washington, Inc. (“XO”) and Pac-West Telecomm, Inc. (“Pac-West”). Administrative Law Judge Mace issued a Notice of Opportunity to Respond to the XO/Pac-West Petition on February 23, 2005.

For the reasons discussed below, the Commission appropriately rejected XO/Pac-West’s untimely and incorrect argument that reciprocal compensation rates should be the same as the unbundled local switching minute-of-use rate, finding that the law required that reciprocal compensation reflect only the “additional” costs of switching associated with terminating service, not the total unit costs. The Commission should therefore uphold its decision and reject XO/Pac-West’s Petition for Reconsideration.

ARGUMENT

To support their claim that the Commission improperly decided to base rates for reciprocal compensation on the “additional” costs of providing the service, rather than equal to the minute-of-use (“MOU”) charge for unbundled end-office switching, XO/Pac-West make two arguments. Neither argument is correct.

First, XO/Pac-West dispute the Commission’s finding that “XO’s proposal was not properly supported on the record, nor timely raised in this proceeding.”¹ XO/Pac-West argue that they had no opportunity to challenge Verizon’s proposed reciprocal compensation rate until post-hearing briefing and claim that legal arguments are not a proper subject of prefiled testimony. *See* XO/Pac-West Petition at 2. XO/Pac-West’s position is disingenuous. XO/Pac-

¹ *Order* ¶ 528.

West, as well as other parties, addressed numerous legal issues in their prefiled testimony and at the hearing. For example, all the parties addressed the proper interpretation of TELRIC, which is a central legal question in this proceeding.² There is no reason why XO/Pac-West could not have raised their reciprocal compensation arguments in their testimony.

Moreover, the proper cost standard and rate structure for reciprocal compensation is a *mixed* question of law and fact, much like the mixed questions of law and fact relating to the appropriate cost of capital, depreciation, and other inputs. For example, Verizon NW argued that applicable law requires that reciprocal compensation rates be based only on the additional costs of terminating service, not on the total unit costs associated with providing switching. Whether a particular cost fits within the “additional” cost standard is plainly a factual issue that would need to be fully explored before post-hearing briefing in order for the Commission to make a reasoned decision on the issue. The Commission should therefore disregard XO/Pac-West’s claim that brief questioning at the hearing “was the first opportunity they reasonably could have raised [the issue].” XO/Pac-West Petition at 3.

Second, XO/Pac-West are wrong to claim that the Commission erred by agreeing “with Verizon that the Act makes a distinction between switching and termination rates . . . [and] allows the price of call termination to be lower than the cost of ordinary switching.”³ In support of their claim that this finding was in error, XO/Pac-West point to the FCC’s *Local Competition Order*, where the FCC found that reciprocal compensation rates should be calculated according to the TELRIC methodology. *See* XO/Pac-West Petition at 5.⁴ But this citation is of no

² *See, e.g.*, Exh. No. 651T (Selwyn) (discussing the proper interpretation of TELRIC with regard to cost of capital); Exh. No. 1004TC (Lundquist) (opining on the applicable pricing standard).

³ *Order* ¶ 528 (citing 47 U.S.C. § 252(d)).

⁴ *See* First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 1054 (1996) (“*Local Competition Order*”) (“We . . . find that

moment; Verizon NW does not dispute here that the reciprocal compensation rates should reflect the TELRIC standard.

The relevant question, however, is whether applicable law requires that reciprocal compensation rates be *equal* to the MOU switching rate. The answer is no. Indeed, there is nothing to support XO/Pac-West's claim that the FCC in the *Local Competition Order* somehow read out of existence the statutory term "additional cost." See 47 U.S.C. § 252(d)(2). The FCC simply found that "the 'additional cost' to the LEC of terminating a call that originates on a competing carrier's network *primarily* consists of the traffic-sensitive component of local switching."⁵ The FCC did *not* find that reciprocal compensation rates should be *equal* to the traffic sensitive rate for switching.

Verizon NW's proposed reciprocal compensation rates clearly satisfy the FCC's standard. As Verizon NW explained, its proposed reciprocal compensation rates are based primarily on the traffic sensitive costs from Verizon NW's TELRIC switching studies, but do not include the "getting started" costs.⁶ These costs are properly excluded because they do not constitute the "additional" costs Verizon NW incurs when terminating traffic. No party, not even XO/Pac-West, has challenged this factual distinction. Thus, the Commission's decision was correct.

the 'additional cost' standard permits the use of the forward-looking, economic cost-based pricing standard that we are establishing for interconnection and unbundled elements.").

⁵ *Local Competition Order* ¶ 1057 (emphasis added).

⁶ See Exh. No. 201TC 94:11-95:13 (Panel Direct).

CONCLUSION

For the foregoing reasons, the Commission should deny XO/Pac-West's Petition for Reconsideration.

Respectfully submitted,

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of March 2005, served Verizon Northwest Inc.'s Response to Petition for Reconsideration of XO Washington, Inc. and Pac-West Telecomm, Inc. upon all parties of record in this proceeding by Federal Express and by e-mail:

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