BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Continued Costing and Pricing of UNEs …….. In the Matter of Verizon Northwest Inc.'s Terms and Conditions Regarding Microwave Entrance Facilities.	DOCKET NO. UT-003013 DOCKET NO. UT-011219 RESPONSE OF COMMISSION STAFF REGARDING EXPANSION OF DOCKET UT-011219

Commission Staff files the following response to Verizon Northwest Inc.'s comments regarding the expansion of Docket UT-011219.

Verizon's comments appear to be fixed on the use of the technical term "SGAT," a term set forth in the 1996 Telecommunications Act. If the use of that term causes difficulties, Staff wishes to clarify that it is not asking the Commission to literally establish an "SGAT," per se. Rather, Staff is requesting that Docket UT-011219 be expanded to establish the tariffed terms and conditions for Verizon's interconnection services contained in Tariffs WN U-20, WN U-21, and WN U-22, the collocation, UNE and Resale tariffs.

Verizon itself contemplated the inclusion of terms and conditions for its interconnection services, as witnessed by the inclusion of such terms and conditions in its compliance filing in Docket UT-960369. Staff objected to the inclusion of such terms and conditions because the Commission had indicated it would not address them in the cost docket. Verizon subsequently removed them from the compliance filings. *See Verizon Response to Staff Comments Regarding*

its September 18, 2000 Compliance Filing ()ctober 17, 2000) at page 7. The Commission is nearing the completion of the generic cost docket, and the time has now come to address the question of terms and conditions.

Contrary to Verizon's claims, Staff believes the Commission clearly has the legal authority to establish tariffed terms and conditions of service for Verizon's interconnection services in Docket UT-011219. The Commission's authority does not derive solely from the 1996 Telecommunications Act, but also state statutes. In fact, the Commission exercised this jurisdiction in Docket No. UT-941464, prior to the passage of the Act. [*Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, in Part* (October 31, 1995)]. The Commission there said:

> The Commission believes that the telecommunications industry itself should assume primary responsibility for reaching consensus on reasonable solutions to many of the local interconnection issues. However, we realize that the industry necessarily and appropriately looks to the Commission to provide some leadership and direction during the transition to a competitive industry structure. If members of the industry fail to reach agreement necessary to resolve these critical issues, *the Commission is prepared to take a more directive role as needed to establish terms for fair interconnection among competing providers of local exchange services.*
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> The Commission has carefully and thoroughly considered the incumbent LECs' arguments that we lack authority to order any interconnection terms or conditions other than those they are offering. We believe that the incumbent LECs' interpretation of the Commission's authority . . . are unreasonably restrictive. *The Commission has broad authority to regulate the rates, services, facilities, and practices of telecommunications companies in the public interest.*

Id. at 15. (Italics added.) The Commission then cited to supporting case law, including *POWER v. Utilities & Transp. Comm'n*, 104 Wn. 2d 798, 808, 711 P. 2d 319 (1985); and to numerous statutes, including RCW 80.01.040(3), RCW 80.36.080, RCW 80.36.140, RCW 80.36.160, RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186.

Finally, the Commission found:

> *We have concluded that the Commission's authority is sufficiently broad for it to order compensation arrangements* (including "bill and keep") *and other terms and conditions for local interconnection* that differ from those the incumbents propose. *In deciding which arrangements, terms, and conditions to approve and order*, the Commission will endeavor to identify solutions that are consistent with the state's telecommunications policies and otherwise in the public interest.

Id. at 16. (Italics added.)

Verizon contends that the 1996 Telecommunications Act precludes the Commission from exercising its state statutory authority. This contention is incorrect. Section 261(c) of the Act, 47 U.S.C. § 261, provides:

> Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the [FCC's] regulations to implement this part.

Section 251(d)(3), entitled "Preservation of State Access Regulations," also provides:

> In prescribing and enforcing regulations to implement the requirements of this section , the [FCC] shall not preclude the enforcement of any regulation, order, or policy of a State commission that—
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> (A) establishes access and interconnection obligations of local exchange carriers;
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> (B) is consistent with the requirements of this section; and
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> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

Verizon is correct that section 252(f) of the Act provides that a Bell operating company "may prepare and file with the state commission a statement of generally available terms and conditions." However, this section does not preclude or preempt the Commission from

exercising its state authority to establish tarriffed terms and conditions for Verizon, which shall be incorporated into interconnection agreements.

Staff acknowledges/recognizes that in using state authority to establish tariffed terms and conditions, the Commission may not interfere with the agreement-based approach to interconnection established in §251 and §252. The Commission could not, for instance, prohibit a CLEC from negotiation and arbitration of interconnection terms specific to its circumstances. *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, 41 F. Supp. 2d 1157 (D. Ore. 1999). However, so long as the Commission does not dispense with interconnection agreements altogether (and Staff is not proposing this result), this is quite consistent with the Act. In *MCI v. GTE,* supra., the court stated that it "rejects GTE's contention that wholesale discounts, unbundled element prices, *and other terms* invariably must be separately negotiated with each CLEC[.]" *Id.* at 1177 (italics added). The court noted that once GTE provides an element or service to one CLEC under an interconnection agreement, 47 U.S.C. §252(i) requires GTE to make that element or service available to any other CLEC "upon the same terms and conditions." The court stated:

> The court also acknowledges the PUC's concern that the cost of negotiating (and possible litigating) a custom interconnection agreement is prohibitive for many prospective CLECs. In theory, a CLEC could avoid litigation by signing a contract acceptable to GTE, but that effectively would allow GTE to dictate the terms.

Id. The court further held that what it called a "universal short-form" interconnection agreement, under which CLECs could purchase services "off-the-rack," if the CLEC does not plan to physically interconnect with the ILEC, is consistent with the Act. The court also noted that a universal short-form agreement could also be appropriate

> ….for some CLECs purchasing unbundled elements, so long as there is sufficient opportunity for the parties to address any technical issues regarding that

> interconnection, and the PUC ensures that GTE is compensated (to the extent required by the Act) for any special costs associated with a particular interconnection agreement that are not already included within the unbundled element prices.
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> *Id.*

The court in *MCI Telecommunications* held that the Oregon PUC's proposed tariff was only preempted by the Act, "to the extent GTE is required to sell unbundled elements or finished services to a CLEC that has not first entered into an interconnection agreement with GTE pursuant to the Act." *Id.* at 1178. Here, Commission Staff is not proposing that the Commission abolish interconnection agreements. Rather, it proposes that the Commission exercise its state statutory authority to establish terms and conditions, to be incorporated into interconnection agreements. This process is entirely consistent with the Act.

DATED this 21st day of December, 2001.

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