

WILMER CUTLER PICKERING  
HALE AND DORR<sup>LLP</sup>

Catherine Kane Ronis

2445 M STREET NW  
WASHINGTON, DC 20037  
+1 202 663 6380  
+1 202 663 6363 fax  
catherine.ronis@wilmerhale.com

September 29, 2004

**VIA E-MAIL and FEDERAL EXPRESS**

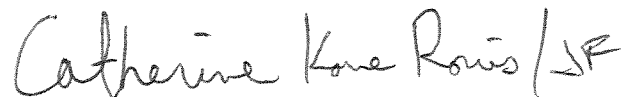
Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
Post Office Box 47250  
Olympia, WA 98504-7250

**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., enclosed please find an original and twelve (12) copies of the Answer of Verizon Northwest Inc. to Joint CLEC Petition for Reconsideration of Order Terminating Proceeding. Please file-stamp the additional copy enclosed and return in the self-addressed envelope provided. Thank you for your assistance in this matter.

Sincerely yours,



Catherine Kane Ronis

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	)	DOCKET NO. UT-011219
Interconnection and Network	)	
Elements to be Provided by	)	
	)	ANSWER OF VERIZON NORTHWEST INC.
	)	TO JOINT CLEC PETITION FOR
NORTHWEST INC.	)	RECONSIDERATION OF ORDER
	)	TERMINATING PROCEEDING
.....	)	

**ANSWER OF VERIZON NORTHWEST INC. TO  
JOINT CLEC PETITION FOR RECONSIDERATION OF  
ORDER TERMINATING PROCEEDING**

Charles H. Carrathers III  
Verizon Northwest Inc.  
600 Hidden Ridge  
Irving, Texas 75038

Catherine Kane Ronis  
John L. Flynn  
Wilmer Cutler Pickering Hale and Dorr LLP  
2445 M Street, NW  
Washington, D.C. 20037  
Tel. 202-663-6000  
Fax. 202-663-6363

September 29, 2004

1. Verizon Northwest Inc. (“Verizon”) respectfully urges the Commission to deny the Joint CLECs’ Petition for Reconsideration<sup>1/</sup> of the Commission’s order granting Verizon’s Motion to Terminate this proceeding.<sup>2/</sup> The Petition fails to demonstrate that the Commission may not terminate a proceeding it initiated on its own motion. The Petition also offers no reason that this proceeding would be legal, and the Joint CLECs’ claim that the Commission misunderstands its own docket is wrong.

2. The Order correctly terminated a proceeding designed “to establish a set of universal terms and conditions under which competitive local exchange carriers (CLECs) may enter into interconnection agreements with Verizon Northwest, Inc.”<sup>3/</sup> As an initial matter, as Verizon has explained, the proposed proceeding is illegal because it lacks a basis under state law and, in any event, is preempted by the Telecommunications Act.<sup>4/</sup> The Commission ruled that it need not reach these legal arguments, however, because it “initiated this proceeding on its own motion” and was now exercising its discretion to terminate the proceeding.<sup>5/</sup> In particular, the Commission explained that uncertainty generated by litigation in the wake of the Federal

---

<sup>1/</sup> Joint CLEC Petition for Reconsideration of Eleventh Supplemental Order Terminating Proceeding (Sept. 17, 2004) (“Petition”). The Joint CLECs are Integra Telecom of Washington, Inc.; XO Washington, Inc.; MCI, Inc., f/k/a WorldCom, Inc.; and Covad Communications Company.

<sup>2/</sup> Eleventh Supplemental Order, *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 (Sept. 9, 2004) (“Order”). Verizon provides this Answer pursuant to the Notice of Opportunity to Respond (Sept. 20, 2004).

<sup>3/</sup> *Id.* ¶ 2.

<sup>4/</sup> *See, e.g.*, Petition of Verizon Northwest Inc. for Review of Order Denying Motion to Terminate Proceeding (July 15, 2004).

<sup>5/</sup> Order ¶ 19.

Communications Commissions (“FCC”) *Triennial Review Order*<sup>6/</sup> and the potential for duplicative proceedings made the proceeding undesirable.<sup>7/</sup> The Commission therefore found that “termination of this proceeding would be the most reasonable and practical course of action at this time.”<sup>8/</sup>

3. The Joint CLECs’ claim that the Commission should reverse its decision to terminate this proceeding is incorrect.<sup>9/</sup> To begin with, the Commission plainly can terminate a proceeding that it started on its own motion, and the Joint CLECs have provided no legal support suggesting otherwise.

4. Just as important, the “SGAT” proceeding the Joint CLECs desire is illegal.<sup>10/</sup> As Verizon explained in its Motion to Dismiss this proceeding, the Act clearly preempts this proceeding.<sup>11/</sup> In *Verizon North, Inc. v. Strand*<sup>12/</sup> and *Wisconsin Bell, Inc. v. Bie*,<sup>13/</sup> for example, the United States Courts of Appeals for the Sixth and Seventh Circuits both held that the Communications Act preempts state proceedings, like this one, that bypass the detailed requirements of the Act. In any event, the proffered state law ground for this proceeding, RCW

---

<sup>6/</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”), *vacated in part, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

<sup>7/</sup> Order ¶¶ 19-24.

<sup>8/</sup> *Id.* ¶ 23.

<sup>9/</sup> Petition ¶ 1.

<sup>10/</sup> Petition ¶¶ 7-8.

<sup>11/</sup> Motion of Verizon Northwest Inc. to Terminate Proceeding (June 17, 2004).

<sup>12/</sup> 309 F.3d 935 (6th Cir. 2002), *cert. denied*, 538 U.S. 946, 123 S. Ct. 1649 (2003).

<sup>13/</sup> 340 F.3d 441 (7th Cir. 2003), *cert. denied* \_ U.S. \_, 124 S. Ct. 1075 (2004).

80.36.140, provides no legal justification because, among other things, the Commission has not conducted the hearing that section of the Washington code requires.

5. The recent decision of the FCC to abolish the “pick and choose” rule supports Verizon’s claim that this proceeding is preempted.<sup>14/</sup> Because the CLECs must now adopt interconnection agreements in whole (and not “pick and choose” particular provisions),<sup>15/</sup> they may not incorporate select terms and conditions from the “universal statement of terms and conditions” into existing interconnection agreements.<sup>16/</sup> In other words, the “universal statement” would *be* the interconnection agreement, and any pretense that it would merely supplement existing agreements has disappeared.

6. The Joint CLECs are likewise wrong that termination of this proceeding is “inconsistent with” the Commission’s decision to continue the *Triennial Review Order* Arbitration (“TRO Arbitration”).<sup>17/</sup> The Commission’s decisions regarding the two proceedings are perfectly consistent because the two proceedings have dramatically different purposes. The “SGAT” proceeding seeks to create far-ranging “model” terms. The TRO Arbitration, in sharp contrast, seeks only to implement the specific requirements of the *Triennial Review Order* through the particular “change of law” provisions of the existing agreements. Unlike the

---

<sup>14/</sup> Second Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-164, CC Docket No. 01-338 (rel. July 13, 2004).

<sup>15/</sup> *Id.*

<sup>16/</sup> Ninth Supplemental Order, *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, at 6 ¶ 14 (July 6, 2004).

<sup>17/</sup> Petition ¶ 4.

“SGAT” proceeding, the TRO Arbitration is necessary because *existing* interconnection agreements are *contrary to law* in light of the DC’s Circuit’s *USTA II* decision.<sup>18/</sup>

7. Equally unpersuasive is the Joint CLECs’ contention that the Commission erred when it concluded that the “SGAT” proceeding is unnecessary.<sup>19/</sup> As Verizon has explained, the CLECs have ample options, provided under the Act, for entering into interconnection agreements without the need for a “model” agreement. CLECs may negotiate an agreement;<sup>20/</sup> they may arbitrate an agreement under particular timelines and rules if negotiations prove unsuccessful; and they may choose not to negotiate or arbitrate at all and instead “opt into” an existing agreement.<sup>21/</sup> As the Commission made clear in its Order terminating this proceeding, “the parties may continue to negotiate and arbitrate agreements under the Act (subject to the FCC’s interim rules) and the Commission will continue to perform its role in reviewing and approving negotiated and arbitrated interconnection agreements as identified in Section 252 of the Act.”<sup>22/</sup>

8. Finally, contrary to the Joint CLECs’ claim, terminating this proceeding will not increase litigation and discourage competition.<sup>23/</sup> In fact, just the opposite is true: Terminating this proceeding will save *tremendous* resources because the parties can now cease their forced negotiations, and will not have the incentive to engage in a protracted litigation over every

---

<sup>18/</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *petition for cert. filed* (Sept. 17, 2004) (No. 04-15).

<sup>19/</sup> Petition ¶ 8.

<sup>20/</sup> *See* 47 U.S.C. 252(a).

<sup>21/</sup> *See* 47 U.S.C. § 252(i).

<sup>22/</sup> Order ¶ 25.

<sup>23/</sup> Petition ¶¶ 6-8.

conceivable interconnection agreement issue with every carrier. Meanwhile, the Joint CLECs' prediction that the Commission will face a great increase in arbitration of individual agreements flies in the face of the general apathy that has greeted this proceeding. Only four CLECs — all of which have interconnection agreements — have even joined the Petition urging a continuation of this proceeding. Notably, AT&T agreed the proceeding should terminate, and Staff has not joined in the current Petition. Thus, the Joint CLECs' attempt to champion the "rights" of carriers that have withheld their support from the Petition should be rejected.

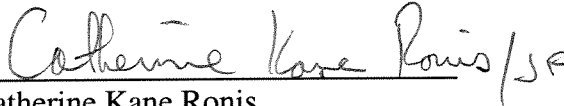
### CONCLUSION

9. For the foregoing reasons, the Commission should deny the Joint CLECs' Petition for Reconsideration of the Commission's order granting Verizon's Motion to Terminate this proceeding.

September 29, 2004

Charles H. Carrathers III  
Verizon Northwest Inc.  
600 Hidden Ridge  
Irving, Texas 75038


Respectfully submitted,

  
Catherine Kane Ronis  
John L. Flynn  
Wilmer Cutler Pickering Hale and Dorr LLP  
2445 M Street, NW  
Washington, D.C. 20037  
Tel. 202-663-6000  
Fax. 202-663-6363

## CERTIFICATE OF SERVICE

I hereby certify that an original and twelve (12) copies of the foregoing Answer of Verizon Northwest Inc. to Joint CLEC Petition for Reconsideration of Order Terminating Proceeding were sent by overnight and 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 29th day of September, 2004

  
Mary Beth Caswell

The Honorable Theodora M. Mace  
Administrative Law Judge  
Washington Utilities & Transportation  
Commission  
1300 S. Evergreen Park Drive SW  
Post Office Box 47250  
Olympia, WA 98504-7250  
[tmace@wutc.wa.gov](mailto:tmace@wutc.wa.gov)

Michael Singer Nelson  
WorldCom, Inc.  
Law and Public Policy  
707 17th Street, Suite 4200  
Denver, CO 80202  
[michael.singer\\_nelson@wcom.com](mailto:michael.singer_nelson@wcom.com)

Dennis D. Ahlers  
Senior Attorney  
Eschelon Telecom Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402-2456  
[ddahlers@eschelon.com](mailto:ddahlers@eschelon.com)

Greg J. Trautman  
Senior Assistant Attorney General  
WUTC Staff  
P.O. Box 40128  
140 S. Evergreen Park Drive SW  
Post Office Box 40128  
Olympia, WA 98504-0128  
[gtrautma@wutc.wa.gov](mailto:gtrautma@wutc.wa.gov)

Simon Fitch  
Office of the Attorney General  
Public Counsel  
900 4th Avenue, Suite 2000  
Seattle, WA 98164-1912  
[simonf@atg.wa.gov](mailto:simonf@atg.wa.gov)

Gregory J. Kopta  
Daniel Waggoner  
Davis Wright Tremaine LLP  
Representing XO, Fox, TWTC  
2600 Century Square  
1501 Fourth Avenue, Suite 2600  
Seattle, WA 98101-1688  
[gregkopta@dwt.com](mailto:gregkopta@dwt.com)  
[danwaggoner@dwt.com](mailto:danwaggoner@dwt.com)

Cathy Brightwell  
Assistant Vice President  
AT&T Law and Government Affairs  
2120 Caton Way SW  
Olympia, WA 98502-1106  
[brightwell@att.com](mailto:brightwell@att.com)

Dan Horton  
Chief Technology Officer  
Fox Communications Corp.  
5210 Carillon Point  
Kirkland, WA 98033  
[dhorton@whoscalling.com](mailto:dhorton@whoscalling.com)



Brian Thomas  
Vice President of Regulatory  
Time Warner Telecom  
520 SW 6th Avenue, Suite 300  
Portland, OR 97204  
[brian.thomas@twtelecom.com](mailto:brian.thomas@twtelecom.com)

Karen J. Johnson, Esq.  
Integra Telecom of Washington, Inc.  
1201 NE Llyod Blvd., Ste 500  
Portland, OR 97232  
[karen.johnson@integratelecom.com](mailto:karen.johnson@integratelecom.com)

Letty Friesen  
AT&T Law and Government Affairs  
1875 Lawrence Street, Room 1575  
Denver, CO 80202  
[lfriesen@att.com](mailto:lfriesen@att.com)

Karen Frame  
Senior Counsel  
Covad Communications Company  
110 Rio Robles  
San Jose, CA 95134  
[kframe@covad.com](mailto:kframe@covad.com)

Rex Knowles  
Vice President Regulatory  
XO  
111 East Broadway, Suite 1000  
Salt Lake City, UT 84111  
[rex.knowles@xo.com](mailto:rex.knowles@xo.com)

Bob Shirley  
Washington Utilities and Transportation  
Commission  
Administrative Law Section  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504-7520  
[bshirley@wutc.wa.gov](mailto:bshirley@wutc.wa.gov)