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May 2, 2006

***VIA HAND DELIVERY***

Carole Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 Evergreen Park Drive, SW
Olympia, WA 98504

***Re: Docket No. UT-053021***
***In Re Rulemaking to Consider Rules for Eligible Telecommunications Carriers***
***Chapter 480-123 WAC***

Dear Ms. Washburn:

Enclosed please find an original and nine copies of Comments of Verizon Northwest Inc. in the above-referenced docket.

Sincerely,

Timothy J. O'Connell

cc: Shannon Smith, Public Counsel (w/encl.)

**BEFORE THE**
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| In Re Rulemaking to Consider Rules For Eligible Telecommunications Carriers, Chapter 480-123 WAC | Docket No. UT-053021<br><br>COMMENTS OF VERIZON NORTHWEST INC. |

## INTRODUCTION

1. Pursuant to the Commission's Notice of April 3, 2006, Verizon Northwest Inc. ("Verizon") submits the following comments on the draft rules currently proposed in this docket.

2. Verizon first commends the Commission and its Staff for providing parties a copy of the February 24, 2006 memorandum from the ETC Rulemaking Team to the Commissioners (the "February 24 Memo").

3. Verizon also acknowledges that the new draft rules delete prior reporting proposals that would have duplicated information already provided to the Commission. Verizon appreciates the material reduction in proposed new regulatory burdens represented by the current version of the draft rules.

4. Unfortunately, the draft rules would still impose significant new annual reporting burdens and potential obligations on Verizon—even though the February 24 Memo acknowledges that the Commission does not make any annual certification to the Federal



**ORIGINAL**

Communications Commission ("FCC") for the single type of federal support that Verizon receives in Washington. The purported rationale for mandating these new and admittedly unnecessary obligations is brief, vague and insufficient, and conflicts with the overall regulatory policy of the State of Washington. The Commission should not impose such new burdens on Verizon or any other similarly situated companies.

## DISCUSSION

### The Commission's Limited Role

5. Only *federal* support mechanisms are at issue. Therefore, the Commission's role is limited to those tasks assigned to it by federal statutes and FCC rules and orders that the Washington Legislature has authorized the Commission to carry out.[1]

6. Under federal law, the Commission has a role in the initial designation of Eligible Telecommunications Carriers ("ETCs") and in the annual certification process for some of the federal support mechanisms. As the February 24 Memo acknowledges, the only federal support for Washington received by Verizon (and Qwest) is Interstate Access Support ("IAS") for which "state certification is not required."[2] Rather, under FCC rules IAS recipients provide certifications directly to the FCC and the fund administrator.

7. In contrast, FCC rules require annual state commission certification for other types of federal support, including one rule specifically referenced in the proposed rules (WAC 480-123-060), 47 CFR §54.314. That federal regulation concerns four types of support available to *rural* ETCs, but not to "non-rural" carriers such as Verizon and Qwest.[3]

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[1] "The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the commission's authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by RCW 80.36.600." RCW 80.36.610(1). RCW 80.36.600 only authorizes the Commission to propose a state universal support program to the legislature for consideration. It does not authorize the Commission go beyond the role expressly described in federal law as to federal support mechanisms.

[2] February 24 Memo, p. 2.

[3] Draft WAC 480-123-060 also refers to 47 CFR §54.307 (which relates to support available to competitive ETCs ("CETCs") but does not address certifications) and 47 CFR §54.313 (which relates to the FCC's

**The Unnecessary Proposed Regulatory Burdens and Liabilities**

8. The February 24 Memo recommends "reporting and certification for Qwest and Verizon even though commission certification is not required," and the draft rules would impose the following burdens on those companies[4]:

| DRAFT RULE | PROPOSED NEW REPORTING and CERTIFICATION REQUIREMENTS |
|---|---|
| 480-123-070(1)(a) | "Substantive description of investments made and expenses paid" with the federal support. |
| 480-123-070(1)(b) | "Substantive description of the benefits to consumers" from such investments and expenses. |
| 480-123-070(4) | Report on "local service related" complaints made to the FCC or the consumer protection division of the Washington attorney general's office. |
| 480-123-070(5) | Certification of substantial compliance with service quality standards in WAC 480-123-030(1)(h), which incorporates WAC 480-120. |
| 480-123-070(6) | Certification of the ability to function in emergencies/adherence to standards in WAC 480-123-030(g), incorporating WAC 480-120-411. |
| 480-123-070(7) | Certification of advertising the availability of the federal Lifeline program. |
| 480-123-080 | A "substantive" plan and description for the use of federal support for the next year, or the planned investment and expenses for which the company plans to use federal support. |

9. The only justification suggested in the February 24 Memo for imposing this significant new regulatory burden is the incorrect claim that otherwise "the UTC will have no knowledge of how Quest and Verizon use federal high-cost support."[5] The February 24 Memo also quotes a phrase from the FCC order that prompted the Commission to open this rulemaking[6], implying in error that the FCC somehow empowered the Commission to require reports about "operating in accordance with

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"forward looking economic cost" formula for providing support to non-rural ETCs; neither Verizon nor Qwest receive such support in Washington).

[4] February 24 Memo, p. 1.

[5] *Ibid.*, p. 2.

[6] *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46 (released March 17, 2005) (hereinafter, "Order 05-46"), cited in the Commission's CR-101 Preproposal Statement Of Inquiry.

applicable state and federal requirements." The February 24 Memo implies as much even though the Commission has no annual certification role because the FCC itself performs that function.[7]

**The Lack of Justification for New Regulatory Burdens**

10. Preliminarily, the Commission should recognize that these regulations are improper for two threshold reasons. First, the fundamental premise of the February 24 Memo is in error: this Commission is extraordinarily well informed as to how regulated incumbent telephone companies use their resources (which include federal USF support) to offer universal service. Second, these admittedly unnecessary regulations are contrary to the public policy of the state of Washington and would exceed the Commission's authority.

**This Commission is Aware of Incumbent Carriers' Provision of Universal Service**

11. This Commission is well aware of the operations of incumbent local telecommunications carriers. This Commission's regulation and oversight of incumbent wireline carriers already fulfill the functions and goals associated with ETC monitoring. These providers' charges for basic telephone service are supervised by the Commission. Incumbent providers provide these services throughout their serving territories. The Commission also monitors the quality of these service offerings through monthly reports and special outage reports. The Commission also receives detailed financial reports from incumbent ETCs. These activities implement the very mandate of universal service: reasonably priced basic telephone service, throughout all regions of the state. Thus, this Commission is well informed as to incumbent wireline ETCs' efforts to promote universal service

[7] The February 24 Memo does not provide a citation for the quote, but it appears to be from Order 05-46, ¶ 71.

12. No party seriously claims that this Commission's Staff would be unaware if incumbent providers such as Verizon were having any difficulties providing the supported services on demand throughout their serving areas.

13. Thus, in a very real sense, the FCC annual recertification process that was plainly developed with wireless ETCs in mind, is a proxy for the actual provisioning of universal service that incumbent wireline ETCs perform. Although the Commission might need to use the FCC's process for Competitive ETCs, it need not resort to any such proxy process for incumbent wireline ETCs: the Commission and its staff are well aware in fact of those companies' routine provision of universal service.

**Admittedly Unnecessary Regulations Are Improper in Washington**

14. As acknowledged in the February 24 Memo, it is undisputed that no certification from this Commission is necessary for carriers whose only federal USF support is IAS. Thus, any new regulatory obligations premised on the requirements that this Commission certify anything to the FCC are inherently unnecessary.

15. Executive Order 97-02 remains in effect (Attachment 1). The admittedly unnecessary requirements for IAS-only carriers conflict with at least two of the directives of Executive Order 97-02. The very first criteria mandated for review of Washington's regulations reads: "Need. Is the rule necessary to comply with the statutes that authorize it?" EO 97-02, § I(1). On its face, a rule that is designed for an admittedly unneeded certification cannot be "necessary to comply" with the federal USF program involved in this docket. Second, the rule conflicts with an additional directive, that of "coordination." Washington regulatory agencies are directed to "consult with and coordinate with other jurisdictions that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency." EO 97-02, § I(5). Here, any certification by the Washington Commission concerning IAS usage is inherently duplicative, because carriers must make appropriate certifications directly to the FCC, and those regulations have no requirement for the state to make such a

certification. Thus, not only are the reporting requirements for IAS-only carriers unnecessary as a matter of fact, they conflict with state policy.

16. Moreover, the Commission lacks the fundamental authority to adopt rules for unnecessary certifications. This Commission has the authority to "take actions" as "permitted or contemplated for a state commission" under the federal Telecommunications Act. RCW 80.36.610(1). However, that statute is emphatic on the limitation placed on the Commission: The "Commission's authority to either establish a new state program or adopt new rules to preserve and advance universal service under Section 254 of the federal act is limited to actions expressly authorized by RCW 80.36.600." *Id.* RCW 80.36.600 does not impliedly, much less "expressly," authorize this Commission to require reports to support a certification that is not necessary under federal law. While the Commission might find information it proposes to have reported interesting, Washington law is explicit: this Commission has only that authority granted to it by the legislature, and mere interest unaccompanied by regulatory duty does not supplement that authority. *WITA v. TRACER*, 75 Wn. App. 356, 880 P.2d 50 (1994).

**Specific Proposed Rules Are Unworkable or Unduly Burdensome.**

17. Even if the Commission had a role in Verizon's annual IAS certification, there is no need for the new filings proposed in the draft rules, each of which is addressed in turn.

18. **480-123-070(1)(a) and (b)**

**-"Substantive description of investments made and expenses paid" with the federal support.**
**- "Substantive description of the benefits to consumers" from such investments and expenses.**

As discussed in Verizon's November 15, 2005 comments (at p. 3), this reporting requirement cannot be fulfilled and would not provide the Commission with any new information. The IAS that Verizon receives is simply interstate revenue – dollars that replace interstate access charge revenues. They are not earmarked funds. They are not dedicated to specific projects or expenses. They are – along with other interstate

revenues and intrastate revenues – generally used by Verizon to cover its operational costs in Washington. That is the benefit they provide to customers: continued provision of good quality telephone service. That is all the company could report to the Commission, and the Commission is already aware of this fact; it does not need a new report.

19. In contrast, CETCs building new wireline networks or adding cell towers may well be able to treat federal universal service funding as earmarked for network additions. Moreover, wireless CETCs do not already file financial reports with the UTC, and wireline CETCs' annual report provides less detail than incumbent ETCs'. Therefore, it is logical that the proposed ETC report could provide the Commission with new and useful information for CETCs.

20. **480-123-070(4) Report on "local service related" complaints made to the FCC or the consumer protection division of the Washington attorney general's office.**

This proposed requirement would not provide the Commission with any new, useful information about Verizon. "Local service related" complaints about Verizon are handled by the Commission – not the FCC or the state attorney general.

21. **480-123-070(5) Certification of substantial compliance with service quality standards in WAC 480-123-030(1)(h), which incorporates WAC 480-120.**

This draft rule would require certification of substantial compliance with the service quality standards set forth in draft WAC 480-123-030, the proposed rule concerning initial ETC designations. Subsection (1)(h) of WAC 480-123-030 would apply the Commission's standard WAC 480-120 service quality standards to wireline ETCs. Verizon already reports monthly to the Commission under those rules, so there would be no point in having it re-submit an additional annual certification.

22. **480-123-070(6) Certification of the ability to function in emergencies/adherence to standards in WAC 480-123-030(g), which incorporates WAC 480-120-411.**

This draft rule would require Verizon to "certify" that it has the ability to function in emergencies by virtue of having the back-up power sources described in draft WAC 480-123-030(1)(g) (the draft initial ETC designation rule). Draft WAC 480-123-030(1)(g) would incorporate existing WAC 480-120-411 for wireline ETCs, presumably incorporating subsection (3) of that rule, which concerns back-up power sources. As the Commission staff is well aware, Verizon switching facilities are equipped with extensive back-up generation and battery equipment, and the monthly service quality and as-needed outage reports provide ample notice of any problems in this regard. There is no need for an additional report.

23. **480-123-070(7) Certification of advertising the availability of the federal Lifeline program.**

The Commission should not adopt any particular requirement for advertising relating to Lifeline and Link-Up programs at this time. The FCC has already initiated a public inquiry into the most effective forms of outreach to insure that consumers are aware of Lifeline and Link-Up services. See, Attachment 2, Notice of Inquiry. The Commission should wait for the conclusion of that inquiry before calling for any particular form of outreach for Lifeline and Link-Up. One item that will be considered by the FCC is whether avenues other than advertising are more effective ways of informing potential Lifeline and Link-Up customers about the availability of those programs. For example, outreach through appropriate governmental or private social service agencies may be more effective in serving such a purpose. In the absence of any showing that the advertising or outreach is somehow a problem, this Commission should not impose a certification requirement that the FCC did not. The FCC made no suggestion that certification of advertising should be required, FCC Order 05-46, ¶ 69, and in doing so expressly weighed the benefits of reporting against the administrative burdens of reporting. *Id.*, ¶ 70. The Commission should not adopt regulations that may be

inconsistent or duplicative of the requirements established by the FCC for what is, after all, a federal program.

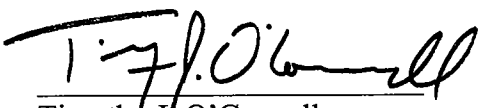
24. **480-123-080 A "substantive" plan and description for the use of federal support for the next year, or the planned investment and expenses for which the company plans to use federal support.**

Just as the proposed report of how Verizon's IAS revenues were spent, discussed above, is unjustified, requiring Verizon to also submit a year's forecast of such expenditures would make no sense. The Commission recently recognized this fact when it repealed its former rule requiring Verizon, Qwest, Century Tel and United Tel to file annual budgets. *See* General Order No. R-525 in Docket UT-051261(12/7/05). As Commission Staff[8] noted in that docket, the requirement to file budget reports may be obsolete "and the agency can fulfill its responsibility to ensure fair, just and reasonable rates without this reporting requirement." Staff Memo August 31, 2005.

## CONCLUSION

25. Verizon appreciates the opportunity to supply the Commission with its suggestions on the proposed rules. Verizon respectfully recommends that the proposed rules be adopted as modified in Attachment 3.

Respectfully submitted May 3, 2006.

By: 

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[8] The Staff open meeting memos were specifically adopted by the Commission as a supplement to its explanation of the elimination of the annual budget requirement. General Order R-525, ¶5.

**EXECUTIVE ORDER 97-02**

**REGULATORY IMPROVEMENT**

**WHEREAS**, administrative rules are necessary to implement laws that protect the public health, safety, welfare, and the environment, and to ensure efficient administration of state government.

**WHEREAS**, in recent years, there has been a steady growth in the number and complexity of administrative rules and their impact on businesses and the general public without a systematic review of their need, effectiveness, reasonableness, clarity, potential conflicting requirements, and consistency with legislative intent.

**WHEREAS**, to achieve meaningful regulatory reform, clear goals, timelines, and commitments must be established and adhered to by the Governor's office, the Subcabinet on Management Improvement and Results, and each agency head.

**NOW THEREFORE, I**, Gary Locke, Governor of the State of Washington, declare my commitment to better serve the people of the state of Washington by taking every step necessary to improve the effectiveness and fairness of our regulatory processes. It is, therefore, the purpose of this executive order to accomplish the following:

- To ensure that state regulations that have significant impact on labor, consumers, businesses, and the environment are reviewed on an open and systematic basis and to ensure that they meet standards of need, reasonableness, effectiveness, clarity, fairness, stakeholder involvement, coordination among regulatory agencies, and consistency with legislative intent and statutory authority.
- To ensure that state regulations are consistent with all requirements of the Administrative Procedure Act and that rule making occurs when required by law.
- To create a Subcabinet on Management Improvement and Results to oversee the regulatory review process and to ensure that state government pursues a fair, effective, and sensible regulatory strategy that emphasizes:
    - Priorities, whereby rules focus on issues of greatest need;
    - Partnership, whereby rule making involves participation of business, labor, the environmental community, non-profit groups, local government, and other stakeholders;
    - Plain language, whereby rules are written and organized so they may be easily understood and used by people who are affected by them; and
    - Performance, whereby rules are fair, effective, and achieve maximum public protection with reasonable requirements.

To accomplish these purposes, by virtue of the power vested in me, I hereby order and direct the following actions:

**I. Regulatory Review**

Upon the effective date of this executive order, each state agency shall begin a review of its rules that have significant effects on businesses, labor, consumers, and the environment. Agencies shall determine if their rules should be (a) retained in their current form, or (b) amended or repealed, if they do not meet the review criteria specified in this executive order. Agencies shall concentrate their regulatory review on rules or portions of a rule that have been the subject of petitions filed under RCW 34.05.330 or have been the source of complaints, concerns, or other difficulties that relate to matters other than the specific mandates of the statute on which the rule is based. Agencies that have already established regulatory review processes shall make them consistent with the requirements of this executive order. Each agency head shall designate a person responsible for regulatory review who shall serve as the agency's contact for regulatory review with the Office of the Governor and the Office of Financial Management.

The following criteria shall be used for the review of each rule identified for review:

1. **Need.** Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to

protect or safeguard the health, welfare, or safety of Washington's citizens?
2. **Effectiveness and Efficiency.** Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?
3. **Clarity.** Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?
4. **Intent and Statutory Authority.** Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop a more specific legislative authorization in order to protect the health, safety, and welfare of Washington's citizens?
5. **Coordination.** Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency? Agencies should consult with and coordinate with other jurisdictions that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.
6. **Cost.** Have qualitative and quantitative benefits of the rule been considered in relation to its cost?
7. **Fairness.** Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

Each state agency shall develop a plan for the review of its rules and submit the plan to the Governor no later than September 1, 1997. Agencies shall consult with their major stakeholders and constituent groups in the development of the plan. The plan shall: (a) Contain a schedule that identifies which rules will be reviewed and when the review will occur; (b) state the method by which the agency will determine if the rules meet the criteria listed above; (c) provide a means of public participation in the review process and specify how interested persons may participate in the review; (d) take into account the need and resources required, if any, to amend significant legislative rules; (e) identify instances where the agency may require an exception to regulatory review requirements; and (f) provide a process for on-going review of rules after the initial four-year review period provided for in this executive order has expired. Any new rules or significant amendments for which a notice of intent to adopt is filed after the effective date of this executive order shall be consistent with its principles and objectives and must also be adopted in accordance with applicable laws. Agencies shall provide the plan to any person who has requested notification of agency rule making and shall be submit the plan for publication in the Washington State Register.

By October 15, 1997, and on that date each year thereafter until the year 2000, each agency shall report to the Governor on the progress made toward completing its regulatory review and other measures taken to improve its regulatory program. The reports shall include, but not be limited to: (a) a summary of the number of rule sections amended or repealed and the number of pages eliminated in the Washington Administrative Code; (b) a summary of rules amended or repealed based on the review criteria in this executive order; (c) a summary of agency actions in response to petitions under RCW 34.05.330; (d) a summary of the results of the agency's review of policy and interpretive statements and similar documents; (e) a summary of the agency's review of reporting requirements imposed on businesses; (f) recommendations for statutory or administrative changes resulting from the regulatory reviews; and (g) other information the agency deems necessary or that may be required by the Governor. More frequent reports may be requested, as necessary. Agencies shall make the reports available to persons who have requested notification of agency rule making and shall submit them for publication in the Washington State Register.

As part of its regulatory review, each agency shall review its existing policy and interpretive statements or similar documents to determine whether or not they must, by law, be adopted as rules. The review shall include consultation with the Attorney General. Agencies shall concentrate their review on those statements and documents that have been the source of complaints, concerns, or other difficulties.

Each agency shall also review its reporting requirements that are applied generally to all businesses or classes of businesses to ensure that they are necessary and consistent with the principles and objectives of this executive order. The goals of the review shall be to achieve reporting requirements that, to the extent possible, are coordinated with other state agencies with similar requirements, are economical and easy to understand, and rely on electronic transfer of information.

The Office of Financial Management shall develop procedures to ensure that agencies notify and consult with the Governor or the Governor's staff on the substance of any significant legislative rules upon notice of proposed rule making by the agency.

The Governor may grant exceptions to regulatory review requirements in those instances where the substance of rules is mandated by federal law or where an agency can demonstrate an unreasonable conflict with established priorities.

**II. Creation of the Governor's Subcabinet on Management Improvement and Results**

There is created the Governor's Subcabinet on Management Improvement and Results to consist of the heads of the following agencies: Office of Financial Management, Department of Labor and Industries, Department of Ecology, Department of Social and Health Services, Department of Revenue, Department of Employment Security, and Department of Health. The chair of the Subcabinet shall be the Governor's Deputy Chief of Staff. Staffing for the Subcabinet shall be provided by the Office of Financial Management, with assistance from the member agencies. All state agencies shall provide the Subcabinet with periodic reports and other information and assistance as may be requested.

The responsibilities of the Subcabinet are:

- To study and make recommendations to the Governor for statutory, administrative, and organizational changes and for special pilot projects that result in regulatory improvements in state government. Recommendations shall be designed to improve service to citizens, provide effective and fair public protection, reduce the complexity of compliance, ensure reasonableness and effectiveness, simplify administrative processes, eliminate unnecessary procedures and paperwork, and reduce costs. The Subcabinet shall report to the Governor on these items no later that December 1, 1997. Subsequent reports shall be submitted in each future year no later than December 1.
- To oversee the regulatory review process established by this executive order and report to the Governor on the progress of state agencies in complying with these requirements. The first such report shall be submitted to the Governor no later than December 1, 1997. Subsequent reports shall be submitted in each future year no later than December 1.
- To assist the Office of Financial Management in the preparation of reports to the Legislature required by RCW 34.05.328(6) and RCW 43.05.900.
- To convene work groups and other special committees for the purpose of assisting the Subcabinet in the development of recommendations and reports required by this executive order and in the design and implementation of special pilot projects for regulatory improvement. Depending on their purpose, membership of such groups may include representatives from business, labor, environmental organizations, state agencies, local government, nonprofit organizations, citizens, and other interests.

**III. Effective Date.** This executive order shall take effect immediately.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the State of Washington to be Affixed at Olympia this 25th day of March A.D., Nineteen hundred and ninety-seven.

GARY LOCKE
Governor of Washington

**BY THE GOVERNOR:**
Secretary of State