BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON, Petitioner,	)	
v.	)	DOCKET NO. UT-013019
VERIZON NORTHWEST, INC., Respondent.	)	

INITIAL BRIEF OF
FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON
(June 21, 2001)

Focal Communications Corporation of Washington ("Focal"), by its undersigned attorneys, hereby submits its initial brief in this matter, pursuant to the Prehearing Conference Order, issued April 26, 2001.

Introduction

As a matter of law, Focal is entitled to the terms and conditions contained in an interconnection agreement between GTE South Incorporated and Time Warner Telecom in North Carolina, and Focal has been so-entitled since it made its opt-in request on October 4, 2000. Focal is not aware of any material disputes of fact and agrees that any questions of law can be resolved through briefing.

Many aspects of competing to provide local telecommunications service are difficult enough. However, the process of opting in to a voluntarily-negotiated agreement should be easy, especially when Verizon bargained for and agreed to the FCC's Merger Conditions[1], which permit requesting carriers in one state to import a negotiated agreement, in whole or part, to another state to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i). And as noted in the Commission's Interpretive and Policy Statement in Docket No. UT-990355:

> Principle 5: * * * The intent of the pick and choose [opt in] rule is to allow new entrants to enter the local exchange market quickly by taking interconnection under an already approved agreement without incurring the costs of negotiation and arbitration. In addition, the pick and choose rule constrains an ILEC's ability to discriminate against CLECs.[2]

Thus, both federal and state policy favor a simplified and non-discriminatory opt-in process. Instead, contrary to the principles of the FCC Merger Conditions and this Commission's Interpretive and Policy Statement, over the past seven or eight months, Focal has been needlessly forced to expend legal fees to enforce its rights, while operating without the full protection of an interconnection agreement in the meantime. Focal respectfully requests that the Commission require Verizon to honor Focal's request for the Time Warner Agreement without further delay.

Focal responds to the specific questions set forth in the Prehearing Conference Order as follows:

---

(1) Does the merger condition in ¶ 31 or ¶ 32 apply in this case?

---

[1] *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, Appendix D, p. 1 (rel. June 16, 2000) ("Bell Atlantic/GTE Merger Order"). (The Bell Atlantic/GTE Merger Conditions are contained in Appendix D (the "Merger Conditions").)

[2] *In Re Implementation of Section 252(i) of the Telecommunications Act of 1996*, Docket No. UT-990355, Interpretive and Policy Statement (First Revision) ¶ 17 (April 12, 2000).

(a) According to Exhibit C to Focal's petition, GTE South, Inc. and Time Warner Telecom signed the Time Warner Agreement, respectively, on June 26, 2000 and June 21, 2000. The signatures on the Time Warner Agreement both follow the date that the FCC entered the Bell Atlantic/GTE Merger Order, 14 FCC Rcd 14032 (June 16, 2000). What is the effective date of the agreement?

Focal's Position

The merger condition in ¶ 32 applies in this case. Article III, Section 36 of the agreement states that the Time Warner Agreement will be effective "upon execution and delivery by both Parties and approval by the [North Carolina Utilities] Commission." Focal does not know the exact date on which the Time Warner Agreement was approved by the North Carolina Utilities Commission, but the agreement was filed with the commission on or about July 12, 2000. However, as discussed below, the operative date for determining whether an agreement is pre- or post-merger is the date by which the agreement was negotiated, and not the date it was effective or approved by the commission in the state where it was negotiated.

(b) Is the Time Warner Agreement a "Post-Merger" agreement subject to ¶ 31, a "Pre-Merger" agreement subject to ¶ 32, or does some other condition apply?

Focal's Position

The Time Warner Agreement is a "Pre-Merger" agreement subject to ¶ 32 of the Merger Conditions. The Merger Conditions state in relevant part as follows:

> For purposes of these Conditions, the term "Merger Closing Date" means the day on which . . . Bell Atlantic and GTE cause a Certificate of Merger to be executed, acknowledged, and filed with the Secretary of State of New York. . . . The term "prior to the Merger Closing Date" means prior to the time that Bell Atlantic and GTE cause a Certificate of Merger to be executed, acknowledged, and filed with the Secretary of State of New York.[3]

[3] *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion

It is Focal's understanding that the Merger Closing Date, as defined above, was June 30, 2000. Paragraphs 31 and 32 of the Merger Conditions clarify that whether or not an interconnection agreement is a "Post-Merger" or "Pre-Merger" agreement turns on whether the agreement was "negotiated" before or after June 30, 2000. Specifically, ¶ 32 states that conditions specified in this paragraph relate to an "interconnection agreement . . . that was voluntarily negotiated . . . prior to the Merger Closing Date." GTE South, Inc. and Time Warner Telecom signed the agreement, respectively, on June 26, 2000 and June 21, 2000, and had thus completed negotiating before the June 30, 2000 Merger Closing Date. Therefore, the Time Warner Agreement is a "Pre-Merger" agreement subject to ¶ 32 of the Merger Conditions.

---

(2) How should the Merger Conditions be interpreted? What did the FCC intend when it stated in ¶ 31 of the GTE/Bell Atlantic Merger Conditions, "Bell Atlantic/GTE shall make available to any requesting telecommunications carrier in the Bell Atlantic/GTE Service Area within any Bell Atlantic/GTE State any interconnection arrangement, UNE, or provisions of an interconnection agreement (including the entire agreement) subject to 47 U.S.C. § 251(c) and Paragraph 39 or these Conditions . . ." *Bell Atlantic/GTE Merger Order*, 14 FCC Rcd 14032, 14308? In particular, the parties should answer the following questions:

(a) Does the term "interconnection arrangement," as used in ¶ 31 or ¶ 32, include all arrangements in an interconnection agreement? If an "interconnection arrangement" does *not* include all arrangements contained in an interconnection agreement, how do you characterize those other arrangements, particularly terms and conditions for reciprocal compensation? Please cite to any instances where the FCC characterizes an arrangement in an interconnection agreement as something other than an "interconnection arrangement."

---

and Order, 15 FCC Rcd 14032, Appendix D, p. 1 (rel. June 16, 2000) ("Bell Atlantic/GTE Merger Order"). (The Bell Atlantic/GTE Merger Conditions are contained in Appendix D (the "Merger Conditions").)

Focal's Position

Verizon has reneged on its promise to the FCC and seeks to artificially narrow the scope of its MFN obligation under the Merger Conditions, by attempting to carve out interconnection obligations not contained in 47 U.S.C. § 252(c) of the Federal Telecommunications Act. However, the term "interconnection arrangement," as used in ¶¶ 31 and 32 of the Merger Conditions, includes all arrangements in an interconnection agreement. Clearly by its inclusion of the phrase "including an entire agreement" in both paragraphs, the FCC intended that competitive carriers would have a choice between adopting an entire negotiated agreement or selected provisions from such agreements. Moreover, in the Bell Atlantic/GTE Merger Order, the FCC explained directly this aspect of the Merger Conditions. The FCC clarified that the phrase "interconnection arrangement" "encompasses, both for out-of-region and in-region agreements, **entire interconnection agreements** or selected provisions from them." Bell Atlantic/GTE Merger Order, ¶ 300, n. 686 (emphasis added). Consequently, the phrase "interconnection agreement" includes any or all arrangements in an interconnection agreement, with the only exceptions being those specifically delineated in ¶¶ 31 and 32 (i.e. price, state specific performance measures, and arrangements that are infeasible, inconsistent with the regulatory requirements of the state for which the request is made and applicable collective bargaining agreements).

And any possible doubt about what the FCC meant was erased by the letter from the FCC's Common Carrier Bureau, CC Docket No. 98-184, DA 00-2890 (Dec. 22, 2000), in which the FCC rejected Verizon's attempt to limit the scope of its obligation. As discussed below in the response to Question 4, the FCC confirmed that the Merger Conditions meant what they said:

Verizon must permit Focal to adopt the entire agreement if it so chooses, and not just the bits and pieces approved by Verizon.

(b) The FCC uses the language "subject to 47 U.S.C. 251(c)," in ¶¶ 31 and 32. Would reading that language as limiting arrangements that are available to a requesting carrier to § 251(c), but not including § 25l(b), impair the meaning of those conditions when read along with the parenthetical language "including the entire agreement?" How can those two clauses be squared? What does the absence of the parenthetical language, "including the entire agreement," in ¶ 32 subpart (2), indicate about the FCC's intent?

Focal's Position

Reading the language as limiting arrangements that are available to a requesting carrier to § 251(c), but not including § 251(b), not only would impair the meaning of the conditions when read with the parenthetical language, but would completely contradict the unambiguous parenthetical language and the purpose of the Merger Conditions. Verizon's obligations under the Bell Atlantic/GTE Merger Order and Merger Conditions are crystal clear: a requesting telecommunications carrier is entitled to adopt any interconnection, including an entire agreement, to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), so long as it was voluntarily negotiated - pre merger - anywhere in GTE's legacy service area. Having explained in ¶ 32 subpart 1 that "any interconnection arrangement, UNE, or provision of an interconnection agreement" included an entire agreement, it would have been needlessly redundant for the FCC to re-state its obvious intent. And limiting the available provisions to only those which are subject to 251(c) of the Act ignores entirely the express language that specifically allows Focal to adopt an "entire agreement." This is precisely what Focal seeks to do. Focal submits that the FCC could not have spoke with greater clarity.

In addition to ignoring the unambiguous language of the Merger Conditions, limiting the arrangements available to a competitive carrier to those set forth in § 251(c) ultimately finds no support in the Act. By its terms, section 251(c) – which sets forth **additional** obligations that apply only to incumbent LECs – incorporates explicitly and unequivocally the obligations and duties of section 251(b). Thus, section (c) states that

> **In addition to** the duties contained in subsection (b), each incumbent exchange carrier has the following duties:
>
> (1) DUTY TO NEGOTIATE. – The **duty to negotiate in good faith** in accordance with section 252 **the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection**.

47 U.S.C. § 251(c) (emphasis added). In short, section 251(c) does not stand alone; rather, it is inextricably linked to, and incorporates by express reference, all of the duties of section 251(b) that Verizon contends are excluded from its obligations under the Merger Conditions. The two subsections are joined in the Act and Verizon's efforts to uncouple its 251(b) obligations from those set forth in 251(c) must be rejected.

While Verizon's § 251(b) argument is obviously nonsense, it highlights another problem with Verizon's interpretation of its merger obligations. As noted above, ¶¶ 31 and 32 expressly enable CLECs to adopt "an entire agreement" from one state for use in another. The Time Warner Agreement, and presumably countless other interconnection agreements executed by Verizon, was voluntarily negotiated and addresses not only topics addressed in § 251(b), but also topics that are not addressed in either § 251(b) or § 251(c). If, as Verizon now claims, only provisions that expressly address matters embraced by § 251(c)(2)-(6) are available for opt-in, then the provisions of ¶¶ 31 and 32 permitting adoption of "entire agreements" are a nullity. The express reference in those paragraphs to § 252(a)(1) plainly indicates that the agreements subject to cross-border adoption embrace whatever agreements Verizon may have voluntarily entered into in § 251/252 interconnection negotiations in their entirety.

> (c) The FCC states in ¶¶ 31 and 32 of the Merger Conditions that *"qualifying interconnection arrangements* and UNEs shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i) . . ." (emphasis added). How, if at all, does the reference to "qualifying interconnection arrangements" affect the interpretation of the language in the first sentence of ¶ 3l, or the language in subpart (2) of ¶32? How, if at all, does the FCC's reference to "qualifying interconnection arrangements" affect the definition of "interconnection arrangements?"

<u>Focal's Position</u>

The first sentences of ¶¶ 31 and 32 explain that a qualifying interconnection arrangement is an "interconnection arrangement, UNE, or provisions of an interconnection agreement" that meet certain timing and location requirements. Under ¶ 31, a qualifying post-merger arrangement or agreement is one that was voluntarily negotiated by either Bell Atlantic or GTE and it can be imported into any Bell Atlantic or GTE state. Under subpart (2) of ¶ 32, on the other hand, a qualifying pre-merger arrangement or agreement is one that was voluntarily negotiated by GTE. If the Time Warner Agreement falls under ¶ 32 subpart 2, which Focal believes is true, Focal can only opt-in to the agreement in another GTE Service Area, not a Bell Atlantic Service Area, as defined in the Merger Conditions. Indeed, that is precisely what Focal seeks to do. (If the Commission were to determine that the Time Warner Agreement falls under ¶ 31, Focal's substantive rights for purposes of this proceeding would not be affected. Focal simply would have the <u>additional</u> right to opt-in to the agreement in Bell Atlantic Service Areas.

In addition, the FCC limited GTE's obligation to permit competitive carriers to import an interconnection agreement under ¶¶ 31 and 32 in only two instances: where arbitrated arrangements or state-imposed provisions are involved. For example, ¶ 32 provides that it does

> not impose any obligation on Bell Atlantic/GTE to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. § 252, or the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. § 252(a)(1).

Bell Atlantic/GTE Merger Order, App. D at ¶ 32.

As set forth above, the FCC established two - and only two - instances where an otherwise entirely importable agreement would have provisions that would not be subject to import, and neither instance applies here. Focal does not seek to import any state-imposed provisions of the Time Warner/GTE North Carolina agreement, and the agreement does not contain any arbitrated provisions.

(d) The FCC states that the condition regarding most-favored nation arrangements is designed to facilitate market entry by requiring Bell Atlantic/GTE to offer telecommunications carriers operating within its service area any interconnection arrangement[686] or UNE . . ." *Bell Atlantic/GTE Merger Order*, FCC Rcd 14171, ¶ 300. Footnote 686 states, "this commitment encompasses, both for out-of-region and in- region agreements, *entire interconnection agreements* or selected provisions from them." *Id.* (emphasis added). How, if at all, do ¶ 300 and the accompanying footnote affect the interpretation of the Conditions in ¶¶ 31 or 32 of Appendix D?

<u>Focal’s Position</u>

As explained more fully in Focal’s response to question 2(a) above, it is clear from the language of the Merger Conditions themselves that the FCC intended that competitive carriers would have a choice between adopting an entire negotiated agreement or selected provisions from such agreements under ¶¶ 31 and 32. Paragraph 300 and footnote 686 of the Bell Atlantic/GTE Merger Order simply further clarify that “interconnection arrangement” includes entire interconnection agreements. Indeed, it is difficult to understand how Verizon can credibly maintain that there is any ambiguity in the FCC's phrase "including an entire agreement."

(e) The "last antecedent rule," applied in statutory construction, provides that "unless a contrary intention appears in the statute, the qualifying words and phrases refer to the last antecedent." *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 781, 903 P.2d 443 (1995); *See also 73 Am Jur 2d STATUTES § 230.* How, if at all, does this rule apply to the FCC's statement quoted above?

<u>Focal's Position</u>

Rules of statutory construction are not ordinarily applied to interpretations of administrative agency decisions, and they are not applied when, as here, the language is already clear. Nevertheless, footnote 686 is clear that Verizon's commitment to allow competitive carriers to opt-in to other carrier's interconnection agreements across state boundaries "encompasses, **both** for out-of-region and in- region agreements, entire interconnection agreements or selected provisions from them." Bell Atlantic/GTE Merger Order at ¶ 300, fn. 686 (emphasis added). Thus, even if this rule of construction were applied in this context, the FCC's intent was clear from the face of Merger Conditions that it applied to entire agreements. And any possible doubt was erased by the letter from the FCC's Common Carrier Bureau, CC Docket No. 98-184, DA 00-2890 (Dec. 22, 2000), discussed below.

(f) Do the conditions in ¶¶ 31 and 32 rest on policy considerations and, if so, how do those policies dictate the Merger Order and Conditions should be interpreted?

Focal's Position

The conditions set forth in ¶¶ 31 and 32 do rest on policy considerations, and the Commission should interpret the conditions consistent with those considerations. In reviewing the proposed merger of Bell Atlantic and GTE, the FCC was well aware of the potential harms to the public interest presented by the merger. The FCC stated that, absent supplemental conditions, "the proposed merger does not serve the public interest, convenience, or necessity because it would inevitably slow progress in opening local telecommunications markets to consumer-benefiting competition." Bell Atlantic/GTE Merger Order, App. D. at ¶ 96. The FCC specifically found that

> absent conditions, the merger of Bell Atlantic and GTE will harm consumers of telecommunications services by (a) denying them the benefits of future probable competition between the merging firms; (b) undermining the ability of regulators and competitors to implement the pro-competitive, deregulatory framework for local telecommunications that was adopted by Congress in the 1996 Act; and (c) increasing the merged entity's incentives and ability to discriminate against entrants into the local markets of the merging firms. Moreover, we also find that the asserted public interest benefits of the proposed merger will not outweigh these public interest harms.

Bell Atlantic/GTE Merger Order at ¶ 3. The FCC concluded, however, that the voluntary commitments agreed to as conditions of approval by Bell Atlantic and GTE would alter the public interest balance. In particular, the FCC found that the most favored nation provisions of the Merger Conditions would address the harms of the merger by <u>facilitating market entry</u> and <u>spreading the use of best practices</u> throughout the merged companies' regions. *Id.* at ¶ 300.

Excluding negotiated interconnection provisions that do not fall under § 251(c) (2) – (6), however, would permit Verizon to avoid the very obligations it voluntarily and expressly agreed to as a condition of approval of the merger. Nothing could further undermine the FCC's objective of protecting the public interest from the recognized harms of the merger than permitting Verizon to deny competitors the right to opt into entire pre-merger negotiated interconnection agreements. The very protections that the FCC sought to establish would be defeated if Verizon were allowed to continue to exercise bottleneck control over market entry.

The Commission should not permit Verizon to unilaterally decide which requests for interconnection agreements and arrangements it will honor. The FCC's policies underlying the most favored nation provisions of the Merger Conditions are intended to serve the public interest. Having secured the FCC's approval of the merger, Verizon should be held to its commitments under the Merger Conditions.

---

(3) What does the FCC mean when it refers to "specific performance measures" in ¶¶ 31 and 32? Are there specific performance measures in place in Washington? If so, how do they affect Focal's request?

<u>Focal's Position</u>

Some states such as Illinois and Texas have established "state-specific performance measures" that are used to determine whether an incumbent local exchange carrier is meeting certain performance or provisioning requirements. Washington has not established any performance measures, and Focal is not seeking to import any performance measures from North Carolina to Washington. Consequently, "state-specific performance measures" as referenced in ¶¶ 31 and 32 do not affect Focal's request.

---

(4) Does the letter from the FCC's Common Carrier Bureau, CC Docket No. 98-184, DA 00-2890 (Dec. 22, 2000), control the Commission's decision in this case? If not, should the Commission wait for a final ruling by the FCC?

Focal's Position

The letter from the FCC's Common Carrier Bureau (the "Bureau"), CC Docket No. 98-184, DA 00-2890 (Dec. 22, 2000) (the "Bureau December 22nd Letter") absolutely controls the Commission's decision in this case. Indeed, Verzion has already presented to the Bureau all of the arguments in support of its unsupportable interpretation of ¶ 32 of the Merger Conditions. The Bureau unequivocally stated that the "Merger Conditions allow competitive local exchange carriers . . .to import entire interconnection agreements across state lines." Bureau December 22nd Letter, p. 2. While Verizon conveniently mis-characterizes the Bureau December 22nd Letter as an "advisory" letter that somehow lacks the authority of the FCC, Verizon is simply wrong. The law is clear that "[e]xcept for the possibility of review, <u>actions taken under delegated authority have the same force and effect as actions taken by the [FCC]</u>." 47 C.F.R. § 0.5(c) (2000) (emphasis added). Carol Mattey, Deputy Chief of the Bureau, issued the letter Bureau December 22nd Letter under delegated authority 00-2890. And while Verizon filed a letter to the FCC seeking "clarification" of the Merger Conditions, (Verizon Answer, p. 2), the FCC's Public Notice, CC Docket No. 98-141, CC Docket No. 98-184 (March 30, 2001) leaves no doubt that the FCC is only considering "whether there are grounds to waive or modify the relevant MFN conditions." *Id*. at 2. Whether or not the FCC decides, in the future, to waive or modify the Merger Conditions has absolutely no effect on Focal's notification to Verizon more than eight months ago that Focal was opting-in to the Time Warner Agreement. The Bureau, under delegated authority, has determined that the Merger Conditions allow a carrier to import an entire agreement across state lines, which is precisely what Focal properly did.

---

(5) What effect, if any, does the FCC's reciprocal compensation remand order, due to be released the week of April 23, have on the issues in this dispute?

Focal's Position

The FCC's reciprocal compensation remand order has now been released and it does not affect this case in any way. Focal acknowledges that the FCC restricted a competitive carrier's opt-in rights, by preventing carriers prospectively from opting-in to any provision of an interconnection agreement concerning compensation for ISP-bound traffic. <u>In the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996l Intercarrier Compensation for ISP-Bound Traffic</u>, CC docket 96-98, 99-68, Order on Remand and Report and Order, (FCC 01-131, Released April 27, 2001) ("ISP Remand Order"), ¶¶82, 112, fn. 154, fn. 155. Specifically, the FCC ordered that carriers 252(i) rights expired upon publication of the ISP Remand Order in the Federal Register, which occurred on May 15, 2001. *Id.* at ¶ 112. Verizon cannot dispute that Focal's opt in right was well intact when Focal exercised it last year on October 4, 2000, more seven months before the FCC's ISP Remand Order was published in the Federal Register.

(6) Whether the Commission, as a matter of state law and policy, should require Verizon to make available to Focal the Time Warner Agreement, in its entirety.

Focal's Position

Federal and Washington State policy are consistent in this regard: as a matter of public policy, the Commission should require Verizon to make the Time Warner Agreement, in its entirety, available to Focal. The consequences of failing to do so would violate the FCC's policy goals underlying the Merger Conditions of furthering competition and facilitating market entry. The unequivocal obligations of ¶ 32 of the Merger Conditions, as explained in the Bell

Atlantic/GTE Merger Order, expand the state-specific adoption duties imposed on Verizon by section 252(i) to encompass a region-wide MFN obligation. Bell Atlantic/GTE Merger Order at ¶ 305. When the FCC decided to extend region-wide the benefit under 252(i) of avoiding the burden of negotiating (or arbitrating) an interconnection agreement, it did so to reduce a CLEC's risk and cost of entry, lower a CLEC's barriers to entry, and spread the use of best practices. *Id.* at ¶¶ 300-05, 352, 356, and 370. Certainly in deciding to implement the Merger Conditions, the FCC weighed the policy implications that Verizon is now raising of allowing all interconnection provisions, including reciprocal compensation provisions, to be imported across state borders. The FCC obviously determined that it was in the public interest to enact such a requirement to address the increase in Verizon's competitive power that was going to result from the approval of the merger.

And, as previously stated, this Commission issued an Interpretive and Policy Statement that embodied the same policy as the FCC:

> The intent of the pick and choose [opt in] rule is to allow new entrants to enter the local exchange market quickly by taking interconnection under an already approved agreement without incurring the costs of negotiation and arbitration. In addition, the pick and choose rule constrains an ILEC's ability to discriminate against CLECs.[4]

It is Verizon that fails utterly to explain what public policy goal could possibly be furthered by permitting a carrier to import only a portion of an interconnection agreement and then requiring that carrier to negotiate—or worse, to arbitrate—another separate agreement to cover everything outside of § 251(c)(2)-(6). In practical terms, if the Commission accepts Verizon's argument, Focal will obtain only a skeleton agreement missing critical components. Focal will then have to negotiate a completely separate agreement with Verizon. Indeed,

[4] *In Re Implementation of Section 252(i) of the Telecommunications Act of 1996*, Docket No. UT-990355, Interpretive and Policy Statement (First Revision) ¶ 17 (April 12, 2000)

Verizon has tried to require Focal to enter into a 21-page supplemental agreement, which Focal clearly could not execute. This generic one-sided set of supplemental terms would require time-consuming negotiations with Verizon and potentially could need to be arbitrated. As a result, Focal has not been able to quickly and easily enter into an agreement as originally contemplated under the Merger Conditions. The result Verizon seeks defeats the goals of the Merger Conditions and convincingly proves the FCC's conclusion that, absent conditions, the merger will inevitably slow progress in opening local telecommunications markets to competition. Bell Atlantic/GTE Merger Order, App. D at ¶ 96.

CONCLUSION

For the reasons stated herein, Focal respectfully requests that the Commission require Verizon to honor Focal's request to opt in to the Time Warner Agreement in its entirety, without further delay.

RESPECTFULLY SUBMITTED
this 21st day of June, 2001.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Focal Communications Corporation of Washington

By ____________________________
Gregory J. Kopta

Of Counsel:
Jane Van Duzer
Matthew H. Berns
Focal Communications Corporation
200 North LaSalle Street
Chicago IL 60601
(312) 895-8400