BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Telecommunications - Operations, Chapter 480-120 WAC	**Docket No. UT - 990146**

COMMENTS OF VERIZON NORTHWEST INC. ON TECHNICAL RULES

February 14, 2001

I. INTRODUCTION

Verizon Northwest Inc. ("Verizon") appreciates the opportunity to present its views on the proposed amendments to "technical rules" and the proposed new rules and definitions as set forth by the Notice of Opportunity to File Written Comments dated January 23, 2001. Verizon recognizes the difficulties associated with this rulemaking process and all of the hard work of the Commission Staff in this evolutionary process. In Verizon's view, however, this rulemaking has taken a step backwards from the last set of technical rules on which parties commented on in June 2000.

As discussed in more detail below, the latest proposed technical rules are troubling because they would impose significant new administrative burdens and risks on telecommunications companies. These new proposed technical rules seem to have lost sight of the original purpose for this rulemaking, which began in 1999 pursuant to the Governor's Executive Order 97-02.[1] That Order listed seven criteria against which to test an existing rule or to write a new one: need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness. The recent additions to the proposed technical rules fail most of these criteria. Rather than reduce and streamline regulation, they would increase and complicate it. At a minimum, proposals for substantively new regulatory requirements should be deleted from this docket and handled in stand-alone proceedings.

This rulemaking was also opened in recognition of the shared state and national goal of promoting competition in the telecommunications market.[2] To do this, however, market forces must be allowed to replace the heavy hand of regulation. As new FCC Chairman Michael

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[1] *See Notice of Opportunity to File Written Comments* issued on April 16, 1999.

[2] *Ibid.*

Powell recently reminded us, competition best flourishes in a deregulatory environment.[3] The FCC concurs.[4]

Excessive rules can impose significant additional costs and burdens on both new entrants and incumbent telecommunications companies. Verizon urges the Commission to refrain from imposing unnecessary new costs and burdens. Verizon has consistently advocated a “less is more” approach to rulemaking throughout this docket. Unfortunately, Verizon’s views have generally been rejected by Staff in favor of a set of proposed rules that would only increase telecommunications companies' costs of operation in Washington and result in the type of regulatory micro management that is inconsistent with the goals of regulatory streamlining and promoting competition. As discussed below, many of the changes to the proposed technical rules since June of 2000 represent a significant step in the wrong direction and should not be adopted. In many instances, the existing rules are preferable to the rule changes proposed by Staff.

II. SPECIFIC CONCERNS WITH PROPOSED TECHNICAL RULES

WAC 480-120-051 Application For an Installation of Service.

In general, proposed amendments to WAC 480-120-051 represent a significant expansion of the existing rule rather than a streamlining. The new proposed version of this rule contains two particularly troubling subsections – (5) and (8). They are out of place in WAC 480-120, as they concern inter-company issues rather than retail service issues. In addition, their inclusion is inconsistent with the Commission's recent termination of a rulemaking concerning inter-

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[3] *See* Powell Remark to Press of February 6, 2001 available at www.fcc.gov.

[4] *See e.g.*, *In the Matter of Revision of Filing Requirements*, CC Docket No. 96-23, 11 FCC RCD 16326, 1996 FCC LEXIS 6274 * 53 (rel. Nov. 13, 1996).

company issues. The proposal to increase Commission micro management under subsection (6) is also of significant concern.

Subsection (5) addresses inter-company customer transfers and subsection (8) deals with incumbent local exchange carrier ("ILEC") reimbursement to competitive local exchange carriers ("CLECs") for fines paid due to an ILEC's failure to timely provide facilities. These proposed subsections could impose significant new burdens on ILECs and are best addressed in specific interconnection agreements between carriers. Moreover, these proposed subsections relate to operations support systems ("OSS") issues in spite of the fact that the Commission recently decided to not impose OSS rules. On September 21, 2000 the Commission terminated its inquiry into possible rules governing carrier to carrier OSS issues (Docket UT-990261). The Commission agreed with Staff that other requirements and arrangements sufficiently cover these inter-company issues, including performance standards flowing from the mergers affecting Verizon and Qwest Communications, the conditions attendant to authorizing Qwest to enter the interLATA long distance business in this state, and colloborative industry efforts under way in other states on OSS performance issues. There is no justification for using this rulemaking as a back-door exception to that approach.

In any event, Subsection (5) should be deleted because it dictates how the carrier-to-carrier relationship should be handled. This is a subject already covered by inter-company agreements.

Subsection (8) should be deleted because it also treads on inter-company agreement issues. Moreover, dictating in a rule the payments called for by subsection (8) would generate disputes within the industry that would end up before the Commission, as ILECs and CLECs contest whether ILEC action is the "proximate cause" of the CLECs having to pay fines, make payments, or issue credits to customers.

Finally, Verizon strongly opposes the proposal to change subsection (6)'s measurement standard from 90 percent to 95 percent and to expand its scope beyond primary access lines. Verizon and other carriers voiced their concerns with this proposal in June 2000. The Staff's

rejection of these views demonstrates an unwelcome tendency toward micro management at a time when the Commission should be transitioning from heavy traditional regulation to a market-based approach to customer service issues. Factors such as installation practices can provide a key service differentiator between competitors. The Commission should focus at this point on educating consumers about the new competitive environment and not on ratcheting up regulation for competitive carriers.

At the very least, the Commission should revise subsection (6) to make accommodations for "*force majeure*" conditions or circumstances where it would be unfair to expose companies to significant penalties for failure to meet new unrealistic performance measurements. For instance, order intensive periods (i.e. installations at college campuses at the beginning of each school year) occur and would distort any due date measurement. Therefore, Verizon reiterates its initial comments that support an overall average due date interval rather than a strict measurement.

Verizon urges the Commission to re-visit WAC 480-120-051, delete new subsections (5) and (8), and revise the performance measurement in subsection (6) back to ninety percent, applicable only to the primary access line, and with appropriate *force majeure* provisions.

WAC 480-120-500 Service Quality -- General Requirements.

The existing WAC 480-120-500 is superior to the new version proposed by Staff. The few proposed wording changes in fact represent a major change in the policy position represented by this rule. The proposed changes would transform the rule from a service quality regulation into an obligation-to-serve rule.

First, as indicated in its June 2000 comments, Verizon opposes mandating the "availability of comparable services." The proposed wording suggests that companies may be penalized if all services are not available everywhere at the same time. Requiring "availability of comparable services" would actually harm consumers. This language would require a CLEC to offer the same services it provides in an established urban area when entering new rural markets,

even where the demand is insufficient to economically justify such service offerings. Imposing a regulatory mandate that would increase CLEC's costs, competitive entry into new market areas -- especially rural parts of the state -- would be significantly discouraged.

For ILECs such as Verizon, the proposed rule revision would discourage the introduction of new network features, because the costs of introduction state-wide would simply be too high.

In a competitive telecommunications market, companies must be allowed to exercise their best economic and engineering judgment about where and when those service rollouts should occur, free of the heavy hand of regulation. Concerns about the breadth of new service deployment in higher cost areas are better addressed through economic development incentives, the FCC's E-rate program, and similar initiatives.

In any event, the proposed subsection (1) language would need to be modified by inserting the word "reasonably" before "ensure."

As stated in its June 2000 comments, Verizon again urges the Commission to maintain the existing language in WAC 480-120-500(3):

> These rules are not intended to establish a standard of care owed by a telecommunications company to any consumers or subscribers.

This language is necessary to prevent significant increased litigation costs associated with any claim an injured party might make if a telecommunications company were to not meet a Commission standard in a given instance. A determination of whether such rules establish a standard of care is really a legal one to be made by a judge in an actual controversy. The Commission already has significant tools to ensure compliance with its rules. It would serve no purpose to add increased litigation risks, which would happen by deleting existing Subsection (3).

WAC 480-120-510 Business Offices.

Verizon directs the Commission to some confusing language in subsection (2) about the speed of answer measurement. Verizon only measures the time after the customer makes a

Voice Response Unit ("VRU") selection, or does nothing and is routed to a service representative queue. Verizon cannot measure the time that a customer remains in a VRU because that time is controlled by the customer. The language in subsection (2)(a) should be changed to a sixty second measurement and subsection (2)(b) should be deleted in its entirety.

WAC 480-120-515 Network performance standards.

Verizon is puzzled why the Staff has reduced the performance standard in subsection (2)(b)(iii) from five percent to one percent. Verizon proposed language in June 2000 for switching standards that are consistent with FCC reporting requirements in ARMIS 43.05 Table 2 -- a service objective for average busy season, busy hour of less than five percent of calls. Since there is no compelling reason to have a different state requirement, the Commission should mirror the FCC's requirement.

With respect to subsection (3) on interoffice facilities blocking measures, the new version reflects confusion about what Verizon had recommended in June 2000. The following language should be used in subsection (3):

> (3) Interoffice facilities. Blocking performance for trunk groups for any month must be:
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> (a) No more than 1% of all trunk groups may block in excess of .5% during the period for internal and intertandem facilities; and
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> (b) No more than 1% of all trunk groups may block in excess of 2% during the period.

WAC 480-120-520 Major Outages.

Verizon's major concern with this rule relates to the proposed definition of major outages in terms of "one thousand customer hours lost." This definition is confusing. Verizon recommends revising it to read:

> Service failure lasting for an hour or more beginning from the point of outage and affecting more than one thousand customers.

WAC 480-120-525 Network Maintenance.

As proposed in Verizon's June 2000 comments, the Commission should modify subsection (2)(c) and add “when diverse facility routes are available.” If Staff's language were accepted, Verizon could face significant financial expense in order to establish the mandated route and diversity.

With respect to the answer times discussed in subsections 5(a) and (b), Verizon urges the Commission to make the same revisions, for clarity purposes, as proposed for WAC 480-120-510. Subsection 5(a) should reference a sixty second answer time and subsection (b) should be deleted. Only one standard is required and measured.

WAC 480-120-535 Service Quality Performance Reports.

The detailed level of reporting called for by this proposed WAC is the type of regulatory micro management that is at odds with the goal of regulatory streamlining. Verizon urges the Commission to reduce, rather than increase, the number of required monthly reports. If this rule is retained, then Verizon requests the Commission to clarify two areas.

Subsection 4(d) requires the company to identify “held orders” at five and seven day intervals. Verizon assumes the seven day requirement is a typographical error, as it has no apparent utility. Requiring the amount of data, frequency and level of reporting for held orders is particularly onerous, because this information is tracked and compiled manually.

Verizon is also confused about what must be reported in the Summary Trouble Reports mentioned in subsection (6). A repeat report measure is not stated anywhere in the rules. Subsection (6)(a)(ii) seems to be a switching measure, but that measure is located in subsection (8)(a) and (b). Verizon requests clarification on what Staff intends for companies to report in this subsection.

If all the proposed reports were required by the Commission, Verizon would need at least six months to develop and compile reporting data at the level of detail requested.

WAC 480-120-999 Adoption by Reference.

While Verizon has no problem working with the national standards specified in this rule, all references should be to the current standard – not the ones specified by date. Verizon notes that Subsection (3) should be corrected by deleting the reference to the "National Fire Protection Association" ("NFPA"). The National Electrical Safety Code is published by Institute of Electrical and Electronic Engineers ("IEEE"). Although NFPA sells these books, it is not involved in the publishing or writing of these standards.

WAC 480-120-X06 Unserved Areas.

It is highly inappropriate to insert this major policy issue into this docket. The proposed language should be promptly deleted. Moreover, the criteria for requiring a company to serve an unserved area are already set forth in 47 U.S.C. § 214(e)(3). If the Commission believe it needs to address this topic in a rulemaking, it should be explored in a separate docket.

WAC 480-120-X08 Service Quality Guarantees.

Verizon strongly opposes the proposal to impose a service guarantee credit by rule. This is clearly unlawful ratemaking. It is also unnecessary.

At the current time, Verizon has a tariffed service quality program, and it advocates an approach whereby companies are allowed to determine how they individually want to address service quality needs. The WAC 480-120-X08 "one size fits all" proposal does not promote competitive choice and ignores the important service differentiation that can occur in a competitive market. In sum, a rule of this nature is simply not necessary or appropriate.

In addition, for the reasons discussed in Verizon's comments on WAC 480-120-051, issuing credits between carriers is an inter-company agreement issue and should not be addressed in these rules.

WAC 480-120-X16 Service Interruptions.

The proposed new rule establishes a tracking and reporting requirement for service interruptions based on whether a premise visit is required. Verizon suggests that from a customer perspective, it is only important that the problem be fixed in a timely manner based on the severity of the reported problem, not whether a field visit is required. With that in mind, Verizon suggests only one measurement be required for tracking and reporting purposes, percent out-of-service ("OOS") cleared. Verizon urges the Commission to revise this rule to be more aligned with customer expectations and suggests the standard be 85% of OOS repaired within 24 hours, except for *force majeure* events.

WAC 480-120-X11 Access Charge and Universal Service Reporting.

This proposed rule is egregiously out of place in this docket. It clearly goes beyond the original purpose of the docket, and it opens up a highly contentious subject with significant legal and policy ramifications. The proposal should be promptly deleted from this docket.

At a practical level, of all the proposed new rules, this one causes Verizon the greatest concern. The reporting requirements resemble a "mini rate case" and would be extremely burdensome.

Verizon is also concerned about whether there is really an important use to which the Commission would put this information, as it would necessitate allocating significant company resources to compile it. Absent some clear demonstrated need for this information, Verizon strongly objects to these new reporting mandates.

On their face, the proposed reports appear to be unnecessary make-work. Access rates were recently examined in the access reform proceeding (Docket No. UT-970325) and subsequent compliance dockets. The Commission's new access charge rule generally requires terminating access rates to be set at the same level as local interconnection rates or at "cost." Thus, companies are already on notice as to how the Commission expects their switched access rates to be set. There is no reason for the Commission to burden companies with needless

reporting requirements like these. In any event, since carriers already file inter-company agreements, tariffs and price lists with the Commission, the Commission can examine them to determine current interconnection rates, should there be good cause to make such an inquiry for a given company. Likewise, the Commission can- - as it has before - - run forward looking cost models should there be good cause to revisit that subject for a given company.

As to supposed universal service support costs, the Commission itself concluded in Docket Number UT-980311 that estimating them is contentious and imprecise at best. No useful purpose can be served by a rule that would in effect reopen that docket for each company each year.

Lastly, the proposal for a new annual imputation test filing by Primary Toll Carriers ("PTCs") is entirely unsupported. The Commission's imputation requirement has been in place for a number of years, and the Commission examines the issue each time a PTC files toll rates. There are no obvious - - let alone demonstrated - - grounds for augmenting these mechanisms with a new reporting requirement.

In short, even if it were proper to raise these issues in this docket (which it is not), there is no good cause for imposing the mounds of new red tape called for by the proposed rule.

III. SPECIFIC CONCERNS WITH PROPOSED DEFINITIONS

In addition to comments requested on the proposed technical rules, the Commission has requested comments on proposed definitions for Chapter 480-120 Telecommunications - Operations.

Verizon recommends revising the definition of "Due Date" to read "the date on which the company committed to provide service." The currently proposed "five day" interval language is more appropriate in the due date rule than in a definition. The definition should be more generic, so it can be utilized in any rule that references a due date.

The proposed definition of "*force majeure*" is too narrow and fails to cover other circumstances where outages will be caused by factors completely outside of a company's control, such as exceptionally bad weather or natural disasters. Verizon recommends the definition be revised to read:

> *Force majeure* means circumstances beyond the reasonable control of the party obligated to perform, such as those due to the elements, natural disasters, strikes, electrical, computer or mechanical failures, civil or military emergencies, or acts of legislative, judicial, or other civil authorities.

IV. CONCLUSION

Verizon views the latest proposed technical rules as troubling because they would impose significant new administrative burdens and risks on telecommunications companies. These new proposed technical rules seem to have lost sight of the original purpose for this rulemaking. Rather than reduce and streamline regulation, they would increase and complicate it. Excessive rules can impose significant additional costs and burdens on both new entrants and incumbent telecommunications companies. Verizon urges the Commission to refrain from imposing unnecessary new costs and burdens. At a minimum, proposals for substantively new regulatory requirements should be deleted from this docket and handled in stand-alone proceedings.