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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint of:

THE LUMMI NATION, Complainant,

v.

VERIZON NORTHWEST;
QWEST CORPORATION, Respondents

Docket No. UT-060147

DECLARATION OF CYNTHIA
PADGETT

Cynthia Padgett declares and states:

1. I am an employee of Verizon North Inc. I have worked for Verizon North Inc. for six years. I am over the age of eighteen, and competent to testify as to all the matters set forth in this Declaration. I make all of the following statements based on my own personal knowledge.

2. In September 2004, Verizon Northwest Inc. ("Verizon") credited the Lummi Nation for all bills for FX Services back to March 29, 2004, the date Northwest Capital Recovery Group first contacted Verizon regarding the provision of FX Services. The total amount of the credit was \$4,299.20.

3. Verizon has offered to resolve this dispute by giving the Lummi Nation an additional two-year refund of all amounts paid for FX Services, plus interest. The credit for the period of March 29, 2002 to March 28, 2004 would be \$18,888.40, plus interest. The Lummi Nation has rejected Verizon's offer.

DECLARATION OF CYNTHIA PADGETT - 1

1 4. Verizon remains willing to resolve this dispute by giving the Lummi Nation a
2 two-year refund of all amounts paid for FX Services, plus interest, and will pay the Lummi
3 Nation this amount in full settlement of all its claims in this matter.

4 5. Attached as Exhibit 1 is a true and correct copy of a Letter of Authorization sent
5 to me by the Lummi Nation authorizing the Northwest Capital Recovery Group to examine
6 documents and data in the possession of listed utility companies—telecom, power, water, sewer,
7 and garbage—for the purpose of auditing the utilities' bills.

8 6. Attached as Exhibit 2 is a true and correct copy of a proposed Settlement
9 Agreement in which Verizon offered to credit the Lummi Nation for two full years of payments
10 for FX Services, plus interest.

11 7. Attached as Exhibit 3 is a true and correct copy of a letter dated October 5, 2005
12 from me to the Lummi Nation reminding it of the offered refund and Settlement Agreement.

13 8. Attached as Exhibit 4 is a true and correct copy of a letter dated November 8,
14 2005 from Darrell Hillaire to me rejecting Verizon's settlement offer.

15 9. Attached as Exhibit 5 is a true and correct copy of a letter dated December 2,
16 2005 from me to the Lummi Nation once again offering to settle this matter for two years credit,
17 plus interest.

18 I declare under penalty of perjury under the laws of the States of Washington and
19 Indiana that the foregoing is true and correct.

20
21 Cynthia D. Padgett
22 Cynthia Padgett

23 Date: 04.03.2006

24 Place: Westfield, Indiana

25
26
DECLARATION OF CYNTHIA PADGETT - 2

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this 6th day of April, 2006, served the true and correct original,
3 along with the correct number of copies, of *Declaration of Cynthia Padgett* upon the WUTC,
via the method(s) noted below, properly addressed as follows:

4 Carole Washburn, Executive Secretary X Hand Delivered
Washington Utilities & Transportation U.S. Mail (1st class, postage prepaid)
5 Commission Overnight Mail
1300 S. Evergreen Park Drive SW Facsimile (360) 586-1150
6 Olympia, WA 98503-7250 Email (records@wutc.wa.gov)

7 I hereby certify that I have this 6th day of April, 2006, served a true and correct copies of the
8 foregoing documents upon parties noted below via E-Mail and U.S. Mail:

9 Margaret M. Schaff
10 Margaret M. Schaff, PC
749 Deer Trail Road
11 Boulder, CO 80302
Phone: (303) 443-0182
12 Fax: (303) 443-0183
Email: mschaff@att.net
13 *Counsel for Lummi Nation*

David M. Neubeck
Judy Bush
Reservation Attorney
2616 Kwina Road
Bellingham, WA 98226
Phone: (360) 384-2258
Fax: (360) 312-9824
Email: judyb@lummi-nsn.gov;
davidn@lummi-nsn.gov
Counsel for Lummi Nation

15 Lisa A. Anderl
16 Adam L. Sherr
Qwest Corporation
17 1600 7th Avenue, Room 3206
18 Seattle, WA 98191
Phone: (206) 398-2500
19 Email: lisa.anderl@qwest.com
adam.sherr@qwest.com
20 *Counsel for Qwest Corporation*

21 I declare under penalty under the laws of the State of Washington that the foregoing is
22 correct and true.

23 DATED this 6 day of April, 2006, at Seattle, Washington.

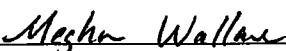
24 
25 _____
Meghan Wallace
26 Legal Secretary

Exhibit 1



Lummi Nation Planning Department

Dan Emley, Facilities Manager
2830 Kwina Road, Bellingham, Washington 98226
(360) 384-2224 Office FAX (360) 380-6331
e-mail dane@lummi-nsn.gov

Letter of Authorization

Rick

1. Be it known that **Dan Emley** (your name), as **Facilities Manager** (owner, CFO, Manager, etc.) of **Lummi Indian Business Council** (business name) hereinafter referred to as the Client, with its principal office at **2615 Kwina Road** (address) in the **City of Bellingham**, and WA (State), does hereby constitute and appoint the **Business Expense Reduction Firm of Northwest Capital Recovery Group (NWCRG)**, 1574 Coburg Road, #183, Eugene, Oregon, 97401 and **Harry J. Wildgen**, Principal and Senior Auditor of said firm, its several, true and attorneys-in-fact. Said attorneys-in-fact is Specific, only for and limited to representing the Client in matters pertaining to the past, present and future utility bills of the Client initiated below:

DE
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DE

The Client's initials acknowledge topic areas included:

- Telecom
- Power
- Natural Gas
- Water
- Sewer
- Garbage

2. NWCRG is hereby granted the right to examine all documents and data in the possession of said utility company(s) and vendors with respect to any bills paid or owed to said utility company(s) and vendors by the Client, and to secure from said utility company(s) and vendors any information relative to the applicable status of limitations until this authorization is revoked in writing to said utility company(s) and vendors.
3. The Client grants to its attorneys-in-fact full power and authority to do and perform every act and thing necessary to collect refunds due to the Client and/or to affect a change in the billing procedures of the Client's account.
4. The Utility company(s) and vendors are hereby authorized to mail to NWCRG, upon request, monthly bills, requesting information on the Client's accounts and all communications addressed to the Client from said utility company(s) and vendors. It is further understood that NWCRG will treat this information as proprietary and confidential and will not release it to others in any manner.
5. The Client may revoke this Limited Power of Attorney at any time, however the provisions in the Northwest Capital Recovery Group No Risk Agreement will not be affected by such revocation.

By *Dan Emley* (signature) Facilities Mgr. (title)
Dan Emley (Name) 12.19.03 (date)

Date:

12/18/2003

Exhibit 2

RELEASE AND SETTLEMENT AGREEMENT

This agreement is entered into this date by and between VERIZON NORTHWEST INC. (hereafter "Verizon"), and the undersigned on behalf of LUMMI INDIAN TRIBE (hereafter "RELEASOR").

For good and valuable consideration, receipt and adequacy of which is hereby acknowledged, and in settlement of a dispute, the parties hereto agree that:

- (1) RELEASOR, individually and together with its affiliated business organizations, partners, successors, heirs, agents and assigns, does hereby forever release and discharge VERIZON, its parent company, subsidiaries or affiliated business organizations, successors, present or former employees, officers, directors, assigns, agents, and representatives from any and all claims, causes of action, losses, disputes, liabilities and demands of whatsoever kind and character, known or unknown, suspected or unsuspected, past, present, or future, (hereinafter "CLAIMS") arising from, or attributable to, billing disputes on billing telephone numbers ("BTN") 360-662-1239, 360-662-1306 and 360-662-1326 for services rendered on or before the effective date of this agreement:

<u>BTN</u>	<u>Credit Already Issued</u>	<u>New Credit</u>	<u>Interest</u>
360-662-1239	\$3,072.46	\$ 10,141.79	\$ 383.21
360-662-1306	\$ 173.24	\$ 918.86	\$ 31.67
360-662-1326	<u>\$1,053.50</u>	<u>\$ 7,827.75</u>	<u>\$ 257.56</u>
	\$4,299.20	\$18,888.40	\$672.44

Total Credit Previously Issued	\$ 4,299.20
New Credit to be Issued	\$18,888.40
Interest Credit to be Issued	<u>\$ 672.44</u>
Total New Credit to be Issued (Credits plus interest)	\$19,560.84
Total Settlement Including Credits Previously Issued and Credits and Interest to be Issued	<u>\$23,860.04</u>

- (2) VERIZON agrees, forthwith after the execution of this settlement agreement, to provide to RELEASOR a total credit of \$19,560.84 (Nineteen thousand five hundred sixty dollars and eighty-four cents) in settlement of all CLAIMS by RELEASOR to appear on the next billing cycle and will be applied on the summary bill for 998-900-2723. After the credit appears on the summary bill, RELEASOR will request a refund check and it will be mailed to RELEASOR.
- (3) RELEASOR shall defend, indemnify and hold harmless VERIZON and its affiliates, officers, agents and employees from all CLAIMS by third parties arising from, or attributable to, billing disputes on behalf of RELEASOR against VERIZON.
- (4) It is understood and agreed by the parties that this settlement agreement is in compromise of a disputed claim, and that consideration paid is not to be construed as an admission of liability on the part of VERIZON. RELEASOR acknowledges that compensation as described herein is made in full settlement of all CLAIMS.
- (5) The parties agree that this agreement is fully integrated, represents the entire understanding of the parties, and that there are no other agreements, representations, or promises which have not been expressly embodied herein. Should any of the provisions herein be determined to be invalid by a court or regulatory body of competent jurisdiction, the remaining provisions shall remain valid and enforceable, and the parties shall renegotiate the invalidated provision(s) in good faith to effectuate its purpose and conform to the law.
- (6) The parties agree that this agreement may only be modified by writing executed by authorized representatives of both parties.
- (7) As a material covenant and inducement to enter into this Agreement, RELEASOR acknowledges and agrees that any information or opinion regarding the terms and conditions of this Agreement shall be kept confidential and shall not be disclosed at any time to any third party, except as required for the purposes of tax preparation or other internal business accounting and record-keeping purposes, or as required to address any dispute over the terms of this Agreement or its judicial enforcement. It is further agreed that any substantiated violation of this provision shall automatically and immediately render RELEASOR liable to VERIZON for liquidated damages in an amount equal to the value of services or credit provided pursuant to Paragraph 2 herein.
- (8) The parties hereto state that they have carefully read this agreement, that they fully understand its final and binding effect, that the only promises made to them in signing the agreement are those stated above, and that this agreement is executed freely and voluntarily after having been apprised of all relevant information and data.

(9) In the event of any legal dispute concerning this agreement, its validity, interpretation, enforcement or breach, the prevailing party shall recover its reasonable attorneys fees and costs in connection with such dispute, except that any party challenging the validity of this agreement, in whole or in part, shall bear their own costs and attorneys' fees incurred in connection with such a challenge.

(10) This agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

VERIZON NORTHWEST INC.

LUMMI INDIAN TRIBE

By: _____

By: _____

Title: _____

Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that (s)he executed the same.

WITNESS my hand and official seal.

Signature: _____

Exhibit 3



Verizon Business Partnership Channel
19845 US 31 North
Westfield, IN 46074

Wednesday, October 05, 2005

Lummi Indian Business Council
Attn.: Darrell Hillaire, Tribal Council Chairman
2616 Kwina Road
Bellingham, WA 98228

RE: Closure of PUC Appeal in regard to billing dispute with Release and Settlement Agreement
BTN: 360-662-1326, 360-662-1306 and 360-662-1239

Dear Mr. Hillaire

This is a reminder that we have not received your signed settlement agreement in the above referenced matter. If we have not received your executed copy by November 11, 2005, the proposed settlement will be withdrawn.

For your convenience, I have enclosed another copy of the agreement originally sent in June of this year. I believe the original may have been sent to the attention of your telecommunications vendor, Richard Doughty of Communications Consultants as well as to the PUC as Mr. Doughty filed the appeal on behalf of the Lummi Indian Business Council

Please call me if you have any questions.

Sincerely,

Cynthia E. Padgett
Point of Contact for PUC Appeals
Toll Free: 888-571-3971 ext 4105
Direct: 317-896-4105

Cc: Louis Saul, Verizon BPC Account Manager
Meryl Friedman, Verizon Paralegal

Exhibit 4



LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA DRIVE • BELLINGHAM, WASHINGTON 98226 • (360) 384-1480

DEPARTMENT _____ EXT. _____

November 8, 2005

Cynthia E. Padgett
Point of Contact for PUC Appeals
Verizon Business Partnership Channel
19845 US 31 North
Westfield, IN 46074

Re: Your Letter of October 5, 2005 addressed to the Lummi Indian Business Council

Dear Ms. Padgett:

We are in receipt of your letter dated October 5, 2005, referencing a proposed settlement agreement and establishing a November 11, 2005, deadline for Verizon's receipt of an executed copy of said agreement. A copy of your letter is enclosed.

The proposed settlement agreement amount is not acceptable to the Lummi Nation. Records indicate that the Lummi Nation continued to be billed for telephone numbers that were reassigned to others at least as far back as 1995. The Nation paid in excess of \$100,000 for services it did not receive over a 10-year period. We are prepared to file a claim against Verizon with the Washington Utilities and Transportation Commission for payment in full for these charges. However, to resolve this dispute without further legal action, the Lummi Nation will accept a settlement (payment or credit) of \$68,000. This counter-offer of settlement will be withdrawn and the WUTC claim will be filed if we have not heard back from you by November 30, 2005.

Please respond to Judith K. Bush, Reservation Attorney, 2616 Kwina Road, Bellingham, WA 98226. Her direct line is 360-384-2258; her email is judyb@lummi-nsn.gov.

Sincerely,

Darrell Hillaire
Chairman

Enclosure

Exhibit 5



Verizon Business Partnership Channel
19845 US 31 North
Westfield, IN 46074

December 2, 2006 > *actually 2005*

Judith K. Bush
Reservation Attorney
2616 Kwinn Drive
Bellingham, WA 98226

RE: Lummi Indian Business Council Release and Settlement Agreement

Dear Ms. Bush:

We are in receipt of Mr. Hillaire's letter of November 8, 2005, in which the Lummi Indian Business Council rejected Verizon's settlement offer for an adjustment to the Lummi Indian Tribe account.

In revisiting the facts surrounding this issue, Verizon wishes to make clear its position that payment is due for any service that is ordered, provisioned and available for use. Verizon dedicates facilities whether or not a customer opts to use a service. In this case, your client paid for foreign exchange services each month, year after year, before raising the claim that the service should have been terminated eight years prior.

Based on the Lummi Nation's recent unsubstantiated claim that an unidentified person called Verizon in 1996 to cancel the services, Verizon proposed a settlement offer in the total amount of \$23,860.04 for two years credit plus interest. Verizon made it clear that this offer to settle a disputed claim was not an admission of error or liability by Verizon. Verizon firmly believes that the previously proposed settlement offer is quite generous.

We are extending the expiration deadline of this offer to allow the Lummi Indian Business Council additional time to reconsider the proposed settlement. This offer, however, will be finally withdrawn on December 30th, 2006.

Please be aware that if the Lummi Indian Business Council opts to file a formal complaint with the WUTC in this matter, Verizon will defend its position that no adjustment whatsoever is due. Furthermore, Verizon would expect to file a counterclaim for special access charges based on evidence that these charges were inadvertently omitted from the Lummi Nation's bills over the last ten years.

Upon reconsideration, should you wish to accept our settlement offer, kindly execute the Release and Settlement Agreement and forward to my attention. I have enclosed an additional copy for your convenience.

Sincerely

Cynthia E Padgett
BPC Point of Contact for Appeals
317-896-4105