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March 15, 2001

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Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-7250

Dear Ms. Washburn:

Subject: **VERIZON COMMENTS - UT-990146**
WAC 480-120-049 - ACCESS TO PREMISES

Verizon Northwest Inc. ("Verizon") submits these comments in response to the Commission's March 5, 2001 Notice of Opportunity to Submit Written Comment on Draft Access to Premises Rule.

Verizon does not as a practical matter oppose the practices described in proposed subsection (1) of WAC 480-120-049. The worker identification requirement is a common sense business practice. There does not, therefore, seem to be any need for establishing a formal regulation on the subject. Verizon will be interested to hear at the March 22 workshop whether this proposal is based on specific problems of which the Commission is aware.

Verizon supports the customer choice objectives of proposed subsections (2), (3) and (4). It has, however, concerns about the Commission's authority to promulgate such a rule, the necessity for the rule in light of FCC actions, and the scope of the rule. Verizon also has some questions and concerns about specific verbiage in the proposed rule, which it will discuss at the workshop.

Verizon has long taken the position that the Commission should enact only rules that are clearly within its authority. This concern applies whether or not Verizon supports the substance of a given rule. Rules that are outside of the Commission's authority provide false hopes and are, obviously, vulnerable to invalidation in the future in crucial situations where some parties have relied upon them. That is particularly the case with this draft rule, as carriers and customers may make significant decisions based on the assumption

that the rule will ensure premises access. The Commission's notice does not set forth the legal basis of the draft rule. Verizon will appreciate the Commission addressing this point at the workshop. If the Commission's authority is unclear, the parties may want to discuss possible legislation.

Verizon does not generally support state commissions merely duplicating FCC rules. Such actions often introduce differences between state and federal regulations that complicate companies' compliance. The Commission's proposed rule is similar to - - but not exactly the same as - - rules adopted by the FCC last October.¹ The FCC noted that it would be monitoring developments in the real estate industry closely with regard to open access, and it requested further comments by parties on possible additional rules. At the workshop Verizon will be interested to hear the Commission's thoughts on the sufficiency of the FCC's current rules and its further rulemaking process to resolve Washington State concerns, and on the relationship between federal and state rules on this topic.

If the Commission is to adopt a state premises access rule, its scope should be somewhat broader than the proposed rule. In Verizon's experience, open access issues arise not only with regard to commercial and residential "multi-unit premises" (which the draft rule addresses), but also subdivisions and other developments involving owner-occupied premises and multiple premises scenarios. Something as simple as expanding the proposed rule's definition of "multi-unit premises" or using a slightly different term could be sufficient to address the broad scope of open access issues. This can be discussed at the workshop.

In addition, someone other than the technical "owners" might cause problems and something less than a formal "contract" might be involved. The draft rule, however, speaks of "contracts" and appears to only address agreements or arrangements with "owners." Less formal agreements or arrangements and property managers, construction contractors, developers who are not the "owner" and others should also be addressed. Making subsection (2) of the proposed rule more general with regard to the subject arrangements and the identity of the other parties could resolve the concern. Again, this can be discussed at the workshop.

¹ Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98 (joined with WT Docket No. 99-217 and CC Docket No. 88-57); FCC 00-366 (released October 25, 2000). See Appendix B for new rules 64.2300, -.2301 and -.2302 of Subpart X, Part 64 of Title 47 CFR.

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Verizon looks forward to working with the Commission on these important issues.

Please contact Joan Gage on 425-261-5238 if you have any questions.

Very truly yours,

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