BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON Petitioner, v. VERIZON NORTHWEST, INC., Respondent.	)	DOCKET NO. UT-013019 INITIAL ORDER REQUIRING VERIZON TO MAKE AVAILABLE AN ENTIRE INTERCONNECTION AGREEMENT AS REQUESTED

I. SYNOPSIS

1 This Order determines that Verizon Northwest, Inc. ("Verizon"), must make available to Focal Communications Corporation of Washington ("Focal") an entire interconnection agreement previously approved by the North Carolina Public Utilities Commission pursuant to the Federal Communications Commission's ("FCC") *Bell Atlantic/GTE Merger Order*,[1] except for state specific rates and performance measures, and relevant name changes.

II. BACKGROUND AND PROCEDURAL HISTORY

2 On July 28, 1998, Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") announced their plan of merger.[2] Based on the extensive breadth of the companies' operations, the proposed merger required the review of several government agencies, including the FCC and the Washington Utilities and Transportation Commission ("Commission").

3 Bell Atlantic and GTE filed with the FCC their initial applications for transfer of control on October 2, 1998. The companies renewed and supplemented their initial application by submitting a January 27, 2000 Supplemental Filing, which included a set of proposed merger conditions to which they voluntarily committed.

---

[1] *See* 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 (rel. June 16, 2000) ("*Bell Atlantic/GTE Merger Order*"). The FCC's Order included *Merger Conditions* contained in Appendix D.

[2] The merged entity was later renamed "Verizon Communications, Incorporated." GTE Northwest Incorporated was renamed "Verizon Northwest, Incorporated."

4 The FCC subsequently determined that, absent conditions, the merger of Bell Atlantic and GTE would 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, the FCC found that the asserted public interest benefits of the proposed merger would not outweigh these public interest harms.

5 The FCC also found that the applicants' proposed conditions would alter the public interest balance.

> These conditions are designed to mitigate the potential public interest harms of the Applicants' transaction, enhance competition in the local exchange and exchange access markets in which Bell Atlantic or GTE is the incumbent local exchange carrier, and strengthen the merged firm's incentives to expand competition outside of its territories.[3]

6 The *Merger Conditions* adopted by the FCC include most-favored nation provisions for out-of-region and in-region arrangements, dependent in part on whether the arrangement was voluntarily negotiated before or after the "Merger Closing Date" as defined. Under the *Merger Conditions*, the Merger Closing Date was June 30, 2000.

7 GTE South, Inc., and Time Warner Telecom voluntarily negotiated an entire interconnection agreement ("*GTE South/Time Warner Agreement*") in North Carolina and signed the agreement, respectively, on June 26, 2000, and June 21, 2000. Therefore, the *GTE South/Time Warner Agreement* is a "Pre-Merger" agreement subject to Paragraph 32 of the *Merger Conditions*.

8 Paragraph 32 provides that Bell Atlantic/GTE must make available "in the GTE Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement [including an entire agreement] subject to 47 U.S.C. § 251(c) that was voluntarily negotiated by a GTE incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date."

9 By letter dated October 4, 2000, Focal requested that Verizon make available the *GTE South/Time Warner Agreement* in its entirety for use in the state of Washington pursuant to the *Bell Atlantic/GTE Merger Order* and Section 252(i) of the

---

[3] *Bell Atlantic/GTE Merger Order*, at para. 4.

Telecommunications Act of 1996.[4] Verizon refused Focal's request, claiming that Verizon is not obligated to make all arrangements from the *GTE South/Time Warner Agreement* available to requesting carriers in other states.

10 On November 9, 2000, Focal submitted a letter to the FCC Common Carrier Bureau requesting an interpretation of the most-favored nation ("MFN") provisions in the *Bell Atlantic/GTE Merger Order*. Verizon filed its response to Focal's request on December 6, 2000. The FCC Common Carrier Bureau entered a letter ruling on December 27, 2000 ("December 27th Letter").[5] As discussed in this Order, the December 27th Letter explained that the *Bell Atlantic/GTE Merger Order*'s MFN provisions apply to entire interconnection agreements.

11 Thereafter, Verizon continued to refuse to make the entire *GTE/Time Warner Agreement* available to Focal. On or about January 11, 2001, Verizon submitted a "Supplemental Agreement" to Focal, supplementing and revising the terms and conditions contained in the *GTE/Time Warner Agreement*.

12 Focal filed a petition on March 22, 2001, to enforce its rights under the *Bell Atlantic/GTE Merger Order* and Section 252(i) of the Telecom Act. Verizon filed its answer to Focal's petition on March 29, 2001. The Commission convened a prehearing conference and subsequently entered an order on April 26, 2001. The parties stated, and the Commission agreed, that there are only legal issues pending in this proceeding. The parties waived the opportunity for an evidentiary hearing.

13 The parties both filed opening briefs on June 22, 2001, and reply briefs on July 6, 2001. On July 23, 2001, Focal filed a motion to strike portions of Verizon's reply brief or to further respond. Verizon filed its opposition to Focal's motion on August 9, 2001.

III. PARTIES AND REPRESENTATIVES

14 Gregory J. Kopta, attorney, Seattle, represents Focal. Kimberly A. Newman, attorney, Washington D.C., represents Verizon.

IV. DISCUSSION

15 Discussion on the issues begins with Focal's motion to strike portions of Verizon's reply brief. The disputed issues in this case focus on the interpretation and implementation of the *Bell Atlantic/GTE Merger Order* and the *Merger Conditions*,

---

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* ("Telecom Act").

[5] Letter from Carol Mattey, Deputy Chief, Common Carrier Bureau, FCC to Michael L. Shor, Swidler Berlin Shereff Friedman, LLP, CC Docket No. 98-184, DA 00-2890 (December 27, 2000).

47 U.S.C. § 251(c), the FCC Common Carrier Bureau December 27, 2000 letter, and 47 U.S.C. § 252(i). These authorities are discussed in turn (but not necessarily in that order). Finally, we discuss the preparation by Verizon of a Supplemental Agreement to the *GTE South/Time Warner Agreement*.

A. Focal's Motion to Strike Portions of Verizon's Reply Brief

16 Focal argues that Verizon unfairly raises new issues regarding the interpretation and enforcement of the *GTE South/Time Warner Agreement* in its Reply Brief. Consequently, Focal requests that the Commission strike portions of that brief or allow it further opportunity to respond. Verizon contends that all arguments in its briefs are properly presented and that no further response is necessary.

17 In its briefs Verizon asserts that "the main issue in this case really is compensation for Internet traffic," and the Company argues at length that it is not obligated to pay reciprocal compensation for ISP-bound traffic as provided for in the *GTE South/Time Warner Agreement*. In spite of Focal's agreement with that assertion, the parties are mistaken. The main issue in this case is whether Paragraph 32 of the *Merger Conditions* to the FCC's *Bell Atlantic/GTE Merger Order* permits Focal to opt into the entirety of an agreement previously approved in another GTE Service Area consistent with Section 252(i) of the Telecom Act.

18 Issues regarding the interpretation and enforcement of specific terms and conditions in the GTE South/Time Warner Agreement (i.e., Article V, Section 3, *Transport and Termination of Traffic*) are not ripe prior to determining whether Focal's petition to adopt that agreement is approved, and those issues are not properly raised in this proceeding.[6] Verizon's arguments regarding the interpretation of provisions in that agreement are not considered in this proceeding and Focal's motion to strike portions of Verizon's Reply Brief or to further respond is moot.[7]

19 Verizon also argues that the Commission should delay a decision in this matter until the FCC concludes a proceeding[8] to consider whether the MFN merger conditions apply to provisions for reciprocal compensation for ISP-bound traffic and whether

---

[6] Although this Order does not address the interpretation and enforceability of the reciprocal compensation provisions in the *GTE South/Time Warner Agreement*, the Commission notes that it previously ordered GTE Northwest and Electric Lightwave, Inc., to compensate each other for ISP-bound traffic originating on their respective networks. *See In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Electric Lightwave, Inc., and GTE Northwest Incorporated*, Docket No. UT-980370, Order Approving Negotiated and Arbitrated Interconnection Agreement (May 12, 1999), at para. 29-33.

[7] Focal argued that Verizon's arguments regarding the interpretation and enforcement of the *GTE South/Time Warner Agreement* were raised as new issues in Verizon's Reply Brief.

[8] FCC Public Notice, *Common Carrier Bureau Seeks Comment on Letters Filed by Verizon and Birch Regarding Most-Favored Nation Condition of SBC/Ameritech and Bell Atlantic/GTE Orders*, DA 01-722 (March 30, 2001).

there are grounds to waive or modify the MFN conditions. Focal responds that the MFN issue is presently settled by the *Bell Atlantic/GTE Merger Order* and the December 27th Letter, as a matter of law.

20 The FCC's notice, dated March 30, 2001, requires that all comments be filed by May 14, 2001. Although the Commission has not delayed its decision in this matter in response to Verizon's request, we note that the FCC has not taken action nearly five months after receiving comments. Further, there is no indication when, if ever, the FCC will act in this regard. Verizon does not contest the Commission's right to review this dispute pursuant to Paragraph 32 of the *Merger Conditions*, and our resolution of the disputed issues in this proceeding without further delay serves the public interest.

B. Paragraph 32 of the *Merger Conditions*

21 Paragraph 32 of the *Merger Conditions* states, in relevant part:

> In-Region Pre-Merger Agreements. Subject to the conditions specified in this Paragraph, Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement *(including an entire agreement)* subject to 47 U.S.C. § 251(c) . . . that was voluntarily negotiated by a Bell Atlantic incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date and (2) *in the GTE Service Area* to any requesting telecommunications carrier *any interconnection arrangement, UNE, or provisions of an interconnection agreement subject to 47 U.S.C. § 251(c)* that was voluntarily negotiated by a GTE incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date . . .. *Exclusive of price and state-specific performance measures* and subject to the conditions specified in the Paragraph, *qualifying interconnection arrangements or 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)* . . .. The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis pursuant to 47 U.S.C. § 252 to the extent applicable. . . . This Paragraph shall 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). . . . (Italics added.)

1. Section 251(c) of the Telecom Act

22 Verizon contends that Paragraph 32 only requires that it make available to Focal those interconnection arrangements, UNEs, and provisions of the *GTE South/Time Warner Agreement* that are the express subject of 47 U.S.C. § 251(c), and that it is under no obligation to make available those interconnection arrangements, UNEs, and

provisions that are the subject of 47 U.S.C. § 251(b).[9] Focal responds that Section 251 (c) encompasses the duties set forth in subsection (b), and argues that the FCC makes clear that GTE must make available to Focal the entire *GTE South/Time Warner Agreement* as approved in North Carolina.

23 Verizon contends that if the FCC intended that it must make available terms in agreements that fulfill the obligations of both Section 251(b) and Section 251(c), then Paragraph 32 of the *Merger Conditions* would have expressly referenced both sections. Focal argues that Section 251(c) – which sets forth additional obligations that apply only to incumbent LECs – incorporates explicitly the obligations and duties of Section 251(b). Focal concludes thus it was not necessary for the FCC to specifically reference both sections in Paragraph 32 in order to effect the intent that Verizon make available interconnection agreements in their entirety.

24 Section 251(c) states, in relevant part:

> ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS: -- In addition to the duties contained in subsection (b), each incumbent local 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. . . .

25 We agree that the clause "In addition to the duties contained in subsection (b)" serves to incorporate the obligations set forth in subsection (b) into subsection (c). It would be surplusage to restate each of the subsection (b) duties in subsection (c). Further, Verizon's argument that the reference to subsection (c) in Paragraph 32 requires an incumbent LEC to make available arrangements that comply with those additional duties, but does not require that arrangements complying with *the duties that they are additional to* be made available, is unreasonably narrow in concept and implementation. The reference to subsection (b) in subsection (c) establishes that an incumbent LEC's duties under subsection (c) includes those explicitly set forth in subsection (b).

26 Section 251(c)(1) supports the conclusion that the preceding reference to subsection (b) duties operates to incorporate those duties into subsection (c). Verizon contends that while subsection (c)(1) may establish a duty to negotiate subsection (b) terms in good faith, once those terms are negotiated incumbent LECs are not required to make

[9] Section 251(b) of the Telecom Act states obligations that apply to all local exchange carriers, including the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Section 251(c) establishes additional obligations of incumbent local exchange carriers in addition to the duties contained in Section 251(b).

them available to requesting carriers under Paragraph 32. Verizon's contention in this regard again is unreasonably narrow in perspective. The provision in subsection (c) that incumbent LECs negotiate terms and conditions to fulfill subsection (b) duties in good faith further supports Focal's argument that the reference to subsection (c) in Paragraph 32 also requires incumbent LECs to make subsection (b) arrangements available.

27 Interconnection agreements routinely include numerous terms and conditions that are necessary in order to make the agreement fully effective but are not directly linked to either Section 251(b) or subsection (c). Under Verizon's theory of the case, Verizon would not be required to make any of those negotiated terms available to requesting carriers either. As discussed below, this outcome is inconsistent with the intent of Section 252(i).

2. "Entire Agreement"

28 Focal further argues that parenthetical reference to an "entire agreement" in subparagraph (1) regarding the Bell Atlantic Service Area also applies to subpart (2) regarding the GTE Service Area, even though the phrase is not repeated in that subpart. According to Focal, Section 251(c) must be read to include the duties of subsection (b) in order to give effect to the requirement that Verizon make "entire agreements" available. Verizon argues that that it need only make available an entire agreement *subject to 47 U.S.C. § 251(c)*; in short, Verizon must make available an "entire 251(c) interconnection agreement."

29 Focal's argument is more persuasive. Paragraph 32 and Section 251(c) should be read to give full meaning to the phrase "an entire agreement." Verizon's invention of "an 'entire' 251(c) interconnection agreement" renders the phrase "an entire agreement" substantively less than the plain meaning of those words, and is inconsistent with 47 C.F.R. § 51.809[10] and this Commission's implementation of Section 252(i) of the Telecom Act.[11]

3. "Qualifying" Arrangements

30 The parties also disagree whether reference to "qualifying" interconnection arrangements in Paragraph 32 includes arrangements that comply with its Section 251(b) duties. Paragraph 32 places certain limits on Verizon's obligation to make arrangements available to requesting carriers; however, the reference to "qualifying" interconnection arrangements in Paragraph 32 is wholly consistent with the finding that Section 251(c) incorporates the duties enumerated in subsection (b).

---

[10] The FCC's "MFN rule."

[11] *See In the Matter of Implementation of Section 252(i) of the Telecommunications Act of 1996*, Docket No. UT-990355, Interpretive and Policy Statement (First Revision) (April 12, 2000) ("Revised Interpretive and Policy Statement").

31 For example, Paragraph 32 provides that no interconnection arrangement in the Bell Atlantic Service Area can be extended into the GTE Service Area and vice versa. Further, Paragraph 32 only addresses arrangements that were voluntarily negotiated prior to the Merger Closing Date:

> This Paragraph shall not impose 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).

32 Thus, Paragraph 32 employs GTE's willingness to agree voluntarily to arrangements in interconnection agreements as a self-regulating mechanism. The *Merger Conditions* presume that if GTE voluntarily agreed to provide an arrangement to any LEC anywhere in its service area, then it is fair, just, and reasonable that Verizon make that same arrangement (or an entire agreement) available to any other requesting carrier within that same expanded boundary. Other limitations to the availability of arrangements also exist;[12] however, the FCC essentially deferred to GTE's past business judgment to define the scope of its future obligation.

33 We reject Verizon's argument that only terms and conditions complying with its section 251(c)(2)-(6) duties constitute "qualifying" interconnection arrangements. Rather, section 251(c) incorporates the duties enumerated in Section 251(b), and qualifying interconnection arrangements are those that were voluntarily negotiated within the relevant service area and are not subject to the other express limitations stated in Paragraph 32.

C. The *Bell Atlantic/GTE Merger Order*

34 Focal avers that that the *Bell Atlantic/GTE Merger Order* further clarifies that the FCC intended that competitive carriers would have a choice between adopting an entire negotiated agreement or selected provisions from such agreements under Paragraph 32. Verizon responds by repeating its arguments that an entire interconnection agreement means "an 'entire' 251(c) interconnection agreement," and that section 251(b) provisions are not qualifying arrangements.

35 Most favored nation arrangements are discussed in the *Bell Atlantic/GTE Merger Order* beginning at Paragraph 300. MFN is "designed to facilitate market entry

[12] A qualifying interconnection arrangement also must be feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made. Further, terms, conditions, and prices contained in tariffs cited in Bell Atlantic/GTE interconnection agreements and state-specific performance measures are not considered negotiated provisions.

throughout Bell Atlantic/GTE's region as well as the spread of best practices (as that term is understood by Bell Atlantic/GTE's competitors) . . ." Paragraph 300 goes on to describe the application of MFN in a different context than that raised in this case, but also provides guidance how the FCC defines the scope of an "interconnection arrangement."

> [MFN] encompasses, both for out-of-region and in-region agreements, entire interconnection agreements or selected provisions from them.[13]

36 The *Bell Atlantic/GTE Merger Order*, Paragraph 305, explains that Paragraph 32 is structured to put Bell Atlantic/GTE on notice as to which procedures could become uniform across its region.

> Moreover, under the conditions to this merger, *any voluntarily negotiated, in region interconnection arrangement or UNE* will be made available to requesting carriers in any other in-region service area of the particular legacy company whose interconnection arrangement or UNE is being extended. (*Emphasis added*).

37 Paragraph 305 is unequivocal regarding the class of arrangements that Verizon must make available under Paragraph 32. Further, this Commission has long recognized that an incumbent LEC must make available an existing agreement in its entirety to requesting carriers, even though neither section 252(i) nor FCC Rule 51.809 make specific reference to entire agreements.[14] Verizon's arguments regarding the application of Paragraph 32 of the *Merger Conditions* conflict with the provisions of the FCC's *Bell Atlantic/GTE Merger Order* that the conditions append.

The FCC Common Carrier Bureau December 27, 2000 Letter

38 On December 27, 2000, Carol Mattey, Deputy Chief, FCC Common Carrier Bureau sent a letter to the parties concerning the MFN provisions contained in the *Merger Conditions*. The December 27th Letter explained that the *Bell Atlantic/GTE Merger Order*'s MFN provisions apply to entire interconnection agreements, so that carriers may import interconnection agreements from one state into another state. Focal argues that the Bureau's December 27th Letter controls the Commission's decision in this case. Verizon argues that the Commission should not give any weight to the Bureau's December 27th Letter because it does not constitute a definitive ruling. Verizon has requested that the Common Carrier Bureau further clarify the issues addressed in the December 27th Letter.

---

[13] *Bell Atlantic/GTE Merger Order*, Paragraph 300, footnote 686. Bell Atlantic and GTE's Service Areas are comprised of regions.

[14] *See* Revised Interpretive and Policy Statement, at para. 14.

39 The FCC has delegated authority to its staff to act on matters that are "minor or routine or settled in nature and those in which immediate action may be necessary" under 47 C.F.R. § 0.5(c). Actions taken under delegated authority are subject to review by the FCC, and except for that possibility, those actions have the same force and effect as actions taken by the commission.

40 The FCC Common Carrier Bureau develops, recommends, and administers policies and programs for the regulation of services, facilities, and practices of subject common carriers. 47 C.F.R. § 0.91. Title 47 also broadly authorizes the Bureau to act for the FCC, and to advise the public, other government agencies, and industry groups on common carrier regulation and related matters. 47 C.F.R. § 0.91(a) and (c). FCC rules and regulations delegate authority to the Common Carrier Bureau Chief to "perform all functions of the Bureau." 47 C.F.R. § 0.291. The December 27th Letter constitutes a non-hearing action taken under delegated authority by the Chief of the FCC's Common Carrier Bureau, as indicated by the letter's designation DA 00-2890.

41 Sections 1.102 through 1.120 set forth procedural rules governing reconsideration of actions taken pursuant to authority delegated under Section 5(c). Verizon, by letter dated February 20, 2001, to Dorothy Atwood, Chief, FCC Common Carrier Bureau, requested that the Bureau reconsider the December 27th Letter.[15]

42 It is noteworthy that the FCC did not exercise its discretion to stay the effectiveness of the December 27th Letter as permitted under 47 C.F.R. § 1.106(n). Pursuant to 47 C.F.R. § 1.102(b) non-hearing actions taken pursuant to delegated authority "shall be effective upon release of the document containing the full text of such action." Section 1.106(n) further states:

> Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof.

43 Thus, under FCC rules and regulations the Common Carrier Bureau's December 27th Letter has the same force and effect as actions taken by the FCC, and Verizon was clearly bound to comply with its findings as of the date it was written.

44 The December 27th Letter thoroughly rejects the same Verizon arguments that are advanced in this proceeding. According to the FCC, "the plain language of the *Merger Conditions* permit a CLEC to obtain an entire interconnection agreement under the MFN provisions," so long as the agreement was voluntarily negotiated and

[15] Requests for reconsideration of actions taken pursuant to delegated authority are acted upon by the same designated authority pursuant to 47 C.F.R. § 1.106(a)(1).

meets the other requirements specified in the conditions. The FCC also found that Section 251(b) is incorporated explicitly into Section 251(c).

45 The December 27th Letter describes the purpose of the MFN provisions:

> In the *Bell Atlantic/GTE Merger Order*, the Commission adopted the MFN provisions to mitigate certain harms arising out of the merger. In particular, the Commission found that the MFN provisions address the harms of the merger by facilitating the market entry and spreading the use of best practices throughout Verizon's region. (*Footnote omitted*.)

46 Later in the letter, the FCC discusses the relationship between the MFN provisions and Section 252(i) of the Telecom Act:

> Moreover, the *Merger Conditions* expressly state that the rules and requirements of section 252(i) apply to all requests for interconnection arrangements and UNEs under the MFN provisions of the *Merger Conditions*. The MFN provisions expand the section 252(i) opt-in rights of CLECs by allowing CLECs to import interconnection arrangements (including entire agreements) from one state into another.

47 Finally, the FCC noted that Verizon's view is not consistent with the underlying purpose of the MFN provisions, and that the intent of the *Merger Conditions* would be thwarted if a CLEC was forced to negotiate separately an interconnection agreement to obtain provisions relating to Section 251(b) duties.

D. Implementation of 47 U.S.C. § 252(i) and Focal's Request to Opt-in to the *GTE South/Time Warner Agreement*

48 By letter dated October 4, 2000, Focal requested to opt-in to the terms and conditions contained in the *GTE South/Time Warner Agreement*. As discussed above, Paragraph 32 of the *Merger Conditions* provides that Verizon must make available to Focal that entire agreement to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i). The Telecom Act and FCC rules are silent as to the effective date of requests under Section 252(i). Focal argues that its opt-in right to the *GTE South/Time Warner Agreement* was "fixed and intact" when Focal presented its request in October 2000. Although briefs filed by the parties did not squarely address what effective date to affix to Focal's request, this issue previously has been discussed by the Commission.

49 The Commission concluded in the Revised Interpretive and Policy Statement that a request under Section 252(i) by a CLEC with an existing agreement constitutes a request to revise, modify, or amend the agreement. Accordingly, the Commission further concluded that a Section 252(i) request is not self-executing and must be

submitted to the Commission for approval under 47 U.S.C. § 252(e)(1). Likewise, the Revised Interpretive and Policy Statement provides that a request by a carrier without an existing interconnection agreement also must be submitted to the Commission for approval.[16] The Commission's policy that a Section 252(i) request is not self-effecting is also reflected by the expedited process for adoption of previously approved agreements in their entirety.[17]

50 Focal originally opted-in to the interconnection agreement between Verizon and AT&T Communications of the Pacific Northwest, Inc. However, Verizon terminated that agreement as of its September 24, 2000, expiration date. Although the parties maintain the services and facilities in existence as of that date under the terms and conditions of the expired agreement, Focal currently does not have an interconnection agreement with Verizon in Washington State.

51 The Commission may issue an interpretive and policy statement when necessary to end a controversy or to remove a substantial uncertainty about the application of statutes or rules. However, it is important that parties recognize that current interpretive and policy statements are advisory only, and they do not carry the same weight as statutes or rules.[18] Because of Verizon's egregious conduct in this case, an exception must be made to the Commission's current policy statement that adoptions of agreements under Section 252(i) only become effective when approved.

52 Whatever legitimacy may be associated with Verizon's strained interpretation of the *Bell Atlantic/GTE Merger Order* and Paragraph 32 of the *Merger Conditions* was dispelled by the FCC Common Carrier Bureau's December 27th letter. To repeat from above, under FCC rules and regulations the December 27th Letter has the same force and effect as actions taken by the FCC, and Verizon was clearly bound to comply with its findings as of the date it was written. The FCC did not thereafter stay its decision, and Verizon should have fully complied with the *Merger Condition* terms by making the entire *GTE South/Time Warner Agreement* available to Focal while pursuing other relief.

53 Verizon's subsequent conduct unfairly deprived Focal of its rights under the *Bell Atlantic/GTE Merger Order*. Accordingly, it is reasonable and equitable, as well as consistent with the Telecom Act and FCC rules, that Focal's request to opt-in to the entire *GTE South/Time Warner Agreement* be made effective as of December 27, 2001.

---

[16] *See* Revised Interpretive and Policy Statement, at paragraph 3.
[17] Id., at Paragraph 31.
[18] RCW 34.05.230(1). RCW 34.05.230 subsections were renumbered effective January 1, 2001; the text in the current subsection (1) followed subsection (8) in prior versions.

E. Supplemental Terms for State-Specific Prices and Performance Measures

54 Verizon argues that its proposed Supplemental Agreement contains numerous provisions that address rates specific to Washington State, and is consistent with its legal duty to make arrangements available to Focal. However, that Supplemental Agreement is part and parcel of Verizon's refusal to comply with FCC requirements that it make the entire *GTE South/Time Warner Agreement* available to Focal.

55 Focal previously filed the entire *GTE South/Time Warner Agreement* as Exhibit C attached to its Petition in this proceeding. Verizon must file a revised Supplemental Agreement that only states Washington-specific rates to replace North Carolina-specific rates that were originally made part of the *GTE South/Time Warner Agreement*, any relevant Washington-specific performance measures, and changes in the names of, and contact information for, the parties, the Commission, and the state no later than 10 days after this Order is entered.

V. FINDINGS OF FACT

56 The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

57 Focal Communications Corporation of Washington ("Focal")and Verizon Northwest, Inc.("Verizon"), are each engaged in the business of furnishing telecommunications service within the state of Washington as public service companies.

58 The interconnection agreement between GTE South, Inc., and Time Warner Telecom in North Carolina was voluntarily negotiated, and constitutes a "Pre-Merger" agreement subject to the *Bell Atlantic/GTE Merger Order*, Paragraph 32 of the *Merger Conditions*.

59 Focal requested that Verizon make available in Washington State the entire *GTE South/Time Warner Agreement*, except for state-specific rates and performance measures. Verizon denied Focal's request.

60 Focal filed a petition in this proceeding to enforce its rights under the *Bell Atlantic/GTE Merger Order*.

61 The FCC Common Carrier Bureau entered a letter ruling on December 27, 2000, explaining that the *Bell Atlantic/GTE Merger Order*'s MFN provisions apply to entire interconnection agreements. That ruling has not been stayed.

62 Paragraph 32 of the *Merger Conditions* requires that Verizon make available entire agreements that are voluntarily negotiated, including terms and conditions comprising arrangements that comply with its duties under 47 U.S.C. § 251(b) and (c).

63 Arrangements that comply with incumbent local exchange carrier duties under 47 U.S.C. § 251(b) and (c) constitute qualifying arrangements pursuant to Paragraph 32 of the *Merger Conditions*.

64 The Commission's Revised Interpretive and Policy Statement implementing 47 U.S.C. § 252(i) states that a Section 252(i) request is not self-executing and must be submitted to the Commission for approval under 47 U.S.C. § 252(e)(1).

65 Interpretive and Policy Statement issued by the Commission are advisory only, and they do not carry the same weight as statutes or rules.

VI. CONCLUSIONS OF LAW

66 The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.

67 Section 251(c) of the Telecommunications Act of 1996 incorporates the provisions of 47 U.S.C. § 251(b).

68 Under FCC rules and regulations the Common Carrier Bureau's December 27th Letter has the same force and effect as actions taken by the FCC.

69 Under FCC rules and regulations Verizon should have complied with the findings of the Common Carrier Bureau's December 27th Letter as of the date it was written.

70 Verizon's failure to comply immediately with the Common Carrier Bureau's December 27th Letter unfairly deprived Focal of its rights under the *Bell Atlantic/GTE Merger Order*.

71 Verizon should make available in Washington State to Focal the entire *GTE South/Time Warner Agreement*, except for state-specific rates and performance measures.

72 Verizon should make available to Focal a supplemental agreement to the *GTE South/Time Warner Agreement* that includes all relevant Washington state-specific rates and performance measures.

73 It is reasonable and equitable, as well as consistent with the Telecom Act and FCC rules, that Focal's request to opt-in to the entire *GTE South/Time Warner Agreement* be made effective as of December 27, 2001.

VII. ORDER

IT IS ORDERED That:

74 Verizon must make available in Washington State to Focal the entire *GTE South/Time Warner Agreement*, except for state-specific rates and performance measures, effective December 27, 2000.

75 Verizon must file a revised Supplemental Agreement that only states Washington-specific prices to replace North Carolina-specific rates that were originally made part of the *GTE South/Time Warner Agreement*, any relevant Washington-specific performance measures, and changes in the names of, and contact information for, the parties, the Commission, and the state no later than 10 days after this Order is entered.

76 The Commission retains jurisdiction over all matters and the parties in this proceeding to effectuate the provisions of this Order.

DATED at Olympia, Washington and effective this 17th day of October, 2001.

WASHINGTON UTILTIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Administrative Law Judge

NOTICE TO PARTIES:

This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

WAC 480-09-780(2) provides that any party to this proceeding has twenty (20) days after the service date of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-09-780(3). Pursuant to WAC 480-09-780(4) the Commission designates that that an *Answer* to any Petition for review must be filed by any party within five (5) days after service of the Petition.

WAC 480-09-820(2) provides that before entry of a Final Order any party may file a *Petition To Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such Answer.

One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-09-120(2).

An original and three copies of any Petition or Answer must be filed by mail delivery to:

Office of the Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

or, by hand delivery to:

Office of the Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, S.W.
Olympia, WA 9850