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November 19, 2004

Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transportation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Re: Docket No. UT-043013

Dear Ms. Washburn:

In accordance with the Commission's Order Number 9, issued September 15, 2004, (as modified by the Notice of Extension of Time of November 17, 2004), Verizon encloses its Issues Lists, identifying any issues that may require a hearing. Verizon had circulated these lists to the CLECs earlier this week and was anticipating same response. Verizon notes that, instead, several of the CLECs unilaterally filed an issues list earlier in the day. Because Verizon's Issues Lists are more comprehensive (and because Verizon has uniformly identified the issues in a more neutral way) Verizon requests that the arbitrator use these lists as the basis for further proceedings.

There are two Issues Lists. The first Issues List pertains to Verizon's proposed *Triennial Review Order* ("*TRO*") Amendment 1, submitted on September 10, 2004. Amendment 1 is Verizon's affirmative offer to amend its interconnection agreements (where necessary) and is thus the basis for this arbitration.

As Verizon explained in its September 15, 2004 filing proposing to withdraw its Petition for Arbitration as to certain parties, most of Verizon's interconnection agreements already contain specific provisions permitting Verizon to cease providing unbundled network elements ("UNEs") that are not subject to an unbundling obligation under section 251(c)(3) of the Telecommunications Act of 1996 and the FCC's implementing regulations. These agreements do not need to be amended to give Verizon the contractual right to discontinue UNEs that are not required by federal law. Therefore, Verizon has not sought to negotiate Amendment 1 with these carriers, and they are not reflected in the Issues List for Amendment 1.

The Amendment 1 Issues List reflects the issues in dispute with six of the seven CLECs Verizon has designated as remaining in this arbitration: AT&T Communications of the Pacific Northwest Inc. and TCG Seattle (collectively, "AT&T"); Comcast Phone of Washington LLC 9as a

member of the Competitive Carrier Group); MCI WorldCom Communications, Inc. and MCImetro Access Transmission Services LLC (collectively, "MCI"), and WilTel Local Network, LLC f/k/a/Williams Local Network Inc.. The seventh CLEC, Level 3 Communications LLC, does not appear on the Issues List because Verizon and Level 3 have reached a tentative stipulation that Level 3 will not actively participate in the arbitration, but will accept the results.

Verizon has, to the best of its knowledge, briefly stated the positions of the CLECs in the Amendment 1 Issues List. Verizon's Issues List considers the joint issues list submitted by AT&T and CCG on November 11, 2004, but Verizon's list is much shorter because it eliminates redundant issues in the AT&T/CCG list, as well as issues related to superseded Verizon proposals. In addition, Verizon's matrix, unlike the AT&T/CCG matrix, does not address subject areas (e.g., batch hot cuts, "reverse collocation") that are not properly the subject of a *TRO* amendment.

Verizon's second Issues List pertains to its *TRO* Amendment 2. Amendment 2 addresses certain obligations such as routine network modifications and commingling. Amendment 2 was originally submitted on August 23, 2004. An updated version was filed on November 3, 2004, to reflect the FCC's *Interim Order*[1] and recent FCC rulings relating to fiber loops. Although Amendment 2 is not part of Verizon's affirmative offer that Verizon seeks to litigate as the petitioning party, it is clear that some CLECs wish to litigate issues related to Amendment 2. Therefore, Verizon has included an Amendment 2 Issues List.

Verizon maintains, however, that the Commission should consider any Amendment 2 issues on a separate track from the Amendment 1 issues. As Verizon has explained, the FCC expects state Commissions to conclude change-of-law proceedings concerning the "*USTA II* UNEs" (that is, mass-market switching, enterprise loops, and dedicated transport) promptly, to ensure a "speedy transition" to the permanent rules it intends to adopt as early as December of this year (but in no event later than March 2005). *Interim Order*, ¶ 22.

Because Amendment 2 raises factual issues, such as pricing of new services, litigation of Amendment 2 will be more complicated than Amendment 1, which addresses only legal issues. Litigation of cost studies probably cannot be completed by the time the FCC issues final rules. Bifurcation of the proceeding into Amendment 1 and Amendment 2 issues will thus avoid

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[1] Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-179 (rel. Aug. 20, 2004) ("*Interim Order*").

delaying resolution of the Amendment 1 issues and promote the FCC's objective of a rapid transition to its new rules identifying which elements must be unbundled—and which must not.

In addition, the FCC's rules concerning the unbundling of high-capacity loops and transport were vacated by the D.C. Circuit in its *USTA II* decision, and the FCC expects state change-of-law proceedings to presume the definitive elimination of these elements in its final rules. *See id.*, ¶ 23. If high-capacity loops are no longer required to be unbundled, then, of course, the network modifications that are necessary to convert ordinary loops to DS1 or DS3 loops can no longer be required, either. Therefore, it makes sense to wait for the FCC to define the ILECs' affirmative unbundling obligations before litigating the specific terms, conditions, and pricing associated with any such obligations.

Please contact me if you have any questions or concerns.

Sincerely,

Timothy J. O'Connell

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