

Brooks E. Harlow
brooks.harlow@millernash.com
(206) 777-7406 direct line

November 22, 2004

VIA E-MAIL & FEDERAL EXPRESS

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
Post Office Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: Docket No. UT-043013

Dear Ms. Washburn:

Covad Communications Company (“Covad”), through counsel, hereby responds to the November 3, 2004 Amendment No. 2 filed by Verizon in this docket.¹ Specifically, Covad respectfully submits that the Washington Utilities and Transportation Commission (the “Commission”) should immediately enforce, without further proceedings, certain requirements of the Federal Communications Commission (“FCC”) affirmed by the *Triennial Review Order*,² that were not vacated by the decision of the D.C. Circuit in *USTA II*,³ including: (1) Verizon’s obligation to permit competitive local exchange carriers (“CLECs”) to commingle unbundled network elements (“UNEs”) and wholesale services;⁴ and (2) Verizon’s obligation to perform routine network modifications, as necessary, to provide CLECs access to Verizon’s network elements and facilities.⁵ Even if the Commission elects to arbitrate an interconnection agreement amendment to implement such requirements (which it should not), the Commission must consider all arbitration issues related to the *Triennial Review Order* in the above-referenced proceeding.

¹ Verizon Northwest Inc.’s Letter response to Commission and proposed Amendment No. 2 (filed Nov. 3, 2004).

² *Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003), *corrected by Errata*, 18 FCC Rcd 19020 (2003) (“*Triennial Review Order*”).

³ *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

⁴ *Triennial Review Order*, at ¶ 579.

⁵ *Triennial Review Order*, at ¶ 632.

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Covad consistently has maintained that the *Triennial Review Order* offers clarification of the FCC's existing rules that obligate incumbent local exchange carriers ("ILECs"), including Verizon, to perform routine network modifications, and to permit CLECs to commingle UNEs and wholesale services.⁶ As such, the requirements of the *Triennial Review Order* clarifying certain of the FCC's existing rules do not constitute a change of law that must be implemented by an amendment to current interconnection agreements between Verizon and Washington CLECs.⁷ Accordingly, consistent with the *Triennial Review Order*, Covad has urged the Commission to immediately enforce without further proceedings, those requirements affirmed by the *Triennial Review Order*, that were not vacated by the decision of the D.C. Circuit in *USTA II*, including: (1) Verizon's obligation to permit competitive local exchange carriers ("CLECs") to commingle UNEs and wholesale services; and (2) Verizon's obligation to perform routine network modifications, as necessary, to provide to CLECs access to Verizon's network elements and facilities.

Several other state commissions have undertaken a similar review of the issues raised in this arbitration and already explicitly rejected Verizon's efforts to require interconnection agreement amendments to address routine network modifications. For example, the Maine Public Utilities Commission determined that the *Triennial Review Order* did not establish new law but clarified existing obligations.⁸ Moreover, the Rhode Island Public Utilities Commission also addressed Verizon's attempts to demand interconnection agreement amendments to address routine network modifications and determined that the *Triennial Review Order* did create a change of law.⁹ The Virginia State Corporation Commission also ruled that

⁶ Answer and exhibits of Advanced Telecom Group Inc.; BullsEye Telecom Inc.; Comcast Phone of Washington LLC; DIECA Communications, Inc. d/b/a Covad Communications Company; Global Crossing Local Services Inc.; KMC Telecom V Inc.; and Winstar Communications LLC (collectively, "Competitive Carriers Coalition") to Verizon Northwest Inc.'s Petition for consolidated arbitration of an amendment to interconnection agreements with competitive local exchange carriers and commercial mobile radio service providers. Docket No. UT-043013_ (Mar. 19, 2004) at 5.

⁷ *Id.*

⁸ Accordingly, the Maine Commission required Verizon to provide routine network modifications in accordance with the FCC's rules and without conditioning its performance on an amendment to its interconnection agreements. Specifically, the Maine Commission stated "[w]e find, on balance, that the TRO did not establish new law but instead clarified existing obligations. Section 251(c)(3) has always required that Verizon provide access to its UNEs on a non-discriminatory basis. The FCC's new rules merely clarify what is required under that existing obligation. Thus, Verizon must perform routine network modifications on behalf of CLECs in conformance with the FCC's rules. Verizon may not condition its performance of routine network modifications on amendment of a CLEC's interconnection agreement." Maine Public Utilities Commission, Docket 2004-135, Order at 8 (June 11, 2004).

⁹ Specifically, the Rhode Island Commission stated that "[t]he FCC's TRO by its language, and as exhibited by VZ-RI's conduct over the years, did not create a new legal obligation for VZ-RI to perform but merely clarified an old pre-existing obligation. Accordingly, there is no need to alter the current terms and conditions in ICAs, as they relate to VZ-RI's obligation to perform routine network modifications for CLECs at TELRIC rates because VZ-RI is already required under ICAs to provide UNEs at TELRIC rates." *State of Rhode Island and Providence*

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“the costs for routine network modifications have been addressed in the TELRIC rates previously established by the Commission for high capacity UNE loops” and required Verizon to provision high capacity loops under its existing interconnection agreement.¹⁰ Covad urges the Commission to evaluate the decisions put forth by the Maine, Virginia and Rhode Island Commissions and to make a similar determination with regard to routine network modifications, and Verizon’s obligations, in the State of Washington.

Furthermore, it is Covad’s understanding that Verizon has already begun to implement changes from the *Triennial Review Order* in Washington. For example, in Washington, when Verizon issues a “no facilities” rejection to a CLEC request, it no longer provides any explanation or justification for its “no facilities” conclusion. Therefore, CLECs are unable to validate Verizon’s finding to determine whether Verizon has made a mistake or has illegally rejected the request. Verizon should have to continue to provide reasons for a “no facilities” reject to promote CLEC assurance and efficient of order processing. It is also Covad’s understanding that Verizon has also begun implementing OSS interface changes pursuant to the *Triennial Review Order*. Specifically, attached to this letter is a October 4, 2004, Verizon notice in which it indicates that it has modified it wholesale system interfaces and processes to allow mechanized processing of LSR requests for loop modifications required under the *Triennial Review Order* (see Exhibit A). This notice demonstrates that Verizon has made systems modifications pursuant to the *Triennial Review Order* without an amendment to its interconnection agreements with CLECs.¹¹

In the event that the Commission, to implement the requirements of the *Triennial Review Order*, proceeds to arbitrate rates, terms and conditions for routine network modifications and commingling, the Commission must consider all arbitration issues related to the *Triennial Review Order* in the above-referenced proceeding. Therefore, Verizon’s proposal to negotiate and/or arbitrate a *separate* amendment, addressing only Verizon’s obligations to perform routine network modifications and to permit CLECs to commingle UNEs and wholesale services, on a *separate* “track” from other issues relating to the *Triennial Review Order* and the *USTA II* decision, unquestionably would frustrate the Commission’s objective of establishing regulatory certainty quickly and efficiently, and therefore must be rejected.

Plantations Public Utilities Commission, Petition of Verizon-Rhode Island for Arbitration of an Amendment to Interconnection Agreements With Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers In Rhode Island To Implement The Triennial Review Order, Docket No. 3588, Procedural Arbitration Decision at 11 (April 9, 2004).

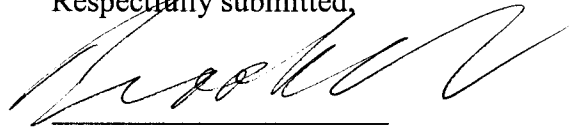
¹⁰ Virginia SCC, Case No. PUC-2002-000887, Order dated January 28, 2004, at 8.

¹¹ In fact, in the Verizon East states, Verizon has been attempting to make OSS interface changes, to CLECs’ detriment, without complying with the terms of its Change Management Guidelines. The New York Commission recently found in favor of CLECs that filed a complaint against Verizon New York for implementing such changes without following the requisite notification and testing periods (See Order Denying Rehearing, Case No. 04-C-0538 attached as Exhibit B). This Commission should acknowledge Verizon’s unilateral changes to prohibit Verizon from making the same changes in Washington.

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Please feel free to contact the undersigned counsel if you have any questions or require further information.

Respectfully submitted,



Brooks Harlow
Heather Hendrickson
Counsel to Covad Communications Company

cc: All Parties of Record

CERTIFICATE OF SERVICE
UT-043013

I hereby certify that a true and correct copy of the foregoing has been provided via electronic mail and U.S. Mail, postage prepaid to the following parties:

DIRECTOR – CONTRACT PERFORMANCE &
ADMINISTRATION
VERIZON WHOLESALE MARKETS
600 HIDDEN RIDGE
IRVING TX 75038

RICHARD POTTER
VICE PRESIDENT
VERIZON NORTHWEST INC
PUBLIC POLICY AND EXTERNAL AFFAIRS
1800 - 41ST STREET
EVERETT WA 98201

VICE PRESIDENT AND
ASSOCIATE GENERAL COUNSEL
VERIZON WHOLESALE MARKETS
1320 N. COURT HOUSE ROAD, FLOOR 8
ARLINGTON VA 22201

TIMOTHY J O'CONNELL
STOEL RIVES
600 UNIVERSITY ST.
STE 3600
SEATTLE WA 98101

AARON M PANNER
KELLOG, HUBER, HANSEN,
TODD & EVANS, P.L
1615 M STREET NW, STE 400
WASHINGTON DC 20036-3209

PRESIDENT
TEL WEST COMMUNICATIONS, LLC
3701 S. NORFOLK STREET, STE 300
SEATTLE WA 98118

GENERAL COUNSEL
T-MOBILE USA INC
12990 SE 38TH ST.
BELLEVUE WA 98006

JOHN P ANDRIST
PRESIDENT
NCI DATA.COM, INC.
700 B OKOMA DRIVE
OMAK WA 98841

IRINA ARMSTRONG
REGULATORY CONTACT
METROPOLITAN TELECOMMUNICATIONS
OF WASHINGTON
44 WALL STREET, FL 14TH
NEW YORK NY 10005

SCOTT BEER
ICG TELECOM GROUP, INC.
GOVERNMENT AND EXTERNAL AFFAIRS
161 INVERNESS DRIVE WEST
ENGLEWOOD CO 80112

ROBERT BENSON
TARIFF SUPPORT
FOX COMMUNICATIONS CORP.
5210 CARILLON POINT
KIRKLAND WA 98033

PENNY H BEWICK
NEW EDGE NETWORK, INC
D/B/A NEW EDGE NET
3000 COLUMBIA HOUSE BLVD., STE 106
VANCOUVER WA 98661

LON E BLAKE
DIRECTOR OF REGULATORY AFFAIRS
ADVANCED TELCOM, INC.
3723 FAIRVIEW INDUSTRIAL DR. SE.
SALEM OR 97302

KIMBERLEY A BRADLEY
SENIOR DIRECTOR OF REGULATORY AFFAIRS
WINSTAR COMMUNICATIONS, LLC
1850 M STREET, N.W., STE 300
WASHINGTON DC 20036

MICHAEL J BRADSHAW
POWERTELNET COMMUNICATIONS, INC.
PO BOX 1150
PROSSER WA 99350

STEVEN C CLAY
PRESIDENT
NEW ACCESS COMMUNICATIONS, LLC
801 NICOLLET MALL, STE 350
MINNEAPOLIS MN 55042

JOHN COONAN
WASHINGTON RSA NO. 8 LIMITED
PARTNERSHIP
C/O INLAND CELLULAR TELEPHONE COMPANY
PO BOX 171
ROSLAND WA 98941

CHRIS CROWE
PAC-WEST TELECOMM, INC.
1776 MARCH LANE
STE 250
STOCKTON CA 95207

BARBARA FILLINGER
REGULATORY MANAGER
IONEX COMMUNICATIONS NORTH, INC.
2020 BALTIMORE
KANSAS CITY MO 64108

RUDOLPH GEIST
O1 COMMUNICATIONS OF WASHINGTON, LLC
770 L ST., STE 960
SACRAMENTO CA 95814

BECKY GIPSON
DIRECTOR
EXCEL TELECOMMUNICATIONS, INC
REGULATORY AFFAIRS DEPARTMENT
1600 VICEROY DRIVE
DALLAS TX 75235

KEN GOLDSTEIN
METROCALL, INC.
6677 RICHMOND HIGHWAY
ALEXANDRIA VA 22306

BERNARD CHAO
COVAD COMMUNICATIONS COMPANY
110 RIO ROBLES
SAN JOSE CA 95134-1813

TOM COOK
COOK TELECOM, INC.
2963 KERNER BLVD.
SAN RAFAEL CA 94901

DALE CROUSE
PRESIDENT
PREMIERE COMMUNICATIONS SYSTEMS, INC.
4509 INTERLAKE AVE. N
110
SEATTLE WA 98103

MICHAEL E DAUGHTRY
UNITED COMMUNICATIONS, INC.,
D/B/A UNICO
497 SW CENTURY DR., STE 200
BEND OR 97702

LETTY FRIESEN
ATTORNEY AT LAW
AT&T COMMUNICATIONS
OF THE PACIFIC NORTHWEST
1875 LAWRENCE STREET, FL 15
DENVER CO 80202

MR GEOFF GEORGE
GENERAL MANAGER
MARATHON COMMUNICATIONS, INC.
1550 N 34TH ST, # 200
SEATTLE WA 98109-2904

JOHN GLICKSMAN
VICE PRESIDENT/GENERAL COUNSEL
ADELPHIA BUSINESS SOLUTIONS OPERATIONS
ONE NORTH MAIN ST.
COUDERSPORT PA 16915

ROBERT T HALE
PRESIDENT/CEO
GRANITE TELECOMMUNICATIONS, LLC
234 COPELAND STREET
QUINCY MA 02169

KEN HANKS
SENIOR TAX ANALYST
INTERNATIONAL TELCOM, LTD.
417 - 2ND AVENUE WEST
SEATTLE WA 98119

KARINE HELLWIG
SPRINT COMMUNICATIONS COMPANY L.P.
6390 SPRING PKWY
MS: KSOPHT010-Z2400
OVERLAND PARK KS 66251-2400

SCHULA HOBBS
DIRECTOR OF REGULATORY AFFAIRS
DSLNET COMMUNICATIONS, LLC
545 LONG WHARF DRIVE, FL 5
NEW HAVEN CT 06511

KAREN JOHNSON
CORPORATE REGULATORY ATTORNEY
INTEGRA TELECOM OF WASHINGTON, INC.
19545 N.W. VONNEUMANN DR.
STE 200
BEAVERTON OR 97006

REX KNOWLES
XO WASHINGTON, INC
1111 EAST BROADWAY
SALT LAKE CITY UT 84111

DEANNE LAIDLER
US CELLULAR:
8410 W. BRYN MAWR STE 700
CHICAGO IL 60631

ARTHUR L MAGEE
COMPTROLLER
BUDGET PHONE, INC.
PO BOX 19360
SHREVEPORT LA 71149

SAM G MAROPIS
ASSOCIATE DIRECTOR
REGULATORY/MUNICIPAL AFFAIRS
SBC TELECOM, INC.
1010 N. ST. MARY'S, ROOM 13K
SAN ANTONIO TX 78215

ROBERT E HEATH
VICE PRESIDENT
AMERICAN FIBER NETWORK, INC.
9401 INDIAN CREEK PARKWAY, STE 140
OVERLAND PARK KS 66210

TRE HENDRICKS
ATTORNEY AT LAW
UNITED TELEPHONE COMPANY
OF THE NORTHWEST
902 WASCO STREET
HOOD RIVER OR 97031

WILLIAM P HUNT III
VICE PRESIDENT, PUBLIC POLICY
LEVEL 3 COMMUNICATIONS, LLC
1025 EL DORADO BLVD
BROOMFIELD CO 80021

DENNIS KELLEY
DIRECTOR OF OPERATIONS
(PROVISIONING)
1-800-RECONEX, INC. (T633)
2500 INDUSTRIAL AVENUE
HUBBARD OR 97032

GREGORY J KOPTA
DAVIS WRIGHT TREMAINE
2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE WA 98101-1688

TRUDY M LONGNECKER
TARIFF & REGULATORY ANALYST
RCN TELECOM SERVICES, INC.
105 CARNEGIE CENTER
PRINCETON NJ 08540

DIMITRI MANDELIS
PRESIDENT
COMPUTERS 5*, INC., D/B/A LOCALTEL
341 GRANT RD.
EAST WENATCHEE WA 98802

PAUL MASTERS
ERNEST COMMUNICATIONS, INC.
5275 Triangle Pkwy, STE 150
NORCROSS GA 30092-6511

FELICIA MAYO
POINT OF CONTACT
COMM SOUTH COMPANIES, INC.
REGULATORY AFFAIRS
8035 EAST R.L. THORNTON FREEWAY, STE 410
DALLAS TX 75228

DANIEL MELDAZIS
SENIOR MANAGER REGULATORY AFFAIRS
FOCAL COMMUNICATIONS CORPORATION
OF WASHINGTON
200 NORTH LASALLE ST., STE 1100
CHICAGO IL 60601

ANDREW METCALFE
PRESIDENT
NORTHWEST TELEPHONE, INC.
1630 N. WENATCHEE AVE., STE 9
WENATCHEE WA 98801

JILL MOUNSEY
DIRECTOR-EXTERNAL AFFAIRS
AT&T WIRELESS SERVICES, INC.
7277 164TH AVE. NE
REDMOND WA 98052

CARL NICKENS
SR. COUNSEL
PACIFIC BELL WIRELESS NORTHWEST, LLC
5565 GLENRIDGE CONNECTOR, STE 1700
ATLANTA GA 30346

JON PESNELL
CONTROLLER
PREFERRED CARRIER SERVICES, INC. (T953)
14681 MIDWAY ROAD, STE 105
ADDISON TX 75001

JILL SANFORD
SENIOR ATTORNEY
ABOVENET COMMUNICATIONS, INC
360 HAMILTON AVENUE
WHITE PLAINS NY 10601

TIMOTHY M SEAT
Z-TEL COMMUNICATIONS, INC.
601 S. HARBOUR ISLAND BLVD, STE 220
TAMPA FL 33602

BOB MCCOY
GENERAL COUNSEL
WILLIAMS LOCAL NETWORK, INC.
4100 ONE WILLIAMS CENTER
TULSA OK 74172

BECKI MERKEL
COST ACCOUNTANT II
MCLEODUSA TELECOMMUNICATIONS SVCS.
6400 C ST., SW
P.O. BOX 3177
CEDAR RAPIDS IA 52405-3177

NICOLE MIZELL
REGULATORY SPECIALIST
VARTEC TELECOM, INC.
1600 VICEROY DRIVE
DALLAS TX 75235

CATHERINE MURRAY
MANAGER, REGULATORY AFFAIRS
ESCHELON TELECOM OF WASHINGTON, INC.
730 SECOND AVENUE SOUTH, STE 1200
MINNEAPOLIS MN 55402

WILLIAM OBERLIN
BULLSEYE TELECOM, INC.
25900 GREENFIELD ROAD, STE 330
OAK PARK MI 48237

DAVID M PIKOFF
VICE PRESIDENT
DPI-TELECONNECT, L.L.C.
2997 LBJ FREEWAY, STE 225
DALLAS TX 75234

THOMAS SAWATZKI
HIGHSPEED.COM LLC
6W ROSE ST.
STE 500
WALLA WALLA WA 99362

MICHEL SINGER NELSON
ATTORNEY
WORLD.COM, INC.
707 17TH ST., STE 4200
DENVER CO 80202

DAVID L STARR
DIRECTOR, REGULATORY COMPLIANCE
ALLEGIANCE TELECOM OF WASHINGTON, INC.
9201 NORTH CENTRAL EXPRESSWAY
DALLAS TX 75231

TERESA S REFF
SENIOR FINANCIAL ANALYST
GLOBAL CROSSING LOCAL SERVICES, INC.
REGULATORY AFFAIRS
1080 PITTSFORD VICTOR ROAD
PITTSFORD NY 14534

RICHARD STEVENS
PRESIDENT
CENTEL COMMUNICATIONS, INC.
PO BOX 25
GOLDENDALE WA 98620-0025

LANCE TADE
ELECTRIC LIGHTWAVE, INC
4 TRIAD CENTER, STE 200
SALT LAKE CITY UT 84180

MARY TAYLOR
REGULATORY MANAGER
AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST
2120 CATON WAY SW, STE B
OLYMPIA WA 98502

MARY TAYLOR
TCG SEATTLE
2120 CATON WAY SW, STE 3
OLYMPIA WA 98502

BRIAN THOMAS
TIME WARNER TELECOM OF WASHINGTON LLC
223 TAYLOR AVENUE N.
SEATTLE WA 98109

DUDLEY UPTON
CELLCO PARTNERSHIP
1300 I ST. NW, STE 400
WASHINGTON DC 20005

ROWENA VALLE
NOS COMMUNICATIONS, INC. (T1022)
TARIFF AND REGULATORY AFFAIRS
4380 BOULDER HIGHWAY
LAS VEGAS NV 89121-3002

RANDALL C MEACHAM
SENIOR MANAGER - GOVERNMENT AFFAIRS
KMC TELECOM V, INC.
1755 N. BROWN ROAD
LAWRENCEVILLE GA 30043

SULTAN WEATHERSPOON
WEATHERSPOON TELEPHONE, LLC
16410 NE 32ND STREET
VANCOUVER WA 98682

RHONDA WEAVER
DIRECTOR OF GOVERNMENT AFFAIRS &
TELEPHONE
COMCAST PHONE OF WASHINGTON, LLC
440 YAUGER WAY SW
OLYMPIA WA 98502-8153

RICK WEAVER
REGULATORY CONTACT
WESTGATE COMMUNICATIONS, LLC
PO BOX 1903
BREWSTER WA 98812

KAREN SHORESMAN FRAME
COVAD COMMUNICATIONS COMPANY
7901 LOWRY BLVD.
DENVER CO 80320

SIMON FFITCH
OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL
900 4TH AVENUE STE 2000
SEATTLE WA 98164

EDWARD KIRSCH
SWIDLER BERLIN SHEREFF FRIEDMAN LLP
300 K STREET NW
STE 300
WASHINGTON DC 20007-5116

ANDREW M KLEIN
KELLEY DRYE & WARREN, LLP
1200 19TH STREET, NW
STE 500
WASHINGTON DC 20036

RICHARD A PITT
Representing Northwest Telephone, Inc.
12119 JACQUELINE DRIVE
P.O. BOX 667
BURLINGTON WA 98233

DATED at Seattle, Washington this 22nd day of November, 2004.



Carol Munnerlyn, Secretary