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December 30, 2004

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Ms. Carol J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
PO Box 47250  
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Olympia, WA 98504-7250

**Re: Docket No. UT-043013**

Dear Ms. Washburn:

By this letter, Verizon Northwest Inc. responds to the letter from Covad Communications Company dated November 22, 2004 (with the Exhibit A, filed on November 30, 2004). In that letter, Covad requests that the Commission immediately impose, "without further proceedings," two requirements arising from the FCC's *Triennial Review Order* ("TRO"). Specifically, Covad requests that the Commission require Verizon to immediately – apparently without amending existing interconnection agreements – permit competitive local exchange carriers ("CLECs") to (1) commingle unbundled network elements ("UNEs") and non-UNE wholesale services and (2) perform routine network modifications at the CLECs' request.

For several different reasons, Covad's request must be denied.

First, as a practical matter Covad's demand that these obligations be imposed immediately, without further proceedings, is not realistic. Verizon's interconnection agreements ("ICAs") do not contain rates, terms or conditions applicable to commingling or routine network modifications. Therefore, an amendment must be negotiated (and, if necessary, arbitrated) to establish such rates, terms and conditions. Verizon has, of course, proposed such an amendment ("Amendment 2") to Covad, which Covad could execute immediately, or which it could choose to negotiate in good faith. In fact, Covad and Verizon have been engaged in negotiations over Amendment 2, and Verizon believed that Covad wished to continue such negotiations.

Second, the requirements Covad seeks to impose are not mere clarifications to the law, such that no amendment is necessary. As to commingling, Covad is clearly wrong. See *TRO*, ¶ 579 ("We eliminate the commingling restriction that the Commission adopted as part of the temporary restraints in the *Supplemental Order Clarification* and applied to stand-alone loops

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and EELs. We therefore modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services . . .”). It is difficult to imagine how the FCC could have made more clear that it was eliminating existing restrictions and modifying existing rules when it enunciated its new requirements regarding commingling.

In addition, commingling is not available to Covad now, in any event. In its *Interim Order*, the FCC required incumbents to continue providing unbundled access to the switching, enterprise market loops, and dedicated transport under the same rates, terms, and conditions that applied under ICAs as of June 15, 2004.<sup>1</sup> Because commingling is a new obligation, there were no rates, terms, or conditions pertaining to commingling in Verizon’s ICAs as of June 15, 2004. Therefore, Covad cannot obtain commingling until the FCC’s “freeze” is lifted (as of the earlier of the effective date of the FCC’s final unbundling rules or six months from Federal Register publication of the *Interim Order*). *Id.*

As to routine network modifications, Covad also errs. The requirement to perform routine network modifications arising from the *TRO* is one which the FCC made clear that “we adopt today” – i.e., in the *Triennial Review Order*. *TRO*, paragraph 632. Moreover, the FCC had previously approved of Verizon’s policy regarding the type of provisioning activities that it would undertake to make UNEs available as consistent with the requirements of section 251(c)(3). See *Virginia 271 Order*,<sup>2</sup> 17 FCC Rcd at 21959, ¶ 144; *New Hampshire/Delaware 271 Order*,<sup>3</sup> 17 FCC Rcd 18724-26, ¶¶ 112-114; *New Jersey 271 Order*,<sup>4</sup> 17 FCC Rcd 12349-50, ¶ 151. Finally, while Verizon may previously have been required to engage in line conditioning, such as removing bridge taps and load coils, the *TRO* expanded the list of activities that Verizon is required to perform, including certain installation activities, modifications to interoffice

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<sup>1</sup> 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*”), ¶ 1.

<sup>2</sup> Memorandum Opinion and Order, *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, 17 FCC Rcd 21880 (2002) (“*Virginia 271 Order*”).

<sup>3</sup> Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, 17 FCC Rcd 18660 (2002) (“*New Hampshire/Delaware 271 Order*”).

<sup>4</sup> Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., et al., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, 17 FCC Rcd 12275 (2002) (“*New Jersey 271 Order*”).



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transport facilities, modifications to dark fiber facilities, and other activities. Again, as a practical matter, Verizon's ICAs contain no provisions dealing with these requirements, so Covad cannot obtain routine network modifications without an amendment.

Finally, Covad suggests that Verizon has made "systems modifications pursuant to the *TRO* without an amendment." (Covad Letter at 3.) Specifically, Covad claims that Verizon no longer provides any explanation for a "no facilities" rejection to a CLEC request; and that Verizon has begun implementing operations support systems ("OSS") interface changes pursuant to the *TRO*. Covad is trying to mislead the Commission with these claims, which are, in any event, irrelevant to its request for immediate implementation of commingling and routine network modifications without an amendment.

As Covad should know, changes to Verizon's OSS – including the routine network modification ordering system change Covad mentions – are made pursuant to the requirements set forth in the Change Management Guidelines that apply in all Verizon territory, *not* through contract amendments. Verizon makes OSS changes routinely, and there is no obligation anywhere for Verizon to amend its ICAs to proceed with them. It would obviously be infeasible to amend many hundreds of interconnection contracts before implementing changes in ordering systems, which continue to evolve along with routine changes in technology and CLEC needs.

Moreover, contrary to Covad's vague, unsupported allegation, Verizon has not changed its practices in the wake of the *TRO* to eliminate explanations for "no facilities" rejections. The changes discussed in the October 4, 2004, letter Covad references were simply intended to have automated the routine network modification ordering system that was already in place on a manual basis.

Finally, Covad has misrepresented the New York Commission decision it references in footnote 11. That decision did not forbid Verizon from making changes to its OSS and thus provides no basis for this Commission to "prohibit Verizon from making the same changes in Washington." (Covad letter, n. 11.) The primary issue in the New York case was the appropriate prioritization (or "typing") of a number of "Change Controls" to be implemented in this year's June and October OSS Releases. Although the Commission disagreed with Verizon's typing of certain of these Change Controls, it did not stop Verizon from proceeding with them. In fact, as to the Change Control related to routine network modifications, the Commission agreed with Verizon's categorization and this Change Control was included in the October Release.



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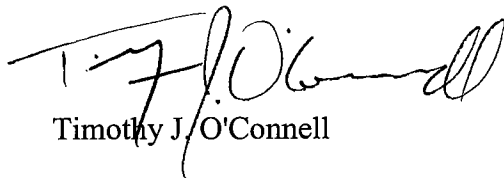
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As an alternative to immediate implementation of routine network modifications and commingling requirements without an amendment, Covad proposes that the Commission consider routine network modification and commingling obligations in the same proceeding as provisions implementing discontinuation of "delisted" UNEs. (Covad Letter at 1, 3.) In fact, Verizon proposed simultaneous briefing of all issues in the Florida list that the parties have been using to identify the issues to be resolved in this proceeding, including routine network modification and commingling issues. The arbitrator, however, directed parties to first brief issues that do not appear to be affected by the FCC's final unbundling rules. Verizon has thus recommended deferring issues relating to commingling (Florida Issues 12, 17(b) and 25) and routine network modifications (Florida Issues 17(d) and 22) (as well as a number of other issues) to later briefing, because the FCC's new rules indisputably address the high-capacity facilities associated with most routine network modifications and commingling requests. Nevertheless, Verizon stands ready to brief all issues on the Florida list if the parties and the arbitrator agree that is the better approach.

Verizon respectfully asks the Commission to disregard Covad's letter of November 22, 2004, and to promptly proceed with arbitration of amendments, where necessary, to implement the *TRO* rulings, as Verizon has been trying to do for the last 10 months.

Sincerely,

STOEL RIVES LLP



Timothy J. O'Connell

cc: Service List