

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

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

1 **SYNOPSIS:** *The Commission requires Verizon to make available to competitive local exchange companies in Washington State an interconnection agreement from another state.*

2 **NATURE OF PROCEEDING:** In this Order the Commission reviews the initial order requiring Verizon to make available an entire interconnection agreement as requested.

3 **INITIAL ORDER:** An initial order was entered on October 17, 2001, by Administrative Law Judge Lawrence J. Berg requiring Verizon to make an entire interconnection agreement requested by Focal available for adoption in the state of Washington.

4 **PETITION FOR REVIEW:** Verizon filed a petition for administrative review of the initial order on November 5, 2001. Focal filed an answer to the petition on November 16, 2001. Verizon filed a motion for leave to file a reply to the answer on December 3, 2001. Focal filed a supplemental statement of authority on February 28, 2002.

5 **COMMISSION:** The Commission affirms the initial order’s ruling 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.

6 **PARTIES AND REPRESENTATIVES:** Gregory J. Kopta, attorney, Seattle, represents Focal. Kimberly A. Newman, attorney, Washington D.C., represents Verizon.

I. BACKGROUND

7 Focal is a competitive telecommunications local exchange carrier, or CLEC. Verizon is an incumbent local exchange carrier, or ILEC. Under the Telecommunications Act of 1996, ILECs must open their networks for use by CLECs. This is implemented by parties' entering an agreement providing terms for the interconnection. The Initial Order would direct Verizon to allow Focal to opt-in to an existing interconnection agreement between GTE and Time-Warner from the state of North Carolina, pursuant to provisions of an order of the Federal Communications Commission allowing GTE to merge with Bell Atlantic to become Verizon. The initial order would grant the requested relief.

II. THE DISPUTE ON REVIEW OF THE INITIAL ORDER

8 Verizon petitioned for administrative review, challenging the findings and conclusions of the initial order. Verizon argues that the initial order erred in construing the FCC's *Merger Conditions*, that the FCC April 2001 Order on Remand² affirms that no provisions allowing reciprocal compensation for ISP-bound traffic can be imported pursuant to paragraph 32 of the merger conditions³, and that the initial

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 *In the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC docket 96-98, 99-68, Order on Remand and Report and Order, (FCC 01-131, Released April 27, 2001)(hereinafter, Order on Remand).

³ The portion of Paragraph 32 of the *Merger Conditions*³ at issue in this case says:

32. 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 USC §251 (c) and paragraph 39 of these conditions that was voluntarily negotiated by a Bell Atlantic incumbent LEC with a telecommunications carrier, pursuant to 47 USC §252 (a)(1), prior to the merger closing date and (2) in the GTE service area to any requesting telecommunications carrier any interconnection agreement subject to 47 USC §251 (c) that was voluntarily negotiated by a GTE incumbent LEC with a telecommunications carrier, pursuant to 47 USC §252(a)(1), prior to the merger closing date, provided that no interconnection arrangement or UNE from an agreement negotiated prior to the merger closing date in the Bell Atlantic area can be extended into the GTE service area and vice versa.

order should have delayed a decision in the instant case until the FCC issues a definitive interpretation of the *Merger Conditions* in that regard. Verizon contends that the initial order erred in not following the Commission's policy that interconnection agreements only become effective when approved by the Commission.

- 9 Focal answered Verizon's petition, arguing that the FCC's *Merger Order* and *Merger Conditions* allows Focal to adopt any interconnection arrangement, including an entire agreement, to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), if it was voluntarily negotiated prior to the merger anywhere in GTE's legacy service area.
- 10 Focal contends that the FCC opinion letter written December 22, 2000,⁴ confirms that the *Merger Conditions* require Verizon to make available to CLECs an entire agreement and that the opinion letter is valid and binding on Verizon. Focal claims that the FCC's Order on Remand has no effect on Focal's right to import the entire negotiated *GTE/Time Warner Agreement*. Finally, Focal agrees with the initial order's decision that the right to opt-in to the agreement as of the date of the FCC opinion letter is appropriate.
- 11 On November 30, 2001, Verizon filed a motion to leave to file a reply to the answer of Focal. Verizon reiterates therein that the December 22, 2000, opinion letter does not control the outcome of this proceeding; that Focal agreed to "bill and keep" compensation arrangements rather than reciprocal compensation in its prior interconnection agreement; and that the Order on Remand bars adoption of any reciprocal compensation terms from the *GTE/Time Warner Agreement*.
- 12 On March 2, 2002, Focal provided the parties with a copy of a FCC Memorandum Opinion and Order in *Global NAPs, Inc. v. Verizon Communications, Verizon New England, Inc. and Verizon Virginia, Inc. (Global)*, File No. EB-01-MD-010, released February 28, 2002. In this Memorandum Opinion and Order, the FCC essentially confirms the interpretation of paragraph 32 of the *Merger Conditions* contained in the initial order.

⁴ In the Initial Order, the FCC Common Carrier Bureau opinion letter is referred to as the December 27, 2000. Upon examination of that letter, attached to Focal's answer to Verizon's petition, it appears the date of the letter is December 22, 2000 and will be referred to hereinafter as the December 22, 2000 Opinion Letter. This corresponds to the date of the Opinion Letter referenced in the parties' pleadings.

III. THE INITIAL ORDER

- 13 The ALJ's initial order reviewed the language of paragraph 32 and found that the reference to section 251(c)⁵ does not limit a CLEC's opt-in rights under the MFN provisions of The *Merger Conditions*. Section 251(b)⁶ is incorporated explicitly into section 251(c). Thus, even if interconnection arrangements, UNEs, or interconnection agreements were negotiated in relation to items set forth in section 251(b), those arrangements would be subject to Most Favored Nation (MFN) status under Section 251(c) and paragraph 32. The ILEC would be required to offer such agreements to any requesting CLEC in the GTE-legacy service area.
- 14 The initial order further concluded that the plain meaning of the phrase "entire agreement" does not allow it to be circumscribed by the phrase "subject to 47 U.S.C. § 251(c)" as Verizon suggests. Verizon must make available the "entire agreement" not "the entire 251(c) agreement."
- 15 The initial order also found that a "qualifying interconnection arrangement" under paragraph 32 was one that was voluntarily negotiated within the relevant service area and not subject to other express limitations stated in that paragraph, such as an arbitrated arrangement or an agreement negotiated prior to the merger closing date.

IV. CHALLENGES TO THE INITIAL ORDER

- 16 Verizon claims that since the reciprocal compensation arrangements contained in the *GTE/Time Warner Agreement* are subject to section 251(b) of the Act, not section 251(c), they are not subject to MFN status, because paragraph 32 only provides MFN status for negotiated arrangements pertaining to the provisions of 251(c).

⁵ 47 U.S.C. § 251(c) addresses additional obligations of incumbent local exchange carriers (ILECs), providing that "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. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements." Section 251(c)(2) through (6) outline further duties of incumbent local exchange carriers (ILECs): to provide interconnection to requesting carriers at technically feasible points, to provide connections that are equal in quality to the ILEC's on rates terms and conditions that are just reasonable and nondiscriminatory; to offer telecommunications services for resale; to provide notice of changes in information necessary for transmission and routing of services; and, to provide physical or virtual collocation of equipment on rates terms and conditions that are just, reasonable and nondiscriminatory.

⁶ 47 U.S.C. § 251(b) addresses obligations of local exchange carriers (LECs or CLECs). Section 251(b)(5) sets forth the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Other duties contained in Section 251(b) include: not to prohibit or limit resale of its telecommunications services; to provide number portability; to provide dialing parity to CLECs; and to afford access to rights-of-way.

- 17 Verizon argues that paragraph 32 is part of the FCC’s “market-opening” conditions that address the merger of two ILECs. Thus the paragraph targets the 251(c) obligations imposed on ILECs. Since the obligations set forth in 251(a) and (b) relate to all companies, including CLECs, it is not necessary to require MFN status for those obligations, according to Verizon, because the potential harm to the market from the merger of two ILECs is not present.
- 18 Verizon asserts that the interpretation in the initial order renders the “subject to Section 251(c)” language surplusage in violation of the principle of contract interpretation that every word and phrase must be presumed to have meaning whenever possible. Similarly Verizon contends that the phrase “qualifying interconnection arrangements or UNEs” would also be rendered meaningless because according to the initial order every arrangement would qualify for MFN adoption.
- 19 Verizon argues that the history of the “subject to section 251(c)” language and its insertion into paragraph 32 demonstrates that it was intended to limit the scope of arrangements that would be subject to MFN status.
- 20 Verizon contends that the “in addition to” language in section 251(c) simply makes clear that ILECs have obligations in addition to those imposed upon LECs in section 251(b). It does not incorporate by reference the obligations of subsection (b) into subsection (c). It only creates a separate obligation. And because the initial order found only the obligations of subsection (b) are incorporated by reference into subsection (c), subsection (a) arrangements are not susceptible to MFN treatment. In Verizon’s view, while there is no public policy reason for imposing MFN requirements on subsection (b) obligations while exempting (a) obligations, there is a public policy reason for interpreting paragraph 32 to permit creation of subsection (c) obligations pertaining only to ILECs.
- 21 Verizon disputes that the December 22, 2000, FCC opinion letter controls the outcome of this proceeding.⁷ First, Verizon contends that 47 C.F.R. § 0.5(c) delegates authority to the FCC Common Carrier Bureau to act only in those matter that are minor, routine, or settled, or in those matters in which immediate action is required. The instant proceeding cannot be characterized as minor, routine, or settled.
- 22 Verizon further argues that the opinion letter is not an “action” within the meaning of 47 C.F. R. 0.5(c). Rather it is an informal opinion letter without an ordering clause. As such it would not be binding on anyone. According to Verizon, the FCC had intended the opinion letter to be binding it would have sought public comment as required under the Administrative Procedures Act (APA).

⁷ Attached as first exhibit to Focal’s Response to the Petition.

- 23 Finally, Verizon cites a New Jersey arbitrator's decision⁸ agreeing with Verizon's interpretation of paragraph 32. Verizon argues that since the New Jersey arbitrator's decision and the initial order in this proceeding bear such different interpretations of the *Merger Conditions*, the parties should wait until the FCC finally rules on the scope of the *Merger Conditions*.
- 24 Focal argues that a plain reading of the *Merger Conditions* leaves no doubt that all interconnection arrangements, including those associated with section 251(1)(b), as well as entire interconnection agreements, can be adopted under MFN status across state borders under the same rules that would apply to a request under section 252(i). Focal asserts that Verizon's interpretation of paragraph 32 has been rejected by the FCC in the December 2000 opinion letter. Furthermore, the FCC's Memorandum Opinion in the *Global* case disposes of all issues related to the proper interpretation of the *Merger Conditions*.
- 25 The Memorandum Opinion arises out of a complaint filed by Global NAPs, Inc. (Global) against Verizon Communications, Verizon New England, Inc., and Verizon Virginia, Inc. (collectively, Verizon) alleging that Verizon violated section 201(b) of the Act by refusing to honor Global's request to opt-in to certain provisions of an interconnection agreement eligible for adoption across state lines pursuant to the *Merger Conditions* established as a result of the Bell Atlantic/GTE merger.
- 26 Global is a telecommunications carrier offering interstate and intrastate telecommunications service in a number of states. Global and its affiliates have entered into interconnection agreements with Verizon to provide these services.
- 27 In 1998, Global negotiated an interconnection agreement with Bell Atlantic – Rhode Island that in part required Verizon to pay Global reciprocal compensation for the delivery of traffic from Verizon's network to Global's ISP customers until the FCC or a court determined that ISP-bound traffic was not local traffic or otherwise not compensable.
- 28 In February of 1999, the FCC ruled that ISP-bound traffic was interstate in nature and not subject to reciprocal compensation under section 251(b)(5) of the Act. But the FCC allowed state commissions to determine whether reciprocal compensation provisions of interconnection agreements applied to ISP-bound traffic would remain in effect pending adoption of a FCC rule establishing an appropriate interstate compensation methodology. The Rhode Island Public Utilities Commission subsequently entered an order requiring Bell Atlantic -Rhode Island to continue to pay reciprocal compensation to Global for this ISP-bound traffic.

⁸ See *Arbitrator's Interim Decision on Verizon's Most-Favored-Nation Obligations under Sec 251(i) and the Bell Atlantic/GTE Merger Conditions*, State of New Jersey Board of Public Utilities Docket No. TO01080498 (October 25, 2001) at Exhibit G to Verizon's Petition.

- 29 The FCC's February 1999 ruling was vacated by the courts and remanded to the FCC. In the April 27, 2001, Order on Remand, the FCC held that ISP-bound traffic constitutes "information access under section 251(g)⁹ of the Act and thus is excluded from the reciprocal compensation provision of section 251(b)(5)."¹⁰ The FCC established a compensation arrangement for the delivery of ISP-bound traffic but emphasized that the new compensation scheme applied only prospectively, as carriers renegotiated expired agreements. The FCC emphasized that this new scheme did not otherwise alter existing contractual obligations.¹¹
- 30 In July 2000, Global notified Verizon that it sought to adopt the Rhode Island agreement in Virginia and Massachusetts. Verizon agreed that all provisions of the Rhode Island agreement could be adopted in those two other states, except the provision for reciprocal compensation for ISP-bound traffic.
- 31 In April 2001, Global filed the complaint that resulted in the Memorandum Opinion. Faced with interpretation of paragraph 32 of the *Merger Conditions*, and specifically the question whether the paragraph's language that "provisions of an interconnection agreement (including an entire agreement) subject to 47 U.S.C. § 251(c)..." meant that an entire agreement, including provisions not subject to section 251(c), were subject to MFN treatment, the FCC stated: "Moreover, section 251(c) (1) states that an incumbent LEC must '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.'...The fact that the agreement included other provisions does not take it out of the ambit of section 251(c)."¹²
- 32 The FCC then found that the entire Rhode Island agreement was subject to section 251(c) as that phrase is used in paragraph 32 of the *Merger Conditions*, and that Global should be able to opt-in to the entire Rhode Island Agreement, making it eligible for adoption by Global in Virginia and Massachusetts.
- 33 In making this ruling the FCC specifically rejected Verizon's argument that the phrase "subject to 47 U.S.C. § 251(c)" limits the agreements it must make available by excluding from MFN status any provisions related to reciprocal compensation for

⁹ 47 U.S.C. § 251(g) provides that after the passage of the Telecom Act of 1996, each wire line local exchange carrier must provide exchange access, information access, and exchange services to interexchange carriers and information service providers on the same non-discriminatory basis (including provisions for receipt of reciprocal compensation) that applied to the carrier immediately preceding the enactment of the Act, whether that basis was established by court order, consent decree, or regulation, order or policy of the FCC, until such time as the FCC prescribes regulations governing provision of those services.

¹⁰ Order on Remand, 16 FCC Rcd 9151, 9154-56, ¶¶ 4-6.

¹¹ *Id.* At 9189, ¶ 82.

¹² Memorandum Opinion and Order at 6.

ISP-bound traffic, which is covered by section 251 (b) and not found in 251(c). The FCC reasoned that the “subject to 47 U.S.C. § 251(c)” phrase modifies “agreement,” rather than “provisions” in paragraph 32. Thus paragraph 32 allows carriers to opt-in to an agreement, or any provisions of an agreement, if the agreement is subject to section 251(c). The FCC concluded that the agreement was subject to 251(c).

34 The FCC termed Verizon’s interpretation “cramped”¹³ and capable of keeping competing carriers from ever being able opt-in to an entire agreement, because most agreements contain terms in addition to those listed in 47 U.S.C. § 251(c).

V. COMMISSION DISCUSSION AND DECISION

35 **A. INTRODUCTION:** We are persuaded that the initial order outlines the most reasonable and correct interpretation of paragraph 32 of the *Merger Conditions* and Therefore, Verizon must offer to Focal the entire *GTE/Time Warner Agreement* regardless of whether it contains terms related to reciprocal compensation for ISP-bound traffic governed by section 251(b) of the Act.

36 The appropriateness of the interpretation set forth in the initial order is confirmed by the FCC’s own interpretation of the *Merger Conditions*. The situation in this proceeding is completely analogous to that addressed in the Memorandum Opinion. Just as in the *Global* case, Focal seeks to opt-in to an entire agreement negotiated prior to the date of the merger and adopt it in another state that is part of the GTE service territory, under circumstances where Verizon has refused to offer the entire agreement because it contained a provision related to reciprocal compensation for ISP-bound traffic.

37 Also, the FCC in *Global* recognized that its interpretation of paragraph 32 of the *Merger Conditions* rendered the language “subject to 47 U.S.C. 251(c)” arguably superfluous but that nevertheless the overall interpretation “made more sense than that offered by Verizon.” *Global* at ¶ 18. The FCC rejects Verizon’s argument that the language in a similar provision of the *SBC/Ameritech Merger Order* provides insight into the correct interpretation of paragraph 32 in the GTE/Time Warner agreement. The FCC rests its determination only on the language of paragraph 32 itself and the comparison is considered inapposite. *Global* at fn. 37.

38 Furthermore, while we are persuaded the initial order’s analysis of the FCC’s December 22, 2000, Opinion Letter is correct, the Memorandum Opinion in *Global* dispels any doubt about the FCC’s interpretation of the *Merger Conditions* contained in that letter. Based on the FCC’s conclusive analysis, Verizon’s position in this proceeding must be rejected and Verizon must make available to Focal the entire GTE/Time Warner agreement.

¹³ *Id* at 7.

- 39 **B. EFFECT OF FCC’S ORDER ON REMAND:** The initial order found that the issue of whether Verizon is obligated to pay reciprocal compensation for ISP-bound traffic under the interconnection agreement is not ripe for decision in this case because no agreement between Focal and Verizon has yet been adopted or approved. Thus, the initial order found that it is premature to discuss the effect of the FCC’s Order on Remand because it primarily addresses the categorization of reciprocal compensation arrangements for ISP-bound traffic and whether such compensation provisions are capable of MFN treatment in interconnection agreements.
- 40 Verizon argues that if the time is ripe to construe paragraph 32’s MFN provisions then the time is also ripe to determine whether that paragraph allows adoption of arrangements governing ISP-bound traffic. Verizon points out that the FCC’s *Order on Remand* confirmed that ISP-bound traffic is not subject to the reciprocal compensation requirements of section 251(b)(5), but rather is “information access” traffic subject to section 251(g).
- 41 Focal responds that the Order on Remand establishes a prospective regime that does not disturb existing contracts or state decisions. Focal claims that it invoked its right to opt-in to the *GTE/Time Warner Agreement* on October 4, 2000, well before the effective date of the FCC Order on Remand. Focal is not asking the Commission to address the substantive issue of compensation for ISP-bound traffic on a prospective basis, but rather seeks only to enforce its opt-in right exercised prior to the FCC Order on Remand.
- 42 Verizon further argues that Focal’s prior agreement with Verizon expired on September 24, 2000. Even if it had not expired, it contained no provisions for compensation for ISP-bound traffic. Rather it provided a bill-and-keep system to deal with such traffic. Focal should not now be able suddenly to take advantage of a reciprocal compensation provision when it did not receive such compensation in its prior contract. Finally, Verizon claims that even if Focal had adopted the *GTE/Time Warner Agreement*, Focal would not be eligible to receive such compensation under that agreement because the Order on Remand “resolved” the ISP-bound traffic issue and required the agreement to be interpreted as precluding any reciprocal compensation for that traffic no matter when it was adopted.
- 43 *Discussion and Decision:* In the instant proceeding, Verizon has advanced no argument that overcomes the initial order’s conclusion that until it is determined whether the entire agreement can be adopted and an interconnection agreement between Verizon and Focal is deemed approved, it is premature to consider whether Focal is entitled to compensation for ISP-bound traffic under the Order on Remand.
- 44 **C. DELAYING A DECISION:** The initial order determined that it would serve the public interest to decide this case now rather than delaying until the FCC determines

whether the MFN *Merger Conditions* apply to provisions for reciprocal compensation for ISP-bound traffic and whether there are grounds to waive or modify the MFN conditions.

45 Verizon contends that waiting for a FCC decision on this issue will promote the public interest by ensuring against the possibility of inconsistent state and federal decisions. Verizon also suggests that based on the recent arbitration decision in New Jersey, the FCC is likely to agree with Verizon anyway. Finally, Verizon suggests there would be no harm to Focal if a decision in this case were delayed because Verizon and Focal have been exchanging traffic under a bill and keep arrangement since 1999.

46 Focal observes that the New Jersey arbitration decision is not binding on the Commission, and disputes Verizon's contentions that Focal agreed to bill-and-keep arrangements in the prior agreement with Verizon or that it would not be entitled to reciprocal compensation under the North Carolina agreement. Focal does not otherwise address this issue.

47 *Discussion and Decision:* We agree that the public interest is served by a timely decision in this case. There is no dispute that the Commission has the authority to decide the matter. More important, in answer to Verizon's arguments counseling a delay until the FCC issues a decision, we think the FCC has clearly and unequivocally addressed the interpretation of paragraph 32 of the *Merger Conditions* in the *Global* decision.

48 **D. EFFECTIVE DATE OF FOCAL'S REQUEST TO OPT-IN TO THE GTE/TIME WARNER AGREEMENT:** The initial order concluded that because the FCC opinion letter was written December 22, 2000, and Verizon failed to comply with it as required, the effective date for adoption of the *GTE/Time Warner Agreement* should be December 22, 2000. The initial order based this view on the flexible advisory nature of the Commission's Revised Interpretive and Policy Statement.¹⁴ That statement directs CLECs requesting adoption of interconnection agreements to submit them to the Commission for approval before they can become effective.

49 The initial order held that the approval requirement is not meant to lead to an unreasonable or unfair result when applied in a situation where egregious behavior of an ILEC has prevented a carrier from timely presenting an agreement for Commission adoption.

¹⁴ See *In the Matter of Implementation of Section 252(i) of the Telecommunication Act of 1996*, Docket No. UT-990355, Interpretive and Policy Statement (First Revision)(April 12, 2000)("Revised Interpretive and Policy Statement").

- 50 Verizon first objects that the FCC's opinion letter was an informal opinion that had no force and effect, rendering the December 22, 2000, date meaningless in terms of the adoption of the *GTE/Time Warner Agreement*. Second, Verizon claims that the initial order erred in ignoring the Commission's long-standing policy that agreements under the Act only become effective when they are approved.
- 51 Focal claims that enforcement of its opt-in right should revert back to October 4, 2000, when it requested the right to adopt the entire *GTE/Time Warner Agreement*. However, Focal appears to accept the initial order's conclusion that the date of the FCC's opinion letter would provide a reasonable alternative effective date for adoption of the agreement.
- 52 The Commission agrees in this instance that the public interest calls for our policy statement requiring prior Commission approval of interconnection agreements to be flexibly interpreted. A policy statement is not a rule and has no binding effect, but is a guide for affected persons of the Commission's current thoughts about an issue. *RCW 34.05.230*.¹⁵ The clear language of paragraph 32, as well as the clear signal from the FCC contained in the FCC's opinion letter, emphasizes the egregious conduct of Verizon in failing to offer Focal the entire *GTE/Time Warner Agreement* under MFN status. Focal had no opportunity to obtain Commission approval at the time its request should have been honored by Verizon. In the era of competition among telecommunications carriers, delaying tactics by an ILEC can cause material harm to a competitor. Focal's opt-in to the *GTE/Time Warner Agreement* should be deemed approved as of December 22, 2000.
- 53 **E. SUPPLEMENTAL TERMS FOR STATE SPECIFIC PRICES AND PERFORMANCE MEASURES:** Focal previously filed the entire *GTE South/Time Warner Agreement* as Exhibit C attached to its petition in this proceeding. In accordance with the terms of this order, Verizon must file a revised supplemental agreement whose only revisions are: (1) to state Washington-specific rates to replace North Carolina-specific rates that were originally made part of the *GTE South/Time Warner Agreement*; (2) to state any relevant Washington-specific performance measures; and (3) to change the names of, and contact information for, the parties, the Commission, and the state. The filing must be made no later than 10 days after this Order is entered.

¹⁵ The revised Interpretive and Policy Statement, at 3, says:

“The general purpose of the interpretive and policy statement is to establish guidelines for parties seeking to pick and choose pursuant to Section 252(i) of the Act... This interpretive and policy statement is not an order of the Commission, or is it binding on the Commission or parties... This interpretive and policy statement is not a rule. The Commission believes that a policy statement is more flexible than a rule... *Emphasis added.*”

VI. FINDINGS OF FACT

- 54 (1) 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.
- 55 (2) 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.
- 56 (3) 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*.
- 57 (4) 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.
- 58 (5) Focal filed a petition in this proceeding to enforce its rights under the *Bell Atlantic/GTE Merger Order*.
- 59 (6) The FCC Common Carrier Bureau entered a letter ruling on December 22, 2000, explaining that the *Bell Atlantic/GTE Merger Order*’s MFN provisions apply to entire interconnection agreements. That ruling has not been stayed.
- 60 (7) 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).
- 61 (8) Arrangements that comply with incumbent local exchange carrier duties under 47 U.S.C. § 251(b) and (c) constitute qualifying arrangements under paragraph 32 of the *Merger Conditions*.
- 62 (9) The Commission’s Revised Interpretive and Policy Statement implementing 47 U.S.C. § 252(i) states that 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).
- 63 (10) Interpretive and Policy Statements issued by the Commission are advisory only, and they do not carry the same weight as statutes or rules.

VII. CONCLUSIONS OF LAW:

- 64 (1) The Washington Utilities and Transportation Commission has jurisdiction
over the subject matter of this proceeding and all parties to this proceeding.
- 65 (2) Section 251(c) of the Telecommunications Act of 1996 incorporates the
provisions of 47 U.S.C. § 251(b).
- 66 (3) 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.
- 67 (4) 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.
- 68 (5) 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*.
- 69 (6) Verizon should make available in Washington State to Focal the entire *GTE
South/Time Warner Agreement*, except for state-specific rates and
performance measures.
- 70 (7) 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.
- 71 (8) 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.

VIII. ORDER

THE COMMISSION ORDERS That:

- 72 (1) 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 22, 2000.
- 73 (2) Verizon must file a revised Supplemental Agreement whose only revisions
are: (1) to state Washington-specific prices to replace North Carolina-specific
rates that were originally made part of the *GTE South/Time Warner*

Agreement; (2) to state any relevant Washington-specific performance measures; and (3) to change the names of, and contact information for, the parties, the Commission, and the state. The filing must be made no later than 10 days after this Order is entered.

- 74 (3) 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 _____ day of April, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).