BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

Petition of Verizon Northwest Inc.for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. UT-043013 **COMMENTS ON ISSUES TO BE ADDRESSED IN THIS PROCEEDING**

1. Verizon Northwest Inc. ("Verizon") files these comments in response to claims by various competitive local exchange carriers ("CLECs") that certain issues raised in Verizon's petition for arbitration and by its draft amendment should not be addressed in this proceeding. For the reasons explained below, there are no grounds for any of those issues to be excluded from this proceeding. On the contrary, the FCC has held that "it would be unreasonable and contrary to public policy" to take actions — such as those urged by the CLECs here — that could "preserve [the FCC's] prior rules for months or even years" because doing so would "have an adverse impact on investment and sustainable competition in the telecommunications industry." *Triennial Review Order* ¶¶ 703, 705.

2. Numerous CLECs assert that some or all of the issues raised in Verizon's petition should instead be addressed as part of Docket No. UT-011219, a three-year old proceeding to develop a Verizon model interconnection agreement. But the FCC made clear that carriers are to amend their *existing* agreements to reflect the FCC's new rules, and not merely to incorporate those rules into *future* agreements. Indeed, the FCC provided express "guidance . . . to ensure that parties make the necessary changes to their

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interconnection agreements in response to this Order in a timely manner." *Id.* ¶ 702. Indeed, whether or not an interconnection agreement contains a change of law provision, the FCC made clear that it expected state commissions "to resolve [any] dispute[s] over contract language at least within the nine-month timeframe envisioned for new contract arbitrations under section 252." *Id.* ¶ 704; *see id.* ¶ 703. And, as explained above, the FCC held that perpetuation of its prior, vacated UNE rules is contrary to public policy. For all of these reasons, it would be inappropriate to divert any of the issues raised in Verizon's petition to Docket No. UT-011219. If anything, the rulings in this proceeding should be incorporated into the model agreement developed in Docket No. UT-011219, so that new agreements will contain the same provisions with respect to the *Triennial Review Order* as existing agreements.

3. Nor does the possibility of future judicial decisions with respect to portions of the *Triennial Review Order* provide grounds for declining to address in this proceeding all or some of the issues raised in Verizon's petition. As an initial matter, nothing in the D.C. Circuit's decision in *USTA II* affected the process the FCC expected carriers to use to make appropriate changes to their interconnection agreements in response to the *Triennial Review Order*. In fact, no party challenged those portions of the FCC's decision. In addition, Verizon's draft amendment contains provisions that address possible future judicial decisions, including the possibility that the D.C. Circuit's decision vacating portions of the *Triennial Review Order* will not take effect on May 3, 2004, as scheduled. Although CLECs may disagree with Verizon's proposals, the proper course under the schedule the FCC established is for those disputes to be arbitrated here, rather than to postpone them until the *Triennial Review Order* has become final and non-

appealable. Indeed, the FCC expressly rejected CLECs' claims that proceedings to approve amendments to reflect its new rules should be delayed until all appeals of that order were complete. *See Triennial Review Order* ¶ 705.

4. Furthermore, numerous portions of the *Triennial Review Order* are unaffected by the D.C. Circuit's decision in *USTA II*. Those include, among others, the portions where the FCC:

- Determined that the broadband capabilities of hybrid copper-fiber loops and fiber-to-the-home facilities are not subject to unbundling.
- Eliminated the obligation to provide line sharing as a UNE and adopted transitional line-sharing rules.
- Eliminated unbundling requirements for OCn loops, OCn transport, entrance facilities, enterprise switching, and packet switching.
- Eliminated unbundling requirements for signaling networks and virtually all call-related databases, except when provisioned in conjunction with unbundled switching.
- Eliminated unbundled access to the feeder portion of the loop on a stand-alone basis.
- Found that the pricing and UNE combination rules in § 251 do not apply to portions of an incumbent's network that must be unbundled solely pursuant to § 271.

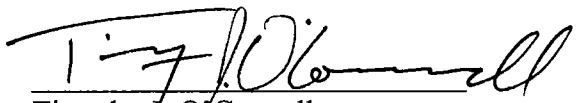
Although none of the issues presented by Verizon's petition and draft amendment should be excluded from this proceeding, that is especially true as to the draft amendment provisions that reflect these, and other, aspects of the *Triennial Review Order* that were upheld or never challenged.

5. Two other claims noted in Order No. 2, both of the Competitive Carriers Coalition ("CCC"), bear mention. First, Verizon has no "section 271 access and pricing obligations" in Washington. CCC Answer at 17. The requirements of § 271 only apply to Bell Operating Companies and Verizon Northwest Inc. is not a Bell Operating Company. *See* 47 U.S.C. §§ 153(4), 271(b)(1), (i)(1). Second, the FCC did not

"*clarif[y]* that Verizon must perform routine network modifications to provision UNE orders." CCC Answer at 17 (emphasis added). Instead, the FCC expressly recognized that it adopted a *new* rule regarding the obligation of incumbents to perform routine network modifications. *See Triennial Review Order* ¶ 632. The FCC did not imply, let alone hold, that its prior (vacated) rules had required incumbents to perform routine network modifications.

DATED: March 25, 2004.

Respectfully submitted,



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