

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

FOCAL COMMUNICATIONS)	
CORPORATION OF WASHINGTON,)	
)	
Petitioner,)	DOCKET NO. UT-013019
)	
v.)	
)	FOCAL’S MOTION TO STRIKE
VERIZON NORTHWEST, INC.,)	PORTIONS OF VERIZON
)	COMPLIANCE FILING
Respondent.)	
.....)	

Focal Communications Corporation of Washington (“Focal”) moves to strike portions of the filing made by Verizon Northwest, Inc. (“Verizon”), in ostensible compliance with the Commission’s Second Supplemental Order for failure to comply with that order.

DISCUSSION

Ordering paragraph 2 of the Commission’s order provides,

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whose *only* revisions are: (1) to state Washington-specific prices to replace North Carolina-specific rates that were originally made part of the *GTE South/Time Warner Agreement*; (2) to state any relevant Washington-specific performance measures; and (3) to change the names of, and contact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.

Second Supp. Order ¶ 73 (emphasis added). Verizon made a filing on or about April 12, 2002, pursuant to this ordering paragraph. The Supplemental Agreement included in Verizon’s filing, however, included the following term:

Reservation of Rights. Each Party reserves the right to update the Verizon North Carolina Terms to incorporate intervening changes in law to the extent permitted by the Verizon North Carolina

Terms and neither party waives its right to challenge the legality or enforceability of the Verizon North Carolina Terms as a result of intervening or subsequent changes in law.

Verizon Supplemental Agreement ¶ 4. Verizon also duplicates this language in the final recital (“Whereas”) paragraph. The Commission did not authorize additional language with respect to the change of law provisions contained in the GTE South/Time Warner Agreement (or “Verizon North Carolina Terms” as Verizon refers to it), and this additional language should be stricken from the Supplemental Agreement.

In addition to the Supplemental Agreement, and perhaps more egregious, Verizon also filed a letter from Jeffrey A. Masoner, Verizon Vice President, Interconnection Services Policy and Planning, Wholesale Marketing, to John Barnicle, Focal President and C.O.O. (“Masoner Letter”). The Masoner Letter requests that Focal accept additional terms and conditions not contained in the Verizon North Carolina Agreement. The Masoner Letter also sets forth Verizon’s musings on various matters, including a substantive interpretation of the GTE South/Time Warner Agreement.

The Second Supplemental Order did not authorize Verizon to include any such additional language. To the contrary, the Commission specifically rejected Verizon’s proposal to add or change *any* terms and conditions other than those the Commission (and the FCC) authorized Verizon to add or change. The Supplemental Agreement includes all changes the Commission authorized Verizon to make. Verizon’s inclusion of the Masoner Letter in its April 12, 2002 filing violates the express and unambiguous requirements of the Second Supplemental Order, and is simply the latest in a long line of actions by Verizon to evade a clear regulatory mandate.

REQUEST FOR RELIEF

WHEREFORE, Focal requests that the Commission grant the following relief:

- A. An order from the Commission:
 - 1. Striking the Masoner Letter from Verizon's April 12, 2002 filing;
 - 2. Striking paragraph 4 and corresponding language in the final recital paragraph from the Supplemental Agreement; and
 - 3. Otherwise approving the Supplemental Agreement; and
- B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

RESPECTFULLY SUBMITTED this 18th day of April, 2002.

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