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April 30, 2004

TIMOTHY J. O'CONNELL  
Direct (206) 386-7562  
tjoconnell@stoel.com

**VIA FACSIMILE AND U.S. MAIL**

Ms. Carole Washburn, Executive Secretary  
Washington Utilities & Transportation Committee  
1300 Evergreen Park Drive, SW  
Olympia, WA 98504

**Re: *Docket No. UT-043013 –  
Vilaire's Request for Adoption of Interconnection Agreement***

Dear Ms. Washburn:

In a letter to you dated April 22, 2004, VCI Company ("Vilaire") requested Commission approval of an interconnection agreement between Vilaire and Verizon Northwest Inc. ("Verizon"). Specifically, Vilaire seeks to adopt the existing interconnection agreement between Tel West Communications, LLC and Verizon that was approved in Docket No. UT-990305.

Verizon objects to Vilaire's adoption of this agreement. Vilaire failed to explain in its April 22 letter that Verizon would not agree to the adoption unless Vilaire agrees that such an adoption does *not* include any provision imposing an unbundling obligation on Verizon that no longer applies because of the FCC's Triennial Review Order.<sup>1</sup> Verizon's position is explained in paragraph 1(B) of its April 5, 2004 letter to Vilaire. A copy of this letter is attached.

Verizon's position is fully consistent with the FCC's rules governing adoption of interconnection agreements. For example, under FCC Rule 51.809(c), network element arrangements must be made available for adoption "for a reasonable period of time" after an agreement is approved. Here, some of the network element arrangements included in the Tel West-Verizon agreement are no longer required by the TRO, and thus the "reasonable time" for adopting them has passed.

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<sup>1</sup> Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order").

Oregon  
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In short, the Commission should not approve Vilaire's adoption. The parties must execute an adoption letter so that they are contractually bound to the terms of the adoption – Vilaire cannot unilaterally adopt the agreement. Also, Verizon's paragraph 1(B) is appropriate because any "reasonable time" for adopting UNE provisions imposing obligations beyond those required by the TRO expired upon the effective date of the TRO.

Sincerely,

Timothy J. O'Connell

Enclosures

cc: Parties of Record

John C. Peterson, Director  
Contract Performance and Administration  
Wholesale Markets



**Wholesale Markets**  
600 Hidden Ridge, HQE03D52  
P.O. Box 152092  
Irving, TX 75038

Phone 972-718-5988  
Fax 972-719-1519  
john.c.peterson@verizon.com

April 5, 2004

Mr. Stan Efferding  
President  
VCI Company  
3875 Steilacoom Blvd. SW #A  
Lakewood, WA 98499

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Efferding:

Verizon Northwest Inc. ("Verizon"), a Washington corporation, with principal place of business at 1800 41<sup>st</sup> Street, Everett, Washington 98201, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), VCI Company ("VCI"), a Washington corporation, with principal place of business at 3875 Steilacoom Blvd. SW #A, Lakewood, Washington 98499, wishes to adopt the terms of the Interconnection Agreement between Tel West Communications, LLC ("Tel West") and Verizon that was approved by the Washington Utilities & Transportation Commission (the "Commission") as an effective agreement in the State of Washington, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand VCI has a copy of the Terms. Please note the following with respect to VCI's adoption of the Terms.

1. By VCI's countersignature on this letter, VCI hereby represents and agrees to the following five points:
  - (A) VCI adopts (and agrees to be bound by) the Terms of the Tel West/Verizon agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that VCI shall be substituted in place of Tel West Communications, LLC and Tel West in the Terms wherever appropriate.

(B) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), or that is otherwise not required by both 47 U.S.C. Section 251(c)(3) and 47 C.F.R. Part 51. Moreover, Verizon, on February 26, 2004, filed a petition at the Washington Utilities & Transportation Commission to arbitrate amendments to interconnection agreements (including the Terms) with respect to the Triennial Review Order ("TRO Arbitration"). Once the Commission issues an effective order approving an amendment with respect to the Triennial Review Order in the TRO Arbitration (an "Approved Amendment"): 1) the terms of such Approved Amendment shall be deemed to amend this adoption effective on the effective date of such Commission order, 2) VCI agrees to be bound by the terms of such Approved Amendment effective on the effective date of such Commission order, and 3) Verizon and VCI shall execute an amendment to this adoption to memorialize that this adoption is amended by the terms of such Approved Amendment effective on the effective date of such Commission order; provided, however, failure by either party to do so shall not be cited as a basis for contesting the effectiveness of the provisions in 1) and 2) above.

(C) Notice to VCI and Verizon as may be required under the Terms shall be provided as follows:

To: VCI Company  
Attention: Stan Efferding  
3875 Steilacoom Blvd. SW #A  
Lakewood, WA 98499  
Telephone Number: 206-419-5948  
Facsimile Number: 253-475-6328  
Internet Address: vilarie@comcast.net

To Verizon:

Director-Contract Performance & Administration  
Verizon Wholesale Markets  
600 Hidden Ridge  
HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972-718-5988  
Facsimile Number: 972-719-1519  
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel  
Verizon Wholesale Markets  
1515 N. Court House Road  
Suite 500  
Arlington, VA 22201  
Facsimile: 703-351-3664

- (D) VCI represents and warrants that it is a certified provider of local telecommunications service in the State of Washington, and that its adoption of the Terms will cover services in the State of Washington only.
  - (E) In the event an interconnection agreement between Verizon and VCI is currently in effect in the State of Washington (the "Original ICA"), this adoption shall be an amendment and restatement of the operating terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.
  - (F) Verizon's standard pricing schedule for interconnection agreements in the State of Washington (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to VCI's adoption of the Terms. VCI should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.
2. VCI's adoption of the Tel West Terms shall become effective on April 19, 2004. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by an authorized officer of VCI. The term and termination provisions of the Tel West/Verizon agreement shall govern VCI's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on January 14, 2005.
  3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does

not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of VCI's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny VCI's adoption and/or application of the Terms, in whole or in part, at any time:
  - (a) when the costs of providing the Terms to VCI are greater than the costs of providing them to Tel West;
  - (b) if the provision of the Terms to VCI is not technically feasible; and/or
  - (c) to the extent that Verizon otherwise is not required to make the Terms available to VCI under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.<sup>1</sup> Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.<sup>2</sup> Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.<sup>3</sup> In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection

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<sup>1</sup> Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, remanded, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. See *WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

<sup>2</sup> For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL [www.verizon.com/wise](http://www.verizon.com/wise) (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

<sup>3</sup> See, e.g., 47 C.F.R. Section 51.809(c).

agreement to the extent that such provisions provide compensation for Internet traffic.<sup>4</sup>

7. Should VCI attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.
8. In the event that a voluntary or involuntary petition has been or is in the future filed against VCI under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and VCI's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of VCI resulting from VCI's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

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<sup>4</sup> *FCC Internet Order* ¶ 82.

**SIGNATURE PAGE**

Please arrange for a duly authorized representative of VCI to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON NORTHWEST INC.

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John C. Peterson, Director  
Contract Performance and Administration  
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D, E and F of paragraph 1:

VCI COMPANY

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(SIGNATURE)

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(PRINT NAME)

c: M. Miller – Verizon