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April 12, 2002

Mr. John Barnicle  
President and C.O.O.  
Focal Communications Corporation of Washington  
200 N. LaSalle Street, Suite 1100  
Chicago, IL 60601

Re: Requested Adoption Under the FCC Merger Conditions

Dear Mr. Barnicle:

Verizon Northwest Inc., f/k/a GTE Northwest Incorporated ("Verizon"), has received your letter stating that, pursuant to paragraph 32 of the BA/GTE Merger Conditions ("Merger Conditions"), released by the FCC on June 16, 2000 in CC Docket No. 98-184, Focal Communications Corporation of Washington ("Focal") wishes to provide services to customers in Verizon's service territory in the State of Washington by adopting the voluntarily negotiated terms of the Interconnection Agreement between Time Warner Telecom ("Time Warner") and Verizon South Inc., f/k/a GTE South Incorporated ("Verizon North Carolina") that was approved by the North Carolina Utilities Commission as an effective agreement in the State of North Carolina, after giving effect to operation of law (the "Verizon North Carolina Terms"). In addition, as required by Section VIII of the Second Supplemental Order ("Supplemental Order"), released by the Washington Utilities and Transportation Commission (the "Commission") on April 4, 2002 in Docket No. UT-013019, the adoption shall be effective as of December 22, 2000.

I understand that Focal has a copy of the Verizon North Carolina Terms which, in any case, are attached hereto as Appendix 1. Please note the following with respect to Focal's adoption of the Verizon North Carolina Terms.

1. By Focal's countersignature on this letter, Focal hereby represents and agrees to the following three points:

- (A) Focal agrees to be bound by and adopts in the service territory of Verizon, the Verizon North Carolina Terms, after giving effect to operation of law, and in applying the Verizon North Carolina Terms, agrees that Focal shall be substituted in place of Time Warner Telecom and Time Warner in the Verizon North Carolina Terms wherever appropriate.
- (B) Notice to Focal and Verizon as may be required or permitted under the Verizon North Carolina Terms shall be provided as follows:

To Focal:

Attention: General Counsel  
200 N. LaSalle Street, Suite 1100  
Chicago, IL 60601  
Telephone Number: 312/895-8400  
Facsimile Number: 312/895-8403

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](mailto:wmnotices@verizon.com)

with a copy to:

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

- (C) Focal represents and warrants that it is a certified provider of local telecommunications service in the State of Washington, and that its adoption of the Verizon North Carolina Terms will only cover services in the service territory of Verizon in the State of Washington.
2. Pursuant to Section VIII of the Supplemental Order, Focal's adoption of the Verizon North Carolina Terms shall become effective as of December 22, 2000. Verizon shall file this adoption letter with the Commission with the Supplemental Agreement required by Section VIII(2) of the Supplemental Order. The term and termination provisions of the Time Warner/Verizon North Carolina agreement

shall govern Focal's adoption of the Verizon North Carolina Terms. Focal's adoption of the Verizon North Carolina Terms is currently scheduled to expire on May 11, 2002.

3. As the Verizon North Carolina Terms are being adopted by Focal pursuant to the Merger Conditions and the Supplemental Order, Verizon does not provide the Verizon North Carolina Terms to Focal as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Verizon North Carolina Terms does not in any way constitute a waiver by Verizon of any position as to the Verizon North Carolina Terms or a portion thereof. Nor does it constitute a waiver by Verizon of any rights and remedies it may have to seek review of the Verizon North Carolina Terms, or to seek review of any provisions included in these Verizon North Carolina Terms as a result of Focal's election pursuant to the Merger Conditions.
4. For avoidance of doubt, please note that adoption of the Verizon North Carolina 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 Remand 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, compensation for Internet traffic – if any – is governed by the terms of the *FCC Remand Order*, not pursuant to adoption of the Verizon North Carolina Terms.<sup>2</sup> Moreover, in light of the *FCC Remand Order*, even if the Verizon North Carolina 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 Remand Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet Traffic.<sup>4</sup>
5. Focal's adoption of the Verizon North Carolina Terms pursuant to the Merger Conditions is subject to all of the provisions of such Merger Conditions. Please

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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.

<sup>2</sup> For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Remand 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, Resources, Industry Letters, CLEC).

<sup>3</sup> See, e.g., 47 C.F.R. Section 51.809(c). These rules implementing section 252(i) of the Act apply to interstate adoptions under the Merger Conditions as well. See, e.g., Merger Conditions ¶ 32 (such adoptions shall be made available "under the same rules that would apply to a request under 47 U.S.C. Section 252(i)").

<sup>4</sup> *FCC Remand Order* ¶ 82.

note that the Merger Conditions exclude the following provisions from the interstate adoption requirements: state-specific pricing, state-specific performance measures, provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252 and provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1). Verizon, however, does not oppose Focal's adoption of the Verizon North Carolina Terms at this time, subject to the following reservations and exclusions:

- (A) Verizon's standard pricing schedule for interconnection agreements in Washington (as such schedule may be amended from time to time), which includes (without limitation) rates for reciprocal compensation, shall apply to Focal's adoption of the Verizon North Carolina Terms. Focal should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Verizon North Carolina Terms or that are otherwise not part of this adoption. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights under the Merger Conditions.
- (B) Focal's adoption of the Verizon North Carolina Terms shall not obligate Verizon to provide any interconnection arrangement or unbundled network element unless it is feasible to provide given the technical, network and Operations Support Systems attributes and limitations in, and is consistent with the laws and regulatory requirements of the State of Washington and with applicable collective bargaining agreements.
- (C) On January 25, 1999, the Supreme Court of the United States issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. The Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Verizon North Carolina Terms may be void or unenforceable as a result of the Supreme Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' decision in Docket No. 96-3321 regarding the FCC's pricing rules, and the current appeal before the Supreme Court of the United States regarding the FCC's UNE rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Verizon North Carolina 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 Verizon North Carolina Terms.

- (D) Terms, conditions and prices contained in tariffs cited in the Verizon North Carolina Terms shall not be considered negotiated and are excluded from Focal's adoption.
  - (E) Focal's adoption does not include any terms that were arbitrated in the Verizon North Carolina Terms.
6. Verizon reserves the right to deny Focal's adoption and/or application of the Verizon North Carolina Terms, in whole or in part, at any time:
- (A) when the costs of providing the Verizon North Carolina Terms to Focal are greater than the costs of providing them to Time Warner;
  - (B) if the provision of the Verizon North Carolina Terms to Focal is not technically feasible;
  - (C) if Verizon otherwise is not obligated to permit such adoption and/or application under the Merger Conditions or under applicable law.
7. Should Focal attempt to apply the Verizon North Carolina Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

In the event that a voluntary or involuntary petition has been or is in the future filed against Focal 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 Focal's adoption of the Verizon North Carolina Terms shall in no way impair such rights of Verizon; and (ii) all rights of Focal resulting from Focal's adoption of the Verizon North Carolina 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.

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

Sincerely,

VERIZON NORTHWEST INC.



Jeffrey A. Masoner  
Vice President - Interconnection Services Policy & Planning

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

FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Attachment

c: Sherri D. Sebring - Verizon (w/out attachments)