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November 18, 2005

By E-Mail and Federal Express

Ms. Carole J. Washburn  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504

Re: Commission Investigation Into Competition, Docket No. UT-053025

Dear Ms. Washburn:

**March 11, 2006**, less than four months from now, is the default date established in the Federal Communications Commission's ("FCC's") Triennial Review Remand Order ("TRRO")<sup>1</sup> on which high capacity (DS1 and DS3) loops and transport will no longer be available as unbundled network elements ("UNEs") in multiple wire centers in Washington. **September 11, 2006**, less than ten months from now, is the FCC's default date on which dark fiber loops will no longer be available at all and the availability of dark fiber transport will be severely limited.

Covad Communications Company, Integra Telecom of Washington, Inc, Time Warner Telecom of Washington, LLC, and XO Communications Services, Inc. (collectively "Joint CLECs") provide the following comments and recommendations on the procedures and scope of the above-referenced docket. The Joint CLECs recommend that, at a minimum, the Commission conduct an adjudicative proceeding to determine how implementation of the TRRO will affect local exchange competition and to mitigate that impact and further encourage the development of effective local exchange competition.

The Commission initiated this docket earlier this year in response to the Joint CLECs' and others' concerns about the impact of the TRRO on local competition in Washington. Those concerns have only increased with the passage of time. The Joint CLECs are facilities-based

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<sup>1</sup> *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 & CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005).

providers of telecommunications services in Washington. They each have constructed their own networks, but they also must obtain high capacity facilities from Qwest Corporation ("Qwest") and Verizon Northwest Inc. ("Verizon") to be able to provide service to many of the Joint CLECs' customers. No competitive local exchange carrier ("CLEC") could hope to duplicate the network that Qwest and Verizon have built over decades as monopoly providers with virtually guaranteed rates of return. Nor do CLECs enjoy Qwest's and Verizon's unfettered access to virtually every building, if not every building, within their service territories. There are, and likely always will be, a very large number of customer locations to which Qwest or Verizon alone has constructed facilities. CLECs would be severely limited in their ability to offer competitive service if they could not have reasonable access to such facilities.

Implementation of the TRRO threatens just that. CLECs' only potentially viable alternative to high capacity UNEs is Qwest or Verizon special access services, but the rates for those services are far in excess of the cost-based UNE rates that the Commission has established. The monthly recurring rate for a Qwest unbundled DS1 loop in Seattle, for example, is \$68.86. The month-to-month rate for the equivalent DS1 channel termination out of Qwest's interstate tariff is \$165, more than *double* the UNE rate. Qwest's special access rates, moreover, have continued to rise. Qwest has increased its interstate rates three times in the less than three years since it obtained pricing flexibility from the FCC, effectively demonstrating that CLECs have no real alternatives to using these Qwest services.

No one other than Qwest and Verizon know the number of high capacity circuits that will no longer be available once the provisions of the TRRO take effect. By way of example, however, if 1,000 Qwest DS1 UNE loops are required to be converted to special access services in the next six months, CLECs currently paying \$68,860 for those circuits would face a rate increase of up to *\$100,000 per month* in high capacity loop costs alone. No party could seriously contend that such an enormous rate increase will not have a significant negative impact on end user customers obtaining services from CLECs that rely on those facilities. And the Commission and Washington consumers should not suddenly discover the full brunt of that impact when it happens on March 11, 2006.

Qwest nevertheless recommends that the Commission make a broad-based inquiry into the state of competition in Washington covering a wide array of services and service providers, many of whom are not subject to Commission jurisdiction. Even Qwest would have to concede, however, that such an inquiry would take many months and would not conclude until long after the TRRO is scheduled to be implemented and its negative impacts made manifest. The purpose of this docket is not, and should not be, to perform a *post mortem* on the demise of local exchange competition in the wake of the TRRO. Accordingly, any comprehensive investigation should be undertaken only *after* the Commission either (a) mitigates the impact of the TRRO, or (b) takes reasonable steps to ensure that at least the existing level of competition continues until the Commission can complete its investigation.

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The Joint CLECs, therefore, recommend that the Commission take the following action in this docket as soon as practicable:

- Issue an order preventing Qwest from unilaterally imposing the requirements of the TRRO on any CLEC until the parties amend their interconnection agreement to incorporate those requirements;
- Establish an initial adjudicative phase of this docket dedicated to determining the accuracy of Qwest's and Verizon's wire center designations pursuant to the TRRO, the impact of the unavailability of high capacity UNEs in properly designated wire centers, and appropriate measures to mitigate that impact;
- Assign an administrative law judge to oversee this initial adjudicative phase and to schedule a prehearing conference at the earliest opportunity to establish a schedule that would enable the Commission to make a determination prior to March 11, 2005; and
- To the extent such a schedule cannot be established, to issue an order requiring Qwest and Verizon to continue to provide CLECs with high capacity circuits in all wire centers as intrastate special access services at the Commission-established UNE rates until such time as the Commission makes its determination.

Very truly yours,

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