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May 15, 2000

Ms. Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Subject: Docket No. UT-990582/ Collocation Rulemaking
Supplemental Comments of MGC Communications, Inc.

Dear Ms. Washburn:

MGC Communications, Inc. dba Mpower Communications Corp. ("Mpower")[1] is submitting its supplemental comments in the above-referenced docket to urge the Washington Utilities and Transportation Commission ("Commission") to adopt the definition of equipment as currently proposed in the draft rules. This definition of equipment is consistent with Washington telecommunications laws and policies and will result in the modern, efficient telecommunications systems that will foster competition in the telecommunications industry and will drive down costs to consumers for advanced services.

As the Commission is aware, the federal collocation rule on which the definition of equipment is based was vacated. *See* GTE Service Corp. v. Federal Communications Commission, 205 F.3d 416 (D.C. Cir. 2000). However, the Telecommunications Act of 1996 (the "Act") does not preclude a state from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition as long as the regulations are not inconsistent with the Act or the FCC's regulations to implement the Act. 47 U.S.C. § 261(c). In the recent decision in which the Ninth Circuit upheld the Commission's decision to require U S WEST to permit the collocation of MCI's remote switching units because they are useful for interconnection, the Ninth Circuit stated that while the Act may not require such a provision, the Act does not proscribe such a provision. MCI Telecommunications Corp. v. U S WEST Communications, 204 F.3d 1262, 1269 (9th Cir. 2000). Thus, in the interest of achieving

[1] Mpower is a competitive local exchange carrier ("CLEC"), which provides DSL services.

competition in the local exchange market, the Commission may implement a definition that permits collocation of equipment that is used or useful in interconnection.

The Commission's proposed definition is more consistent with Washington's competitive telecommunications law. First, Washington law provides that it is the policy of the state to (i) maintain and advance the efficiency and availability of telecommunications service; (ii) ensure that customers pay only reasonable charges for telecommunications service and (iii) promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state. RCW 80.36.300 (emphasis added). Second, the Commission is authorized to regulate in the public interest the rates, services, facilities and practices of public utilities, including telecommunications companies. RCW 80.36.080. Third, under RCW 80.36.080, the Commission is given broad powers to regulate the rates, tolls, contracts and charges, rules and regulations of telecommunications companies for services rendered and equipment and facilities supplied to ensure that they are just, fair and reasonable and that the appliances, instrumentalities and service of a telecommunications company shall be "modern, adequate, sufficient, and efficient."

Washington telecommunications law emphasizes efficient telecommunications systems, and the Commission has been granted the authority to adopt a definition of "equipment" that would allow the efficient collocation of all types of telecommunications equipment. The Commission's current definition of equipment permits CLECs to collocate newer multifunctional equipment that may have capabilities in addition to access, which results in greater efficiency and ultimately smaller space requirements in the central office of the incumbent local exchange carrier ("ILEC").

The Commission should be mindful that telecommunications equipment is systematically and rapidly becoming smaller and more efficient, particularly as software is used in place of hardware to provide features and functionality. Consequently, the traditional classification of equipment in terms of access, transmission and switching has become less meaningful. The emerging equipment is increasingly multifunctional, incorporating all three functions of access, transmission and switching. With this efficient equipment, it is difficult, if not impossible, to remove the switching function and provide it at another physical location.

Mpower is interested in collocating its Lucent Pathstar Access Server. The Pathstar is a complete end office switch, an access device capable of more space efficiency than other equipment, and a transmission device in that it provides multiplexing to the DS3 and ATM levels. In its basic configuration, the Pathstar occupies only one standard seven-foot rack, about

the size of a large filing cabinet.

In jurisdictions which permit collocation of equipment with no more than access functionality, Mpower has collocated the Northern Telecom Access Node Digital Loop Carrier to provide interconnection to unbundled loops. The Access node provides termination for 668 loops, multiplexes the lines onto T1 carriers, and provides the functions of line concentration under the GR-303 standard (fewer transmission paths are required than lines connected, reflecting the fact that not all telephones are in use at one time). The Access Node occupies the same amount of space as the Pathstar.

The Pathstar, which has capabilities beyond interconnection, can provide access for 1024 unbundled loops. Thus, it is more efficient than the Access Node because less space is required to achieve the same outcome. Yet, ILECs oppose its use because it also functions as a switch and argue that it is not equipment which is necessary for collocation. Mpower believes that the real reason for this opposition is a desire by the ILECs to limit the economic efficiency of CLECs. If Mpower cannot use the Pathstar, it would have to haul all traffic out of the central office to an off-site switch location and then haul it all the way back if the traffic is destined for the same office. Certainly, this cannot be justified based on space constraints when the Pathstar does not take up any more space than the purely access-function equipment.

Washington law requires the Commission to take into consideration the efficiency of networks when promulgating a rule on collocation equipment. Thus, a definition of equipment that would allow all equipment which is used or useful for interconnection would ensure that CLECs can use modern multifunctional equipment that permits greater network efficiency and ultimately benefits the public with greater competition and lower costs to consumers. Therefore, the Commission should adopt the definition of equipment as currently proposed in the draft rules.

Very truly yours,

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