

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	Docket No. UT-040788
	)	
Complainant,	)	MOTION FOR LEAVE TO FILE
	)	RESPONSE TO PUBLIC COUNSEL'S
v.	)	ANSWER TO VERIZON MOTION TO
	)	CLARIFY ORDER NO. 15
VERIZON NORTHWEST INC.,	)	
	)	
Respondent.	)	
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**I.**

This Motion for Leave to File Response to Public Counsel’s Answer to Verizon Motion to Clarify Order No. 15 is brought by Verizon Northwest Inc. (“Verizon”) pursuant to WAC 480-07-375.

**II. RELIEF SOUGHT**

Verizon requests leave to file the attached response to Public Counsel’s Answer to Verizon Motion to Clarify Order No. 15 (“Answer”). The Commission’s April 18, 2005 Notice called for answers to Verizon’s Motion for Clarification and did not address a reply. Allowing the moving party the opportunity to respond to pleadings that oppose its motion is consistent with Commission practice and the Washington Superior Court rules for civil proceedings and fundamental concepts of due process.<sup>1</sup> Because of the significant financial and public policy

<sup>1</sup> WAC 480-07-375(2); See, i.e. King County Superior Court Rule 7(b)(3)(D).

issues raised by Public Counsel's Answer, Verizon requests the opportunity to respond. Verizon's response will also assist the Commission in its resolution of the Motion for Clarification. Therefore, it respectfully requests permission to file the attached Response.

DATED this 26<sup>th</sup> day of April, 2005.

GRAHAM & DUNN PC

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) ANSWER TO VERIZON MOTION TO  
) CLARIFY ORDER NO. 15

**I. INTRODUCTION**

Verizon Northwest Inc. ("Verizon") hereby responds to the Office of Public Counsel's ("Public Counsel") Answer To Verizon Motion to Clarify Order No. 15 ("Answer"). Public Counsel's Answer should be rejected because it is inconsistent with the Settlement Agreement in two key respects. First, it supports a revenue requirement other than what Public Counsel agreed to. Second, it opposes a revenue neutral outcome for the Company for the Commission's decision to sunset late payment charges as of December 31, 2007. Such an outcome was a key component of the Settlement Agreement. It also recommends no viable procedural alternative that would be consistent with the Settlement Agreement.

Public Counsel's Answer promotes an unsupportable public policy that would jeopardize future settlements in other cases, and violates fundamental concepts of due process. If Public

Counsel's view was accepted, the Commissions could order that all the rate increases agreed to in the settlement must expire one minute after the end of the stay-out period, putting the company back in the position it was before it filed its rate case. No rational utility would ever agree to settle a rate case if it faced such a risk. Indeed, Verizon agreed to the settlement to avoid such uncertainty.<sup>1</sup> Both Commission Staff and WebTech reasonably supported Verizon's request for clarification of Order No. 15, as these parties recognized that an \$ 8 million rate reduction would not be consistent with the agreed-upon revenue requirement or rate design.<sup>2</sup> The Staff Response notes that Verizon has "legitimate concerns" regarding the possibility that a substantial portion of the revenue requirement is at risk and Verizon is "being reasonable" in suggesting that any change on the Late Payment Charge be done on a revenue neutral basis. (Staff Response ¶ 5). Public Counsel's Answer is not reasonable and provides no useful guidance that would preserve the intent and purpose of the Settlement Agreement, unlike Verizon's proposal, which is the clearest and cleanest way to handle any issues surrounding late payment charges.

## II. BACKGROUND

On April 18, 2005, Verizon filed its Motion for Clarification regarding Order No. 15, which approved the unanimous settlement agreement resolving Verizon's general rate case and found a \$38.65 million revenue requirement to be just and reasonable. The motion for clarification addressed the Commission's imposition of an additional condition that would eliminate the \$8 million revenue stream provided by consumer and business late payment charges by requiring these charges to expire on December 31, 2007, and under the timeline contained in the order, would at a minimum create a period of time where the revenue

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<sup>1</sup> See ¶ 42 of Narrative Supporting Settlement Agreement.

<sup>2</sup> Revenues from the late payment charge were an important part of the overall agreed-upon rate design as a means of providing necessary revenues while minimizing pressure on basic rates. Elimination of these rates would cause a significant hole in the rate design, unless offset by increases elsewhere.

requirement would be reduced by \$8 million. (Order No. 15 ¶¶ 26, 64). This is a new condition that was not contained in the Settlement Agreement and as noted in Staff's response, constitutes 22% of the very rates found to be just and reasonable by the Commission. (Staff Response ¶ 4). The Commission may not have realized that its action, in effect, reduced the approved revenue requirement by \$8 million from Day One of the settlement period. Requiring an automatic sunset for the late payment charge would deprive Verizon of the process it is due by concluding in advance that a rate was unreasonable with no record support and without providing Verizon with the opportunity to be heard prior to depriving the Company of this revenue stream.<sup>3</sup> Because Verizon believed that the Commission did not intend these consequences, Verizon sought clarification. Verizon sought clarification that the revenue reduction "gap" that will occur as of December 31, 2007 was not the Commission's intent and requested the Commission to clarify the order in such a manner as to eliminate the gap.

On April 22, 2005, Public Counsel filed its Answer opposing Verizon's request and suggesting unworkable procedural options for dealing with this revenue gap, which it erroneously claims does not raise a serious financial risk to Verizon.

### **III. RESPONSE**

#### **A. The Answer is Inconsistent With the Settlement Agreement.**

Public Counsel's Answer is not consistent with the "best efforts" provision of the Settlement Agreement (¶ 63) whereby Public Counsel agreed to support the revenue requirement in the Settlement Agreement, which establishes a \$38.65 million additional revenue requirement. The parties agreed that this revenue requirement is to remain in effect for a minimum of two

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<sup>3</sup> Due process requires a hearing that considers evidence of confiscation prior to the deprivation of a significant property interest (i.e. \$8 million). *See Hodel v. Virginia Surf. Mining & Rec. Ass'n. Inc.*, 425 U.S. 264, 299-300, 101 S.Ct. 2352; 69 L.Ed.2d 1 (1981).

years and until a party can prove a change in conditions through lawful process.<sup>4</sup> Here, Order No. 15 reduces the revenue requirement by 22% at the outset, only with a delayed implementation date of December 31, 2007. Indeed, the Commission's condition reduces the revenue requirement even before the tariffs that are to expire on December 31, 2007 have even been filed or approved. It is disingenuous for Public Counsel to argue that the new late payment provision does not alter the revenue requirement, or that Verizon would not be at risk because a revenue stream of \$8 million will just evaporate without offset. Public Counsel agreed to support a revenue requirement of \$38.65 million and should be held to that commitment. Because the Answer is clearly inconsistent with this position, it should be rejected on public policy grounds.

**B. Public Counsel's "Risk" Analysis Ignores The Real Consequence of the New Condition.**

Public Counsel claims there is no increased risk from the new condition because it occurs outside of the stay-out period contained in the Settlement Agreement. This position is specious for several reasons. Factually, this position is factually wrong. First, Verizon will lose \$8 million automatically without offset. This is not a speculative "risk" – it is a financial certainty under Order No. 15.

Second, Public Counsel argues that Verizon's risks would be the same even if the late payment charge condition was eliminated because the Commission can always investigate and file a complaint. However, if that were to happen, Verizon would be protected by the procedural mechanisms that guarantee due process such as notice and the opportunity for a meaningful hearing. More important, it would be allowed to keep the late payment charge revenues until the Commission made a finding that these revenues were not needed to ensure that Verizon's rates

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<sup>4</sup> Contrary to Public Counsel's claim (Answer, ¶ 8), Verizon does not suggest a guarantee of \$38.5 million in perpetuity. Rather, it opposes an up front reduction of \$8 million without due process.

were “just, reasonable and sufficient,” based upon an evidentiary record.<sup>5</sup> Thus, Public Counsel is simply wrong to equate the risks that might exist post-stay-out with the very real result caused by Order No. 15. Accepting Public Counsel’s argument would literally undo every settlement because it recommends up-front action that would pre-ordain Commission action immediately after a stay-out period. Furthermore it is unfair and certainly inconsistent with the parties’ intent in entering into the Settlement Agreement.

Third, the “adjudication alternatives” proposed by Public Counsel are not meaningful because they contemplate Verizon first losing the \$8 million in revenue for some period of time and then having to bear the burden of getting it back.

Fourth, the condition has occurred during the stay-out period. On Day One of the stay-out period Order No. 15 imposes a condition that reduces Verizon’s revenue requirement two years later. Verizon is entitled to revenue neutrality under the terms of the Settlement Agreement (§ 45) for that Commission-imposed condition. The Answer ignores this requirement.<sup>6</sup>

Contrary to Public Counsel’s assertion, Verizon is not advocating entitlement to the \$38.6 million revenue requirement in perpetuity. Rather, Verizon contends that the Commission should follow its well-established procedures that preserve a given set of rates until either the Commission or Verizon can justify a change to those rates.<sup>7</sup> The Commission cannot lawfully find that rates it approves in 2005 as just and reasonable are automatically not just and reasonable two and a half years later without following due process. In short, the automatic \$8

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<sup>5</sup> See RCW 80.36.080, *Power v. WUTC*, 104 Wn. 2d 798, 809, 711 P.2d 319 (1985).

<sup>6</sup> Again, Public Counsel’s Answer is inconsistent with this provision of the Settlement Agreement.

<sup>7</sup> For instance, if Verizon is over-earning the Commission may institute a complaint pursuant to RCW 80.04.110, which places the burden of proof upon the Commission, which can lower rates only after proper notice and hearing. Commencement of a complaint does not automatically reduce a rate, however.

million reduction has no evidentiary basis and is not associated with any change in cost of service or other showing that the revenue requirement is not correct.

The two procedural alternatives suggested by Public Counsel are also inconsistent with the Settlement Agreement because they support Commission action to deprive Verizon of \$8 million included in the agreed-upon revenue requirement. The first would involve suspension of any new late payment fee tariff. This would require Verizon to be deprived of late payment fee revenues during the suspension period.<sup>8</sup> It would also force the burden of justifying the charge and the need for the revenues upon Verizon, when Verizon has already justified this amount in the Settlement Agreement. Verizon entered into the Settlement Agreement to resolve adjudication and minimize risks. Public Counsel's recommendations promote new risks and unnecessary adjudication. It also assumes the need for an adjudication. Verizon understands the Commission's concern over late payment charges and it will work with the Commission to provide the requested information. However, Verizon does not understand why it is being singled out for a complaint action by Public Counsel just because Verizon will impose a late payment charge. These are common in the industry as the following chart shows:

<b>Company</b>	<b>State</b>	<b>Late Payment Charge</b>	<b>LPC Tariff Reference</b>
Qwest	WA	1%	WN U-40, Section 2, Sheet 49
Century Tel	WA	1%	WN U-5, Section 2, Sheet 46
MCI Metro	WA	1.5%	WA Price List No. 2, Sheet 42
AT&T Communications	WA	\$5.00 minimum or 1.5%	Local Exchange Svs., Schedule 16, Section 2, Page 19

<sup>8</sup> Under the Complaint and tariff suspension statutes, RCW 80.04.110, .130, the Commission must act within ten months. Even if Verizon filed a new set of tariffs on July 2, 2007 to recover any revenues lost due to the late payment charge elimination, the Company would be exposed to months of financial loss if the Commission takes the whole statutory period to act. Based on historical results, if the Commission were to file a complaint it would take approximately a year to process and during that time Verizon's rates would be reduced.



Comcast	WA	1.5%	Comcast Phone of WA, Telecom. Price List, Section 2, Page 5
Telephone Utilities of WA	WA	1.0%	WN U-1, Rules and Regs., NO. 5, Sheet 10.
Sprint Communications	WA	1.5%	WA Price List No. 5, Sheet 38
Level 3 Communication	WA	1.5%	WN U-2, Section 2, Sheet 23.
Vartec Telecom.	WA	\$5.00 minimum or 1.5%	WA Price List no. 2, Rules and Regs., Sheet 37

Therefore it seems inequitable for Public Counsel to advocate an "adjudication" against Verizon over late payment charges when other companies are similarly situated.

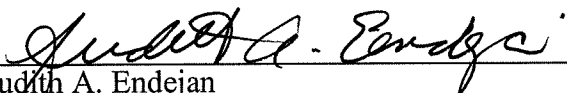
Finally, Public Counsel's second approach, a complaint action, would also require the Company to re-justify a rate in a vacuum otherwise known as "single-issue ratemaking." Verizon strongly opposes Public Counsel's suggestion that encourages single-issue ratemaking, which the Commission rejected in *MCI v. GTE Northwest*, Docket No. UT-970653, Second Supp. Order (1997).<sup>9</sup>

#### IV. CONCLUSION

Based on the foregoing, Verizon requests the Commission to reject the Answer on the merits. Public Counsel should be held to its agreement to support a \$38.65 revenue requirement that the Commission found to be just and reasonable.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of April, 2005.

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<sup>9</sup> Just because Verizon agreed to dismiss its appeal of the 11<sup>th</sup> Supplemental Order in Docket No. 020406 (cited in the Answer, p. 7) as part of the Settlement Agreement does not mean it would not strenuously challenge future single-issue ratemaking.