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VIA ELECTRONIC MAIL

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504

Re: Docket No. UT-060676
Verizon Northwest Inc. Response to Comments of Public Counsel

Dear Ms. Washburn:

Verizon Northwest Inc. ("Verizon") responds by this letter to the Comments of Public Counsel submitted in the above-referenced docket on January 8, 2007 ("Public Counsel Comments"). As Verizon has stated in comments throughout this proceeding, which it will not repeat here, the Commission Staff's proposal for WAC 480-120-266 should not be adopted. The proposal is inappropriate because it exceeds the Commission's role with regard to competitively classified services,[1] as set forth in SB 6473. Yet Public Counsel believes the proposal, in particular Commission Staff's latest draft of subsection (2), does not go far enough. Specifically, Public Counsel advocates that the Commission mandate how a company provides information to its customers about competitively classified services. This advocacy is based on a flawed interpretation of the statutory changes leading to this rulemaking, and should be rejected.

After citing correctly to Washington law for the proposition that the "plain meaning" of a statutory provision such as RCW 80.36.100(5) is to be given effect, Public Counsel eschews that provision's plain meaning in pursuit of a nonsensical assessment of the legislative intent behind SB 6473. *See* Public Counsel Comments at 6-9. Public Counsel's analysis amounts to the following: because the Legislature did not want to re-impose a tariff filing requirement on competitively classified services (for which price lists were being withdrawn), RCW 80.36.100(5) cannot be read to mean what it says.

[1] For purposes of convenience, references to "competitively classified services" include both services and companies subject to competitive classification.

However, RCW 80.36.100(5) states simply that § 80.36.100 does not apply to competitively classified services. RCW 80.36.100 includes requirements not only to file tariffs with the Commission, but also to "keep open to public inspection at such points as the Commission may designate, schedules showing the rates, tolls, rentals, and charges of such companies …." RCW 80.36.100(1); *see also* RCW 80.36.100(3) (a copy of the schedule "shall be kept by every telecommunications company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, …."). Thus, the enactment of RCW 80.36.100(5) removed the authority of the Commission to mandate how a company is to provide notice to its customers regarding the terms, conditions and rates of competitively classified services.

Public Counsel ignores the public notice requirements in RCW 80.36.100, and concludes simply that the enactment of RCW 80.36.100(5) was the "obvious answer" to avoid imposition of a tariffing requirement on competitively classified services. Of course, the "obvious" way to achieve such a limited purpose would be to remove the tariffing requirement in RCW 80.36.100 from application to competitively classified services. Instead, however, the Legislature determined that *all* of RCW 80.36.100 (including not just the tariffing requirements, but the public notice mandates as well) did not apply. Thus, the legislation removed any authority of the Commission to mandate public notice requirements of the type set forth in RCW 80.36.100 on competitively classified services. Public Counsel's invitation to ignore the public notice requirements in RCW 80.36.100 must be rejected. Indeed, ignoring such provisions would violate the legal principle that a statute is to be "read in its entirety, instead of reading only a single sentence or a single phrase." *Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 203 (2004); *see also State v. Joswick*, 71 Wn. App. 311 (1993) ("All provisions of an act must be considered in their relation to each other and, if possible, harmonized to ensure proper construction for each provision.").

Public Counsel resorts to a secondary argument that the Commission's authority to mandate public notice requirements is inherent in its continuing general supervision over competitively classified services, and its authority to revoke competitive classifications. Public Counsel Comments at 9-10. This argument violates another cannon of Washington law on statutory construction: that "[a]n administrative agency must be strictly limited in its operations to those powers granted by the [l]egislature." *Cole v. Wn. Util. & Transp. Comm'n*, 79 Wn.2d 302, 306 (1971) (citing *State ex rel. PUD 1 v. Department of Pub. Serv.*, 21 Wn.2d 201 (1944)); see also *Waste Management v. Wn. Util. & Transp. Comm'n*, 123 Wn.2d 621 (1994) (holding that the Commission's general powers did not confer jurisdiction over the affairs of an unregulated affiliate of a regulated company when the specific authority set forth in the affiliated interest statute did not apply). Thus, the Commission's authority over competitively classified services cannot be expanded to include authority to impose public notice requirements that was expressly removed by the legislature in SB 6473.

That is not to say that companies will not provide notice to their customers, as they have every interest in doing so in order to develop enforceable agreements under applicable contract law. And it also does not mean that the Commission does not have a role with regard to competitively classified services; to the contrary, RCW 80.36.320 and .330 impose specific requirements on competitively classified services and make clear the Commission's role in

enforcing those requirements. But it does mean that the Commission cannot impose through this rulemaking public notice requirements expressly removed by legislation. Accordingly, Verizon respectfully submits that Public Counsel's request that the Commission do so should be rejected.

Sincerely,

Gregory M. Romano

GMR:pl