

Allan T. Thoms
Vice President
Public Policy & External Affairs



May 1, 2003

WA0101RA
1800 41st Street
P.O. Box 1003
Everett, WA 98201

Phone 425 261-5460
Fax 425 261-5262

Ms. Carole Washburn
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, Washington 98504-7250

Dear Ms. Washburn:

Re: Rulemaking Docket No. A-010648: WAC 480-09 - Procedure; WAC 480-04 - Public Access to Information and Records

Dear Ms. Washburn:

In response to the Notice and Opportunity to File Written Comments dated April 4, 2003 ("April 4 Notice"), Verizon Northwest Inc. ("Verizon") hereby submits written comments on the Commission's proposed changes to Chapter 480-09 WAC and Chapter 480-04 WAC. These comments contain proposed edits to and remarks about several of the Commission's proposed revisions to the existing Chapter 480-09 WAC as found in Appendix A, which is in the form of a new chapter (Chapter 480-07 WAC). Verizon's comments refer to the proposed new rules.

The April 4 Notice invites comments with respect to three areas:

1. Rules organization (logical grouping/order; use of subheadings)
2. Clear language (consistent style and grammar)
3. Possible substantive changes (new rules, substantive changes to existing rules)

Verizon's proposed edits and remarks address these areas in the accompanying redlined Appendix A and as follows.

Rules Organization

Chapter 480-07 contains improved headings and subparts and generally appears to be reorganized in a manner that should improve readability and ease of reference. Verizon's proposed edits to headings in particular make some changes intended to add clarity, especially for persons not accustomed to practice before the Commission.

Clear Language

Verizon proposes corrections and changes to the language of the Chapter 480-07 as noted in the enclosed redlined Appendix A.

Substantive Suggestions

Verizon believes the purpose and effect of most of its proposed changes in the enclosed redlined Appendix A are self-evident. The following comments address some specific substantive suggestions.

480-07-145 Filing documents in adjudicative proceedings. Electronic communications (including fax and email) should be allowed, but not required, for all formal correspondence and filing, and the official receipt date should be the date the electronic communication is received. The need to also submit hard-copies should be eliminated. At a minimum, the number of required hard-copies should be reduced. The rule should permit electronic (e-mail or facsimile) filing and service in adjudicative proceedings. Verizon suggests modeling language to that effect in the manner found in proposed rule WAC 480-07-143 (submitting documents in rulemaking proceedings) and the Rules of the Superior Court. Parties should continue to be permitted to file and serve hard copies, but "hard copies" should include electronic media.

480-07-180 Incorporated and referenced materials in commission rules and orders. If such materials are available through the Commission's website, the rule should mention it.

480-07-310 Ex parte Communications. "is not allowed" should be deleted from the title of this rule, because ex parte communications are allowed when the notice requirements described in this rule are met.

480-07-340 Classification of parties. This rule should explain how the Commission Staff and Public Counsel are classified in given proceedings. Verizon does not propose specific language at this time; the Commission and parties should discuss this issue. Verizon presumes that in most if not all cases Public Counsel will be acting as an intervenor, as opposed to a complainant, applicant, etc. Verizon assumes the same is true for the Commission Staff, except perhaps in a complaint case brought by the Commission, in which case the Staff will be acting as the complainant.

480-07-360 Parties-Master service list. This rule should identify where and how a copy of the master service list may be obtained. If the master service list is available electronically, on the Commission's website, etc., the rule should so state. The master service list and any updates or changes should be made available to the parties to the adjudicative proceeding.

480-07-370 Pleadings-General. This rule should allow electronic filing and service, as discussed above.

480-07-380(4) Date certain-indefinite discontinuance disfavored. Dismissal without notice for failure to provide a status report every thirty days could lead to manifest injustice by prejudicing a party's substantive rights for minor procedural failings. The Commission should provide notice and an opportunity for the party to cure the defect.

480-07-390 Briefs; oral argument; findings and conclusions. The rule should allow electronic filing and service, as discussed above.

480-07-400 Discovery. Subsection (1)(c)(iii) requires a party relying on a cost study to rerun it upon another party's request. The rule should be clarified. Whether a party should be required to rerun a model is a decision that should be made on a case-by-case basis. A party, however, should not be required to rerun its study where the requesting party has the ability to rerun the study itself.

480-07-405(6) Objections; consequence of failure to object. Subsection (a) requires parties to submit an objection to a response "no later than five days before a response is due, or at such other time as may be ordered." The Commission should retain the original language: "Objections to data requests shall be presented to the requesting party no later than the time responses are due." A party may be proceeding in all good faith but not realize the objectionable nature of a discovery request in as short a time as five days. For example, it may not be apparent until well into the process of gathering information just how burdensome a data request is. The Commission's rules have long recognized – and continue to recognize (480-07-400(4)) ("A discovery request is inappropriate" where it is "unduly burdensome") – that data requests must not be unduly burdensome. The proposed rule in a very real way undermines that well-established standard.

480-07-405(7) Responses. Subsection (b) relates to timing. Under the Commission's current practice "weekends and holidays will be excluded in calculating these time limits." (see WAC 480-09-480(6)(a)(v).) This sentence appears to be inadvertently omitted from the proposed rule. If this change is intentional, it is a material change in discovery practice in proceedings before the Commission. To the contrary, weekends and holidays should be excluded in calculating time limits. This is because discovery responses produced on such an accelerated basis dramatically raises the potential for wholly inadvertent error by so dramatically reducing the time permitted to gather the requested information. No good purpose is served by elevating expedition over the opportunity for a considered response to discovery requests.

480-07-410(5) Correcting/supplementing deposition testimony. This rule should allow a witness the opportunity to review, correct and sign the deposition transcript. Consistent with Rule 30 of the Superior Court Rules, a witness should be given thirty days after receipt of the transcript to review and determine the accuracy of the transcript and make necessary changes.

480-07-430 Prehearing conferences. Subsection (2) of this rule states that the Commission will provide “reasonable notice” of the time and place for the prehearing conference. Rule 480-07-440 states that the Commission shall provide 20 days written notice of the time and place of the first prehearing conference. The rules should be consistent.

480-07-460 Hearing-Predistribution of exhibits and prefiled testimony. This rule should allow electronic filing and service, as discussed above. The number of copies should be reduced. Finally, the final sentence of 480-07-460(1) (before subsection (a)) should be modified by adding the following clause: “Except for exhibits intended solely for impeachment.” Evidentiary hearings presume that there is a value to cross-examination. One of the purposes of cross-examination is sometimes to impeach the witness. Impeachment is impaired if witnesses are routinely afforded the opportunity to review contradictory documents prior to their examination. Moreover, a witness may make a statement for the first time during cross-examination that may require an exhibit for the purpose of impeachment that a party did not anticipate needing to use prior to the witness’ examination. The proposed rule could dramatically undermine the usefulness of cross-examination.

480-07-470 Hearing guidelines. See the discussion above concerning WAC 490-07-340 concerning the party classification of the Commission Staff. The separate treatment of the Staff in proposed subsection (6) of this rule should be deleted. The order in which Staff presents its evidence should be determined on a case-by-case basis, considering Staff’s party classification in the case, the scheduling availability of other parties’ witnesses and other practical factors.

Subsection 11 discusses cross-examination and responses that are given “subject to check.” The witness should be given the opportunity to conduct his “check” and provide an affidavit of the reasons for any change within ten days after the transcript has been distributed.

480-07-500 et seq. General rate cases. The titles of these sections should be amended to reflect that they apply to “General rate increases.” The rules should also allow electronic filing and service, as discussed above. For voluminous materials, parties should be permitted to make such materials available through a website, in lieu of serving hard copies.

480-07-630 Arbitration under the Telecommunications Act of 1996. Subsection (3) should be deleted. Intervention by persons who will not be a party to the contract being arbitrated is inappropriate. In addition, the cited RCW 80.04.510 does not authorize Public Counsel to intervene in these arbitrations, which are conducted pursuant to the federal Act.

480-07-700(2) Forms of ADR. This section allows the Commission to provide an arbitrator. The parties should agree to the arbitrator.

480-07-883, -885 Compliance filings. The rule should be changed to allow electronic filing and service, as described above.

480-07-900 Open public meetings. For the benefit of those unfamiliar with the Commission’s practice, the rule should be expanded to describe how interested parties and the general public may provide input on open meeting agenda items and participate in the open meeting itself. The Staff written recommendation process should be described.

Ms. Carole J. Washburn

May 1, 2003

Page 5

480-09-920 Interpretive and policy statements. The rule should describe how to access the index and individual statements through the Commission's website.

Verizon appreciates the opportunity to provide written comments and recognizes the task that the Commission has undertaken. Verizon looks forward to working with Commission Staff and other interested parties to improve the procedural rules.

Please contact Joan Gage on 425/261-5238 if you have any questions.

Very truly yours,

Allan T. Thoms
Vice President
Public Policy & External Affairs

ATT:kad
Enclosures