

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

VERIZON NORTHWEST INC.,

Respondent.

DOCKET NO. UT-040788

PUBLIC COUNSEL AND AARP  
ANSWER TO AMENDED  
PETITION OF VERIZON  
NORTHWEST FOR BIFURCATION  
AND WAIVER

**I. INTRODUCTION**

Pursuant to the Prehearing Conference Order in this docket, Public Counsel and AARP jointly file this answer to the Amended Petition of Verizon Northwest, Inc., For An Order Approving Commencement of Bifurcated General Rate Case And Waiver of WAC 480-07-510 (“Petition”).

Public Counsel and AARP<sup>1</sup> opposes the Verizon petition for bifurcation and waiver.<sup>2</sup> As discussed in detail below, Verizon has failed to establish any valid grounds for waiver of the Commission rules which require a general rate case filing to be accomplished by the filing of tariffs which proposed new or revised rates for its services, and which include tariffs for rates to be charged for specific classes of service. The Commission has the discretion to modify the application of the rules in Chapter 480-07, but only “if consistent with the public interest, the purposes underlying regulation, and applicable statutes.” WAC 480-07-110(1). Verizon’s Amended Petition satisfies none of these requirements. On the contrary, Verizon’s decision to

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<sup>1</sup> For reading convenience, reference in this Answer to “Public Counsel” includes both Public Counsel and AARP.

<sup>2</sup> Public Counsel suggests more precise terminology be used than that in the Verizon petition. Verizon’s filing, lacking any tariffs or rate spread proposal, is more properly termed a revenue requirement petition, rather than a “general rate case.”

present its case in this alternative fashion elevates its private interests over those of its customers and the broader public interest, and cannot be reconciled with the statutory requirements of Title 80 or their underlying regulatory purposes.

The schedule in the prehearing conference order calls for responses to “Verizon petitions,” which by its terms includes the Verizon petition for interim rate relief. Public Counsel opposes the petition for interim relief. Public Counsel will provide its detailed response to the interim petition at the time provided for dispositive motions, or responsive testimony on July 14.

## II. VERIZON’S REQUEST

The basic framework of the Verizon request is that, following the interim case, the “Commission [should] bifurcate this filing so that a final rate design is submitted only after the Commission establishes Verizon NW’s permanent revenue requirement.” Petition, p. 2, ¶ 2.

Verizon acknowledges that “the Commission’s rules do not expressly contemplate a bifurcated rate case filing. In order to be able to proceed with its petition, therefore, Verizon seeks waiver of three Commission rate case filing requirements, Petition, p. 2, ¶¶ 3-5:<sup>3</sup>

WAC 480-07-510(2), which requires that the company must provide “...copies of the proposed new or revised tariff sheets [.]”

WAC 480-07-510(4)(d), which requires the summary document to include the “[r]equested revenue change in dollars, in total, *and by major customer class.*” (emphasis added).

WAC 480-07-510(4)(e), which requires the summary document to include the “[r]equested revenue change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. Filings must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

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<sup>3</sup> Verizon’s initial Petition sought waiver only of one rule, WAC 480-07-510(2). After Staff advised the company that additional waivers were necessary, the petition was amended to include two additional rules and a catch-all request for waiver of any other requirements related to WAC 480-07-510(2).

The petition also asks the Commission to waive “any other requirements associated with the tariff filing requirements of WAC 480-07-510(2),” apparently leaving the identification of those requirements up to the Commission or other parties.

For reasons not explained, Verizon has not requested a waiver of WAC 480-07-510(4)(c), which requires the company to include in the summary document the “[r]equested revenue change in percentage, in total, *and by major customer class.*” (emphasis added).

### III. ARGUMENT

#### A. The Commission’s General Rate Case Filing Rules Implement Statutory Requirements and Serve Important Regulatory Purposes.

##### 1. Verizon’s request is not consistent with applicable statutory requirements.

RCW Title 80, Chapter 36, sets out the general statutory provisions and procedures by which changes in customer rates are to be effected. RCW 80.36.100 requires that company tariffs be on file with the Commission and be open for public inspection. RCW 80.36.110 specifies the procedures for increasing and for decreasing tariffed rates. The statute provides that, unless otherwise ordered by the Commission, “no change shall be made in any rate, toll, rental, or charge” on file with the Commission, except after thirty days notice. The notice must “plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, or charge will go into effect, *and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.*” The statute goes on to provide that proposed changes may be suspended by the Commission prior to the effective date. RCW 80.04.130 sets out the procedures for suspension and hearing.

The Commission may allow rate changes on less than statutory notice, but only “for good cause shown” upon issuance of an “order specifying the change to be made and the time when it takes effect, and the manner in which the change will be filed and published.”

In summary, the statutory scheme set out by the legislature clearly contemplates and provides for the following:

- company charges are to be reflected in filed tariffs
- if a company wishes to change such charges, it must file proposed tariff revisions and provide notice to the Commission and its customers of the specific proposed changes
- the Commission may either allow the tariffs to go into effect without action, or issue an order allowing specific tariff changes to go into effect on less than statutory notice,
- alternatively, if the Commission does not wish the tariffs to take effect immediately it can suspend and conduct a hearing.

The legislature has made no statutory provision for any other alternative procedure for public service companies to seek increases in their rates. Exceptions to the basic filing and suspension framework are clearly spelled out in the statute. While the Commission has some discretion, within the overall legislative grant of ratemaking authority, it does not have the discretion to simply disregard and abandon the basic statutory scheme, as Verizon would have it do here.

As Public Counsel understands Verizon's proposal, it would purport to comply with Title 80 by filing tariff revisions after the conclusion of adjudicative proceedings and issuance of a final order determining both the permanent revenue requirement and rate spread. At that point, Verizon apparently concedes it would need to file the tariff revisions required by RCW 80.36.110 in order to lawfully change rates. The problem for Verizon is that the statute expressly requires the filing of the "changes *proposed* to be made" and requires that "all *proposed changes* shall be shown by printing, filing and publishing *new* schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection." (emphasis added). What Verizon proposes to file, however, are not *proposed* changes, but final rates determined by an adjudication. The filing would be a sham, since the rates would in fact no longer be proposed, but final. Verizon's clear expectation at that point is that the rates would not

be suspended for a ten month proceeding. Indeed, if any customer came forward at that point and stated opposition to the new rates, or requested suspension, under Verizon's proposed procedure, they would be told they were too late. Verizon's proposal makes a mockery of the statutory language and its express purpose of providing notice in advance of specific proposed rate increases, and an opportunity to fully participate in the hearing process.

**2. Verizon's proposal is inconsistent with the important underlying regulatory purposes of the statutes and rules.**

A fundamental principle at the heart of Washington's rate making statutes and regulatory procedures is full, clear, and accurate notice to customers and the Commission of whether and how a company proposes to change its rates. In aid of that principle, WAC 480-07-510(2), and the related provisions of 510(4)(c), (d) and (e) are designed to required *actual* notice to customers, at the outset of a rate proceeding, of the *specific* proposals of the company for rate changes to achieve an overall proposed revenue increase.

Adequate and sufficient notice is not achieved by merely providing customers notice of a theoretical range of possibilities, couched in conditional language. Such approaches may as easily mislead or confuse as inform. The purpose of the statutes and rules as written is to require the Company to make a concrete and defined proposal for a rate change, so that the Commission and other parties will then know how to proceed. This enables customers, in particular, to determine if a rate case will affect them, what the maximum affect will be, and whether they wish to participate in the proceeding from the outset. A notice of "estimated potential impact" can never be a substitute for actual notice of a real proposal.

The company's approach creates a substantial risk that parties may decide to "wait and see" what impact the case will have, waiting until it is too late to have any involvement in determining the total amount of revenue to be spread over the customers and services. This problem was clearly highlighted by one intervenor at the prehearing, the U.S. Department of

Defense, which was uncertain about whether to seek party status at this stage, or to wait until the rate spread part of the proceeding.

The rules for which waiver are sought are part of Subpart B, General Rate Proceedings rules. In the “statement of policy” section, WAC 480-07-500, the rules make clear that the purpose of the rules is “to standardize presentations, clarify issues, and speed and simplify processing.” WAC 480-07-500(3). Verizon’s proposal has the opposite results. Its non-standard presentation creates new issues rather than clarifying, and complicates rather than simplifies procedures.

The Commission rules indicate a presumption that they are to be followed and taken seriously. The commission may “summarily reject any filing for a general rate proceeding that does not conform to the requirements of subpart B.” WAC 480-07-500(4). The rules carefully set out which filings are defined as general rate proceedings, WAC 480-07-505(1), and which are exempted from the requirement, WAC 480-07-505(2), (3). Verizon does not suggest here that it does not meet the definition of a general rate proceeding under WAC 480-07-505(1). Significantly, even where the rules do not expressly define a filing as a general rate proceeding, “the commission may require that any filing or proposal by a regulated company to increase rates for any customer class, or to restructure rates, is subject to the procedures and protections of subpart B of these rules.” WAC 480-07-505(4). This suggests Commission “legislative intent” to give consideration, in close cases, to requiring full filing requirements when actual rate increases for customer classes are proposed.

Thus the overall structure of the rules themselves reflects an intent by the Commission to adopt a set of rules for general rate filings, which are clear, which are strongly enforced, and which announce the Commission’s intention to exercise its discretion to impose general rate filing requirements in all appropriate cases. Verizon’s proposal is not consistent with this regulatory scheme, nor has it made any real effort to show that it is.

Both courts and commentators have recognized that tariff filing requirements protect consumers through notification and certainty. Professor Leonard Goodman's treatise, *The Process of Ratemaking*, observes that ratepayers are entitled to the notice and opportunity to be heard that occurs in a formal rate case when substantial rate increases are involved. Leonard Saul Goodman, *The Process of Ratemaking*, Vol. I, 58 (1998). Goodman also stresses the importance of specificity in rates when he points out that exceptions to filing requirements have been limited to those that are specifically exempted by administrative order. *Id.* at 46-47. The author cites multiple cases in which agencies rejected tariffs because they were improperly prepared pursuant to agency rules (for instance, lack of specificity in rates and improper filing form). *Id.* at 46 and 47.

Where the statutes prescribe a manner in which proceedings before a public utility Commission are to be initiated, the procedure must be followed. *See, e.g., State ex rel Laclede Gas Co. v. Public Service Commission of Missouri*, 535 S.W. 561, 568 (Mo. Ct. App 1976).<sup>4</sup> In *State ex rel. Utility Consumers' Council of Missouri v. Public Service Commission of Mo.* 585 S.W.2d 41, 49, 33 P.U.R.4th 273 (Mo. 1979), the Missouri Supreme Court elaborated on this principle, stating that "utility rates should be definite and published in order to insure stability and notice of rates to consumers..." *Id.* The court stressed that consumers must understand their rates and have the knowledge necessary to determine if a complaint is warranted. *Id.* The general rate case allows those opposed as well as those in sympathy with a proposed rate a forum to present their views. *Id.*

None of these regulatory purposes are served by granting the Verizon waiver requests. On the contrary, allowing the petition on such a weak showing creates a significant likelihood that every other regulated company in Washington will seek to invoke this procedure when it believes it can benefit from the approach.

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<sup>4</sup> Citing 73 CJS Public Utilities ¶ 47, p. 1114; *State ex rel. Landry v. Public Service Commission*, 327 Mo. 93, 34 SW 2d 37 (1931); *Florida Motor Lines Corporation v. Douglass*, 150 Fla. 1, 7 So. 2d 843 (banc. 1942); *Southern Bell Telephone & Tel. Co v. City of Louisville*, 265 Ky 286, 96 SW 2d 695 (1936); *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 157 Pa. Super.595, 43 A.2d 348 (1954).

**B. Verizon’s Petition Provides The Commission With No Reasonable Justification For Waiving Rules.**

The company’s petition is striking in the absence of support it offers for such a major departure from established ratemaking procedures. The petition makes virtually no effort to argue, as the waiver rules requires, that the petition is in the public interest, that it comports with the statutory scheme, and is consistent with underlying regulatory purposes. Instead, the company’s rationale, provided in a cursory three paragraphs, can be summed up as:

- the approach allows a focus on revenue requirement without having to propose and litigate rate design.
- because parties are expected to disagree about revenue requirement, it is more efficient to decide that issue before developing rate design.
- no party is prejudiced because the statutory clock will not be triggered and this approach is more focused and efficient. Petition, pp. 3-4, ¶¶ 8-10.

These arguments fall very far short of justifying the waiver request.

**1. Verizon has cited no precedent in support of its petition.**

Verizon has cited no case authority, or prior Commission decision as precedent for the Commission departing from its rate-making procedures in the manner proposed. The “focus” and “efficiency” arguments ignore the fact that ratemaking before the Washington Commission routinely involves consideration of, and vigorous dispute over revenue requirement and rate spread in the same proceeding, within the ten-month statutory timeline. At the present time, the Commission is concurrently presiding over three other general rate case proceedings, all of which are simultaneously considering rate spread and revenue requirement.<sup>5</sup> When in 1995, Washington’s largest telecommunications company, Qwest, filed a \$204 million rate case which sought to double residential rates, all issues were considered together. *WUTC v. US West*, Docket UT-950200, Fifteenth Supplemental Order.

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<sup>5</sup> General rate filings are pending by PacifiCorp, Puget Sound Energy, and Northwest Natural Gas.  
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**2. The company has had more than adequate time to prepare general rate case tariffs and rate design.**

In informal pre-filing communications early in the year, Verizon initially justified bifurcation and waiver on the basis that they had not had time to prepare the necessary rate design studies to support a proposal. While even this questionable justification is no longer included in the petition, it is simply not credible that a company with Verizon's resources and with such a significant alleged need is unable to put together a complete filing.

Verizon has been free at any time to file a general rate case, and has known at least since the Commission decision in *AT&T v. Verizon* last year that its access charge revenue would be affected. It has now had many months since that time to prepare a case. Verizon's voluntary decision to not present a full case after such a passage of time in no way compels the Commission or other parties to now accept a significantly reworked rate case procedure which introduces unnecessary complexity, uncertainty, and prejudice into the proceeding.

Furthermore, under the proposed schedule attached to the amended petition, Verizon has even more time available to prepare a full and complete general rate filing. Proceedings on the revenue requirement petition do not even begin until September, following a decision on the interim request. Verizon could easily make use of that additional time to prepare a general rate case filing, including tariffs and a rate spread proposal, ready for the next phase of the case.<sup>6</sup>

**3. Verizon conduct and statements indicate that it is motivated by a desire to delay notification to its residential and small business customers of the impact of its full request.**

Verizon's testimony, its draft public notice, its press release, and its revised procedural filing, all raise questions about Verizon's true purpose in seeking bifurcation and waiver. In testimony filed in support of the rate spread in the interim case, Verizon explains it has "no option but to increase basic residential and business rates," given that the *AT&T v. Verizon*

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<sup>6</sup> We point out below how this approach would still allow Verizon to propose a bifurcated schedule with its rate spread proposal taken up after revenue requirement, either within the 10 months, or within an extended time allowed by waiver of the statutory deadline.

decision appears to prohibit any increase in access charges and that long distance, data, and specialized services are subject to vigorous competition,. Banta Direct (SMB-2T), pp. 8-9.<sup>7</sup> The reality is that Verizon has little or no uncertainty about where it will propose to increase rates. It appears that the company simply does not want to “go public” with its intentions until the proceeding is near its conclusion.

This is reflected in Verizon’s press release announcing the initiation of this case (copy attached). The release described the revenue phase of the case in opaque terms:

The company has also asked the commission to decide on the company's income needs in Washington within about 10 months. After making that decision, the commission is expected to take up to five more months to decide on the final rate changes.

The commission would review Verizon's costs of doing business in Washington and then replace the interim charges with final pricing, which may affect other services in addition to local telephone service. If the commission determines that no increase or a smaller increase is justified, customers would be given refunds.

Conspicuously absent from the notice is any reference to the company’s filing that day requesting an additional annual permanent revenue increase from its Washington customers of nearly \$240 million, an overall 70 percent increase.

The customer notice included with Verizon’s initial filing likewise takes pains to avoid providing clear information to customers about the ultimate impact of the permanent rate proposal. Not until page 2 of the notice is the topic mentioned, under the heading of “Verizon’s Income,” couched in an arcane regulatory discussion of revenues and income. Customers are informed that “specific rate changes” will be determined later. This is a certain recipe for customer inattention. While the next section “Design of Customer Rates,” notes that customers will receive notice of specific rate changes, most customers, if they indeed wade through this much technical text, will reasonably conclude that they need not get involved until that point.

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<sup>7</sup> Ancillary charges were excluded as impractical for interim increases. Even in the general rate context, however, is difficult to see Verizon proposing to raise any significant portion of its full revenue requirement request from ancillary services.

The reality of course is that once revenue requirement has been determined, perhaps as much as \$239 million, it will be too late. There will be little left to debate, especially given Verizon's view of the options for rate spread laid out above.

Finally, Verizon has clarified its request by indicating that if the Commission finds a revenue deficiency at the end of the revenue requirement phase, in excess of any interim relief, the company will not seek to collect that revenue until the completion of the rate spread phase. The company's willingness to forego these revenues clearly demonstrates the company's sole interest in seeking waiver is to avoid filing the tariffs that would notify customers of the company's rate spread proposals.

**4. Most of the benefits Verizon seeks can be achieved by bifurcation without the need for waiver.**

While Verizon combines requests for both waiver and bifurcation together, in fact, Verizon's stated purposes in the petition can be met by bifurcation alone. Verizon's stated goal appears to be that revenue requirement and rate spread be decided separately, for the sake of "focus" and "efficiency." There is nothing in the Commission's rules, however, to prevent Verizon from filing a complete general rate case, including proposed rate spread tariffs, while requesting that the revenue issues be addressed in the first phase of the proceeding. Verizon could waive the statutory deadline so as to provide for a schedule of comparable length to that proposed here, avoiding any time squeeze resulting from the bifurcation. The fact that this option is readily available to the company, without waiver of the rules, casts further doubt on the justification offered for its "non-tariff" approach. It is hard to see the proposal as anything other than an effort to hide the company's plans from customers for as long as possible. This is simply not a justification that is in the public interest, or that the Commission should countenance as a valid reason for granting a waiver of its rules.

### **C. Verizon's Petition Raises Other Procedural Issues.**

Public Counsel observed above that Verizon has offered no precedent for this approach to ratemaking before the Commission. To the extent there is little or no experience with this approach, there is a greater risk of unforeseen problems. One such issue, for example, is the timing and duration of interim relief. Under ordinary Commission procedure, an interim request and a full general rate case run concurrently. As a result, if interim relief is granted, it only remains in effect for a relatively short period, until the end of the general case, approximately 6-7 months (assuming approximately 90 days for the interim case). Under Verizon's approach however, the duration of interim relief is unclear. The proposed interim tariff filed with the Commission states that the relief remains in effect until permanent rates are adopted, following the rate spread phase. It is unclear what occurs, however, if interim relief is granted, but at the end of the revenue requirement case, a lower amount is determined. Under the tariff and the proposed Verizon schedule, it appears customers would continue to pay the now excessive amount of interim rates until after the rate spread phase, several more months with no fixed end point.

Verizon itself is uncertain about how its proposed procedure works. Since its initial filing it has amended its interim tariff, amended the proposed schedule to remove an intermediate rate change date, and added two waiver new requests and a catch-all request (although apparently still omitting a necessary waiver under WAC 480-07-510(4)(c).

It is also significant that Verizon "reserves its right to file tariffs that trigger the statutory clock if its proposed schedule is not adopted or if this case is otherwise delayed." Petition, p. 4, n. 2. It thus appears that Verizon may, at its option, unilaterally push the "restart" button or redirect this proceeding at any time, depending on whether it is satisfied with the progress of the case. This only adds to the procedural uncertainty this approach presents. For example, it is unclear what significance or applicability any record developed in advance of such a new filing would have. The impact of such an action on the status of interim relief would have to be

determined. A decision by Verizon in summer or fall 2005 to make a traditional tariff filing might potentially leave customers paying any interim rates ordered this year well in to 2006. Moreover, the implication of this reservation seems to be that Verizon retains the ability to move promptly to file tariffs at any time it feels the need. If that is the case, why does not Verizon file tariffs now?

#### IV. CONCLUSION

Verizon's proposal in this case asks the Commission and the other parties to participate in what amounts to a Faustian bargain. In return for "focus," "efficiency," and a more comfortable case schedule, we are asked to turn our backs on the values embodied in the Commission's statutes and rules – full, fair, accurate and timely notice, which provides all parties an opportunity to decide, with adequate information, and in a timely manner, whether their interests are affected by a company proposal. There is much evidence that Verizon's true goal is not "focus" or "efficiency" at all, but to keep from its customers as long as possible the full magnitude of its significant rate increase proposals. While this may be in the private interest of Verizon and its shareholders, it is not in the public interest, nor is it consistent with Washington's statutory framework for Commission ratemaking, and the underlying regulatory purposes served by that framework – namely adequate notice and opportunity to participate.

The Commission should deny all Verizon's requests for waiver of its rules, coupled with bifurcation. Verizon should proceed with its interim petition, and prepare a full general rate case filing to be made on or before the time of a decision in the interim case. If it wishes it can combine a tariff filing with a request for bifurcation and an extension of the statutory deadline. Such an approach would allow Verizon to present its case for relief without prejudicing the rights of customers and in a timeframe no longer, and perhaps shorter, than the company's own proposal.

DATED this 2<sup>nd</sup> day of June, 2004

CHRISTINE O. GREGOIRE

Attorney General

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Simon J. fitch  
Assistant Attorney General  
WSBA No. 25977

AARP

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Ronald L. Roseman  
WSBA No. 15396