

February 28, 2006

**VIA ELECTRONIC MAIL & FIRST CLASS MAIL**

Ms. Carole Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: In the Matter of the Joint Application of Verizon Communications Inc., and MCI, Inc.,  
For Approval of Agreement and Plan of Merger  
Docket No: UT-050814

Dear Ms. Washburn:

Public Counsel provides this written submission regarding the Verizon Public Purpose Fund in response to the Commission's February 1, 2006 Notice. While the parties have reached agreement in some areas, we have unfortunately been unable to reach unanimous agreement in all areas.

This written submission addresses the following issues with respect to the Verizon Public Purpose Fund (Fund):

- 1) *Grant Administration.* Whether the fund should have a grant administrator, and if so, who should serve as the grant administrator.
- 2) *Disbursement of Funds.* Whether Verizon should disburse funds directly to grantees, or the grant administrator should disburse funds.
- 3) *Eligibility Criteria.* What types of organizations should be considered eligible to receive funds.
- 4) *Funding Criteria.* What types of activities should be considered appropriate use of funds, given the Commission's direction in Order No. 07 in this docket.

### Grant Administration

All parties agree that the fund should be managed by a grant administrator who would solicit applications for project proposals and administer grants to approved projects.

The parties sent letters to two potential grant administrators – the Greater Everett Community Foundation (Foundation) and United Way of Snohomish County (United Way). (These letters are included in Staff’s Recitation on areas of agreement as Attachments 1a and 2a).<sup>1</sup> Both organizations responded to our letter and expressed interest in serving as the grant administrator. The response of the Greater Everett Community Foundation is included as Attachment 1b to the Joint Submission. The initial response of United Way of Snohomish County is included as Attachment 2b, and its supplemental response is included as Attachment 2c.

Public Counsel recommends the Greater Everett Community Foundation be selected as the grant administrator of the Verizon Public Purpose Fund. The Foundation submitted a detailed proposal, including a seven month timeline of when major tasks would be completed, as well as the resume of a consultant with Philanthropy Northwest, Claire Bishop, who would direct the Foundation’s efforts. Ms. Bishop worked with the Seattle Foundation in administering the \$2M Telecommunications Consumer Education Fund (TCEF) established by the final settlement in the 1995 US West Rate Case.<sup>2</sup> Ms. Bishop is also working with the Seattle Foundation to disburse \$13.5M resulting from settlements with Duke Energy and El Paso Energy obtained by the Office of the Attorney General.

Public Counsel believes that the Greater Everett Community Foundation is best qualified to serve as grant administrator. It offers a specific staffing plan, including a lead (Ms. Bishop) with experience in telecommunications consumer issues and statewide grant making to particular utility service areas. As shown in Attachment 1b, the Foundation mapped out a seven month timeline as to when major tasks would be completed. It provided references for both the Foundation and for Ms. Bishop. References for the Foundation include Bob Drewel, Executive Director of the Puget Sound Regional Council (and former County Executive of Snohomish County), and Mark Nesse, Executive Director of Everett Public Libraries. Public Counsel staff spoke with Mr. Nesse, who is in his second year as Board President at the Foundation. He described the Board as “the best Board I’ve been on – very capable people plugged into the community, who care about what’s done and how it’s done.” He described Maddy Metzger-Utt, Executive Director of the Foundation, as “a very capable person,” who came to the Foundation from Big Brothers/Big Sisters.

While United Way is certainly a highly reputable organization, Public Counsel believes it is not as well suited to manage these funds. United Way is primarily focused on human services, and neither its initial response nor the supplemental response discussed whether the organization has any experience administering grants related to consumer or telecommunications issues. The closest experience on these issues appears to be United Way’s involvement in the development

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<sup>1</sup> Please note that all references to Attachments refer to those documents attached to Staff’s Recitation regarding areas of agreement between the parties.

<sup>2</sup> The terms of that settlement (a *cy pres* settlement) resulted in the distribution of \$26M in unclaimed ratepayer refunds, including \$2M to fund the TCEF.

of a 2-1-1 phone line, which serves as a clearinghouse of information on human service issues (e.g. counseling, food and clothing, emergency shelter, volunteering; see United Way's supplemental response, Attachment 2c at p. 3). In addition, its limited initial response did not provide any specific information as to how it would approach oversight of the fund. It provided the name of the staff person who would "most likely be the primary staff person working on this project" and the names of individuals who would provide financial oversight and additional oversight. (Attachment 2b).

In response to concerns expressed by Public Counsel that United Way's brief initial response (Attachment 2b) was insufficient, and did not discuss how they would approach management of the Verizon Public Purpose Fund, Verizon indicated it would contact United Way to inquire as to whether it would like to submit additional information to the parties. Public Counsel received the supplemental information included in Attachment 2c late Friday, February 24, 2006. This supplemental information from United Way provides some additional information regarding its experience in grants management, staff resources, its conflict of interest policy, and one paragraph discussing its approach to managing the Fund. (please see Attachment 2c, at p.5).

Public Counsel believes an important factor in selecting a grant administrator is impartiality. The administrator should be perceived by grant applicants as objective and independent. After receiving the initial response of United Way, Public Counsel learned, through our own research, that Verizon's Director of External Affairs, John Gustafson, is on the Board of United Way of Snohomish County.<sup>3</sup> A potential concern arose, therefore, regarding United Way's independence and impartiality, and Public Counsel raised this concern with the parties. In its supplemental response, United Way has provided its conflict of interest policy to attempt to address this issue. While this goes part of the way to address our concerns, the presence of Mr. Gustafson on United Way's Board, coupled with Verizon's strong advocacy here on behalf of United Way, and Verizon's desire to distribute funds directly to recipients (see below) seems to raise at least a potential for problems in this area.

With respect to administrative costs, the Greater Everett Community Foundation estimated administrative costs of \$36,000, which is 2.8% of the total fund (see breakdown on page 4 of Attachment B). United Way indicated its administrative costs would likely be between 2% and 5% (\$25,000 to \$62,000).

In summary, for the reasons discussed above, Public Counsel recommends the Greater Everett Community Foundation be selected to serve as grant administrator of the Verizon Public Purpose Fund. We believe the Foundation has made a stronger case to serve as grant administrator. It appears fully ready to begin work on this project, submitting a specific staffing plan that includes an experienced lead staff person and preparing a detailed monthly timeline as to when major tasks would be completed. Moreover, the Foundation's fees appear to be more reasonable than those of United Way. Finally, the Greater Everett Community Foundation does not appear to have even the appearance of a potential conflict of interest in administering the Fund.

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<sup>3</sup> Mr. Gustafson is one of six members of the Executive Committee for the Board of United Way of Snohomish County and is also "Immediate Past Chair" of that Board. See United Way of Snohomish County's webpage, <http://www.uwsc.org/AboutUs/leadership.htm>.

### Disbursement of Funds

Public Counsel understands that Verizon would prefer to disburse funds directly to selected grantees. Public Counsel does not support this approach. For several reasons, we recommend that Verizon disburse the \$1.25M to the grant administrator. The general principle here is that the grant process should be clearly distinguishable from Verizon's charitable giving, clearly associated with the Commission's merger order, and clearly under the Commission's control.

First, as stated in the Greater Everett Community Foundation's proposal, best practices in grant making call for having the grant administrator disburse funds to grantees:

Best practices for grantmaking suggest that it is preferable to have the funds placed with and distributed by a single source. The reason for this best practice is to help solidify the relationship between the grantor and grantee. This will help to eliminate any confusion about which organization is responsible for monitoring the performance and fiscal management of the grantee, as well as responding to any difficulties which may emerge once the grants have been made. (Attachment 1b, at p. 3).

Consistent with this practice, both the Foundation and United Way indicated their preference is to hold the grant funds. Second, if Verizon disburses the funds directly to grantees they will likely view Verizon as the grantmaker to which they should be accountable, rather than the grant administrator. Third, if Verizon disburses the funds, the grants are likely to appear as an extension of the Verizon Foundation. Finally, in addition to the reasons discussed above, we believe it would be administratively more efficient to have the grant administrator disburse the funds.

Paragraph 221 of the Commission's Final Order (Order No. 07) states in part: "Verizon shall retain custody of the funds but need not segregate them. It must make disbursements, up to the total amount, by direction of the Commission." Once the grant administrator is selected, however, ordering a disbursement to that administrator is quite consistent with the order. For the reasons stated above, Public Counsel recommends the Commission order Verizon to disburse the \$1.25M Public Purpose Fund to the grant administrator either upon selection of the administrator, or, alternatively, to the administrator once the specific projects have been selected through the administrator's RFP process.

### Eligibility Criteria

Public Counsel, Commission Staff and Verizon are in agreement with respect to the following recommended eligibility criteria:

- a. Limited to 501(c)(3) entities or local government agencies
- b. Grant-funded activities limited to Washington state, by organizations with a presence in Washington.

- c. Applicants must certify they have no relationship to telecommunications providers (except charitable contributions and ordinary customer relationships).
- d. Applicants must be able to demonstrate ability to properly account for funds and use of funds.
- e. Preference will be given to applicants with a track record of successful receipt and use of grant monies for similar projects to those they propose.
- f. Recipients must be able to present a final report regarding use of funds.

### Funding Criteria

Public Counsel recommends the following funding criteria for the Verizon Public Purpose Fund:

Projects selected for funding must be targeted in Verizon's Washington service territory for local exchange service and must address at least one of the following areas:

1. Provide for consumer education, outreach, or participation on telecommunications services and/or policy issues affecting residential or small business consumers in Washington state. Services and/or policy issues include: rates, services, service quality, competitive choices, marketing and consumer protection, consumer rights, and participation in and understanding of state telecommunications policy making proceedings.
2. Improve access to telecommunications services, such as efforts to provide or improve telecommunications services to a community or specific population (e.g. elderly, low income, Native American, homeless).
3. Make services more readily available to the public, such as conducting training or other educational efforts targeted to a community or specific population.
4. Other purposes benefiting a broad range of telecommunications consumers.

Preference will be given to projects that provide a broad telecommunications related consumer benefit and advance a broad public interest.

Ineligible activities include: advocacy on behalf of candidates for public office and/or advocacy for state or federal legislation, initiatives or referenda; projects that would supplant Verizon's own investments or expenses to replace or maintain a modern and efficient network; and projects that would supplant Verizon's own charitable activities.

The parties are in agreement as to items 2-4 in the funding criteria above. Public Counsel understands that Commission Staff and Verizon do not agree with the funding criteria outlined above concerning consumer education and outreach (item 1) and the description of ineligible

activities. Therefore, each party has prepared its own recommended funding criteria on these topics.

In developing its recommended funding criteria, Public Counsel considered the following statements in the Commission’s Final Order:

Paragraph	Excerpt from Commission’s Final Order, Order No. 7, UT-050814
208	“First, we think it is appropriate for ratepayers to share the net of savings and synergies above costs when necessary to mitigate both quantified and unquantified merger harm.”
210	“The second factor we consider is that the conditions in the proposed settlement distribute the settlement benefits unequally among Verizon’s and MCI’s customers. We correct this imbalance by adopting a mitigation measure that will benefit consumers who are underrepresented in the proposed settlement.”
212	“...we believe that in this proceeding it is necessary to allocate some merger benefits to a public use in order to mitigate harm resulting from the merger.”
213	“Here we find harm, and the public interest requires mitigation beyond that proposed in the settlement agreement.”
221	“Our intention is to use the fund for purposes that would mitigate merger effects, improve telecommunications services, make services more readily available to the public, or for other purposes benefiting a broad range of Verizon customers.”
78	“...we conclude that the proposed merger will harm the competitive scene by removing Verizon NW’s largest competitor for local exchange service – and more importantly, by eliminating prospects for significant future competition.”

Public Counsel’s first recommended funding criterion (item 1), regarding consumer education, outreach, or participation on telecommunications services and/or policy issues, is intended in part to address the Commission’s intent that the funds should be used to mitigate merger effects. This language is substantially similar to that in the Seattle Foundation’s RFP for the TCEF. Public Counsel believes that such uses of the funds are perhaps even more appropriate here, where the Commission clearly found that the merger harmed consumers’ competitive choices. Public Counsel also sees advantage to the Commission in setting broadly stated criteria that will encourage a wider range of potential projects to choose from. We see no purpose to unduly narrow rules designed to exclude grant recipients from participating in Commission business. We therefore recommend that the funding criteria allow for projects that would address policy

issues, including service quality, marketing and consumer protection, consumer rights, and participation in and understanding of state telecommunications policy making proceedings. Again, this language is substantially similar to the language in the Seattle Foundation RFP for the TCEF.

The parties have had some discussions regarding whether RCW 42.17.190, concerning use of public funds for lobbying, applies to the Verizon Public Purpose Fund. While we have not had sufficient time to conduct extensive legal research on this issue, Public Counsel's initial view is that these funds are not "public funds" as set forth in RCW 42.17.190. Rather, these are merger savings or benefits that are being shared with ratepayers in order to mitigate harm from the merger. In this regard, Verizon (i.e. Verizon shareholders) is being ordered to provide the funds to benefit ratepayers, in order to mitigate the harm from the merger and allow the merger to be in the public interest.

Finally, Public Counsel's recommended funding criteria also include language regarding ineligible activities. This language is also substantially similar to the language regarding ineligible activities included in the Seattle Foundation's RFP for the TCEF and is likewise appropriate here.

We thank the Commission for this opportunity to provide a recommendation regarding the Verizon Public Purpose Fund. Please let us know if we can be of any further assistance in this matter.

Sincerely,

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CC: Judge Robert Wallis  
Jonathan Thompson  
David Lundsgaard