

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET UT-050814
)	
VERIZON COMMUNICATIONS)	
INC. AND MCI, INC.)	ORDER 09
)	
For Approval of Agreement and Plan of)	
Merger)	ORDER DEFINING PUBLIC
)	PURPOSE FUND

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1 *Synopsis: The Commission selects the Greater Everett Community Foundation, subject to certain conditions including agreement on terms, to administer the public purpose fund. The Commission directs Verizon to disburse the full amount of the public purpose fund to the administrator within three business days following notice an administration agreement has been signed. The Commission defines the parameters of the public purpose fund, including fund administration, and applicant and project eligibility criteria.*

I. BACKGROUND AND SUMMARY

A. Procedural History

2 On December 23, 2005, Order 07 in Docket UT-050814 was entered, approving a settlement agreement for a merger between Verizon Communications, Inc., and MCI, Inc., upon certain conditions, including the creation of a \$1.25 million public purpose fund to 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.

3 The details of that public purpose fund were not specified in the order, but rather were left to a later decision after consultations with the parties to the proceeding.

4 The settling parties – Verizon, Commission Staff and Integra Telecom of Washington Inc. (Integra) accepted the Commission’s conditions. Public Counsel was not a party to the settlement.

B. Post-hearing Conference

5 On January 31, 2005 the Commission convened a conference to discuss the process by which projects would be proposed and selected for funding from the public purpose fund. The participating parties (Verizon, Public Counsel and Staff) agreed to further discussions toward presenting agreed recommendations for procedures, standards, and the structure of awards from the public purpose fund. Parties agreed to make their submission no later than February 28, 2006. The parties were invited to submit individual proposals in the event they failed to reach agreement.

6 The parties reached agreement on a number of issues, but were unable to reach agreement on others. On March 1, 2006, the Commission received statements from each of the parties. Staff recited areas of agreement among Staff, Verizon and Public Counsel, and provided a separate Staff statement on the public purpose fund. Verizon’s separate statement addressed implementation of the public purpose fund. Public Counsel’s separate statement addressed the public purpose fund.

7 On March 8, 2006 the Commission received a letter from Citizens Utility Alliance (CUA) responding to issues raised in Verizon’s separate statement regarding implementation of the public purpose fund. CUA did not participate in the post-hearing conference or submit a proposal on the public purpose fund.

C. Appearances

8 Participants in this phase of the docket were represented by: David C. Lundsgaard, attorney, Seattle, Washington, for Verizon; Simon ffitch, Assistant Attorney General, Seattle, Washington, for the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel); Jonathan C. Thompson, Assistant Attorney

General, Olympia, Washington, for the Commission's regulatory Staff ("Commission Staff" or "Staff").

D. Summary of Commission Decision

- 9 We select the Greater Everett Community Foundation (the Foundation), subject to certain conditions including agreement on terms, to administer the public purpose fund. We direct Verizon to disburse the full amount of the public purpose fund to the administrator upon three business days notice from the Commission that an administration agreement has been reached. We define the parameters of the public purpose fund, including fund administration, and applicant and project eligibility criteria.

II. GRANT ADMINISTRATION

A. Administrator

- 10 The parties recommended two potential fund administrators: United Way of Snohomish County (United Way) and the Greater Everett Community Foundation (the Foundation). but could not agree on which to select.
- 11 Verizon recommended United Way, noting its larger size and longer experience relative to the Foundation. Public Counsel recommended the Foundation, suggesting that its broader mission is better-suited to the purpose of the fund. Staff expected that the Commission would select one of the two entities as fund administrator, expressing no preference between the two.
- 12 We thank both United Way and the Foundation for the information they submitted in response to inquiries by the parties. Either entity could capably perform the task. We believe that the more detailed plan prepared by the Foundation, specifying staffing and timelines, demonstrates that the Foundation will give careful attention to the management and use of these funds. Consequently, we select the Foundation as the administrator, subject to certain conditions. Those conditions include verification of its ability to solicit proposals statewide and to make grants to projects that would serve Verizon's entire service area including eastern Washington; agreement to the

administrative roles noted in this order; and negotiation of a satisfactory management agreement with the Commission.

13 Neither United Way nor the Foundation has a geographic reach that extends into Verizon's eastern Washington service area; each serves a significant population within Snohomish County. In addition, the fees described by the Foundation appear to be more closely calculated and lower than those of United Way. The fees for each are within reason, and we agree with Verizon that cost should not be a deciding factor. We are impressed with the breadth of the Foundation's mission, and by its enthusiastic responses to inquiries from the parties.

14 Public Counsel raised concerns that United Way may not be perceived by grant applicants as independent and impartial, because one of Verizon's executive managers serves on United Way's board. Employees of large corporations often serve on the boards of local United Way chapters. The situation described by Public Counsel is not unusual and is addressed by United Way's conflict of interest policy, which provides for recusal where a board member may be perceived to have a conflict of interest. While we understand Public Counsel's concern, we do not find it persuasive in this case.

B. Administrative Process

1. Roles

15 Verizon recommends that the administrator monitor grantee progress, assure that each project is completed consistently with its proposal, and submit periodic reports to the Commission. Public Counsel recommends that the administrator select and award grants to projects. Staff recommends that the administrator solicit proposals and administer grants to approved proposals. Staff expresses no preference whether the administrator or the Commission selects the eligible projects for funding.

16 We believe the administrator should solicit grant proposals and award funds. The administrator has experience in awarding funds for projects that serve purposes defined by donors, and monitoring their execution. The administrator is well-suited

to ensure a pool of qualified proposals, and to select from among those proposals projects that best meet the criteria set forth in this order.

2. Review and Selection of Projects

- 17 Verizon asks that the parties have some recourse to oppose inappropriate projects prior to the disbursement of funds. Public Counsel and Staff do not request such recourse.
- 18 The parties and other interested members of the community should have an opportunity to review project proposals and provide their advice to the administrator prior to the selection of projects. The administrator should decide how best to capture those suggestions.
- 19 Under extraordinary circumstances, the parties may appeal assertedly unreasonable project selection decisions to the Commission. The administrator should allow for an appropriate window of time between project selection and disbursement of grants to allow for the possibility of such appeals. In the event of an appeal, the Commission will presume that the administrator has acted prudently and the burden of persuasion will lie with the appellant.

C. Custody and Disbursement of Funds

- 20 Verizon recommends that Verizon retain custody of the funds until a project is selected for a grant.¹ Verizon recommends that it make disbursements directly to the grantees, noting that this greater level of control over the funds would provide some security to Verizon that disbursements would not be made to inappropriate projects. Public Counsel recommends that Verizon turn over the funds to the administrator, and that the administrator should make disbursements directly to the grantees. Staff

¹ Verizon notes that the Commission's order accepting the settlement contemplated that Verizon would remain custodian of the funds until disbursement to project sponsors. However, we here decide that Verizon will not bear administrative burdens in conjunction with project selection or disbursement of funds, and we select an outside administrator to bear those burdens. Therefore, we modify the prior order, to pass custody of the funds to the administrator promptly upon the administrator's qualification.

recommends that Verizon turn over the funds to the administrator and notes that the interest earned on principal can be used to offset administrative costs.

21 The process selected for custody and disbursement of the funds should address Verizon's interest in minimizing its administrative burden.² We note Staff's belief that directing the monies to a foundation is an efficient way to ensure rapid disbursement of funds to serve the interests of consumers.³ We share Public Counsel's concern that administrative costs not consume too much of the fund.⁴ We agree with Staff that interest earned on principal could offset administrative costs.

22 We direct Verizon to pay the entire fund amount of \$1.25 million to the administrator within three business days of receiving notice that the Commission has entered into a contract with the administrator for management of the fund. We require that any interest earned on the funds must be used to offset the costs of administering the fund.

III. APPLICANT ELIGIBILITY CRITERIA

A. Legal Organization

23 The parties propose that eligible grant applicants should be limited to nonprofit entities organized under Section 501(c)(3) or to local government agencies.

24 We agree that eligible grant applicants should be limited to nonprofit entities organized under Section 501(c)(3), local government agencies, or tribal governments. Project sponsors with these qualifications are appropriately suited to identify, plan, pursue, and achieve projects with public purposes such as those contemplated.

B. Location

25 The parties propose, and we agree, that grant applicants must have a presence in Washington State.

² TR 631, lines 8-17.

³ TR 664, lines 4-8.

⁴ TR 657, lines 9-14.

C. Business Interests

26 Verizon, Public Counsel, and Staff recommend that the Commission require that grant applicants have no relationship with telecommunications providers except as recipients of charitable contributions and as customers.

27 We require that applicants may not have any ongoing relationship with telecommunications providers except as recipients of charitable contributions and as customers. We also find that those who will participate in the selection process or have a relationship with participants in the selection process, other than as a recipient of contributions or as a customer of telecommunications services, are ineligible to submit proposals or receive project grants.

D. Stewardship

28 The parties propose, and we agree and require, that applicants demonstrate their ability to account properly for funds and the use of funds, using generally accepted accounting standards applicable to public non-profit agencies or governments.

E. Reporting

29 The parties propose that the Commission require recipients to demonstrate their ability to present a final report regarding the use of funds, and require such a report of each successful grant applicant. We agree, and require a recipient of grant funds to present a final report to the administrator that evaluates the achievements of the project and shows that grant funds were used properly and consistently with the criteria approved by the grant. We leave to the administrator to determine how often to require reports and whether interim reports for longer projects would be appropriate. The administrator must submit project reports to the Commission at least semi-annually.

F. Experience

30 The parties recommend that the Commission favor applicants with a track record of successful receipt and use of grant monies for similar projects to those that the applicant proposes.

31 We believe that the proposed restriction could be too narrow to encourage innovation and allow public purpose funds to be used as seed money for new types of projects. Instead, to help ensure that project sponsors have the ability to implement proposals and complete projects, we require that applicants demonstrate sufficient experience, functional skills, and management capabilities to show the likelihood of successful completion.

IV. PROJECT FUNDING CRITERIA

A. Location

32 Verizon recommends that the Commission require funded projects to serve Verizon's Washington local exchange service area. Public Counsel advises that the Commission require that funded activities be located in Washington and target Verizon's service territory for local exchange service. Staff recommends that the Commission require that funded activities be located in Washington.

33 We require that funded projects serve Verizon's Washington service area.⁵ The purpose of the fund is to offset harm resulting from the merger,⁶ which we found befall Verizon customers and potential customers. Therefore, it is appropriate that

⁵ While funded projects must focus on Verizon customers and service territory, we do not require that projects be limited to serve only Verizon customers or persons within Verizon's local service territory. We understand that such requirements could eliminate some kinds of proposals.

⁶ UT-050814 Order No. 07—Order Accepting Settlement, on Condition; Approving Merger, on Condition, paragraphs, 212, 213 and 221.

customers and others within Verizon's service territory see most of the benefits.⁷ In consideration of rural customers and in order to balance the interests of customers throughout Verizon's service territory, we require that one or more grants be focused on benefits to Verizon's eastern Washington service area.

B. Duration

34 The parties made no recommendations on the kinds of projects to be funded, or the duration of those projects.⁸ In order to serve the broadest feasible proportion of customers, who change over time, and to be of enduring benefit, we prefer projects that can demonstrate long-lasting or continuing results.

C. Focus

35 The parties jointly recommend and we require funded projects to do one or more of the following: 1) Provide residential and small business consumer education or outreach; 2) Improve access to telecommunication and information services; 3) Make services more readily available to the public; or 4) Benefit a broad range of consumers.

36 Public Counsel also recommends that the Commission expand this list to include residential and small business participation in telecommunications service and/or policy issues, and notes that this type of participation could remedy merger harms to consumers' competitive choices. We note that both Public Counsel and Staff vigorously represent residential and small business interests in many issues regarding service level and policy formulation before the Commission. We are satisfied that the listed criteria provide an adequate scope for worthwhile projects.

D. Impact

37 The parties recommend that the Commission prefer projects that provide broad consumer benefit and advance a broad public interest. We agree. To that end, we

⁷ We took a similar approach on behalf of customers in Qwest's service territory in UT-001590.

⁸ The order establishing the public purpose fund required that fund disbursements be concluded by June 30, 2009.

prefer scalable projects, and projects that benefit populations not served by other mitigation measures in this merger docket.

E. Effective Use of Funds

38 The parties provide no recommended measures of the effective use of funds. We prefer projects that show enhanced effectiveness by including matching funds or in-kind contributions as part of their funding.

V. INELIGIBLE PROJECTS

A. Advocacy

39 Verizon advises that the Commission should exclude advocacy projects. It contends that such projects would be prohibited by RCW 42.17.190 of the Fair Campaign Practices Act, and would otherwise constitute bad policy in this case. Verizon describes at length its concerns about the use of these funds for advocacy, and outlines its perceptions of problems that arose from the use of US West settlement funds for advocacy.

40 Staff is willing to accept a prohibition against advocacy as an accommodation to Verizon, although opining that the law cited by Verizon would not apply because the funds probably would not be regarded as public funds. Staff recommends that the Commission exclude the use of funds for advocacy on behalf of candidates for public office, or for state or congressional legislation, initiatives or referenda and/or advocacy.

41 Public Counsel shares the view that these funds are derived from merger savings or benefits, not public funds as set forth in RCW 42.17.190, and advises that we allow the funds to be used for advocacy, including rulemakings and judicial proceedings before the Commission.

42 CUA responded to points made in Verizon's statement regarding the application of
US West settlement funds for advocacy purposes, including advocacy before the
Commission.

43 The administrator must reject projects that would be prohibited under statute or rule.
We find that the funds at issue are not public funds within the meaning of RCW
42.17.190, but, we reject the use of these funds to support advocacy projects. No
party has identified a void in advocacy that other interests cannot adequately fill. The
scope of the eligibility criteria listed at paragraphs 23-31, *supra*, is sufficient to assure
meaningful benefits to consumers within the available funds.

B. Verizon Investment and Charitable Activities

44 The parties recommend that the Commission reject projects that would supplant
Verizon's own investments or expenses. The parties further recommend that the
Commission reject projects that would supplant Verizon's own charitable activities,
either through its corporate giving or through the Verizon Foundation. We agree such
projects are ineligible for funding.

VI. CONCLUSIONS

45 We thank the parties for their well-considered advice. We also thank United Way and
the Foundation for their responses to inquiries from the parties and their proposals
regarding administration of this public purpose fund. We also thank CUA for its
attention to this matter. We trust that these contributions and the guidance we provide
in this order will lead to the highest and best use of these funds to advance the public
interest and to mitigate adverse effects found to flow from the merger of Verizon and
MCI.

VII. ORDER

The Commission now enters the following Order:

46 The Greater Everett Community is selected as administrator of the Verizon and MCI
merger public purpose fund, subject to the following conditions:

47 (1) The Foundation shall enter into a contract with the Commission for
management of the fund consistent with the terms of this order within 30 days
of the date of this order.

48 (2) Verizon shall disburse \$1.25 million to the public purpose fund administrator
within three business days after Verizon receives notice that the Commission
has entered a contract with the administrator for management of the fund.

49 (3) The standards and criteria set out in the body of this order shall govern the
selection of proposed projects for funding.

50 (4) The Commission retains jurisdiction to effectuate the provisions of this and
prior orders entered in this proceeding.

DATED at Olympia, Washington, and effective May 16, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner