

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

In the Matter of the Joint Application	)	DOCKET UT-050814
of	)	
	)	
VERIZON COMMUNICATIONS	)	ORDER 12
INC. AND MCI, INC.	)	
	)	
For Approval of Agreement and Plan	)	ORDER CLARIFYING AND
of Merger	)	AMENDING ORDER 09 RELATING
	)	TO PUBLIC PURPOSE FUND
	)	ADMINISTRATIVE STANDARDS
.....	)	

1 *Synopsis: The Washington Utilities and Transportation Commission (“Commission”) clarifies and amends the administrative standards established in Order 09 in this docket to address potential concerns raised by the Greater Everett Community Foundation regarding the ordered processes.*

2 In Order 09 in this docket, the Commission determined the scope and nature of a Public Purpose Fund (“Fund”) that was created by Order 07. In Order 09, the Commission selected as administrator the Greater Everett Community Foundation (“Foundation”).

3 The Foundation and Commission staff began working to develop a contract to set out the Foundation’s responsibilities under the terms of the order. In doing so, the Foundation identified two provisions in the order for which it sought clarification, and another which it found to raise legal concerns regarding its status as a charitable organization.

4 Representatives of the parties who had argued terms of the public service fund to the Commission—Verizon , Public Counsel and Commission Staff—met by consent, via teleconference, with the administrative law judge, the Commission’s Executive Director, and representatives of the Foundation. They continued their June 22 post-hearing teleconference by agreement on June 26. The result was an agreement regarding proposed clarifications or modifications of some terms of Order 09.

5 By this order, the Commission clarifies and amends Order 09 to implement the parties' proposed modifications.

**1. Establishment of an Advisory Committee.**

6 Paragraph 18 of Order 09 provides:

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.

7 The Foundation sought clarification whether the terms of this paragraph would be met by the establishment of an advisory committee comprising a representative of each of the parties as well as members appointed by the administrator. The parties and the administrator agreed that the establishment of an advisory committee with whom the Foundation would consult in evaluating proposals for grants would satisfy the intent of Order 09.

8 We concur, and direct that the committee membership include representatives of Verizon, Public Counsel, and the Commission. The Foundation administrator will appoint other members of the Advisory Committee, most likely trustees of the Foundation who have experience in evaluating grants for compliance with funding conditions. In addition, the participating parties and the Administrator shall select by consensus an additional member to represent the interests of the community at large. The administrator-appointed committee members will comprise a majority of the committee.

**2. Objections to Project Selections.**

9 Paragraph 19 of Order 09 reads as follows:

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.

- 10 The Foundation argues that the appeal process contained in this provision, which it asserts undermines its role as the sole and final determiner of grants, is inconsistent with its responsibilities under applicable law, and may jeopardize its status as a tax-exempt organization. It supported its view with a letter memorandum from its attorneys. The Foundation's representatives stated that it could not accept appointment as administrator if that provision remained.
- 11 While the parties neither accepted nor rejected the legal arguments put forward by the Foundation, they nonetheless agreed that the Foundation's concerns were raised in good faith and they therefore sought to explore a process that addresses those concerns while at the same time ensuring that parties have recourse if the Foundation selects projects for funding that are inconsistent with the Commission's terms.
- 12 The parties proposed that the Commission modify the order consistent with a broad interpretation of its existing terms. The Commission accepts this proposal, and hereby revises paragraph 19 of the order to read as follows:

Under extraordinary circumstances, a party may contest assertedly unreasonable project selection decisions by submitting to the Commission in writing its objections to the selection and the grounds for those objections. A party objecting to a grant award must file its objection with the Commission within three business days following the award. Answers by any other party must be filed within three business days after an objection is filed. The Commission will review the objection within ten days after the answer is filed. If the Commission is persuaded by the party making the contest, it will petition the Attorney General of Washington to take appropriate action pursuant to the Washington Charitable Trust Act and other applicable law. In reviewing any objection, the Commission will presume that the administrator has acted prudently and the burden of persuasion will lie with the objecting party.

13 We agree that this revision provides an opportunity for parties to seek Commission input as to the appropriateness of a project selection. It identifies a process for contesting a project selection that is assertedly unreasonable. At the same time, it addresses the Foundation's concerns regarding the potential risks to its tax-exempt status.

### **3. Addressing Harm Resulting from the Merger.**

14 Paragraph 33 of Order 90 states that the purpose of the Fund is to remedy harm from the merger and to distribute the benefits of the Fund to alleviate that harm. The Foundation seeks guidance as to what criteria it should apply in meeting this test.

15 We believe that the Paragraph 35 of Order 09 provides that guidance by listing the criteria we expect projects to follow. Specifically, we stated that funded projects must 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.

16 Paragraphs 33 and 35 should be read together. To the extent there may be any ambiguity on this point, we clarify that grants for projects that meet the requirements of paragraph 35 (and other terms of the order) are deemed to remedy harm from the merger and distribute the benefits to alleviate that harm.

### **Conclusion**

17 We hereby amend Order 09 as set forth above. We appreciate that the parties worked cooperatively to address the Foundation's concerns, and that they have done so in a way that preserves their interests and the Commission's intention in its earlier Order.

18 It is so ordered.

DATED at Olympia, Washington, and effective July 11, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner