BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Verizon Northwest Inc. for an Order Approving Commencement of Bifurcated General Rate Case and Waiver of WAC 480-07-51-(2),	) Docket No. UT-040788)) VERIZON RESPONSE TO ANSWERS OF) COMMISSION STAFF, PUBLIC) COUNSEL/AARP TO AMENDED) PETITION OF VERIZON NORTHWEST) FOR BIFURCATION AND WAIVER)

1 Verizon Northwest Inc. (Verizon) files this Response to the Answers of Commission Staff and Public Counsel.[1]

II. RESPONSE TO STAFF

2 Staff states that Verizon's bifurcation proposal does not violate any statute or rule,[2] and Staff does not object to the proposal if (1) Verizon provides additional customer notice as recommended by Staff in its Exhibit 1; (2) Verizon provides an additional opportunity for interested parties to participate in response to that notice; and (3) Verizon is responsible for

[1] Public Counsel and AARP filed a joint answer. For purposes of this Response, "Public Counsel" includes both Public Counsel and AARP.

[2] Staff Answer ¶ 11.

"adverse consequences," if any, from any deficiencies in the additional notice it issues.[3] Verizon agrees to all these conditions.

III. RESPONSE TO PUBLIC COUNSEL

A. Public Counsel Misstates Verizon's Proposal

3 Public Counsel's opposition consists of incorrect arguments on form and substance that are based on a mischaracterization of Verizon's proposal for the conduct of this case.

4 Public Counsel argues that Verizon's request for a waiver of portions of the Commission's rate case procedure rule violates RCW 80.36.110. This statute requires utilities to submit proposed rate changes for review before such changes can be made final. According to Public Counsel, "What Verizon proposes to file 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."[4] Public Counsel claims further that these alleged "final" rates could not be opposed or suspended, and "if any customers came forward at that point and stated opposition to the new rates [or] requested suspension," "they would be told they were too late."[5]

5 Public Counsel is wrong; it fundamentally misstates Verizon's proposal. Verizon will, in fact, file *proposed* rates based on the Commission-determined revenue requirement, and Verizon has agreed to *suspend* these rates until (1) other parties and consumers have an opportunity to review them and propose different rates, and (2) the Commission makes a final determination. Staff recognizes this process in its Answer, where it notes that Verizon will satisfy RCW 80.36.110 by filing proposed rates at the end of the revenue requirement phase.[6]

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[3] *Id.* ¶ 3. As we understand Staff's proposal on the last item, Verizon, not Staff is responsible for any mistakes in the notice.

[4] Public Counsel Answer at 4 (emphasis in original).

[5] *Id.* at 5.

[6] Staff Answer ¶ 11, n.9.

6 To clear up any misunderstanding, here is the process Verizon proposes:

1. Verizon will issue the additional customer notice Staff recommends in its Answer, and any interested party may participate in this case in response to that notice.

2. At the conclusion of the revenue requirement phase, Verizon will propose specific rates ("rate design") that reflect the Commission-approved revenue requirement. Verizon will issue *another* customer notice that explains its proposed rate design, and any interested party may participate in the rate design phase of the case in response to that notice.

3. The Commission will review Verizon's proposed rates, as well as the proposed rates of other parties, if any, and issue its final decision. Verizon will file final rates that reflect the Commission's decision.

7 In short, as Staff explains, Verizon's proposal fully satisfies all Washington laws, including RCW 80.36.110. Public Counsel's claims to the contrary are based on a fundamental misstatement of Verizon's proposal.

B. <u>Public Counsel Misstates the Law</u>

8 Public Counsel relies on a Missouri case and a treatise to support its claim that Verizon's bifurcation proposal is somehow unlawful or contrary to public policy. Here, too, Public Counsel is wrong.

9 First, the case discussed by Public Counsel in its brief – *Utility Consumers' Council of Missouri v. PSC*, 585 S.W.2d 41 (Mo. 1979) – is inapposite. There, the court held that the commission did not have the power to authorize a fuel adjustment clause for an electric utility. The court explained that such a clause "enables the utility to pass on to the consumer any increase (or decrease) in the cost of fuel automatically and without any need for further consideration of compensatory decreases (or increases) in other operating expenses. As such, it is a radical departure from the usual practice of approval or disapproval of filed rates, in the context of a general rate case."[7] This case has nothing to do with Verizon's proposal here. Verizon, unlike the utility in the Missouri case, is not proposing to change rates in a vacuum;

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[7] *Id.* at 49.

indeed, Verizon is proposing to change its rates precisely as the Missouri court anticipated, i.e., in the context of a full rate case.

10 Second, the treatise on which Public Counsel relies, Professor Goodman's "The Process of Rate Making," actually supports Verizon's position. Public Counsel suggests that this treatise supports the principle that a general rate case cannot be commenced except by filing proposed tariffs. The text cited, however, simply clarifies that agencies may not dispense with the tariff-filing requirement altogether in a rate case.[8] Here, Verizon does not propose to dispense with the tariff; instead, it will file the tariff in a subsequent phase. Moreover, Professor Goodman *supports* the Commission's discretion to conduct a general rate case in a phased manner. He notes:

> An agency has broad discretion to determine how best it might handle related yet discrete issues through its own procedures and subject to its own priorities. . . Some commissions will group issues for hearing in different "phases" of a proceeding, such as a phase having to do with rate issues and another relating to prudence issues. . . . Once the agency has divided the rate proceeding into phases composed, for example, of a Phase I on revenue requirement and a Phase II devoted to rate design, it will not reopen revenue requirement issues in Phase II when the company attempts to provide more current data.[9]

In short, Verizon is proposing the type of "phased approach" that Professor Goodman accepts as reasonable.

11 Finally, contrary to Public Counsel's assertions, rates may be set through a variety of procedures, not all of which involve a traditional, formal rate case. For instance, the rate-making process may be invoked by an agency itself on its own motion, such as the complaint it opened against U S WEST in 1989.[10] When the Commission takes this approach, it does not publish proposed tariffs. Rather, it first determines the company's revenue requirement,

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[8] Leonard Saul Goodman, *The Process of Rate Making*, Vol. 1, pp. 46-47 (1998) (citations omitted).

[9] *Id.* at 54-55 (citations omitted).

[10] The WUTC issued a complaint against Pacific Northwest Bell (US West Communications) to investigate the propriety of its rates and charges on February 21, 1989 in Docket U-89-2698-F.

and then the parties have the opportunity to propose new rates. Also, rates have been set or adjusted on an interim basis even though no final proposed rates from a general rate case were on file at the time interim relief was ordered.[11]

C. Verizon Has Amply Justified Its Proposal

12 Contrary to Public Counsel's assertions, Verizon has justified the reasonableness of its proposal. As a threshold matter, Public Counsel's principal claim that the "true purpose" of Verizon's proposal is to hide the size of the potential rate increases from customers is baseless. Verizon will provide customers with clear and explicit notice – not once, but twice – of the potential effect of Verizon's filing. At its core, Verizon's proposal simply presents the key revenue requirement issue first, which will allow the parties to propose very precise rate designs.

13 Also, as Verizon explained in its petition, this rate case presents unique revenue requirement issues that were raised (but that the Commission did not decide) in the AT&T Access Charge Complaint Case, Docket No. UT-020406. For example, Staff and Verizon disagree over the application of the FCC's Separations Rules, and this issue alone significantly affects the calculation of Verizon's revenue requirement. Given this, it makes perfect sense to decide the threshold revenue requirement issue first, and thereafter proceed to litigate the rate design issues. To do otherwise would require Verizon (and other parties) to spend considerable time and resources developing cost studies and rate designs that may be useless.[12]

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[11] *See, e.g., In re the Matter of AVISTA CORPORATION, d/b/a AVISTA UTILITIES Request Regarding the Recovery of Power Costs Through the Deferral Mechanism*, DOCKET NO. UE-010395, Washington Utilities and Transportation Commission, 2001 Wash. UTC LEXIS 346, August 16, 2001.

[12] In the "standard" rate cases Public Counsel speaks of, multiple parties propose different rate designs based on their respective positions on what the company's authorized revenue requirement should be.

14 Furthermore, Verizon's proposal actually gives consumers more notice and greater opportunities to participate. First, pursuant to Staff's suggestion, consumers will be given additional notice regarding the revenue requirement phase. Second, after the Commission establishes a revenue requirement, consumers will be given notice of Verizon's specific rate proposals. Because these proposals will reflect the Commission-approved revenue requirement, consumers will have much more *precise* information on how their rates are likely to be changed. Thus, Verizon's bifurcation proposal is justified because it results in more notice and a greater opportunity to participate.

D. Verizon's Proposal Does Not Raise "Unforeseen Problems"

15 Public Counsel erroneously argues (at 12) that Verizon's petition raises "unforeseen problems," such as the "unclear duration" of Verizon's request for interim relief. First and foremost, the *Commission* will set the schedule in this case, not Verizon. Verizon has proposed a schedule that reflects the input of Staff and Public Counsel, but if Public Counsel now believes the schedule is too long, it should propose a shorter one. Also, if the Commission establishes interim rates that provide the company annual revenue that is more than the revenue requirement later authorized by the Commission, the Commission can order Verizon to immediately reduce its interim rates. This would address Public Counsel's claim that consumers might continue to pay "excessive" interim rates.

16 Finally, Public Counsel argues (at 12) that Verizon's reservation of rights to file tariffs that trigger the 10-month statutory clock creates "procedural uncertainty." Here, too, Public Counsel attempts to create problems where none exist. The reason for this reservations of rights is simple: Verizon wants to be able to trigger the 10-month clock in the unlikely event the Commission were to establish a schedule that goes well beyond the 15 months proposed by Verizon. For all these reasons, Verizon respectfully requests that the Commission grant its petition for waiver.

Respectfully submitted this 9th day of June, 2004.

GRAHAM & DUNN PC

By ______________________________
Judith A. Endejan
WSBA# 11016
Email: jendejan@grahamdunn.com
Attorneys for Verizon Northwest Inc.