BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. VERIZON NORTHWEST INC., Respondent.	Docket No. UT-040788 VERIZON RESPONSE TO JOINT MOTION FOR SUMMARY DETERMINATION DISMISSING VERIZON'S PETITION SEEKING INTERIM RATE INCREASE

I. INTRODUCTION

1 Verizon Northwest Inc. ("Verizon") opposes the Joint Motion For Summary Determination filed by the Commission Staff, Public Counsel, and Intervenors AARP, Citizens' Utility Alliance, the United States Department of Defense, Northwest Publications Communications Counsel and WebTech ("the Opposition"). The Opposition is not entitled to summary determination because Verizon's Petition raises genuine issues of fact as to whether Verizon is entitled to interim relief. In deciding a motion for summary determination, the Commission must apply the same standard as found in Civil Rule 56, which requires the Commission to view all facts, and inferences therefrom, in the light most favorable to the non-moving party. *Washington Federation of State Employees, Council 28, etc. v. Office of*

Financial Management, 121 Wn.2d 152, 849 P.2d 1201 (1993).[1] Viewing the evidence Verizon has presented in this light requires denial of the Opposition's motion.

2 A critical fact is whether Verizon faces a financial emergency. Yet this is not the only "fact" pertinent to this Commission's decision here. Under the PNB criteria discussed in Section II.A., the Commission will consider "all salient factors" (No. 6) that bear on the appropriateness of interim relief including the detriment to Verizon's ratepayers and stockholders (No. 5); whether gross hardship or inequity will ensue if interim relief is denied (No.2), and whether all financial indices indicate a serious decline (No. 4). The Commission cannot possibly consider all of the "salient factors" without a full evidentiary hearing.

3 The Opposition isolates four financial indices as the basis for its claim that Verizon faces no financial emergency. The Opposition claims that Verizon has no inability to attract financing, and therefore no customers are in jeopardy. It also claims there is no proof that Verizon either has a need for external capital or that Verizon cannot attract it.

4 As explained herein, these claims are wrong for three reasons. First, the Opposition's claims are based upon the erroneous assumption that the Commission can lawfully consider financial data from non-Washington intrastate operations in deciding on whether to grant intrastate interim relief. Second, Verizon has presented evidence that directly contradicts these assertions, as discussed with respect to the third reason. Third, the Exhibits that allegedly support the Opposition's motion do not establish the absence of a financial emergency. Exhibit 1 does not establish the bond or credit rating that would be applied to Verizon's intrastate operations in Washington, which is the only relevant jurisdiction. Professor Vander Weide's testimony establishes that the financial condition of these operations would not support an investment-grade credit rating. (JHV-4T, pp. 3, 10-13).

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[1] *In the matter of the application of Cascade Natural Gas Corporation for a Certificate Of Public Convenience And Necessity To Operate A Gas Plant For Hire In The General Area of Grant County*, Docket No. UG-001119, 2001 Wash. UTC LEXIS 215 (2001) at *15.

5 Opposition Exhibits 2 and 3 do not prove that Verizon's intrastate operation in Washington is able to attract financing or necessary capital. Again, Professor Vander Weide has explained that the Company's "earnings are clearly insufficient to allow the Company to continue to invest in its network in Washington State." (JHV-4T, p. 10, ll. 5-6). He also explained how other key financial indices – ignored by the Opposition – prove Verizon's financial emergency. Verizon cannot meet its payment obligations on its debt for Washington State due to insufficient revenues. (JHV-4T-p. 9, 12). Both Professor Vander Weide and Ms. Heuring establish that Verizon is earning a negative rate of return and that this means Verizon has no incentive to invest in its intrastate operations. (JHV-4T, p. 14; NWH-7T, p. 4). Mr. Banta explained that the Company's financial condition jeopardizes its ability to obtain capital to fund its construction expenditures for 2004. (SMB-2T, p.4). All of this evidence is relevant to an assessment of Verizon's financial condition and raise issues of fact, when viewed in the light most favorable to the Company, even if the Commission were to consider the Opposition's "evidence" to the contrary. Clearly, the Company's evidence of its financial condition cannot be disregarded simply because opponents proffer different evidence from a different perspective.

6 The bottom line is that the most productive course for the Commission is to hold evidentiary hearings and establish a full record.

II. ARGUMENT

A. The Opposition Misstates the Criteria for Interim Relief; Verizon Meets These Criteria.

7 The Opposition claims that Verizon has failed to make a *prima facie* case for interim relief, but the Commission has never established a checklist of required elements for such a "*prima facie* case." Rather, the Commission has articulated six factors that guide its evaluation of a request for interim relief.[2] These factors are not rigid elements of a "*prima facie* case" and are not to be mechanically applied. Verizon explained in its Petition how its case for interim

[2] *WUTC v. PNB*, Cause No. U-72-30, Second Supplemental Order (Oct. 10, 1972).

relief is consistent with the six factors articulated in PNB. The Opposition arguments to the contrary rest on the erroneous premise that Verizon has no imminent financial needs that would impact its ability to obtain necessary capital because Verizon can sustain its business by being subsidized from non-WUTC jurisdictional operations. However, this argument ignores the legal boundaries of this Commission's jurisdiction, and the corresponding obligation of the Commission to permit Verizon to operate on a financially solvent basis with regard to revenues and costs in the Washington intrastate jurisdiction. The Opposition fails to address this point. In particular, the Opposition ignores:

- The Commission's legal responsibility to provide Verizon's intrastate operations the opportunity to earn a reasonable rate of return. Here, Verizon is earning a negative rate of return -- a point unrefuted by the Opposition;
- The undeniable fact that the Commission's jurisdiction only extends to the financial condition of Verizon's Washington intrastate operations;
- That the continued subsidization of Verizon's Washington intrastate operation by the ratepayers of other states and the interstate jurisdiction violates Washington law, sound regulatory policy and basic notions of equity;
- The gross inequity that would result from a denial of interim relief requested due to the impact of the Commission's Access Charge Order in Docket 020406.[3]

8 Ultimately, as always, the Commission is guided by its broad responsibility to regulate in the public interest pursuant to the sixth PNB factor and RCW 80.01.040, after consideration of all salient factors. In making this determination, the Commission must consider the consequences to both ratepayers and Verizon when determining whether interim relief should be allowed.[4] On that basis, it would clearly be in the public interest for this Commission to allow interim relief. A denial would continue to exacerbate Verizon's negative earnings and would continue the unfair subsidization of Verizon's Washington operations by non-WUTC ratepayers.

[3] *AT&T Communications of the Pacific Northwest v. Verizon Northwest Inc.*, (Eleventh Supp. Order) Docket No. UT-020406 (2003).

[4] In the Matter of the Application of Qwest Corporation, (Tenth Supp. Order) Docket No. UT-021120 (2003) (¶¶ 43, 43).

In contrast, a grant would provide some financial relief to Verizon's Washington intrastate operations during the pendency of the general rate case with no risk to ratepayers, because the interim rates would be subject to refund. Such relief is not uncommon, having been allowed in approximately 50 percent of the cases where interim relief is requested.[5] Here, Verizon has presented a compelling case for interim relief based upon the facts and equities. There is no dispute that Verizon suffered a $30 million annual loss in revenue due to Commission action, which led to its negative intrastate rate of return of - 0.47%. There is also no dispute that the Commission invited Verizon to seek interim relief because it recognized the significant effect of its Access Charge Order.[6]

9 Under these circumstances it would be fundamentally unjust for the Commission to grant a summary determination now and to deny interim relief to Verizon.

B. The Commission Has a Legal Responsibility to Provide Verizon's Intrastate Operations the Opportunity to Earn a Reasonable Rate of Return; Here, Verizon is Earning a Negative Return.

10 Washington law requires the WUTC to ensure that Verizon's rates are "sufficient," which means ones that will "yield to the utility its aggregate required revenue requirement" [which includes a reasonable rate of return]. *See* RCW 80.36.080, *Power v. WUTC*, 104 Wn.2d 798, 808, 711 P.2d 319, 325 (1985).

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[5] The Opposition failed to include the Commission's grant of interim relief to Verizon's predecessor in the Company's last rate case. See, *General Tel. Co. of the Northwest v. Washington Utilities and Transportation Commission*, 104 Wn.2d 460, 706 P.2d 625 (1985). In addition, interim relief was granted in the following cases: *WUTC v. Puget Sound Power & Light Company*, Sec. Supp. Order, Docket No. U-73-57 (1974); *WUTC v. Cascade Natural Gas Corp.*, Sec. Supp. Order, Docket No. U-74-20 (1974); *WUTC v. Washington Water Power Company*, Sec. Supp. Order, Docket No. U-77-53 (1977); *WUTC v. Puget Sound Power & Light Co.*, Sec. Supp. Order, Docket No. U-80-13 (1980); *WUTC v. Washington Water Power Company*, Sec. Supp. Order, Docket No. U-80-13 (1980); *WUTC v. Washington Natural Gas*, Sec. Supp. Order, Docket No. U-80-111 (1981); *WUTC v. Skamania County Sanitary Service*, First Supp. Order, Cause No. TG-2108 (1987); *In re the Matter of Avista Corporation*, Sixth Supp. Order, Docket No. UE-010395 (2001); and *WUTC v. Olympic Pipe Line Co.*, Third Supp. Order, Docket No. TO-011472.

[6] Paragraph 144 of the Access Charge Order noted that the ordered reduction "will cause a considerable reduction in Verizon's revenues." *See also,* discussion Section II.E.

11 The stark, undisputed fact before the Commission at this time is Verizon's negative rate of return of – 0.47%. Verizon's Petition does not involve just a failure to achieve the company's authorized return, as argued by the Opposition. **Rather, Verizon's situation is due to Commission action that has caused the company to have no opportunity to earn its authorized return, resulting in a negative ROR.** Verizon has not created a "hypothetical financial emergency" as suggested by the Opposition (p. 15). Verizon's financial emergency is very real within the Washington intrastate jurisdiction. Washington law requires this Commission to take action when a utility is not earning anything in that jurisdiction.[7]

12 The Commission has used interim relief many times to fulfill its duty to protect the financial integrity of the utilities it regulates. A declining rate of return, and certainly a negative rate of return, warranted interim relief in many of the cases where such relief was granted.[8] In the first case cited by the Opposition, *WUTC v. Puget Sound Power & Light Co.*, Sec. Supp. Order, Cause No. U-75-57, (1974), the Commission said that a "failure of rate of return ... is a significant factor to be considered with all others." (emphasis supplied) In this case, which supports Verizon, the Commission granted interim relief after considering the deteriorating financial condition of the utility, and core changes in the energy industry brought about by increased energy demand in the Puget Sound area. Interim relief was not based, as the Opposition suggests, solely on an inability to obtain needed financing absent interim rate relief. A key factor that warranted this relief was Puget's declining rate of return, which was much higher than Verizon's negative rate of return.

13 The Opposition mischaracterizes the second case, *WUTC v. Washington Water Power Co.*, Sec. Supp. Order, Docket No. U-77-53 (1977). The basis for interim relief there also was not a

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[7] In one case where interim relief was granted, the Commission noted "Without interim relief effective during the pendency of this cause, respondent would be operating in a loss position, which impairs the company's financial viability and may impair its ability to meet its responsibilities as a common carrier." *WUTC v. Skamania County Sewer Service*, First Supp. Order, Docket No. TG-2108 (1987) (FOF 2).

[8] See Footnote 5.

failure to obtain financing for specified projects.[9] Rather, the Commission relied upon the utility's evidence of negative financial indices such a declining rate of return and deterioration in interest coverage. Here, Verizon faces a similar, if not worse, deteriorating financial situation due to its negative rate of return and inability to cover interest payments on an intrastate basis.[10]

14 In two of three recent cases, the Commission also granted interim relief. See *In Re Avista Corp.*, Sixth Supp. Order, Docket No. UE-010395 (2001) and *WUTC v. Olympia Pipeline Co.*, Third Supp. Order, Docket No. TO-011472 (2002). In both cases, the Commission issued its ruling after full evidentiary hearings. Attachment A hereto compares the factors present in those cases with Verizon's situation. This comparison shows that interim relief is warranted for Verizon as well.

15 The Opposition cites the third case, *WUTC v. Puget Sound Energy Co.*, Sixth Supp. Order Docket Nos. UE-011163 and 011170 (2001) ("PSE" Case") as support for dismissal of Verizon's petition. That case is factually and procedurally inapposite. First, PSE requested extraordinary "interim relief" independently, with no accompanying general rate case. PSE merely promised to file one within several months. The Commission found the posture of this request to be "extraordinary" and inconsistent with a more typical request for interim relief in a general rate case that can be analyzed in a proper perspective and is less likely "to constitute single-issue requests, which effect might actually be moderated or exacerbated by other aspects of a company's operations." (¶¶ 21, 27). Unlike PSE, Verizon has presented a request for interim relief within the context of its general rate case filing.

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[9] A third case discussed by the Opposition (p. 11) is inapplicable to Verizon's case. In *WUTC v. Ludlow Utilities Co.*, Sec. Supp. Order, Cause No. U-87-1550-T, after a full evidentiary hearing, the Commission denied interim relief reasoning that the utility, in its own name, had not shown an inability to borrow funds to repair its water system. More important, the Commission felt that the utility's financial operations would improve if the contested level of depreciation claimed by the utility was removed. Here, Verizon has shown that Washington's financing for its intrastate operations is seriously impaired in a way that Ludlow did not demonstrate (JHV-4T- pp.3, 10-13) and the level of depreciation used to determine Verizon's current financial position is the most recent level authorized by the Commission. (SMB-2T, p. 7).

[10] (JHV-4T, p. 6-9).

16 Second, PSE did not present the sort of detailed, compelling financial evidence that Verizon does here, which show a significantly deteriorating financial situation. PSE did not claim a negative rate of return, as Verizon now suffers. PSE merely presented projections of a lower than authorized rate of return. There was no evidence that PSE could not make its interest payments, whereas Verizon has presented such evidence,[11] as well as evidence that demonstrates the below-investment grade level rating that would be achieved for bonds based upon Verizon's intrastate operations.

17 Finally, PSE had not sustained an extraordinary negative financial hit like the Access Charge Order that slashed $30 million of Verizon's intrastate revenues without offset. [12]

18 In contrast to PSE, but like Verizon's situation, Avista and Olympia Pipeline were earning a negative rate of return in intrastate operations precipitated by events outside of each utility's control. The Access Charge Order constituted such an event for Verizon and "gross inequity or hardship" will result to it, as with *Avista*,[13] if Verizon is not afforded similar relief.[14]

19 Verizon has presented solid, undisputed evidence that cannot be ignored regarding its declining financial condition, including a negative rate of return. For purposes of summary judgment, this evidence must be presumed true. The Commission would ignore its legal responsibility to Verizon by failing to consider this evidence. Therefore, for that reason alone, the Motion for Summary Determination should be denied and Verizon should be given the opportunity for a full hearing on its case for interim relief.

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[11] Id.

[12] (JHV-4T, pp. 10-13).

[13] *Avista*, supra, at ¶ 39.

[14] The Opposition faults Verizon for not filing a general rate case at the outset of Docket No. 020406 in anticipation that the Company would lose and be forced to reduce access charges by $30 million. Among other reasons, Verizon never anticipated such a loss because its access charges complied with the new access charge rule. WAC 480-120-540. To suggest that a utility must file a general rate case as a preventative measure in a complaint case is unprecedented.

C. <u>In Ruling on Verizon's Request for Interim Relief, the Commission May Only Consider the Financial Condition of Verizon's Intrastate Operations</u>.

20 The Opposition relies on financial information regarding Verizon Northwest Inc.'s total operations, which include the interstate and intrastate jurisdictions of Oregon, Idaho and Washington. Whatever credit rating Verizon Northwest Inc. can attain <u>in total</u> is irrelevant to the revenue needs of its Washington intrastate operations or the Commission's legal obligation to ensure that Verizon's Washington intrastate revenues are sufficient. That these operations are subsidized by internal funding from outside the Washington intrastate operations is also irrelevant to whether this Commission can, and should, allow the only operations over which it has jurisdiction (Washington intrastate) to sustain serious financial harm without rate relief.

21 RCW 80.01.040 limits the Commission's jurisdiction to regulation within the four corners of Washington state. Bedrock principles of jurisdictional separation further limit the Commission's jurisdiction to Verizon's intrastate operations with the state. When ruling on the request of *Olympic Pipeline* for interim relief, the Commission emphasized[15] "**we must look at the intrastate portion of the operations as though it were independent.**" The Opposition ignored this passage, wherein the Commission clearly said that it would not consider multi-jurisdictional issues in ruling on a request for interim relief rates, but would examine the financial condition of the operations that the Commission has jurisdiction over. The law permits no other course. Because the Opposition's predicate of "no financial harm to Verizon" results only from an impermissible consideration of multi-jurisdictional operations its arguments crumble and its motion fails.

22 Other interim relief cases reinforce this obvious point. In *Olympic*, the Commission did not look to the finances of Olympic's owners; BP Pipeline's North America Inc. ("BP") and Equilon Pipeline, LLC ("Equilon"). Indeed, the finances of these owners was only relevant to highlight Olympic's dire financial condition. There -- as here -- financing for intrastate operations came from owners not regulated by the Commission. Further financing from the

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[15] *Olympic*, ¶ 27

Olympic owners was clearly in doubt because of Olympic's negative financial condition. The Commission recognized that common sense would make Olympic's owners reluctant to provide further funding. It quoted an Olympic witness acknowledging this fact: "Would you make a loan to this company?"[16]

23 So too, in Verizon's case, even if Verizon's owners have the financial capacity to subsidize the Washington intrastate operations, they may have no incentive to do so in a jurisdiction with negative earnings. They cannot be required to do so, and they cannot be assumed to do so for any purpose – including summary judgment. Nor should they have to provide such funding, as explained in the next section. In sum, the Commission cannot and should not consider the financial status of other Verizon entities, including Verizon Northwest Inc., but should only look at Verizon's intrastate operations.

24 Just as it did in *Avista* and *Olympic*, the Commission should fashion a short-term remedy via interim relief to act as a bridge to a longer-term comprehensive resolution of Verizon's financial requirements in the general rate case.

D. The Opposition Cites No Authority to Support Its Claim That Non-Washington Ratepayers Should Subsidize Verizon's Intrastate Operations.

25 The owners of Verizon, and the non-WUTC jurisdictions of their Northwest business unit -- Verizon Northwest Inc. -- have been carrying unjustly the financial burden of subsidizing Verizon's intrastate operations. The Opposition would penalize Verizon's owners for voluntarily providing the subsidies to keep Verizon's Washington intrastate operations going when the Commission has failed to allow the company any intrastate earnings whatsoever.[17] It is wrong to penalize this exercise of good corporate citizenship. Instead, the Commission should

[16] *Olympic*, ¶ 32.

[17] The Opposition makes much of the Company's alleged failure to describe its exact needs for external capital. This argument completely misses the point of Verizon's request, which is to obtain necessary revenues to run its intrastate operations, which currently produce no net operating income. Under these circumstances, Verizon need not specify particular capital projects that cannot be funded, as under present circumstances it is unclear whether any further capital investment in this jurisdiction can be justified in financial terms.

be aware that these owners have no obligation to provide ongoing subsidies and that there is a genuine question mark about the sustainability of funding for Washington jurisdictional investments and operations. The Commission's actions here, both with regard to interim relief and the case in chief, will send terribly important signals about the investment climate in Washington.

26 The Opposition cites no authority, nor can it, that legitimizes the regulatory dereliction of duty that it proposes by arguing that a regulatory agency may subsidize revenue deficiencies within its jurisdiction from the ratepayers in other jurisdictions.

27 Assume, for the sake of argument, that Verizon's Washington intrastate operations were profitable and that Verizon's Idaho and Oregon operations were earning a negative ROR. Verizon expects this Commission would strongly oppose revenues from Washington ratepayers being used to subsidize operations in Idaho or Oregon. So too, here the Commission cannot, and should not, hope to rely upon the ratepayers of other states to subsidize Verizon's below-water Washington operations. This Commission has a legal responsibility to see that Washington intrastate operations are funded sufficiently from Washington intrastate revenues. RCW 80.01.040; 80.36.080. It can take positive, strong steps towards fulfilling this responsibility and ending unfair subsidization by denying the motion for summary determination and allowing the Petition for Interim Relief to proceed towards a grant of this necessary relief.

E. In Addition to Verizon's Dire Financial Condition, the Unique Posture of this Case Warrants Extraordinary Relief to Avoid Gross Hardship or Gross Inequity.

28 The Opposition utterly fails to address the impact of the Access Charge Order, which created a severe revenue hole for Washington's intrastate operations. The unique circumstances of that Order, and the Commission's treatment of Verizon within it, warrant extraordinary interim relief.

29 In testimony before this Commission, in support of a settlement, the parties to Docket UT-020406 acknowledged the appropriateness of rate rebalancing to prevent serious financial harm

to Verizon from access charge reductions.[18] In that docket, the parties agreed to offsetting rate increases of the magnitude requested herein by Verizon in this Petition. While unfortunately the settlement did not come to fruition, the fact remains, nonetheless, that the parties acknowledged the severe revenue impact of a $30 million access charge reduction and that offsetting rate relief would be appropriate.

30 It is simply unfair to argue, as the Opposition does, that Verizon should be denied this necessary relief because it should have filed the petition for rate relief at the outset of Docket No. UT-020406. Verizon had no way to know it would face a $30 million revenue reduction until the Commission actually resolved that docket in the Access Charge Order. The two-month delay in the effective date of that Order hardly minimizes the harm to Verizon. If anything, the two-month delay was an implicit recognition by this Commission that Verizon should be given the chance to seek necessary increases in other rates in order to deal with the access charge reductions.[19]

31 Both the language of the Access Charge Order and subsequent representations by Commission clearly establish that the Commission knew it was causing Verizon significant financial harm. Yet in the Commission's mind, this harm was to be mitigated by the provision of some sort of equitable interim relief. That is what Verizon is asking for here. That is what

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[18] *See* Testimony of Glenn Blackmon, March 6, 2003, TR. Vol. VII, pp. 189-193. Docket No. UT-020406.

[19] The Opposition also faults Verizon for its timing of filing this rate case. However, the time it took to prepare and file this case does not mean that Verizon does not face a serious financial emergency caused by the Access Charge Order. Rather, several factors contributed to this timing, including serious efforts to obtain a stay of the access charge order to mitigate the financial harm to the company during the appeal. Second, during this time period, Verizon staff met with the Commission on several occasions to discuss the best manner in which to proceed to request a rate increase. Finally, the preparation of a general rate case is a time-consuming process involving a substantial commitment of company resources. That the company filed a case within 8½ months from the date of the external event necessitating it is not unusual. The external event that gave rise to Avista's crisis occurred in 1999, yet Avista did not seek interim rate relief until 2001.

Verizon was invited to do by the Commission during the process of Verizon's appeal of the Access Charge Order.

32 The Commission vociferously opposed Verizon's efforts to stay the Access Charge Order claiming Verizon would not be harmed because it could easily get rate relief. In its Opposition to Verizon's Motion for Supersedeas before the Snohomish County Superior Court (Attachment B), the Commission argued that any financial harm to Verizon could be mitigated by asking for an interim rate increase. The Commission said:

> Verizon has the option to file for an interim rate increase, pending the outcome of a formal rate case. This would alleviate Verizon's concerns about the length of time a formal rate case will take. Verizon also may request expedited rate relief outside of the context of a general rate case, and the WUTC could grant such relief if Verizon proved such an increase would be necessary. Therefore, Verizon has options to recover the revenue lost by the requirement that it reduce its access charges. Either of these options would be a more reasonable choice for evaluating Verizon's revenue requirement and setting Verizon's lawful and proper rates. By allowing Verizon to continue charging its excessive rates, Verizon will have no incentive to pursue these options."

The Commission held out this "option," suggesting Verizon had a way to stem the harm due to the Access Charge Order.[20] Nothing of consequence has changed since the Commission made this representation to the court. Of course, a grant of summary determination would render this option meaningless.

33 Furthermore, allowing rate rebalancing to offset the access charge reductions at issue in the Access Charge Order is the type of relief apparently the Commission Staff wishes to afford to other telecommunications companies in Washington. For instance, as Attachment C demonstrates, Commission Staff has actively recommended that CenturyTel be allowed to rebalance rates to offset access charge reductions. Like Verizon, CenturyTel established access

[20] Verizon disagrees that (a) Verizon should be required to file a rate case or seek interim relief to offset the effect of the illegal Access Charge Order, and (b) that a rate case or interim relief can, in fact, offset the effect of the Order. The point here, however, is that Commission itself advocated the filing of such a case, and now Staff seeks to dismiss it.

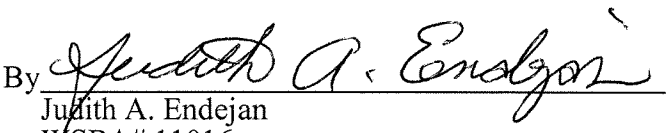
charges pursuant to the new Commission Access Charge Rule, WAC 480-120-540. Unlike Verizon, however, CenturyTel may be allowed to offset access charge reductions promoted by Staff by revenue-neutral rate rebalancing.

34 Verizon's Petition for Interim Relief, in essence, asks to achieve (on an interim basis only) the rate rebalancing that may be allowed to other Washington telecommunications companies that are similarly situated to Verizon. While Verizon believes that the facts of its rate case showing will justify a continuation of that revenue adjustment along with additional needed revenues, as a practical matter the requested interim relief will expire upon the effectiveness of the Commission's order in the rate case proper.

35 Under these circumstances the gross inequity of denying Verizon's Petition for Interim Relief is clear. The Opposition does not bother with the concept of equity or avoidance of injustice to Verizon in its attempt to divert the Commission from the real crux of Verizon's Petition for Interim Rate Relief. Namely, the Commission took $30 million from Verizon, at a time when its intrastate revenues could least sustain it, in order to force it to beg for necessary rate relief. At the very least, the Commission should hear Verizon present its evidence as to why this result is so unfair as to warrant the requested interim relief. The Opposition's Motion for Summary Determination should be denied.

Respectfully submitted this 21st day of June, 2004.

GRAHAM & DUNN PC

By 

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ATTACHMENT A

INTERIM RELIEF FACTORS

	VERIZON	AVISTA	OLYMPIC
1. Emergency outside circumstances	WUTC slashes $30 M in revenues without rate rebalance.	Extraordinary hydropower and wholesale market conditions; drought	Whatcom Creek pipeline explosion
2. General rate case pending	Yes	No - ordered to file one by 12/1/01	Yes
3. Mitigation Efforts	Stay of access charge order sought	Steps taken to mitigate increased power costs	No discussion
4. Financial results reviewed on intrastate WA basis	Yes	Yes	Yes. "We must look at the intrastate portion of the operations as though it were independent."
5. Negative ROR	- .47%	- .7%	-6% (anticipated not actual)
6. Inability to pay % and principal on debt	Yes. Vander Weide (JHV-4T) p. 9	Fixed charge ratio for "times-interest" coverage showed Avista could not cover %	Capitol structure is 100% debt; in arrears on %.
7. Below investment grade bonds	Yes. Vander Weide (JHV-4T) pp. 11-14.	Would drop to BBB without interim relief	No discussion.
8. Gross inequity hardship are foreseeable results	The Access Charge Order was beyond Verizon's control, causing it to suffer $30 M loss without offset. Verizon invited to seek interim relief by Commission action.	Due to conditions beyond Avista's control, gross inequity or hardship would result without interim relief.	No discussion
9. Bank covenants	Conditions present but no default declared; see DR No. 35 response(attached hereto)	Without interim relief default likely	Conditions present but no default declared.
10. Current Economic Climate	WUTC has acknowledged financial downturn and harmful economy for Telecom in very recent years (QWEST/DEX case)	Volatile western wholesale powers markets in recent years	No discussion
11. Interim rates subject to refund	Yes	Yes	Yes

Before the

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Docket No. UT-040788

VERIZON NORTHWEST INC.

RESPONSES TO STAFF DATA REQUEST NOS. 35 - 41
INTERIM RATE RELIEF

June 9, 2004

Docket No. UT-040788
WUTC Staff Data Requests to Verizon Nos. 35-41
June 9, 2004

Data Request No. 35:

Verizon Northwest Inc.'s response to WUTC STAFF DATA REQUEST NO. 3 (General) stated, in part, the following:

> "The Company's position is that it is experiencing an actual emergency for the simple reason that its Washington Intrastate operations are earning a negative rate of return as a result of the Access Charge case, and it cannot meet its intrastate financial obligations with its intrastate revenues."

Please identify any debt covenants or any conditions or criteria that Verizon Northwest Inc., Verizon Communications, Inc. (or any affiliate thereof) must comply with to avoid default on the Company's intrastate financial obligations. Produce the documents containing the covenants, conditions or criteria.

RESPONSE:

The Company has two active indentures that must be satisfied: 1) First Mortgage Bond Indenture (FMB Indenture) dated March 1, 1939, which has been supplemented 36 times and 2) a Debenture Indenture dated April 1, 1994, which has been supplemented 1 time.

Events of default and remedies associated with the FMB Indenture are outlined in Article VI, which is attached as Attachment 35a. Included as default are the non-payment of interest and principal. Dr. Vander Weide's testimony clearly shows that the contribution of the Company's Washington Intrastate Operation towards the payment of interest and principal has declined sharply over the last 5 years. Article I, Section 14 of the FMB Indenture as supplemented also requires the Company to maintain 2.00 times interest coverage in order to issue new First Mortgage Bonds, which takes a financing tool away from the Company. Dr. Vander Weide's testimony shows that this requirement is not being met by the Company's Washington Intrastate Operation. Article V, Section 1 of the FMB Indenture as supplemented and modified requires the Company to maintain a minimum net worth of $160.4 million. Default for a period of 60 days or more causes any debt issued under the Indenture to become due and payable immediately.

Docket No. UT-040788
WUTC Staff Data Requests to Verizon Nos. 35-41
June 9, 2004

Events of default and remedies associated with the Debenture Indenture are outlined in Article Six, which is attached as Attachment 35b. Included as default are the non-payment of interest and principal. Dr. Vander Weide's testimony clearly shows that the contribution of the Company's Washington Intrastate Operation towards the payment of interest and principal has declined sharply over the last 5 years. Default for a period of 30 days or more causes any debt issued under the Indenture to become due and payable immediately.

Prepared By: Robert G. Deter
Date: June 2, 2004
Witness: James H. Vander Weide

ATTACHMENT B

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

VERIZON NORTHWEST INC., Petitioner, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	No. 03-2-10227-8 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION'S OPPOSITION TO VERIZON'S MOTION FOR SUPERSEDEAS

The respondent, Washington Utilities and Transportation Commission (WUTC) opposes the Motion for Supersedeas filed by the petitioner, Verizon Northwest, Inc. (Verizon), because Verizon has failed to meet the standard for supersedeas set forth in RCW 80.04.180. Specifically, Verizon has failed to show that the WUTC's order will cause it "great and irreparable" damage.[1] Therefore, the WUTC respectfully requests that the Court deny Verizon's motion.

[1] RCW 80.04.180; *see also General Tel. Co. of the Northwest v. Washington Utils. & Transp. Comm'n*, 104 Wn.2d 460, 472, 706 P.2d 625 (1985) (holding that petitioner for supersedeas under to RCW 80.04.180 must show that the loss will be material and considerable).

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hinder competition. In addition, the long-distance companies will be less likely to offer customers attractive long-distance rates in the future because they will be uncertain of their costs of providing the service. This, too, will discourage competition.

D. Verizon Has Options to Avoid the Alleged Harm.

In its motion, Verizon argues that it can do nothing to avoid the alleged harm, and faults the WUTC for suggesting that it file a rate case in order to mitigate the losses it will incur as a result of the access charge reduction.[26] Verizon also contends that a rate case will take over a year to file and litigate.[27] Verizon is wrong on both counts.

As a practical matter, a rate case is the method by which regulated companies increase their rates when they require additional revenues.[28] Contrary to Verizon's argument, there is unfair about requiring Verizon to seek a rate increase through lawful means.

Verizon has the option to file for an interim rate increase, pending the outcome of a formal rate case. This would alleviate Verizon's concerns about the length of time a formal rate case will take. Verizon also may request expedited rate relief outside of the context of a general rate case, and the WUTC could grant such relief if Verizon proved such an increase would be necessary. Therefore, Verizon has options to recover the revenue lost by the requirement that it reduce its access charges. Either of these options would be a more reasonable choice for evaluating Verizon's revenue requirement and setting Verizon's lawful

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[26] Verizon Mot., at 8, ll. 1-8.

[27] *Id.*

[28] RCW 80.04.130; *see also generally* Title 80 RCW.

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and proper rates. By allowing Verizon to continue charging its excessive rates, Verizon will have no incentive to pursue these options.

E. If the Court Grants Verizon's Motion, Verizon's Proposed Refund Is Inadequate and the Court Should Order Verizon to Post a Bond.

If the Court grants Verizon's motion for supersedeas, and later affirms the WUTC's order, it will be impossible to compensate all who were harmed by Verizon's excessive access pending judicial review. The benefits of the WUTC's Order would have been spread across all intrastate long-distance consumers in the state, and would have taken a variety of forms.[29] It would be impossible to determine how much and what form of benefit should be refunded to each customer. Even the seemingly simple task of determining who may be entitled to a refund would be impossible because the list would include many consumers who are neither customers of Verizon nor the long-distance companies who are parties to this proceeding. Indeed, the majority of consumers who would be harmed by the stay are not Verizon customers.[30]

A one-time refund to long-distance companies is inadequate because the companies would have virtually no competitive incentive to pass through the refund to their customers. Companies doing business in a competitive market set their prices based on their ongoing and expected future costs, and any one-time cost or benefit likely would be absorbed by each company.[31] The harm to competition that would occur in the event of a stay also could not be remedied later if the WUTC's decision is affirmed on judicial review. The harm to

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[29] Blackmon Decl., ¶ 9.

[30] *Id.*

[31] *Id.*, ¶ 10.

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ATTACHMENT C

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March 24, 2004

Don Dennis
CenturyTel
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Re: CenturyTel Rate Rebalancing Proposal

Dear Don:

I appreciated the chance to talk with you recently about CenturyTel's proposal for rate rebalancing in some Washington exchanges. I have also subsequently reviewed the June 1995 order and settlement in Docket UT-940700 and 940701.

In general, my understanding is that the rate rebalancing proposal stems primarily from a desire to replace actual or potential access charge revenue reductions experienced by CenturyTel. This is to be accomplished by very significant percentage local rate increases (60-65 %) for customers in many CenturyTel exchanges. There is no plan to file a general rate case, undergo an earnings review, or to conduct a proceeding to determine the proper level of access charges for the company. I understand that you have had discussions with the Commission Staff about this approach and they have strongly encouraged the company to take this step.

I'm writing to let you know Public Counsel's concerns with this proposal.

1. I read the Commission's administrative rules to require a general rate case filing if tariffs are filed to effect more than a 3 percent increase.

2. I think the absence of a general rate case is particularly problematic when the company or its predecessor have not had a general rate review in many years, nor an adjudication of correct access charge levels. By contrast, the Commission has recently conducted a careful adjudication of Verizon's access charges (Docket UT-020406), and declined to address rate rebalancing in the same docket, advising Verizon to file separately for any necessary rate relief. It is not clear to me why a different approach is appropriate for CenturyTel. It's my understanding from our conversation that no IXC has brought a complaint against CenturyTel's access charges.

3. I have serious questions as to whether the 1995 order and the underlying settlement, signed by Public Counsel, automatically allows the proposed rate increases. Although rate increases were contemplated in the order, they were to

occur, if at all, over a five year period, which ended in 2000. The increases were contingent on a demonstration of compliance with Commission service quality rules as well as other requirements. Any rate increases were subject to a limitation as to pass-through of exchange purchasing costs, and decreases were required instead if the authorized rate of return was exceeded. I'm not aware that any of these items have been addressed. If CenturyTel and the Commission Staff are relying on this settlement and order, it appears there are a number of issues regarding contingencies and continued applicability of the provisions. These matters should properly be addressed through a docket reopening the settlement, in our view.

4. My concern about the absence of a rate case is accentuated by CenturyTel's January 29, 2004 press release, which quotes Glen Post, CEO, as saying: "During 2003, CenturyTel achieved revenue and earnings growth in a very challenging industry environment. Record cash flows generated in 2003 provided the financial liquidity for CenturyTel to reduce debt by more than $467 million and strengthen our cash position by nearly $200 million." The release mentions that intrastate access revenues increased in the fourth quarter of 2003, and cites strong growth in a number of other areas.

For these reasons, it would be our intention to recommend rejection or at a minimum suspension of a rate rebalancing filing for the reasons set forth above.

You had indicated you would provide us with a copy of the draft proposed tariffs prior to filing, which I appreciate. I think it would be useful to have a meeting to discuss the foregoing issues prior to a formal filing by CenturyTel.

I would be happy to meet with you after my return from vacation on April 7. I have also discussed this case with the Citizens Utility Alliance attorney, John O'Rourke, and would suggest he be included, along with Commission Staff. In my absence, feel free to contact attorney Robert Cromwell in our office about this matter.

Thank you Don. I look forward to talking upon my return.

Sincerely,

Simon J. ffitch
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Public Counsel Section
(206) 389-2055

cc: Glenn Blackmon
John O'Rourke
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