I. OVERVIEW

1 There is no real financial emergency facing Verizon Northwest Inc. Verizon enjoys AA and A+ credit ratings on its debt. Verizon puts the issue in perspective by posing the rhetorical question: "Would you make a loan to this company?" *Verizon Answer*[1] *at 10, ¶ 22.* The answer is a resounding "Yes," based on Standard & Poor's actual credit ratings of Verizon's debt.

2 On the other hand, Verizon has not presented any evidence that it needs a loan. But if it did, the undisputed facts show Verizon is able to finance now, and it will be able to finance while the Commission determines Verizon's revenue requirement and an appropriate rate design. There is no need to grant extraordinary rate relief. Verizon can wait for resolution of its request for a general rate increase.

3 If Verizon has an actual problem accessing external capital markets to fund its utility operations, it has the burden to provide evidence of that. However, Verizon's case for interim rate relief provides no such evidence. Verizon's case is so deficient, it contains no evidence at all of Verizon's need for external capital; how Verizon intends to finance those needs, if any; and why a $29.7 million rate increase is necessary and sufficient to enable Verizon to acquire external capital to finance its operations.

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[1] "Verizon Answer" refers to the "Verizon Response to Joint Motion for Summary Determination Dismissing Verizon's Petition Seeking Interim Rate Increase" (June 21, 2004).

4 In these circumstances, dismissal of Verizon's Petition[2] is the only appropriate result.

5 Verizon is wrong to argue that a hearing is required in order for the Commission to analyze "all salient factors" for interim rate relief. *Verizon Answer at 2, ¶ 2*. As the Commission has stated, at this stage, the issue here is "whether, putting the prefiled evidence in the light most favorable to the Company, the Commission would grant the requested relief."[3]

6 It is up to Verizon to file a sufficient direct case for interim rate relief. It is not up to the Moving Parties,[4] the Commission, or a hearing to do that. The unvarnished fact is that Verizon's case for interim rate relief is grossly deficient; it should be dismissed.

II. FACTS

7 The essential facts are not disputed. As the Joint Motion[5] showed, based on evidence provided by Verizon itself, the Company enjoys AA and A+ credit ratings on its debt. Verizon's "capacity to meet its financial commitment on the [long term

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[2] "Petition" refers to the "Petition of Verizon Northwest Inc. Seeking Interim Rate Increase" (April 30, 2004).
[3] *WUTC v. Puget Sound Energy Co.*, Docket Nos. UE-011163 & 011170 (Sixth Supplemental Order)(2001) at page 5, ¶ 16.
[4] "Moving Parties" refers to Commission Staff, Public Counsel, and Intervenors AARP, Citizen's Utility Alliance, the United States Department of Defense, Northwest Public Communications Council and WeBTEC.
[5] "Joint Motion" refers to the "Joint Motion for Summary Determination Dismissing Verizon's Petition Seeking Interim Rate Increase" (June 9, 2004).

debt] obligation" is "strong," and the Company "has the flexibility to issue additional debt … ". *Joint Motion at 14, ¶ 32, and evidence cited therein.*

8 The evidence produced by Verizon in its interim rate relief testimony relates exclusively to its intrastate Washington operations, and hypothetical bond ratings and other conditions that Verizon attempts to derive from that evidence.[6] However, Verizon does not actually finance based on its Washington intrastate results.[7] Verizon finances on a total company basis. There is no evidence of an actual financing problem facing Verizon, even if there was evidence Verizon needed to finance in the near term.

III. ARGUMENT

9 Interim rate relief boils down to two key issues: Is Verizon actually in such current or imminent financial peril that it must, but cannot (or soon will be unable to) finance to meet its public service obligations? If so, has Verizon shown that the level of interim rate relief it seeks is necessary to enable the Company to address that financial emergency?

10 Remarkably, Verizon provides no evidence whatsoever on either issue. Indeed, while there is no evidence Verizon plans to finance in the near term, Verizon could actually finance its utility operations in this state, and therefore, Verizon can

[6] *See* Verizon Answer at 2-3, ¶¶ 4-5, and the evidence summarized in the Joint Motion at 5-6, ¶¶ 12-14.

[7] *See* the Company's response to Staff Data Request #12, which is found in Exhibit 3 to the Joint Motion.

await the resolution of a rate case to prove its need for additional revenue. No emergency rate relief is justified.

11 For the Commission's convenience, we include as Exhibit A to this Reply a table showing certain interim rate relief factors; how they have been applied by the Commission in recent proceedings involving Olympic Pipe Line Company and Avista Corp.; and how Verizon's case compares. That table provides graphic proof that Verizon's case for interim rate relief is fatally deficient.

A. Verizon's Case Is Deficient Because It Fails To Provide Any Evidence Linking The Relief It Seeks To Its Ability To Finance

12 The Commission has consistently required a utility seeking interim rate relief to prove a connection between the relief it seeks and its ability to finance. Verizon's case is devoid of evidence on that critical point.

1. A Connection Between the Relief Sought and the Utility's Ability to Finance Is A Pre-Condition To Interim Rate Relief

13 In interim rate relief cases, the utility has the burden to prove a connection between the relief it seeks and its imminent need to finance in order to fulfill its duties as a public service company. The Commission has made it as clear as can be that this is a pre-condition to having ratepayers advance money to the utility before

a rate case is complete. For example, in *WUTC v. Washington Natural Gas Co.*, Cause No. U-80-111 (Second Supplemental Order)(1981) at 5, the Commission stated:

> Commission reiterates that the [sic] interim rate relief should be granted only upon a reasonable showing that an emergent condition exists and that without affirmative relief the financial integrity and ability of the Company to continue to obtain financing at reasonable costs will be compromised and placed in jeopardy.

14 This nexus between the relief the utility is seeking and the utility's ability to finance in order to carry out its public service responsibilities is explicit in Interim Rate Relief Factor No. 4:

> The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage and the growth, stability or deterioration of each, together with the immediate and short term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest.

15 In this factor, the Commission makes clear that the utility's financial condition alone is not the focus. Rather, there needs to be a connection between that financial condition and the utility's ability to meet its demands for new financing. The issue is whether "the grant or failure to grant" interim rate relief will impact that ability.

16 Note also that this factor explicitly links the company's ability to finance with the public interest. This analysis is not to be done lightly or arbitrarily, but carefully, so the Commission can determine whether a utility's alleged impaired access to

capital will in turn impair the utility's ability to fulfill its public service responsibilities.

17 In sum, the evaluation of the utility's ability to finance, and the amount of rate relief necessary to enable the utility to finance is the centerpiece of the Commission's long-standing interim rate relief analysis. The fatal flaw in Verizon's case is that it provides no evidence that "the grant or failure to grant" interim rate relief will affect the Company's ability to meet is financing demands, if any.

2. The Cases Discussed By Verizon Were All Focused On The Utility's Ability To Finance In Order To Satisfy Its Public Service Obligations

18 The Joint Motion analyzed certain prior Commission decisions to demonstrate that interim rate relief requires a connection between the relief sought and the utility's ability to finance. *E.g., Joint Motion at 10-11, ¶¶ 24-25, and at 15-20, ¶¶ 35-50.* Verizon claims the Joint Motion mischaracterizes these Commission decisions, and that no such connection is required. The discussion immediately above in Part III.A.1 of this Reply proves Verizon is wrong. So does an analysis of the orders upon which Verizon now relies.

19 For example, Verizon suggests that in *WUTC v. Puget Sound Power & Light Co.,* Cause No. U-73-57 (Second Supplemental Order)(1974), "interim relief was not based, as the Opposition suggests, solely on [Puget's] inability to obtain needed financing absent interim rate relief." *Verizon Answer at 6, ¶ 12.* Verizon is wrong

because the entire focus of the Commission's analysis in that case was on the company's ability to finance. *See Second Supp. Order in Cause No. U-73-57 at 5-6.* Indeed, it was the utility's ability to connect the rate relief it sought to its imminent inability to finance that justified interim rate relief. As the Commission ultimately concluded:

> … critical analysis persuades us that that if we deny interim rates the ability of Puget to market common stock in July of 1974 on reasonable terms is in serious doubt. Further, it appears that without rate adjustment at this time, it will likely be impossible for the Company to issue mortgage debt in September of 1974

Id. at 6.

20 Verizon also is wrong to assert that in *WUTC v. The Washington Water Power Co.,* Cause No. U-77-53 (Second Supplemental Order)(1977), "the basis for interim relief … was not a failure to obtain financing for specified projects. Rather, the Commission relied upon the utility's evidence of negative financial indices such a [sic] declining rate of return and deterioration in interest coverage." *Verizon Answer at 6-7, ¶ 13 (footnote omitted).*

21 Once again, it is Verizon who mischaracterizes the Commission's order. In fact, the Commission specified several projects for which the utility needed to obtain financing, but could not do so absent interim rate relief: Colstrip Nos. 3 & 4, WPPSS No. 3, and Skagit Nos. 1 & 2. *See Second Supplemental Order in Cause No. U-73-57 at 5-6.* More importantly, the basis for interim rate relief was the utility's ability to

prove that additional revenue was needed for the utility to access capital markets to satisfy its duty to provide service to present and future customers. As the Commission concluded:

> Additional revenues … will sufficiently improve [WWP's] financial position so that its ability to market common and preferred stock and to issue debt will be protected.

Id. at 10.

22 Verizon also fails in its attempt to distinguish its case from *WUTC v. Puget Sound Energy Co.,* Docket Nos. UE-011163 & 011170 (Sixth Supplemental Order)(2001)(*PSE Case*), on the basis that PSE's failed attempt to obtain interim rate relief was not accompanied by a general rate case; PSE did not provide "compelling evidence" of financial problems; and PSE did not experience a revenue reduction similar to Verizon's access charge reduction. *Verizon Answer at 8-9, ¶¶ 15-17.*

23 In fact, Verizon's case is very similar to the *PSE Case*, as the Joint Motion explained. *Joint Motion at 18-20, ¶¶ 42-50.* That discussion is incorporated here. Consider also that in the *PSE Case*, the Commission observed that although interim rate relief analysis is more narrowly focused than a general rate case, "the evidence is interrelated and consistent." *Sixth Supp. Order in PSE Case at 10, ¶ 27.*[8] Verizon's case violates this principle.

[8] The Commission acknowledged this principle in Order No. 4 in this Docket: "Order Denying Petition for Commencement of Bifurcated Rate Case and Waiver of Administrative Code Provisions"

24 For example, Verizon is seeking a 75% equity ratio in setting its general revenue requirement, while its actual equity ratio is 62% equity. *Exhibit No. ___ (JVW-1T) at 33, line 14, Exhibit No. ___ (JHV-4T) at 6, lines 18-19.* To make its interim rate relief case "interrelated and consistent" with its revenue requirements case, Verizon should be testifying that a true financial emergency exists; that Verizon needs to issue equity (*i.e.,* consistent with approaching the equity ratio it advocates in its revenue requirements case); that specific financial indicators must be met before it can accomplish that financing; and that $29.7 million is the amount necessary to meet those financial indicators, and thus accomplish that financing.

25 Verizon's case addresses none of these elements. Indeed, in stark contrast to a proper case for interim rate relief, Verizon's case amounts to a legalistic, continual plea for the Commission to replace the access charge revenues that were reduced last summer. *See Verizon Answer at 17-18, ¶¶ 15, 17, 18, at 11-12, ¶¶ 28, 29, and at 14, ¶ 35.* That is simply not enough to justify interim rate relief.

3. Verizon Uses An Incomplete Data Request Response In A Failed Attempt To Show A Risk Of Default

26 Verizon's AA and A+ ratings on its bonds are conclusive proof that Verizon faces no actual prospect of default on any of its debt. Nonetheless, Verizon relies on

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(June 23, 2004) at 1, ¶ 2: "The Company's request for interim rate relief is related to, and dependent upon, the Company's request to pursue total general rate relief…"

its response to Staff Data Request No. 35 to support its assertion that the Company cannot make interest payments, in violation of its bank covenants.[9]

27 This remarkable disparity between the facts (*i.e.,* Verizon's AA and A+ bond ratings by Standard & Poor's), and Verizon's assertion (i.e., that it faces default), is easily explained: Verizon's assertion is not based on evidence.

28 Staff Data Request No. 35 required Verizon to produce documents containing "any debt covenants or conditions or criteria" that must be met "to avoid default on the Company's intrastate financial obligations." Verizon fails to disclose that Attachment A to its Answer contains only a partial response to that data request. In its Attachment A, Verizon elected to omit the bond covenants it actually provided when it responded to that data request.

29 This is a crucial omission, because the actual bond covenant documents the Company supplied when it responded to Staff Data Request No. 35 do not include intrastate Washington financial results as a basis for default. Only total company results are considered.[10] (So the Commission will be fully informed on the matter,

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[9] Verizon makes this claim in its Answer at 7, ¶ 13 and at 8, ¶ 16, as well as in Attachment A to that Answer. The first page of Attachment A to Verizon's Answer shows, in the "Verizon" column, item 9, regarding "Bank covenants" where Verizon says "conditions [are] present but no default declared; see DR No. 35 response (attached hereto)." Verizon's purports to supply its response to Staff Data Request No. 35 in pages 2-4 of Attachment A to its Answer. As we describe below, Verizon failed to include the Company's complete response to that data request.

[10] *See, e.g.,* Exhibit B to this Reply at 4-5 and 18-19. Pages 4-5 are part of an excerpt from the First Mortgage Bond Indenture dated March 1, 1939, for "Verizon Northwest Inc." Section 1 defines the default conditions, and refers to "defaults or failures on the part of the Company." There is no reference to the intrastate operations of Verizon in these default conditions. The same is true of pages

an actual copy of Verizon's complete response to Staff Data Request No. 35 is Exhibit B to this Reply.)

30 The Commission must not permit Verizon to use selective information that excludes crucial evidence to construct hypothetical conditions in order to oppose dismissal of a deficient interim rate relief filing. The actual, complete Company response to Staff Data Request No. 35 confirms that Verizon faces no actual financial emergency.

B. The Commission's Jurisdiction Over Verizon's Washington Intrastate Operations Does Not Require The Commission To Ignore Financial Realities

31 The legal theory underlying Verizon's case for interim rate relief is that because the Commission regulates only Verizon's Washington intrastate operations, the Commission is limited to examining Verizon's financial condition from a Washington intrastate perspective only. *E.g., Petition at 8, ¶ 19, Verizon Answer at 2-3, ¶¶ 4-5, at 4, ¶ 7-8, at 6, ¶ 11, and at 9, ¶¶ 20-21.*

32 In the Joint Motion, we explained why Verizon is wrong. The Commission's interim rate relief factors look to the financial realities facing the utility. In essence, the first step is to determine whether the utility is facing an actual financial

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18-19, which are part of an excerpt from the First Mortgage Bond Indenture dated April 1, 1994 for "Verizon Northwest Inc." Section 6.01 defines the default conditions, and either refers to "the Company" or refers to a default in a principal or interest payment, without specifically referring to the Company. Again, there is no reference to the intrastate operations of Verizon in these default conditions.

emergency. The second step is to determine what share of that financial problem should be borne by ratepayers in this state on an interim basis, pending a decision on revenue requirements. *See Joint Motion at 15-17, ¶¶ 35-41.*

33 Verizon disagrees with this principled approach, and has elected to base its case exclusively on hypothetical financial results that might obtain if Verizon actually financed on a Washington intrastate only basis. *See evidence summarized in the Joint Motion at 5-6, ¶¶ 12-14, and e.g., Verizon Answer at 7, ¶ 13 and at 7, ¶ 20.*

34 Because Verizon actually finances on a total company basis,[11] and because its debt enjoys very favorable AA and A+ credit ratings, Verizon is not unable to finance.[12] The issue is: Does the law compel the Commission to ignore this reality when exercising its discretion in deciding whether or not to grant a rate increase before a general rate case is complete? The answer is No.

35 Indeed, the Commission's primary statutory charge is "to regulate in the public interest." *RCW 80.01.040*. This standard is expressly set forth in interim rate relief Factor No. 4 and Factor No. 6. The Commission consistently has applied this standard to ensure that substance, not form, is the focus of the Commission's analysis.

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[11] *See* the Company's response to Staff Data Request #12, which is found in Exhibit 3 to the Joint Motion.

[12] *See* S&P's "Ratings Definitions," which is found in Exhibit 1 to the Joint Motion. This document was supplied as a Company workpaper in this docket. *See also* Exhibit No. ___ (JHV-4T) at 10, lines 22-23, where the Company testifies that under an A bond rating, Verizon "has the flexibility to issue additional debt … ".

36 Consider, for example, the PacifiCorp – Scottish Power merger, Docket No. UE-981627. In its Second Supplemental Order in that docket, the Commission rejected the argument that it was precluded from reviewing the proposed merger transaction because the precise form of the transaction was not specified in the statute. Instead, the Commission concluded that its statutory responsibility to regulate in the public interest justified its exercise of jurisdiction over that transaction:

> We do not believe that the Legislature meant under RCW 80.12.020 to allow companies to avoid scrutiny of transfers of control over their jurisdictional enterprises by the simple expedient of using stock rather than cash as consideration. Such a rigid and mechanistic reading of the statute, as Public Counsel observes, 'is counter-intuitive in this context and would subvert the purposes underlying the Commission's delegated powers.'[13]

37 In this case, Verizon wants the Commission to disavow scrutiny of the way the Company actually finances its business by the simple expedient of demanding that the Commission focus only on hypothetical financial indicators of Verizon's own choosing. Adopting Verizon's logic, the Commission would be precluded from evaluating the corporate structure and financing of any multi-state utility within its jurisdiction, a result that would clearly and inappropriately frustrate the Commission's ability to regulate in the public interest.

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[13] *In re Application of PacifiCorp and Scottish Power LLC,* Docket No. UE-981627, Second Supplemental Order (March 16, 1999) at 6-7.

38 Verizon chose how to organize its business. It chose not to organize its Washington intrastate operations into a separate legal entity. It chose not to finance those operations separately. It is *not* reasonable or fair for the Commission to pretend Verizon did so. It *is* reasonable and fair for the Commission to analyze the actual financial circumstances facing Verizon in this context.

39 That is exactly what the Commission did in its Third Supplemental Order in *WUTC v. Olympic Pipe Line Co.*, Docket No. TO-011472 (2002)(*Olympic Case*). While Verizon correctly quotes the Commission's statement that it would look at the company's intrastate pipeline "as though it were independent,"[14] Verizon ignores the fact that the Commission carefully considered the *actual* financial problems facing Olympic overall,[15] not simply its intrastate operations. Moreover, in Table 1 to the Third Supplemental Order in the *Olympic Case,* the Commission based its financial analysis on total company results, directly contrary to Verizon's assertions.[16]

40 The Commission conducted the same sort of analysis in *WUTC v. Avista Corp.*, Docket No. UE-010395 (Sixth Supplemental Order)(2001). Though Verizon says the

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[14] Verizon Answer at 9, ¶ 21, quoting the Third Supplemental Order in the *Olympic Case* at 7, ¶ 27.
[15] This was carefully documented in the Joint Motion at 15-17, ¶¶ 35-41. That discussion is incorporated here, to avoid undue repetition.
[16] Verizon Answer at Attachment A, "Interim Relief Factors" table, "Olympic" column, item 4.

Commission viewed Avista's financial results on a Washington intrastate basis,[17] the facts prove otherwise.

41 Like Verizon, Avista is a multi-state utility. Nonetheless, the Commission evaluated the *actual* financial circumstances facing Avista, and did not stop at the Washington/Idaho border when it did so. The Commission carefully evaluated Avista's actual bond ratings, actual bank covenants, and the impact of Avista's actual financial circumstances on the utility's ability "to obtain financing to support its ongoing operations," including completion of several projects such as Coyote Springs II. *E.g., Sixth Supplemental Order in Docket No. UE-010395 at 16-23, ¶¶ 42-60.*

42 None of the Commission's analyses of bond ratings, bank covenants, and the utility's ability to raise capital were based solely on Avista's Washington intrastate operations. Verizon is simply wrong to claim otherwise.

43 The Commission should continue its policy of regulating in the public interest by examining the actual financial circumstances facing the utility before it. It should reject Verizon's attempts to manufacture default conditions, coverage ratios, bond ratings and other financial conditions that do not exist in fact, when, if it were necessary, Verizon could actually finance its operations in order to satisfy its public service obligations.

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[17] *Id.*, "Avista" column, item 4.

C. Proper Application Of The Commission's Interim Rate Relief Factors Is Reasonable And Fair

44 Verizon complains that application of the Commission's interim rate relief policy to Verizon gives the Company "disincentives to invest," and will send "terribly important signals about the investment climate in Washington." *Verizon's Answer at 10, ¶ 23 and at 11, ¶ 25.* Verizon also complains it is being "penalized" for "good corporate citizenship." *Id. at 10, ¶ 25.*

45 In fact, the Commission's interim rate relief policy has exactly the opposite effect Verizon portends. The Commission's interim rate relief policy requires a utility to actively manage its rate structure, and to take prompt action when adverse conditions arise. If the utility can prove a need for emergency relief when an actual emergency exists, prompt rate relief directed to resolving the specific emergency facing the utility will be forthcoming, months before the statutory deadline for Commission action.

46 Properly informed, the utility industry, the investment community, and the public would applaud such a policy, not condemn it. For whatever reason, Verizon simply has not taken advantage of the plain opportunities available to it, apparently preferring instead to focus on its litigation strategy in the courts. If there is a problem here, it is not with the Commission's policy.

D. The Sufficiency Of A Utility's Rates And Whether Subsidies Exist, Are Issues For A General Rate Case, Not Interim Rate Relief

47 Commission statutes allow 10 months from the effective date of a filed tariff change for the Commission to determine whether rates are fair, just, reasonable and sufficient. *RCW 80.04.130(1), RCW 80.36.080*. Issues regarding the reasonableness and sufficiency of rates, and whether subsidies exist, are rate case issues. There is nothing in the Commission's interim rate relief jurisprudence that remotely suggests these are issues to be considered and resolved in an interim rate relief proceeding.

48 Indeed, interim rate relief makes no pretence of either setting "sufficient" rates or addressing complex issues of regulatory and economic subsidies. Rather, the purpose of interim rate relief is to address an emergency financial situation that is actually affecting the utility's ability to satisfy its public service obligations.

49 Contrary to these basic, common sense regulatory practices, Verizon now argues the Commission must use interim rate relief to provide Verizon reasonable or sufficient rates that will yield a reasonable rate of return, and to cure "subsidization" of Verizon's operations in this state. *E.g., Verizon Answer at 5, ¶ 10, at 9, ¶ 20, at 11, ¶ 27*), and at *4, ¶ 7, 8.*

50 Verizon's arguments are one-sided because as the Moving Parties explained, when a utility earns in excess of a fair return, there can be a considerable lag before lower rates can be established. A similar lag occurs when a utility earns less than its

authorized return. *Joint Motion at 6-7, ¶ 16*. There is nothing unusual about this. It happens in every case.

51 More to the point, Verizon's arguments are out of place in an interim rate relief proceeding because issues of reasonableness and sufficiency of rates and subsidy issues are rate case issues. Verizon's case for interim rate relief proves this point. First, Verizon offers no testimony regarding any "subsidy." Second, Verizon provides no testimony that the $29.7 million it seeks in interim rate relief is necessary to make its rates reasonable and sufficient. Indeed, if Verizon did so testify, that would completely undermine the Company's pending request for $239 million in higher rates: *i.e.*, if "only" $29.7 million would result in reasonable and sufficient rates, the remaining $210 million Verizon is requesting would be excessive, if Verizon's argument were valid.

52 The issue is not whether issues regarding "subsidies" or "reasonable and sufficient rates" need to be resolved, but when. The rate case is the proceeding where these issues should be resolved. No utility, including Verizon, has a right to interim rate relief based on bare allegations that "subsidies" exist or that the utility's rates are not "reasonable or sufficient."

E. Verizon's Other Arguments Are Either Unsupported, Are Based On Inadmissible Evidence, Or Are Otherwise Unavailing

53 Verizon offers several other arguments in opposition to the Joint Motion. None have merit. We respond to each of these arguments below.

1. Verizon Misuses Settlement Statements

54 To characterize the impact of the reductions to Verizon's access charge revenues, Verizon uses testimony supporting a never-approved settlement proposal in a prior case: *AT&T Communications of the Pacific Northwest, Inc. v. Verizon Northwest Inc.*, Docket No. UT-020406 (2003)(Access Charge Case). *Verizon Answer at 11-12, ¶ 29.*[18] There are numerous problems with Verizon's use of this testimony.

55 First, Verizon did not include this evidence in its direct case for interim rate relief. It is improper to use this testimony now to shore up Verizon's insufficient direct case. Second, under long-standing precedent as well as Rule 408 of the Rules of Evidence (ER 408), this evidence is inadmissible to show agreement as to the validity of any claim in this proceeding.[19] Third, even if it were admissible, the

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[18] Citing the testimony of Glenn Blackmon at transcript pages 189-193 in the Access Charge Case.

[19] *See SVEA FIRE & Life Ins. Co. v. Spokane, P. & S. Ry. Co.*, 175 Wn. 622, 626, 28 P.2d 266 (1933) (evidence of a settlement between a defendant railroad and a plaintiff farmer for damage caused by fire was held not admissible to prove the railroad's liability in a later action by the farmer's insurance company related to the same claim); *McInnis v. A.M.F., Inc.*, 765 F.2d 240, 250-51 (1st Cir. 1985) (In a lawsuit by a motorcyclist against a motorcycle manufacturer related to an accident between a car and the motorcycle, the trial court violated ER 408 by admitting into evidence a release signed by the motorcyclist excusing the motorist of liability. Admitting the release was prejudicial error and a new trial was ordered); *Playboy Enterprises, Inc. v. Chuckleberry Pub.*, 486 F. Supp. 414, 422-23, n. 10

testimony from a Staff witness is not the testimony of any other of the Moving Parties to the Joint Motion, and it cannot be characterized as such.

56 Finally, the Settlement Stipulation signed by Verizon in the Access Charge Case expressly prohibits the use of that Stipulation "for disputing, arguing, or resolving any issues in any other proceeding." *Settlement Stipulation in Docket No. UT-020406 at 6, ¶ 15*. Verizon attempts to dodge its obligation to respect that prohibition by citing testimony in support of that Stipulation, rather than the Stipulation itself. The Commission should not recognize this distinction, particularly since WAC 480-07-740 requires that any proposed settlement be accompanied by supporting testimony from each party.

57 More importantly, the Commission simply should not countenance Verizon's misuse of the prior good-faith efforts of Commission Staff to reach informal resolution of the Access Charge Case. The Commission should not allow its historical respect for and encouragement of alternative dispute resolution processes generally to be undermined by the strategy employed by Verizon here.[20]

(S.D.N.Y. 1980), *aff'd*, 687 F.2d 563 (2d Cir. 1982) (in suit to enjoin publication of a magazine on basis of trademark infringement, ER 408 barred evidence of the plaintiff's unfavorable settlement of a similar claim because "it is well-established that statements made for purposes of settlement negotiations are inadmissible, and Rule 408 of the Federal Rules of Evidence extends the exclusion to completed compromises when offered against the compromiser.")

[20] If Verizon's interim rate relief case goes to hearing, and if these statements in support of settlement are admitted into evidence over our objection, Staff is prepared to demonstrate, among other things,

2. Verizon Misinterprets The Commission's Statements On The Availability Of Interim Rate Relief

58 Verizon claims the Commission in the Access Charge Case "knew it was causing Verizon financial harm" and "invited" the Company to file for interim rate relief. Verizon includes a Commission pleading in pending litigation that Verizon interprets as a Commission statement that interim rate relief would be obtained "easily." *Verizon Answer at 12-13, ¶¶ 31-32.*

59 Verizon's claims are unsubstantiated. The Commission pleading Verizon relies on, and quotes on page 13 of its Answer, states in pertinent part:

> Verizon has the option to file for an interim rate increase, pending the outcome of a formal rate case. … 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.

Verizon Answer at 13, ¶ 32.[21]

60 This pleading simply describes Verizon's options, nothing more. There is no suggestion, nor could there be, that Verizon would be relieved of its burden to file a sufficient case. Verizon is well aware that the Commission has granted interim rate relief in only half the cases that have sought such relief. *Verizon Answer at 5, ¶ 8.* Verizon assumed the risk that a cursory filing would lead to dismissal.

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that the testimony in support of the settlement shows that Verizon's request for interim relief is excessive.

[21] Quoting *Washington Utilities and Transportation Commission's Opposition to Verizon's Motion for Supersedeas* September 3, 2003) at 4, lines 14-18, filed in *Verizon Northwest Inc. v. WUTC,* Snohomish County Superior Court No. 03-2-10227-8.

61 It is true the Commission delayed the effective date of its order in the Access Charge Case to enable Verizon to seek relief. However, Verizon failed to accept that opportunity, electing instead to wait 262 days after that order was issued to file for interim rate relief. This is not the behavior of a utility in financial distress.

62 Verizon criticizes the statement in the Joint Motion that Verizon could have filed a rate case at the time AT&T filed its complaint to initiate the Access Charge Case, Docket No. UT-020406. *Verizon Answer at 8, footnote 14.* According to Verizon, it could not anticipate an access charge reduction in that case because its access charges complied with WAC 480-120-540. *Id.*

63 Verizon's position is untenable, particularly given its position in the Access Charge Case. In that case, Verizon did not seriously contest the claim that its access charges were excessive; rather, it sought to oppose the reduction by pointing to potential increases in local rates. Verizon made the tactical choice to *argue* the need for a rate increase rather than *propose* an actual rate increase. Verizon's tactical choices in the Access Charge Case should not be used now to shortcut the Commission's general rate case process.

64 In any event, if Verizon truly believes its rate case presentation that its revenues should be $239 million higher, surely Verizon would have filed much earlier, independent of the Access Charge Case.

3. The Commission's Order In The Access Charge Case Alone Does Not Give Verizon The Right To Interim Rate Relief

65 A theme that permeates Verizon's Answer is that the Commission must increase the Company's revenues to avoid "gross hardship," because in *AT&T v. Verizon Northwest Inc.*, Docket No. UT-020406 (Access Charge Case), the Commission reduced Verizon's revenues from access charges. *E.g., Verizon Answer at 8, ¶ 17, at 11-13, ¶¶ 28-33.* Verizon apparently believes the bar for interim relief is somehow lower because it was the Commission that reduced the Company's revenues. Indeed, the sole basis for its requested amount of $29.7 million in interim rate relief is that this is the amount revenues were reduced in the Access Charge Case.

66 The Commission is not obliged to confer special treatment because it decided to correct unjust and discriminatory rates.

67 "Gross hardship," even when it is proven to exist, cannot be analyzed in a vacuum. As we explained in detail above, the Commission's interim rate relief factors deal directly with a utility's inability to finance its public utility business in the near term, while the Commission considers its application for a general rate increase. Verizon simply has not made a case that it must, but cannot finance on reasonable terms pending resolution of its request for general rate relief.

68 Verizon knows that it is not automatically entitled to increase its rates any time its revenues decline. By the same token, Verizon knows it is not required to

decrease its rates any time its revenues increase. Verizon is a sophisticated telecommunications company. It knows how rates are set for regulated utilities. It knows it has the burden of proof. Verizon filed its case for interim rate relief based on a flawed legal theory, supported by insufficient evidence. The consequence should be dismissal.

4. Public Counsel's Letter To CenturyTel Proves Nothing

69 Another Verizon grasp at an "equitable" basis for consideration of its interim request is the existence of informal discussions between Commission Staff and another company, CenturyTel, to decrease CenturyTel's access charges and increase local rates in a revenue neutral manner. Verizon's only evidence of such discussions is a letter from Public Counsel *opposing* rate rebalancing, which Verizon characterizes as Staff "actively recommending" rate rebalancing. *Verizon Answer at 13-14, ¶¶ 33-34 and Attachment C thereto.*

70 It should be obvious Staff has not "actively recommended" anything, and Verizon supplies no evidence of any such recommendation. The letter supplied by Verizon, dated three months ago, is from Public Counsel, an opponent of the proposal. This is no evidence of any final approved proposal to which Verizon could even arguably be entitled.

5. The Joint Motion Did Not Fail to Cite a Commission Interim Rate Relief Order

71 Verizon claims the Joint Motion failed to cite Verizon's last litigated rate case as a case in which interim rate relief was granted. *Verizon Answer at 5, footnote 5.* Verizon is wrong even on this minor point. The rate case to which Verizon refers is *WUTC v. GTNW,* Cause Nos. U-82-45 and U-82-48. In fact, the Commission did not grant interim rate relief in that case. As the Commission's order in that case stated, "[t]he Commission denied the company's request for expedited relief on December 16, 1982, after hearing arguments from all parties." *Second Supplemental Order (August 18, 1983) at 2.*[22]

IV. CONCLUSION

72 For the reasons stated above, the Commission should grant the Joint Motion for Summary Determination Dismissing Verizon's Petition for Interim Rate Increase.

73 Verizon's direct case for interim rate relief is devoid of any evidence on whether the Company needs to finance, when it needs to finance, in what amount it needs to finance, and whether it will finance with debt or equity. Even more surprising is Verizon's failure to offer any testimony that granting interim rate relief

[22] Footnote 5 on page 5 of Verizon's Answer refers to that case by its Supreme Court Reporter citation. It is possible Verizon has confused interim rate relief from the Commission with supersedeas relief from the court. Supersedeas was the issue in the court decision Verizon cites. Obviously, a court decision on supersedeas is not a Commission decision on interim rate relief.

in the amount of $29.7 million will enable it to finance, even assuming there was evidence of a need to do so.

74 The point of interim rate relief is to maintain a utility's access to financial markets while the rate case process moves forward. Verizon makes no attempt to show that its access to capital markets is impaired in any way. Consequently, Verizon has not provided sufficient evidence to support interim rate relief. The Petition should be dismissed.

DATED this 25th day of June, 2004.

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