

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
VERIZON NORTHWEST, INC.
For waiver of WAC 480-120-071(2)(a).

Docket No. UT-011439

MOTION OF COMMISSION
STAFF TO JOIN QWEST AS A
PARTY RESPONDENT

INTRODUCTION

Verizon Northwest, Inc. (“Verizon”) has requested that the Commission waive the requirements of WAC 480-120-071, the line extension rule, regarding the extension of service to two separate locations in Verizon’s Bridgeport exchange in Okanogan and Douglas Counties. Verizon’s petition refers to these two extensions as the “Taylor extension” and the “Nelson extension.” The “Nelson extension” concerns the extension of service to property owned by Mr. Ike Nelson of Bridgeport, and possibly several other nearby properties.

Verizon’s petition alleges that in order to provide service to the Nelson location, Verizon would have to construct new network facilities from Verizon’s closest central office in Brewster for a length of 27 miles. Verizon Petition for Waiver at 3, ¶ B4. However, the petition also alleges that the Nelson location is much closer to Qwest facilities than to Verizon facilities. *Id.* at 3, ¶ B6. Staff estimates that the end of Verizon’s facilities are approximately 19-20 miles from the Nelson home, while Qwest’s nearest facilities are approximately 7.4 miles away. January 9, 2002, Open Meeting Memo, Item 2D (Docket No. UT-011439), at 4 (copy attached as Appendix A). Whether one uses Verizon’s or Staff’s estimates, it is clear that the Qwest

facilities are substantially closer to the Nelson residence than are the Verizon facilities. It also appears highly likely that the cost to Qwest to provide service from its facilities to the Nelson home would be less than the cost that Verizon would incur to provide service.

RCW 80.36.230 grants the Commission the authority to prescribe exchange area boundaries of telecommunications companies, and to alter those boundaries in appropriate circumstances. In light of the facts of this case, Staff may ultimately recommend that the Commission adjust the Qwest and Verizon exchange area boundaries, thus placing the Nelson property and the other nearby properties within the Qwest exchange, with its much closer facilities. Staff may also recommend that the Commission require Qwest to provide service to the Nelson property and the other nearby properties, pursuant to WAC 480-180-071.

Staff, therefore, files this motion requiring that Qwest be joined as a party respondent to this proceeding, for the purpose of determining whether RCW 80.36.230 should be invoked, and whether Qwest should be required to provide service to the Nelson property and other nearby properties pursuant to RCW 80.36.090 and WAC 480-180-071.

ARGUMENT

1. The Commission has the authority to alter exchange area boundaries under RCW 80.36.230.

RCW 80.36.230 provides, “The commission is hereby granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies.” RCW 80.36.240 further provides, “The commission, in conducting hearings, promulgating rules, and otherwise proceeding to make effective the provisions of RCW 80.36.230 and RCW 80.36.240, shall be governed by, and shall have the powers provided in this title, as amended . . .”

In *In re Electric Lightwave, Inc.*, 123 Wn. 2d 530, 537, 869 P.2d 1045 (1994), the State Supreme Court recognized the broad grant of power conferred by RCW 80.36.230. Although this statute does not confer authority to grant exclusive franchises, the Court held:

Our interpretation of RCW 80.36.230 enables the Commission to define the geographical limits of a company's obligation to provide service on demand and to delineate the boundaries between local and long distance calling.

(Emphasis added.) The Court further distinguished the prior case of *Prescott Telephone and Telegraph Co. v. Utilities and Transp. Comm'n*, 30 Wn. App. 413, 634 P.2d 897 (1981). That case had involved two companies that each wanted to serve a certain area, and have it included within their exchange boundaries (in contrast to the present case, in which Verizon is seeking a waiver of their obligation to provide a line extension under WAC 480-120-071). As *Electric Lightwave* noted:

Prescott involved two narrow issues: whether an LEC's exchange boundary was validly created; and whether the Commission acted arbitrarily and capriciously in holding that an exchange territory could not be taken away from the LEC absent a showing the LEC was unwilling or unable to provide service in the territory.

123 Wn.2d 541. Here, Verizon seeks a waiver of its obligation to provide service to the Nelson property, so there is no issue of having its exchange territory "taken away" where it was willing to provide service.

Rather, the issue here is precisely the same as that raised before this Commission in *In the Matter of the Petition of Mr. and Mrs. Neil Thompson for a Boundary Change and Designation of a Telecommunications Common Carrier ("Petition of Thompson")*, Docket No. UT-991878. The Thompson property was located within a CenturyTel exchange, but near US West's exchange area. The Thompsons requested that the Commission adjust the exchange

boundary to place the property within US West's territory, and to designate US West as their telecommunications carrier.

US West contended that the Commission did not have the statutory authority or jurisdiction to adjust the exchange area boundary to include the Thompson property within US West's territory. The Commission disagreed, clearly holding that, as recognized by *Electric Lightwave*, RCW 80.36.230 does grant the Commission authority to define the geographical limits of a company's obligation to provide service on demand; and that RCW 80.36.230 authorizes the Commission, in appropriate circumstances, to adjust the exchange area boundaries of telecommunications companies. *Petition of Thompson*, Prehearing Conference Order Granting Leave to Reply; Denying Motion to Dismiss; Denying Motion to Strike on Condition; Granting Request to Amend Petition; Notice of Hearing (June 19, 2000), at pages 5-6, ¶¶ 28-35 (copy attached as Appendix B). In other words, the Commission has already decided the statutory authority (or jurisdictional) question at issue, and in a case involving Qwest's predecessor, US West.¹ The Commission has the authority to apply RCW 80.36.230 in this case.

US West had also claimed in *Petition of Thompson* that the petitioners, in requesting a boundary change, failed to state a claim upon which relief could be granted. Again, the Commission disagreed. The Commission emphasized its authority to alter exchange boundaries, and held that cost differential alone could provide a basis for invoking RCW 80.36.230:

As discussed above, the Commission has jurisdiction over the subject matter and parties to this proceeding and the authority to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. RCW 80.36.230. There is nothing in the statute which dictates upon what grounds the prescription of exchange area boundaries shall be based. Whether the respective costs of service connection between CenturyTel and US West is a

¹While the *Petition of Thompson* case was eventually settled before a hearing on the facts, this does not negate the fact that the legal question of the Commission's authority to apply RCW 80.36.230 has already been decided.

reasonable basis for the Commission to alter the exchange area boundaries is an issue to be explored at the evidentiary stage. On the basis of cost alone, we cannot say that it is beyond doubt that Petitioners can prove no facts entitling them to relief.

Petition of Thompson, Prehearing Conference Order, *supra*, at page 6, ¶ 35. That is the case here, as well. As evidenced by Verizon's petition for waiver and Staff's own estimates, the Nelson property and other nearby properties are far closer (perhaps three times or more) to Qwest's facilities than to Verizon's. It appears that the cost for Qwest to serve these properties may be substantially less than Verizon's cost. There is clearly a reasonable basis for the Commission to consider the application of RCW 80.36.230 to adjust the Qwest and Verizon exchange boundaries.

2. **The Commission should join Qwest as a party respondent in this proceeding, since Qwest's participation is necessary to protect its interests in the event that the Commission determines that exchange boundaries should be altered pursuant to RCW 80.36.230.**

As this proceeding concerning Verizon's petition for waiver may involve the possible application of RCW 80.36.230 to adjust the Qwest and Verizon exchange boundaries, it necessarily follows that the persons or entities which may be affected by the outcome of the proceeding should be joined as parties. For this reason, Staff requests that the Commission join Qwest as party respondent.

WAC 480-09-420(8), concerning motions, provides in part, "The Commission may refer to the rules in the superior court of Washington as guidelines for handling motions." Here, the relevant superior court civil rule, to be applied by analogy here, is CR 19, entitled "Joinder of Persons Needed for Just Adjudication." It provides in relevant part:

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the

subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest[.]

Here, the absence of Qwest from the proceeding may prevent complete relief from being accorded to those already parties, in light of the possible application of RCW 80.36.230 to adjust the exchange boundaries. For that same reason, Qwest has an interest in this proceeding that could be impaired in its absence. Qwest should, therefore, be joined as a party respondent.

Staff points out that the purpose of this motion is simply to join Qwest as a party. The Commission need not determine whether it will, in fact, adjust the exchange boundaries of Qwest and Verizon, pursuant to RCW 80.36.230, to grant this motion. That question will be determined later, based upon the facts and evidence in the case. It is sufficient to find the Commission has the authority to invoke RCW 80.36.230 in this proceeding, and that Qwest's participation in this proceeding is therefore appropriate and necessary.

DATED this 1st day of February, 2002.

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