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 RESPONSE BRIEF OF COMMISSION STAFF

I. RESPONSE TO VERIZON'S BRIEF

1 Verizon Northwest, Inc. ("Verizon"), asserts that the Commission in this case should act as "gatekeeper" for the Hayes Road (Taylor location) and Timm Ranch line extensions, in order to "protect other customers (and the economy) from unduly costly line extension requests." Verizon Post-Hearing Brief at 3. Verizon's view is that the Commission should carry out this role by effectively slamming the gate in front of these applicants who are reasonably entitled to service from Verizon, pursuant to RCW 80.36.090 and WAC 480-120-071. Verizon's brief is amply laden with hyperbole, and

with dire assertions of what will happen to itself, to its customers, and to "society," if the Commission requires it to build the line extensions here—line extensions that are strikingly similar to many others that both Verizon and Qwest have recently built, and for which, in the case of Verizon, the Company has sought and received recovery of its investment under the line extension rule. Verizon's arguments to deny service, however, are simply not supported either by the facts of this case or by the policies underlying the Commission's line extension rule, and should be rejected.

2 Verizon's contentions that "society" (*i.e.*, other companies, other customers) will be harmed if these extensions are granted are greatly undercut by the fact that "society" has not attempted to make them here. Neither the interexchange carriers (which would pay any temporary increase in terminating access charges to recover investment under subsection (4) of the rule), nor Public Counsel (which represents the interests of the public and of ratepayers in general) have sought to participate in this case or to complain of harm to others in society as a result of granting the line extensions here.[1]

3 Verizon is thus, largely left to the repetitive assertion that these line extensions are just "too costly." Verizon, however, adamantly does *not* want this Commission to evaluate its sweeping assertion by actually comparing these extensions to others which have actually been constructed. It prefers to be able to make its allegations in the

[1] By contrast, when Public Counsel and interexchange carriers were concerned with terminating access, they have sought to participate in proceedings before the Commission. *See, e.g,* Docket No. UT-020406, AT&T Communications of the Pacific Northwest, Inc. v. Verizon Northwest, Inc.

abstract, to pretend that this is the first time that line extensions with the per-customer costs of either the Hayes Road or Timm Ranch extensions have ever been built. Staff demonstrated in its opening brief that this is simply not the case.

4 First, Verizon erroneously states the per-customer costs of these extensions. For Hayes Road, it is approximately $27,500 per customer ($165,000/6); for Timm Ranch, it is approximately $123,000 ($737,672/6) per customer. These amounts are calculated by taking the nonreinforcement cost of each extension and dividing it by the households that would be able to obtain service under the extension. Opening Brief of Commission Staff at 26, 29. Second, the evidence shows that the Hayes Road per-customer cost is far below numerous other line extensions that have been built under the rule, including Curlew **(*******--CONFIDENTIAL)**, Coulee Dam ($80,790), and Colville ($90,700); and that the Timm Ranch per-customer cost is roughly equal to the Sultan/Cedar Ponds extension investment. Thus, these extensions, particularly the Hayes Road extension, are neither unusual nor exorbitant in their costs. (See Attachment 1 to this brief containing table with lists of extension investment and per-household extension investment for line extensions in Qwest and Verizon exchanges.)[2]

5 Nor has Verizon demonstrated that these applicants should be treated differently from the over 400,000 residential customers and 35,000 business customers in

[2]CenturyTel invested $729,959 for a line extension for 12 customers in Moses Coulee, outside any exchange boundaries. *See* Open Meeting Memo filed with the Commission in Docket No. UT-030011, p. 2 (January 22, 2003).

Washington who receive supported telecommunications service. Verizon argues, for example, that the investment expense for the Hayes Road and Timm Ranch extensions is, respectively, eleven times and seventeen times its average extension investment. Verizon Post-Hearing Brief at 9. Yet it is common for customers in high-cost areas to receive service at a comparably multiple level of support. In Docket No. UT-980311, the statewide average cost per line for Verizon is estimated to be $27.38. When multiplied by eleven, the total is $301.18. This amount is still less than the cost per line in two Verizon exchanges. Likewise, $27.38 multiplied by seventeen totals $465.46, which is thirty nine-cents greater than the monthly cost of Sprint's Roosevelt exchange, and only slightly greater than the cost per line in Verizon's Mansfield and Molson-Chesaw exchanges. *See* Ex. 133. [3]

6 Verizon also argues that the applicants in this case are not reasonably entitled to service because (1) they have lived where they live for a significant time and have managed to do without wireline telephone service (Verizon Post-Hearing Brief at 14-15); and (2) the marginal benefit to society, and to the applicants, from creating the extensions is less than the expense involved in building them. (Verizon Post Hearing Brief at 7-9, 17, 22-23.)

[3] Many rural incumbent companies receive support in excess of $300.00 per line. *See* 4-page Attachment to Order Rejecting Disaggregation Filings by Asotin Telephone Company and CenturyTel, and Directing Rural ILECs to File Disaggregation Petition, Docket Nos. UT-013058 and UT-023020 (August 5, 2002). (Attachment 2 to this brief.)

7 The problem with these arguments, as presented by Verizon, is that they prove too much. One could always argue that anyone presently living anywhere who does not currently have a wireline phone—but is "getting by" nonetheless—should not be provided a wireline phone because they have shown that they can do without it. But the fact that an individual is managing without a phone is not proof that they could not significantly benefit from having one. Moreover, one surely cannot contend that because Ms. Taylor "readily" pays almost $8,000 a year ($6,400 for non-business use) for a wireless phone, (*see* Verizon Post-Hearing Brief at 12), this somehow militates against her reasonable entitlement to a reliable wireline phone at a reasonable cost.

8 Verizon's "marginal cost" arguments also prove far too much. When a customer is viewed in isolation, one can often say that the marginal benefit of adding that one customer, whether viewed from the perspective of the customers or the system as a whole, does not equal the cost of providing service to that one customer. But that is true of universal service in general. People who live in high-cost areas throughout Washington receive supported service because Congress and the Legislature have determined that below-cost service should be provided. 47 U.S.C. § 254; RCW 80.36.300.[4] Customers who live in Verizon's Mansfield exchange, for example, do not pay $4,980 per year for their phone service ($415/month in support, calculated by taking the cost per line

[4] *See also Washington Indep. Tel. Ass'n v. Washington Util. & Transp. Comm'n*, (Wash. Supreme Court) (March 6, 2003), slip op. at 6. ("Moreover, it is both state and federal policy that telecommunications service be provided in all areas at affordable and comparable rates, i.e., that universal service be provided.")

of approximately $446/month, minus a benchmark of $31), but they nonetheless are reasonably entitled to that service.

9 Verizon contends that the value to society that is obtained by adding each applicant is very small in comparison to the cost of adding applicants. Verizon argues that these line extensions "simply provide a really good deal to those applicants who only have to pay a fraction of the cost of receiving phone service." Verizon Post-Hearing Brief at 23. But this statement would be true for each of the 400,000 residential customers and 35,000 business customers that receive supported service in Washington. It does not justify Verizon denying service to the applicants in this case.

10 Verizon also erroneously contends that the Commission should include the reinforcement cost of an extension when determining whether to grant a waiver under subsection (7)(a). Verizon Post-Hearing Brief at 7, n. 7. This is clearly wrong, and conflicts with both the language of the line extension rule and the Commission's Order adopting the rule. The "cost of service extension" expressly includes "the direct and indirect costs of the material and labor to plan and construct the facilities," but expressly "does not include the cost of reinforcement, network upgrade, or similar costs." WAC 480-120-071(1) (Definitions). The reason for this is clear, as stated in the Commission's Order Amending and Adopting Rule Permanently at ¶ 27:

> Service extensions can be distinguished from other network improvements and customer requested additions. *Each incumbent company is responsible for*

> *maintaining, reinforcing, and improving its network. Authorized rates are established to provide incumbent companies the opportunity to recover the costs of such investment.*

(Italics added.) The Commission added, in a footnote to the same paragraph: "Any company that cannot meet its obligations with the amount of revenue it earns may request a rate increase." *Id.* at n. 4. Verizon's universal service rate also includes a fill factor to support growth and reinforcement costs. *See* Opening Brief of Commission Staff at 55 and n. 32. The "total direct cost" of the extension for purposes of subsection (7)(a) of this rule thus cannot include Verizon's reinforcement costs. To do so would effectively count these costs twice, and give Verizon the benefit of double recovery for something they are already obligated to do, and for which they are already compensated.

11 Verizon argues that the residents should be denied service because of their existing wireless service options. As Staff has set forth at length in our opening brief, at pages 32-38, neither the Taylors nor the Nelsons have adequate wireless alternatives. To assert that they have found "creative solutions" to their problems, as Verizon does (Verizon Post-Hearing Brief at 13), is simply not correct. Ms. Taylor's Americell and AT&T Wireless cell phones do not provide reliable service. Though Verizon points to statements in Ms. Taylor's February 2002 deposition as evidence that she has reliable access to call police, fire, and ambulance services, (*Id.* at 12, n. 11) the events of September 2002, in which her father-in-law died, tragically proved otherwise. She could not depend

on reaching emergency services in less than 30 minutes, and that was only with the help of another adult to assist in dialing 911 numerous times. The price for her Americell and AT&T service ($6,400 per year) is shockingly high. RCC's service has not been proven reliable in the short time she has had service, and there has been no showing regarding the price of RCC's service, nor that it is reasonably comparable. Further, only two of the six residences, the Taylor and Nichols residences can receive any RCC signal at all.

12 Mr. Nelson likewise does not have adequate cellular alternatives, either from his Verizon Wireless phone (which requires him to go 2 ½ to 3 miles down the road from his home to pick up a signal), or from the radiophone he has hooked to his house and connected to a radio transmitter on the back porch of a neighbor's house across the Columbia River. Nor has his RCC service been shown to be sufficiently reliable, or reasonably comparable to wireline service. Furthermore, RCC's signal reaches only the Nelson and Bob Timm residences; the other applicants cannot receive a signal. Verizon simply overlooks them in its opening brief, but that cannot be the result of an adjudication concerning their applications.

13 Verizon's contention that there may be, at some future time, a new technological solution "on the horizon," is purely speculative on Verizon's part. *See* Verizon Post-Hearing Brief at 12. There has been no showing that any satisfactory alternative solutions (short of RCC spending up to $500,000 to build new cell towers, which Staff

does not believe should be required) are currently available, and none of the applicants should be denied wireline service on the chance that something else may perhaps be developed, at a date no one can state for certain.

14 Verizon alleges that there are "unique" technological difficulties and physical barriers presented by the line extension requests in this case. Upon closer inspection, however, it is evident that the alleged difficulties are not at all unique. Verizon admitted that it encounters rocky terrain throughout its service territory. Tr. 131-32. It encounters soil conditions in the Bridgeport exchange similar to those in ten of its other exchanges. Ex. 131T (Shirley) at 21. It encounters difficulties with weather conditions and vandalism throughout its service territory. *Id.* at 24; Tr. 130-31. With regard to the Columbia River, of which Verizon complains, the presence of this river was known to Verizon's predecessors when the exchange boundaries were drawn (and later adopted by Verizon upon merger), with the Bridgeport exchange covering territory on both sides of the river. With regard to Verizon's reference to a 23-mile loop to serve the Timm Ranch ("unusual loop lengths," *see* Verizon Post-Hearing Brief at 14), this is not unique from a technological perspective. Verizon has 574 loops between 20 and 40 miles in length. Tr. 469-470; Ex. 111T (Spinks) at 3.

15 Verizon contends that, in constructing a line extension to the Hayes Road extension, any households that have not yet requested service should effectively be

disregarded. *See* Verizon Post-Hearing Brief at 15. Yet Verizon admitted that any line extension that is constructed will have adequate capacity for all six residences located on Hayes Road. Tr. 130. Those residences should thus not be disregarded in calculating either the costs or benefits of that line extension. As for Verizon's statement that the residents on Timm Road "acquired their property or took up residence without expectation of receiving subsidized wireline telephone service," Verizon Post-Hearing Brief at 15, that argument could be made for virtually all applicants for extensions. More to the point, the Timm Ranch has been located near an important county road since 1948, and the Taylors have lived on Hayes Road, located near Highway 17, for nearly 30 years. They are not living in a remote area in which they should never expect to receive a wireline phone.

16 Verizon would also have one believe that the Commission's rule somehow militates against granting an extension to Mr. Nelson, if he would use his telephone in any way for the farm business. *See id.* at 15-16, 23. Yet this theory contradicts the logic of the rule itself. Farm houses are expressly excluded from the "predominantly commercial" restriction on what qualifies as "premises" for purposes of the line extension rule (WAC 480-120-071(1) (Definitions)) because they are also residences. As Professor Duft explained, the Timm Ranch's location is dictated by the very nature of the ranching activities conducted there. Ex. 121T (Duft) at 9, 11. It would be illogical to have

a rule that acknowledges that farm houses will be located away from densely populated areas, and thus from the network, but then not permit extensions because farming is also an economic activity. Under this logic, Mr. Nelson and his neighbors would be more likely to receive an extension if there were no ranch and no economic activity. This cannot be the case.

17 Finally, Verizon argues that granting the extensions here will have a negative impact on the company. But these arguments also lack merit. Verizon contends that there is no growth or demand for service in the area. Verizon Post-Hearing Brief at 17. Yet this simply reflects the fact that Verizon has not forecasted demand where these twelve households are located, and where demand in fact exists. Verizon contends that it will not have dollars to spend on other customers if it carries out these extensions. *Id.* This is difficult to reconcile with Dr. Danner's observation that reinforcement monies saved will inure to the shareholders, Tr. 235, and would not necessarily be spent on other extensions. Reinforcement is recovered through authorized rates and the universal service fill factor, as noted above.[5] As to the non-reinforcement investment, Verizon can recover 100% of its investment, including its cost of money, in one year under the rule, so

[5] Verizon attempts to reinterpret the Commission's Order in Docket No. UT-980311, in its response to Bench Requests 800 and 801. However, the language of the Commission's Order is clear. The Commission had a choice of fill factors and it chose ones to ensure "that the level of spare capacity was enough to meet current demand *while allowing for growth*." Tenth Supplemental Order, UT-980311(a), p. 64, ¶ 257 (emphasis added). Verizon also suggests that Docket No. UT-980311 did no more than shift existing revenues. What the case determined, however, was the amount of funds (whether shifted or new) that Verizon needs to meet its universal service requirements, including an amount for network growth in high-cost locations.

there should be no reductions in available funds, and no delay of other projects, because Verizon could borrow to cover any shortfall with no ultimate cost.

18 As for Verizon's contention that the extensions would use up forty percent of its Wenatchee District annual construction budget (Verizon Post-Hearing Brief at 18), this ignores all of the recovery mechanisms set forth above. It further ignores Verizon's ability to alter its capital budget when necessary to meet its needs. As Mr. Spinks pointed out, in 2000 Verizon's final expenditures were $19 million greater than it had budgeted for that year. As he further noted, "Staff would be greatly concerned to learn that Verizon now considers its budget estimates to constitute a fixed amount that it will spend in Washington such that other work would stop, or at best be delayed, once the budgeted level of expenditures was reached." Ex. 111T (Spinks) at 2. Verizon's budget estimates do not constitute a reason to deny the line extensions requested here.

19 Finally, Verizon contends in its brief that it currently suffers from "serious financial restraints" because it is earning less than a 2% rate of return. Verizon Post-Hearing Brief at 19; Tr. 289. If Verizon indeed is under earning, or believes that it cannot meet its obligations with the amount of revenue it is earning, then it may file a rate case and request a rate increase. The Commission acknowledged this in its order adopting the line extension rule. Docket No. UT-991737, General Order No. R-474, Order Amending And Adopting Rule Permanently (December 5, 2000), at n. 4. This allegation

is not a basis for granting Verizon a waiver of its obligation to provide service to these applicants in this case.

20 In summary, Verizon has not presented the Commission with justification for granting a waiver of the obligation to provide service to these applicants who are reasonably entitled to service under RCW 80.36.090, and pursuant to the Commission's line extension rule.

II. RESPONSE TO QWEST'S BRIEF

A. Qwest's Procedural and Jurisdictional Arguments are Without Merit.

1. Arguments regarding alleged lack of notice

21 Qwest alleges at length that it did not receive adequate notice that as a result of this proceeding, the Commission might adjust the Qwest-Verizon exchange boundary to place the Timm Ranch residences within Qwest's Omak exchange, and that it did not receive adequate notice of Staff's reasons for contending that a boundary change might be appropriate in this proceeding. These allegations are simply not supported by pleadings, orders, and evidence in this case.

22 Staff's opening brief sets forth in detail the process by which Qwest was joined as a party in this case. Staff filed a motion to join Qwest as a party on February 1, 2002. That motion explicitly referred to the Commission's authority to adjust exchange boundaries under RCW 80.36.230, and stated that the facts and evidence presented in this

case might justify such a boundary change. The Commission granted Staff's motion in the Third Supplemental Order issued May 31, 2002, in which it affirmed its authority under RCW 80.36.230 to prescribe exchange boundaries, but stated that it was not yet clear whether or how that authority would be invoked in this proceeding; this would depend upon the factual record developed in the case. Qwest was joined as a party to protect its interests—these interests clearly involved the possibility of a boundary change, with the result that Qwest could later be required, under the line extension rule, to serve the Timm Ranch. *See* Opening Brief of Commission Staff at 6-8.

23 Qwest now contends that it did not have notice of any basis that Staff would offer as a basis for altering the Qwest-Verizon boundary. This contention simply ignores the testimony that Staff has filed in this docket. Mr. Shirley stated in his June 20, 2002, testimony that the Commission could look at differences in relative cost between Qwest and Verizon to serve the Timm Ranch, at possible differences in maintenance costs, and in a non-cost factor, the community of interest of Mr. Nelson and the Timm Ranch. He added that at that time, Staff lacked certain important information that could only be provided by Qwest. Ex. 134T (Shirley) at 5-6.

24 Mr. Spinks later provided testimony on September 20, 2002, that if Qwest were to build the line extension to the Timm Ranch, the reinforcement would also be able to serve existing Qwest customers, thereby providing more extensive benefits than just to

the Timm Ranch. Ex. 113T (Spinks) at 2. Though Mr. Shirley stated that he could not make any definitive recommendation until after receiving RCC's testimony, he also indicated that for the same cost, it would be reasonable to conclude that plant and facilities placed by Qwest would provide long-term benefits for a variety of present and future customers than would facilities placed by Verizon. Ex. 137T (Shirley) at 8-9.

25 Mr. Spinks later provided additional reasons that would support adjusting the Qwest boundary line in his January 10, 2003, testimony. First, he expressly showed, based on Qwest's own data request responses, that the nonreinforcement cost for Qwest to serve the Timm Ranch was over $300,000 less than Verizon's nonreinforcement cost. Ex. 114T (Spinks) at 2-3. This significant difference in relative cost, as Mr. Shirley had indicated on June 20, 2002, provides a clear basis for adjusting the Qwest-Verizon boundary line. Furthermore, Mr. Spinks again explained, in detail, why and how the reinforcement portion of the line extension to be constructed by Qwest would benefit existing Qwest customers. *Id.* at 3-5. (Though Qwest later alleged that this was not reinforcement, Mr. Spinks' testimony demonstrates that it is, in fact, reinforcement, and not simply a stand-alone project.) This provides another basis for the Commission to adjust the Qwest-Verizon exchange boundary.

26 In response to Staff's testimony, Qwest provided testimony of its own acknowledging that the Commission might order a change to the Qwest/Verizon

boundary, and arguments as to why this should not be done. Qwest thus knew that this issue was present, and it knew of the bases on which Staff might rely for changing the boundary. Qwest's arguments that it did not receive adequate notice of Staff's claims are without merit. Likewise, Qwest's argument that the Third Supplemental Order should be vacated is without merit, and should be rejected.[6]

2. Jurisdictional argument

27 Qwest also argues that the Commission lacks subject matter jurisdiction to direct a change in the Qwest/Verizon boundary, supposedly because RCW 80.36.230, which explicitly authorizes the Commission to prescribe exchange boundaries, actually requires the Commission to rely on another statute (namely, RCW 80.04.110) to carry out this independent grant of authority. This argument is not supported by either the statutes or the case law.

28 Qwest's argument requires one to read language into RCW 80.36.230 that the Legislature has never inserted. Clearly, if the Legislature intended that the Commission's authority to prescribe exchange boundaries (which of necessity includes the power to alter existing boundaries) could *only* be accomplished by filing a complaint against a tariff under RCW 80.04.110, it could have so stated. It has not done so. Nor has Qwest

[6] The citation to the transcript at page 13 of Qwest's Opening Brief does not indicate that Staff advocated that the boundary issue be dropped. At most, it is a supposition of what the Commission might do in this docket.

proffered any reason why this should be the case. Courts will not read words into a statute that the Legislature has omitted. *State v. Moses,* 145 Wn.2d 370, 374, 37 P.2d 1216 (2002).

29 Qwest cites to *Prescott Telephone & Telegraph Co. v. Washington Util. & Transp. Comm'n.*, 30 Wn. App. 413, 634 P.2d 897 (1981), but that case does not support its claim. In *Prescott*, the court first pointed out that RCW 80.36.230 - .240 do not set forth the manner by which the prescription of exchange boundaries must take place. The court then found that, prior to the Commission's promulgation of WAC 480-80-270(1) in 1969, it was sufficient for the Commission to prescribe exchange boundaries by requiring that they be filed as part of their tariffs. The court noted that this had, in fact, been the Commission's practice: "The commission may be said to have utilized its tariff functions as the means of making RCW 80.36.230 effective." 30 Wn. App. at 417 (*citing* Attorney General Opinion, Mar. 15, 1956).

30 The court then held, however, that since WAC 480-80-270(1) stated that a company's regulations or practices would not be deemed approved by the mere filing of tariffs, but required approval in an order,[7] "if the WUTC is to establish any *new* exchange

[7] WAC 480-80-270 states:

(1) The filing of tariffs with the commission does not imply that the provisions of same are approved, unless the Commission has prescribed the rates, rules, and regulations or practices in an order, and utilities must not in any way make such an inference.

areas, we hold it must do so by issuance of an order, not by mere acceptance of tariffs." 30 Wn. App. at 417. (Italics in original.)

31 The court's subsequent observation that "[t]herefore, Prescott's only challenge to PNB's exchange areas is under RCW 80.04.110," was not a holding that boundary changes could be effected only by using that statute. The court was simply noting that Prescott's basis for seeking a boundary change in that case (so that Prescott could provide service in PNB's area, the reverse of Qwest's position in this case) was its complaint that PNB had allegedly acted wrongly and in violation of law—a claim that would be appropriately invoked under RCW 80.04.110. *Prescott* does not hold that the Commission is precluded from independently relying upon RCW 80.36.230 as a basis to alter exchange boundaries. Qwest's other citations, to cases involving changes in rates rather than exchange boundaries, are likewise not on point.

32 The Commission's Third Supplemental Order plainly stated that the Commission has the authority to alter exchange boundaries in this case. It does not refer to RCW 80.04.110 as some necessary "further authority," because no such further authority is needed.

B. Commission Staff has provided substantial evidence that would support a change in the Qwest/Verizon boundary.

33 Qwest argues that the Commission cannot order a boundary change because of the existing service available to the Timm Ranch residents, and because of service that

could be made available to them through RCC Wireless, Minnesota. As Staff has previously noted in our response to Verizon's Post-Hearing Brief, these so-called "alternatives" are not adequate.

34 Qwest also argues that Commission Staff has not provided sufficient evidence to support a boundary change. As Staff has previously noted in its opening brief, Mr. Spinks clearly shows in his testimony that the nonreinforcement cost for Qwest to build the Timm Ranch line extension is $300,000 less than Verizon's nonreinforcement costs. This is based upon Qwest's and Verizon's own calculations as submitted in responses to data requests. Mr. Spinks further explains why this $300,000 difference is not simply an "overbuilding" of the facility or a "stand-alone" project, as Qwest now contends, but is, in fact reinforcement: it involves the replacement of 6- and 11-pair air-core copper cables that have a remaining life span of, at most, in Mr. Spinks' estimation, ten years; and it involves reinforcement that will be available to serve current existing customers between Omak and the Timm Ranch. *See* Opening Brief of Commission Staff at 22-24. This is substantial evidence that could support a boundary change.[8]

35 Qwest also states that moving existing analog carrier subscribers into the new cable along with the digital carrier would merely "secure imperceptible benefits to

[8] Qwest notes that Staff did not move to join CenturyTel as a party to this case. If Qwest believed that joining CenturyTel was necessary to protect its interests, it had ample opportunity to do so. This is evidenced by Qwest's motion to join RCC as a party to this proceeding, which motion was granted by the Commission.

existing customers who are served by an analog carrier system." Opening Brief of Qwest Corporation at 39. Qwest, however, apparently does consider moving customers from older air core cable to newer generation filled cable as a perceptible customer benefit in states other than Washington. In Case No.- QWE-T-03-4, heard by the Idaho Public Utilities Commission, Qwest proposed using a portion of $4 million "revenue sharing" dollars and an additional $4 million matching dollars from Qwest for, among other projects, the "[r]eplacement or rehabilitation of air core cabling in the local exchange network in selected wire centers[.]" *Notice of Proposal*, In the Matter of Qwest's Proposal to Use Revenue Sharing Funds to Make Network Improvements in Its Southern Idaho Service Area, Case No. QWE-T-03-04 (January 24, 2003), at 1.[9] In its decision approving the Qwest proposal, the Idaho Commission stated that "[a]ccording to Qwest, these network components [air core cabling] represent areas that experience higher incidents of trouble reports from customers." *Order No. 29197*, In the Matter of Qwest's Proposal to Use Revenue Sharing Funds to Make Network Improvements in Its Southern Idaho Service Area, Case No. QWE-T-03-04 (February 24, 2003) at 2.[10]

[9] This Notice was served by the Idaho Commission on January 24, 2003, the last day of the hearing in this case, and it is in the nature of what the WUTC refers to as a prehearing conference order. This proceeding has also been referred to in Idaho as Qwest's "Tech III" proposal. The documents referred to can be found at http://www.puc.state.id.us/FILEROOM/telecom/telecom.htm

[10] In reaching the decision, the Idaho Commission may have relied upon information provided by Qwest Regulatory Manager John Souba, who stated in a letter dated January 17, 2003, that "Customers who are served by lead sheathed and older air core cables are more likely to experience service interruptions or service affecting conditions. . . . Thus, a significant and meaningful customer benefit for those directly

36 If Qwest considers it good engineering to move existing customers to newer generation filled cable in Idaho, then it should be considered good engineering to apply the same practice in Washington. The movement of existing "non-disturber" CM8 carrier systems from older air core cable to the new filled cable will perceptively improve service for those existing customers along the new cable route.[11]

37 Qwest also argues that "Mr. Williamson … testified that Qwest would enjoy reduced maintenance cost if it migrated customers from the existing cable to the new cable, but he did not quantify the reduction and did not compare it to the increase in maintenance cost which would result from placing a second cable alongside the first." Opening Brief of Qwest Corporation at 36. (Citation omitted.) Qwest's own data quantifies the reduction of maintenance cost as well as repair activity. As stated in Ex. 162 (Mr. Williamson's response to Qwest's Data Request No. 77), "As the existing air core cable ages, maintenance costs will rise. . . . [T]he 1993 FCC Depreciation Rate Study filed by *US West* with this Commission contains the following discussion of air core cable:

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impacted customers will be the cutover of their service to newer generation cable that will increase the reliability of their telephone service." The letter can be found at http://www.puc.state.id.us/fileroom/telecom/qwe-t-03-04/app.pdf

[11] In its Opening Brief, at page 39 and n. 41, Qwest argues that the FCC has determined that "analog carrier systems are a known disturber" of DSL technology. Nowhere does the FCC state that "analog carrier systems," or CM8 analog carrier, are a "known disturber" of DSL technology. In fact, the FCC states that the only technology found to cause interference with sufficient persistence to rise to the level of a "known disturber" is analog T1. See *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dockets Nos. 98-147 et al., FCC 99-355, Third Report and Order et al. December 9, 1999 at ¶214. The CM8 analog carrier used by QWEST does not use "analog T1" technology.

'Although aggressive air to filled core replacement programs have taken place since the mid 1970's much remains in service with *associated high maintenance impacts.'"*

38 In contrast to the implication at page 36 of Qwest's Opening Brief that there is no reduction in maintenance cost that would result from replacing air-core cables with gel-filled cables, the Idaho Commission, based in part on submissions from Qwest, determined otherwise. *Order No. 29197* at 3. The Idaho Commission stated that, "Qwest proposes to remove and replace old and deteriorating facilities, which will improve the quality of service to customers." *Id.* In addition, Qwest stated in a letter dated December 30, 2002, from Jim Schmit, Qwest Idaho President, to the Secretary of the Idaho Public Utilities Commission, when speaking of air core cables, (at page 4) "Customers who are served by these [lead sheathed and air core] cabling facilities generally experience a *higher level of repair activity* than those served by later generation cabling facilities. These improvements come from new materials and, in many underground applications, through the use of *gel-filled cables*, which are highly resistant to water intrusion."[12] (Italics added). Qwest itself fully understands the large impact that the movement of existing customers from older air core cable to newer gel-filled cable has on its repair and subsequent maintenance costs. As Mr. Williamson testified, the movement of any existing customers to the new cable will lessen Qwest's maintenance costs.

12 The quoted letter is an attachment to Qwest's "Supplemental Comments on Tech III Proposal" filed with the Idaho Commission on January 17, 2003. The supplemental comments and the attachment quoted above can be found at http://www.puc.state.id.us/fileroom/telecom/qwe-t-03-04/app.pdf.

39 Qwest's arguments concerning the alleged lack of benefit arising from the migration of customers from the existing cable to new cable are thus refuted by Qwest's presentations to Idaho and by Staff's testimony, and are without merit.[13]

III. CONCLUSION

40 Commission Staff requests that the Commission deny Verizon's petition for a waiver of its obligation to provide service under WAC 480-120-071(2), and to find that all the applicants at both the Hayes Road and Timm Ranch locations are reasonably entitled to service under the rule. Staff recommends that the Commission give Verizon until September 1, 2004, to fulfill that obligation, in order to allow Verizon sufficient time to use the mechanisms set forth in subsection (5) of the rule. This section would permit Verizon to discuss with other carriers (*e.g.*, Qwest or CenturyTel) the possibility of making agreements under which each would serve customers that are located in the other's neighboring exchange.

41 The companies clearly have the capability to cooperate in this fashion, and the Commission should issue a decision that permits Verizon and other companies to take advantage of this opportunity. Ratepayers will not be well served if companies do not, in

[13] Commission Staff notes the opening brief filed by RCC Minnesota, Inc. Staff's position regarding RCC has been previously set forth in our opening brief and in this response brief. Namely, RCC's current services are not reasonably comparable to wireline services as to quality, and there has been no showing as to price. Furthermore, RCC's services are not available at all to many of the residences. Additionally, Staff believes that RCC should not be required to spend substantial sums, to construct new cell towers (possibly as high as $500,000 per tower.)

exchange for the continuing protections offered them under rate-of-return regulation, cooperate among themselves to provide service, nor if companies are permitted to view reinforcement dollars as belonging to shareholders, rather than amounts to be invested on behalf of ratepayers.

42 Staff's alternative request for relief (in the event that Verizon's request for waiver is granted) is that the Commission determine that the evidence of record supports an adjustment to the boundary line between the Qwest and Verizon exchanges to include the Timm Ranch within the Qwest Omak exchange. As the evidence shows, the nonreinforcement cost for Qwest to build this line extension is considerably less than Verizon's costs, and the replacement of aging air-core cable will also provide benefits to other existing and future customers of Qwest's Omak exchange.

DATED this 27th day of March, 2003.

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