BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of: Douglas and Jessica Rupp; Kathie Dunn and Chris Hall; Michelle Lechuga; Verlin Jacobs; Anthony Williams; Christine and Samuel Inman; Robert Jacobs; and Sam Haverkemp and Chris Portrey, Petitioners, vs. Verizon Communications, Inc., Respondent.	DOCKET NO. UT-050778 **VERIZON REPLY TO SUPPLEMENTAL RESPONSE TO MOTION TO DISMISS**

I. INTRODUCTION

Pursuant to the Prehearing Conference Order No.1 in this case, Verizon Northwest, Inc. ("Verizon") hereby replies to the Supplemental Response to Verizon's Motion to Dismiss petition, filed by the Petitioners. Nothing contained in the Supplemental Response contradicts the conclusion that the Commission has no jurisdiction to force Verizon to serve the unfiled area where the Petitioners reside. This conclusion is based on the irrefutable fact that the Petitioners live in an area outside of Verizon's filed exchange area boundaries. As such, Verizon cannot be compelled to provide service to the Petitioners.

II. ARGUMENT

A. NO STATE LAW PROVIDES JURISDICTION TO COMPEL VERIZON TO EXTEND ITS EXCHANGE AREA BOUNDARIES TO COVER THE PETITIONERS.

As a threshold matter, even though they are acting *pro se*, the Petitioners must bear the burden of proving that they are entitled to the relief they seek under Commission precedent.[1]

[1] *See, i.e., In the Matter of the Petition of AT&T Wireless PCS of Cleveland, et al., for Designation as an Eligible Telecommunications Carrier,* Docket No. UT-043011, Order No. 1, 2004 Wash. UTC LEXIS 283 (April 13, 2004); *In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Business Exchange Telecommunications Services,* Docket No. UT-030614, Order No. 17, 2003 Wash. UTC LEXIS 628 (December 22,

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They cannot do so as a matter of fact and law because they live outside the boundaries of Verizon's filed service area.

Petitioners rely erroneously on RCW 80.36.230 and 80.36.240, misconstruing these as granting the Commission "sweeping power to prescribe telecommunication exchange area and/or territorial boundaries, and to expand such boundaries when warranted." (Supplemental Response, p. 4.) First, language authorizing "expansion" exists in neither statute. The language in these statutes cannot be read to give the Commission the authority to force a company to serve beyond its dedicated service area.[2] Such an unreasonable interpretation would create tremendous economic uncertainty for rate of return utilities who plan their budgets and manage expenses on the basis of where they know they are obligated to serve, which, in turn is defined by the tariffed exchange area maps they file with the Commission. If the Commission *sua sponte* could impose new "obligations to serve" anywhere in the state, every utility company would be at risk for unplanned and uncompensated new costs.

Second, the act of "prescription" in RCW 80.36.230 means to set up rules that allow telecommunications companies to define the limits of where they are willing to serve. The statute does not give the Commission substantive power to impose new geographical service obligations. *See, Prescott Tel. & Tel. Co. v. UTC,* 30 Wn. App. 413, 634 P.2d 897 (1981). By rule, the Commission required (and still requires) telephone companies to file maps of their service areas with the Commission. Under *Prescott,* as long as Verizon complies with this Commission rule, then Verizon's local exchange areas defined in its tariffs may not be changed.[3] In *Prescott*, the court affirmed a Commission decision that refused to shrink a company's defined

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2003); *In Re Application E-19645 of United Couriers, Inc. for Extension of Authority Under CN-1561,* Order M.V. No. 139215, Hearing No. E-19645 (1989), Wash. UTC LEXIS 27 (March 20, 1989).

[2] There is no legal authority to support this interpretation.

[3] There is no question that Verizon has complied with the appropriate tariff regulations at issue under *Prescott* because it has on file tariff exchange area maps, in compliance with WAC 480-80-102(5)(b).

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service areas over the company's objection. Similarly here, the Commission should respect Verizon's self-defined serving area and refuse to expand it over the company's objection.

Furthermore, *ELI v. WUTC,* 123 Wn.2d 530, 869 P.2d 1045 (1994), demonstrates that RCW 80.36.230 was not intended as a grant of authority to the Commission to expand a carrier's service obligations. As noted in *ELI*, former Commission Chairperson Sharon Nelson pointed out the reason that RCW 80.36.230 has no relationship to expanding a company's service area:

> It appears the real purpose of [RCW 80.36.230] was to bring some order out of the chaos associated with small independent telephone companies, to clearly delineate local and interexchange telephone calling, and to create call zones for local telephone service ....

Id. at 538.

Construing RCW 80.36.230 to limit "prescribed" areas to where a company had dedicated its services is consistent with

> [The] basic modern rule for the extension of service generally accepted by all 50 states ... that a utility can be required by a regulatory authority to make all reasonable additions within the area to which it has dedicated services, but that no extensions can be mandated outside of that area.[4]

Accord, Northern Pacific Railroad Company v. Railroad Commission, 58 Wash. 360, 108 Pac. 938 (1910).

This legal inability of regulators to force companies to make investments beyond their dedicated service areas is consistent with this Commission's recognition that even inside filed exchanges not everyone who chooses to locate in remote, costly-to-serve areas has a claim on the company's funds and on, in effect, large subsidies from the general body of ratepayers. In a case involving a requested service extension in remote parts of Verizon's service area, the Commission granted the Company a waiver of the Commission's service extension rule. In the Twelfth Supplemental Order in *In the Matter of the Petition of Verizon Northwest, Inc. for*

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[4] *The Common Law "Duty to Serve" and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring*, 51 VAND L. REV. 1233, 1252-53 (1998).

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Waiver of WAC 480-120-071(2)(a), Docket No. UT-011439 (April 23, 2003), the Commission said (¶ 68):

> A denial of the waiver would send the signal that extraordinarily costly line extensions to serve few customers are warranted under the new rule. This in turn would make it increasingly difficult for carriers to devote resources to their existing network and would create an unreasonable increase in the subsidies paid by other ratepayers. It would increase maintenance costs and burdens for which carriers either would not obtain cost recovery or would have to seek recovery from other ratepayers. It would increase the possibility of stranded investment if other alternative technologies such as wireless, erodes wireline business.

B. FEDERAL LAW DOES NOT PROVIDE THE COMMISSION WITH AUTHORITY TO FORCE VERIZON TO PROVIDE INTRASTATE SERVICE TO THE PETITIONERS.

The Petitioners suggest that 47 U.S.C. § 214(e)(3), once invoked by requesters, automatically requires Verizon to provide them with telecommunications service. This analysis is wrong for several reasons. First, the statute only applies where services are supported by federal universal service support mechanisms under 47 U.S.C. § 254(c). For Verizon, no Washington intrastate services are supported by federal universal service support mechanisms. While the Petitioners claim that Verizon receives money from the Interstate Access Fund ("IAS"), this support does not apply to intrastate services. As the FCC made clear in the CALLS Order, the IAS funds are intended to support interstate services. In the CALLS Order, *In the Matter of Access Charge Reform,* 15 FCC Rcd 12962 (2000), FCC LEXIS 2807, (rel. May 31, 2000), the Commission said:

> (¶ 185) In the preceding sections of this Order, we have restructured and significantly reduced the interstate access charges imposed by price cap LECs. In this section, based on the CALLS proposal, we identify a specific amount of access charges as implicit support for universal service, and we establish an explicit interstate access universal service support mechanism to replace such implicit support. **In contrast to the Commission's existing high cost support mechanisms for rural and non-rural carriers, which provide support to enable states to ensure reasonably affordable and comparable intrastate rates, the purpose of this federal mechanism is to provide explicit support to replace the implicit universal service support in interstate access charges.** (emphasis added)

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Thus because Verizon receives no federal universal service support for the requested intrastate services, the provisions of § 214(e)(3) simply do not come into play.[5] Even if they did, this Commission could not grant the relief sought by Petitioners. Because the Petitioners want both interstate and intrastate[6] services, under § 214(e)(3) they would have to ask the FCC and not this state Commission for a designation of an eligible telecommunications carrier. This Commission has no authority to make such a designation for interstate services.[7]

Furthermore, assuming for the sake of argument that the Commission had some authority under § 214(e)(3), the Commission must utilize a competitively and technologically neutral carrier selection process.[8] In other words, Verizon cannot be singled out to bear this burden and the proceeding would have to expand to consider other alternative carriers. For instance, other local exchange companies have demonstrated the willingness and ability to save remote areas, such as Beaver Creek Telephone Company (Silver Lake) or WeavTel (Stehekin).

Finally, granting Petitioners' request would constitute nothing but an unconstitutional taking of Verizon's property by forcing it to provide service against its will for the private benefit of a few parties without compensation. The due process cases and arguments in Verizon's Motion to Dismiss support this conclusion and will not be repeated.

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[5] Petitioners claim (pages 9 - 11) that Verizon would try to collect High Cost Loop support if their request were granted, but they cite no authority that the Company would be eligible for such support in Washington, and there is no reason to believe Verizon would get High Cost Loop support, which it currently does not receive, as a result of providing service to the Petitioners.

[6] For instance, the Petitioners appear to want access to the Internet's worldwide web (Supplemental Response, p. 12). Internet access services are interstate in nature.

[7] (3) "* * * the Commission [FCC], with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine . . .. "

[8] Under § 214(e)(3), the commissions must determine " which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof." This analysis cannot be performed if a commission looks only at one company.

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III. CONCLUSION

The solution to the provision of telecommunications services to the Petitioners should not be placed upon Verizon's shoulders. Verizon therefore respectfully requests that this matter be dismissed.

DATED this 17th day of August, 2005.

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