

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Petition of |) | DOCKET NO. UT-011439 |
| |) | |
| |) | TWELFTH SUPPLEMENTAL |
| VERIZON NORTHWEST INC., |) | ORDER |
| |) | |
| |) | ORDER GRANTING VERIZON |
| For Waiver of WAC 480-120- |) | PETITION FOR WAIVER OF |
| 071(2)(a). |) | WAC 480-120-071(2)(a) AND |
| |) | DISMISSING QWEST AND RCC |
| |) | AS PARTIES TO THE |
| |) | PROCEEDING |
| |) | |

Synopsis: *The Commission grants Verizon’s petition for a waiver of WAC 480-120-071(2)(a) of the requirement to extend service to two locations in Verizon’s Bridgeport exchange. The Commission affirms its orders joining Qwest and RCC as parties but now dismisses Qwest and RCC as parties to the proceeding. The Commission finds moot Qwest’s motion to strike portions of Staff’s Response Brief.*

1 Nature of the Proceeding: Docket No. UT-011439 is a petition by Verizon Northwest Inc. (Verizon), seeking a waiver of the requirement to extend wireline service under WAC 480-120-071¹ to the Taylor location and the Timm Ranch, located in Verizon’s Bridgeport exchange in Douglas and Okanogan counties respectively.

2 Procedural history: The matter was heard upon due and proper notice to all interested parties before the Commissioners and Administrative Law Judge Theodora Mace on January 22 to 24, 2003.

3 Appearances: Judith Endejan, Attorney, Graham & Dunn, Seattle, Washington, represents Verizon. Gregory Trautman, Assistant Attorney General, Olympia, Washington, represents staff of the Washington Utilities and Transportation Commission (Commission Staff or Staff). Douglas N. Owens, attorney, Seattle,

¹ A copy of WAC 480-120-071 is attached to this Order as Appendix A.

Washington, represents Qwest Corporation (Qwest). Brooks Harlow, attorney, Seattle, Washington, Miller Nash LLP, represents RCC Minnesota, Inc. (RCC).

I. PROCEDURAL HISTORY

- 4 Verizon is a telecommunications carrier that provides wireline telecommunications services in the State of Washington, subject to the jurisdiction of the Washington Utilities and Transportation Commission. Regulated intrastate telecommunications carriers such as Verizon are obligated to extend service pursuant to the provisions of WAC 480-120-071 (“line extension rule”)². The rule in its current form went into effect January 1, 2000.³ This is the first contested case to test the waiver provisions of the new line extension rule.
- 5 On January 22, 2002, the Commission convened a prehearing conference in this docket at Olympia. The parties agreed to a schedule of proceedings that allowed them to address the question of whether or not Qwest should be made a party, as well as a schedule for evidentiary hearings.
- 6 On May 31, 2002, the Commission entered its Third Supplemental Order granting Commission Staff’s motion to join Qwest as a party to the proceeding and establishing a revised schedule for hearing.
- 7 On July 10, 2002, the Commission granted Qwest’s motion to join RCC as a party and further revised the schedule of proceedings.
- 8 Evidentiary hearings took place before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie and Administrative Law Judge Theodora M. Mace in Olympia on January 22, 23, and 24, 2003.

² WAC 480-120-071 requires companies to extend service to “reasonably entitled” applicants within 18 months of a request. Under the rule, an “extension of service” is an extension of distribution plant beyond the company’s existing distribution plant. The rule provides for voluntary cross-boundary extensions of service; allocation of construction costs between applicant and company; a means by which the company may recover some of its share of construction costs from other ratepayers; and a provision allowing companies to request a waiver of the requirement to extend service.

³ *Order Amending and Adopting Rule Permanently*, General Order No. R-474, Docket No. UT-991737 (“Order R-474”).

9 Verizon, Qwest, RCC and Commission Staff filed opening briefs on March 6, 2003. Commission Staff, Qwest and RCC filed response briefs on March 27, 2003. Verizon filed its response brief on March 28, 2003. Qwest and RCC filed reply briefs on April 3, 2003.

10 On April 3, 2003, Qwest also filed a Motion to Strike Portions of Staff's Response Brief. On April 10, 2003, Staff filed its response to the Motion.

II. MEMORANDUM

11 **Background.** The issues now before the Commission are: 1) whether Verizon should be granted a waiver of the requirement to extend service to the Timm Ranch and the Taylor location; 2) whether Qwest and RCC should remain parties; and 3) if Qwest and RCC remain parties and Verizon is granted a waiver, whether either Qwest or RCC should be required to extend service.

12 WAC 480-120-071(2)(b) states that telecommunications companies that file tariffs with the Commission must extend service, upon application, to occupied premises. Verizon's waiver application requests that the company be relieved from providing service extensions to two different locations within its service territory, citing WAC 480-120-071(7)(a). This subsection of the rule provides that the Commission may determine whether an exchange company should be relieved of the obligation to provide service.

13 In its post-hearing Reply Brief, Verizon asserts that the Commission also has authority to grant the company a waiver of the extension requirement under the provisions of WAC 480-120-015(1). That provision addresses general exemptions from rules included in chapter 480-120 WAC.

14 **Discussion.** The first location for which Verizon seeks a waiver is called the Taylor location on the record.⁴ At the Taylor location, in Verizon's Bridgeport Exchange in Douglas County, the applicants, including Mrs. Kay Taylor, live in three houses along Hayes Road, in a box canyon, approximately 14 miles from the town of Bridgeport. Mrs. Taylor requested service from Verizon on December 7, 2001. Other applicants in the canyon are Wendy Shomler and Ann Nichols. Three additional households located in the canyon have not, to date,

⁴ Commission Staff also refers to this as the Hayes Road location.

requested service. Verizon asserts it would have to construct over 17 miles of new facilities to provide service to this location.

15 The second location, the Timm Ranch, consists of five residences along Timm Road on the Timm Ranch, in the portion of the Bridgeport exchange located in Okanogan County, bordering on the Columbia River. Mr. Ike Nelson initiated the first service request from this location on June 15, 2002. Verizon has received four other service requests from Billie Timm, Robert Timm, Brad Derting and Darrell Shannon. *Exhibit 171D at 9; Exhibit 121 T at 3-4*. Mr. Nelson is also constructing a new house on the ranch for himself. One of his sons will live in the old house. *Exhibit 171D at 13*. Mr. Nelson's family owns Timm Brothers Inc., which for 50 years has operated the 10,000-acre cattle ranch. The family also rents up to 100,000 acres for ranch purposes. *Exhibit 121 T at 4*. Verizon states it would have to construct approximately 30 miles of fiber cable to serve this location.

A. SHOULD VERIZON'S REQUEST FOR A WAIVER OF THE LINE EXTENSION RULE BE GRANTED?

16 Subsection (7)(a)⁵ of the line extension rule gives the Commission authority to determine "whether any applicant for service is not reasonably entitled to service." In determining "reasonable entitlement," the Commission may consider the seven factors listed in subsection (7)(b)(ii) and "such other information that it may consider necessary to a proper determination." The seven factors are:

- The total direct cost of the extension;
- The number of customers to be served;
- The comparative price and capabilities of radio communications service or other alternatives available to customers;
- Technological difficulties and physical barriers presented by the requested extensions;
- The effect on the individuals and communities involved;
- The effect on the public switched network;

⁵ Subsection (7)(a) allows for a waiver of the subsection (2)(b) requirement that service be extended to occupied premises. Subsection (7)(b) permits petitions for waiver of subsection (3)(a) and allows a company to build an extension but charge the applicants for all or part of it, if shifting the cost to other ratepayers is found unreasonable.

- The effect on the company.

17 As is evident from the language of subsection (7)(a), this list is non-exclusive and non-mandatory. It is a list of factors likely to be at issue in a line extension, but not all of these factors will be significant in every case, and there may be other factors, not listed, that will be relevant in a particular case. The fundamental task before the Commission is to consider and weigh all relevant factors, in order to determine, under the rule and under RCW 80.36.090, whether an applicant is “reasonably entitled” to service from the local exchange company. We begin by considering the listed factors, as they apply to each location.

1. The total direct cost of the extension.

18 The line extension rule defines an extension of service as an extension of distribution plant to a location outside any municipal boundary and where no distribution plant of the extending company exists at the time an extension is requested. The extension must be constructed at the request of one or more applicants, and extend more than 1/10 of a mile. *WAC 480-120-071(1)*.

19 The rule further defines the “cost of service extension” as “the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, drop wire, permitting fees, rights-of-way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade or similar costs.” *WAC 480-120-071(1)*.

20 The rule contains no definition of the cost of reinforcement, but Commission Staff defines the cost as the expenditure required to shore up existing facilities in order to allow the company to construct an extension. *Exhibit 131T at 13*.

21 Verizon explains that, historically, line extension construction costs were allocated between the company and the customer so that the customer requesting an extension would bear a significant share of the costs. This allocation reflected a desire to avoid subsidies to individual customers by other existing customers. Under the new line extension rule, customers pay maximum initial and final payments of no more than 20 times their basic monthly service rate. *WAC 480-120-071(3)*. The company shoulders the rest of the cost but, under the rule, can request recovery of its direct and indirect costs by means of filing a

tariff to include a service-extension element on terminating access charges. *WAC 480-120-071(4)*.

- 22 **a. Timm Ranch.** Verizon states that it would have to extend its facilities 30 miles to reach the Timm Ranch, requiring installation of fiber optic cable and signal boosters. *Exhibit 1T at 7*. Approximately 23 miles of the construction would be along a dirt road and would constitute the longest loop in Verizon's Washington service territory with no other customers. *Id. at 10*. Verizon estimated the cost to build these facilities at \$881,497 or a per-customer cost of \$176,299.⁶ *Id. at 5*. The facilities would serve the residences of each of the five applicants.
- 23 Staff estimates that the total direct cost to Verizon for building the Timm Ranch extension would be \$737,612, which Staff derives by excluding \$143,825 in reinforcement costs from Verizon's cost estimate. *Exhibit 131T at 14*. Staff calculates the per-customer cost for the Timm Ranch to be approximately \$123,000, based on the five current applications, plus the potential for service to the house soon to be built by Ike Nelson.
- 24 **b. Taylor Location.** Verizon estimates that it would cost \$329,839 to extend service to the Taylor location or a per-customer cost of approximately \$110,000.⁷ *Exhibit 1T at 3, 5; Exhibit 3*. The company would have to lay copper cable for 15 miles along Highway 17 and two miles along Hayes Road in the canyon. Verizon contends that actual costs may be higher than the estimate because of the basalt rock in the area that might require the use of a backhoe or rock saw. *Exhibit 1T at 5-6*.
- 25 Staff estimates that it would cost Verizon \$165,015 to construct service to the Taylor location, derived by excluding \$164,824 from Verizon's cost estimate for reinforcement costs. Staff's per-customer cost is \$27,500, based on the fact that Verizon sized its estimate to accommodate six potential customers.

⁶ Appendix B to this Order is a chart summarizing the cost testimony in the record. Verizon contends there are only five applicants at the Timm Ranch.

⁷ Verizon argues that there are only three actual applicants for service at the Taylor location. Verizon's cost estimates include facilities that could potentially serve six households in the canyon. *T 130*.

- 26 **c. Total Cost and Cost Considerations.** Verizon's estimate of the total cost to serve the two locations is \$1.2 million, or, \$150,000 per-customer. Staff estimates the total cost at \$902,687, or \$75,228 per-customer.
- 27 Verizon contends that its estimated cost is disproportionately high by any measure. Although Staff disputes the inclusion of reinforcement costs in deciding what is the appropriate direct cost, Verizon points out that Staff does not dispute the accuracy of the cost estimate itself. *T 618*. Verizon further complains that no Staff witness provided any guidance to the Commission as to what cost level would be too high, though clearly the line extension rule contemplates that some limit might be appropriate.
- 28 Verizon presented the testimony of Dr. Carl Danner to identify the overarching cost considerations that would help in determining the appropriate cost ceiling to be applied in line extension requests. Dr. Danner testified that the cost to society as a whole for these extensions is far greater than any offsetting benefit to the individual subscribers. Building such extensions uses up resources that could be used to provide service to a greater number of customers. It is economically reasonable, according to Dr. Danner, to expend such resources only when the product is more valuable than what is achieved by consuming them. *Exhibit 30T at 6, 12*. Dr. Danner also testified that the value of adding these customers to the network, also termed the "externality value," would be small compared to the cost of adding them. *Id at 8-9; T 262-263*. Dr. Danner suggested that even a \$15,000-20,000 limit would be too high a cost for such extensions.
- 29 Verizon states that evidence of the low value of wireline service to these applicants is demonstrated by the fact that, ten years ago, when the applicants originally expressed an interest in obtaining wireline service, they were not willing to pay the costs of construction, which, at that time, were between \$23,000 and \$40,000. *Exhibits 565 and 566; Exhibits 171D at 13 and 172D at 16*. Verizon argues that nothing in the record allows a determination that the extensions would create \$150,000 of value for each applicant in this case.
- 30 Verizon compares the per-customer costs of these extensions to the average cost-per-customer of extensions built so far under the new rule -- \$10,000. *T 193*. The average length of line extensions built under the new line extension rule is 7,500 feet. *Exhibit 7T at 9*. The length of the Timm extension is 142,300 feet. The length of the Taylor extension is 42,600 feet. *Exhibit 4*. Verizon claims that the total cost

of the extensions in this case equals 40% of its 2002 construction budget for the Wenatchee District.⁸ *Exhibit 1T at 9*. The sheer length of the circuits involved invites higher maintenance costs. *Id. at 12-14*. When the facilities wear out, replacement costs will also be extremely costly. Moreover, Verizon is concerned that if demand for service at these locations lessens or disappears, all or part of the \$1.2 million in construction costs would be stranded investment.

- 31 Verizon further argues that the Commission should consider the total cost of construction, including reinforcement costs, because these would be the actual costs incurred by the company. Verizon disputes the Staff's position that reinforcement costs must be excluded from that consideration.
- 32 Verizon argues that it has not received any recovery in basic rates for reinforcement costs for line extensions such as those at issue in this case. Basic rates are intended to recover the costs of "normal reinforcement" related to typical extensions. Verizon estimates that the \$309,000 in reinforcement that Staff excludes could build 30 average line extensions. *Verizon Opening Brief at 18*.
- 33 Commission Staff points out that Verizon's calculation of cost-per-customer at these locations is overstated because Verizon undercounts the number of customers or potential customers. Staff believes it appropriate to divide the cost by the number of households that would be able to take service. *Staff Response Brief at 3*. On that basis the customer count would be six at each location. Staff further asserts that the proper cost estimates per-customer -- \$27,500 at the Taylor location and \$123,000 at the Timm Ranch -- are either below or on a par with the per-customer costs of other line extensions Verizon has constructed under the rule, such as the Cedar Ponds extension in the Sultan exchange. *Exhibit 214C*;⁹ *Exhibit 215*; *Staff Opening Brief at 28*.
- 34 Commission Staff also defends the exclusion of reinforcement costs from the Verizon cost estimates. Staff argues that Order R-474 adopting the new line extension rule provided the context for concluding that reinforcement costs should not be considered in the waiver factors. *Order R-474 at ¶22*. According to

⁸ Verizon's Wenatchee District covers approximately 4,500 square miles in north central Washington, extending from Wenatchee to the Canadian border. The District consists of twenty exchanges with a total of approximately 78,000 access lines. *Exhibit 1T at 1*.

⁹ During the hearing, Verizon stated that the numbers in the "Total" column on the last page of Exhibit 214C were not confidential. *T 149*.

Staff, the order indicated that each local exchange carrier must maintain, reinforce, and improve its network and that it receives funding for these efforts in its authorized rates. *Id.* at ¶27. If cost recovery for performance of these activities is inadequate, the carrier can request a rate increase. Staff asserts that reinforcement costs are considered a part of the company's ongoing business operations. *Id.* at ¶43.

- 35 Commission Staff contends that Verizon has failed to forecast growth at the Taylor and Timm locations and has failed to adequately reinforce its network in north central Washington. An example of this is the difficulty of customers in that area to obtain second lines from Verizon. *Exhibit 545 ¶2.1*. Staff further points out that Verizon says its facilities west of Foster Creek Ranch, near the Taylor location, are "at exhaust," or 100% in use. Thus, Verizon would have to reinforce up to Foster Creek in order either to construct a line extension or to serve one more applicant at Foster Creek Ranch.
- 36 Staff claims that Verizon does not state that it lacks funds for reinforcement. *T169*. Staff contends that Verizon believes the money it has received from ratepayers for reinforcement would be a loss to shareholders if invested in reinforcement. Staff argues that the Commission rejected the claim that a carrier should only be required to serve where it has an existing plan to add additional capacity in the near future or where it makes business sense to do so.¹⁰
- 37 Staff also argues that, in addition to reinforcement dollars Verizon receives in rates, Verizon also receives high-cost, or universal service, funding on a per-access-line basis in high-cost areas. Customers in high-cost areas receive supported service because the federal and state governments have determined that below-cost service should be provided in order to enhance universal service.¹¹ This funding includes a "fill" factor to allow for spare capacity to meet current demand plus an additional allowance for growth. *Docket No. UT-980311(a) Tenth Supplemental Order at ¶257*. Staff claims that Verizon receives such support based on the number of inhabited households served by Verizon at the time the Commission entered the Tenth Supplemental Order in that case. *Id.* at 26-28; *Exhibit 131T at 14*. Because households at the Taylor location and the Timm Ranch were inhabited at the time of the Tenth Supplemental Order in

¹⁰ *WUTC v. U S West Communication, Inc.*, Docket No. UT-961638, Fourth Supplemental Order Rejecting Tariff Filing, January 16, 1998 at 15-21. ("*Fourth Supplemental Order*").

¹¹ 47 USC 254; RCW 80.36.300; *WITA v. WUTC* (Wash. Sup. Ct.) (March 6, 2003 Slip Opinion).

Docket No. UT-980311(a), Staff claims Verizon receives high-cost support specifically for extending service to the Taylor location and the Timm Ranch. Staff argues that to allow Verizon to recover reinforcement costs under these circumstances would constitute allowing the company a double recovery.

- 38 Staff disputes the effect of the Taylor and Timm Ranch extensions on the Wenatchee District construction budget. Staff maintains that Verizon has sufficient flexibility in its budgeting process to allow construction of the extensions, since for 2000 it overspent its budget by \$19 million. *Exhibit 111T at 2.* Moreover, Verizon would be able to recoup its construction costs, less reinforcement, within one year under the rule.
- 39 Finally, Staff contends that because Verizon requested a line extension rule waiver under subsection (7)(a), rather than under subsection (7)(b), the Commission should not give primary weight to the cost of a line extension in deciding this case. Staff suggests that a waiver under (7)(a) means that applicants are not reasonably entitled to service whether they pay any or all of the cost of service. Under (7)(b), construction would still be required but Verizon could charge an applicant the direct cost if the Commission found it unreasonable to recover the cost from ratepayers under subsection (4) of the rule. Staff claims that a waiver under (7)(a) might deny service to future purchasers of property. The total direct cost and the number of customers served plays a far more important role in considering the seven waiver factors under (7)(b) than under (7)(a) because the issue is who should bear the cost of what is built.
- 40 Verizon contends that the reinforcement costs Staff excludes would only arise because of the Timm Ranch and Taylor location line extensions. *T 199-202.* Verizon points out that Staff states it would allow Qwest to recover reinforcement costs if Qwest built the Timm Ranch extension, because Qwest could not have planned to serve that location. However, Verizon asserts that neither did Verizon plan to serve that location. Also, with regard to the capacity of Verizon's facilities to the Foster Creek Ranch, Verizon contends it has technologies available, when actual cable is at exhaust, to allow it to expand capacity without reinforcement if there is plant within a certain distance of a central office. Foster Creek is within the required distance; the Taylor location is not. Thus, Verizon would need to expend money for reinforcement to extend service to the Taylor location that would not be required to expand existing service to Foster Creek.

41 Verizon claims that the requested line extensions would not serve “normal demand,” because they represent applications that arose as a result of the new line extension rule. The new rule resulted in increased demand and increased costs for such construction. In 2001 Verizon built 85 projects under the new rule. *T 192*. These increased costs could not have been factored into ratemaking that occurred prior to the new rule. *T 266*. Verizon argues that rates set in 1999 to recover the revenue requirement at that time could not have taken into account the effect of the new rule which became effective in 2000. Verizon further argues that the cost models used and rates set in the universal service docket, UT-980311(a), merely constituted a reallocation of existing revenue levels that were established based on embedded costs, and did not create any new money for network improvement or extension. *Exhibit 32T at 17-19*. Verizon argues it would not obtain any additional universal service recovery as a result of the new line extensions. *T 453*.

42 Verizon rejects Staff’s contention that the company should construct these extensions because it has already built more-expensive line extensions such as Cedar Ponds, for which Verizon sought recovery under the new rule. Verizon asserts that the company built the Cedar Ponds extension prior to the new rule, and under pressure from Staff. Verizon only requested recovery for Cedar Ponds under section (4) of the new rule because Staff suggested it do so. Verizon also notes that its experience with the Pontiac Ridge extension demonstrates that Staff’s method of counting customers at each location in this case is suspect. Verizon built the Pontiac Ridge extension based on 44 applications for service, but now serves only 37 lines there. *Exhibit 7T at 15*.

2. Number of customers to be served.

43 As discussed above, Verizon and Staff have divergent views about the proper method of counting number of customers to be served at each location. Verizon counts only the number of actual applications—eight—for the two locations. Staff counts twelve—the number of potential customers at both locations.

3. The comparative prices and capabilities of radio communications service or other alternatives.

- 44 Verizon argues that both the Timm Ranch and the Taylor location applicants have access to wireless or radio communications services. The availability of such services makes the provision of wireline service, if not superfluous, certainly not as urgent a need as Staff portrays. At the Timm Ranch, Ike Nelson has radiophone service at his residence which functions like a wireline phone. He extends a line to a residence across the Columbia River, which gives him a dial tone from Qwest's Coulee Dam exchange. *Exhibit 1T at 5; Exhibit 171D at 25.* All of the applicants at the Timm Ranch have Verizon Wireless service but they are unable to receive signal at their homes. They have to drive some 2-3 miles to get a signal. *Exhibit 171D at 23.* Mr. Nelson pays \$65 per month for the two wireless phones he has from Verizon Wireless. *Id.* at 24.
- 45 At the Taylor location, the Taylor residence has stationary cell service from Americell Communications, which provides a connection to emergency services. *Exhibit 172D at 22.* Mrs. Taylor also has wireless service from AT&T, which she uses in conjunction with her business. The Taylors pay \$8,000 per year for their wireless service, which includes business use. *Id.* at 41-42. Mrs. Taylor co-owns a janitorial service in Grand Coulee, 28 miles from her home. The Taylors also have DirecTV satellite service available to them at \$79 per month. *Id.* at 5-13.
- 46 RCC has installed phone cell¹² service at both the Taylor residence and the Nelson residence on a trial basis. RCC's tests showed that both the Taylor and Shomler residences receive phone cell signal through RCC at the Taylor location. The Ike Nelson and Bob Timm residences receive signal at the Timm Ranch. Although RCC installed the service gratis at the Taylor and Nelson residences for purposes of testing it for this case, it normally costs \$1,200 to install. *Exhibit 91T at 11; T 307-308; Exhibit 171D at 15.*
- 47 Staff contends that the wireless alternatives available to the applicants do not provide "reasonably comparable service at a reasonably comparable price compared to wireline in the area." *WAC 480-120-071(2)(c).* None of the wireless services used by the applicants is as reliable as landline. The Timm Ranch

¹² A phone cell is a "hybrid cellular system packaged with a dial tone emulator. It uses a base station that receives the cellular signal like a typical cell phone, then converts that signal into a noncellular signal like a standard telephone line." *Exhibit 91T at 6.*

applicants cannot obtain wireless signal at their residences. The radiophone at the Nelson residence is subject to the risk of lightning damage. Mr. Nelson must make a 140-mile trip to troubleshoot problems with the line. *Exhibit 131T at 20; 171D at 25*. The Taylors' wireless service suffers from static on the line. *Exhibit 172D at 22, 33*. Staff asserts that the quality of their wireless service may have been an issue in the death of Mrs. Taylor's father-in-law when she failed initially to reach 911 by using her wireless phones. *Exhibit 140T*.

48 Staff points out that RCC phone cell service would not be adequate because it would not serve all the applicants at each location. *Exhibits 91T at 8-9; 101T at 5*. Also, the industry standard for the RCC service is more lenient than wireline. *Exhibit 91T at 3*. For example, at the Timm Ranch, there has been sporadic trouble and static on the line. *Exhibit 309*. Staff also mentions that none of the applicants have requested service from RCC.

49 Verizon responds that it is a myth that existing wireless service is not a reasonable substitute for wireline. There is no evidence that either Mrs. Taylor or Mr. Nelson would give up their wireless service if wireline were installed. In fact, at the ranch, wireless would be beneficial for calling while out on the ranch property, whereas wireline cannot serve that function. Nor was there any evidence that any of the applicants could not afford the wireless service they purchased. Finally, comparing the price of wireline with the price of wireless presents difficulties due to the variability of wireless calling plans, which often include the ability to make unlimited long distance calls for a flat monthly fee.

4. Technological difficulties and barriers presented by the requested extensions.

50 Verizon contends that the distances involved and the nature of the terrain in the areas to be served present various technological difficulties and barriers. Verizon predicts that it would require 4,300 man-hours of work to construct the extensions due to these conditions. *Exhibit 1T at 11-13*. The existence of basalt rock would make excavation difficult, and possibly more expensive than original estimates. The presence of the Columbia River would require Verizon to serve the Timm Ranch out of the Brewster exchange, even though the ranch is in the Bridgeport exchange. *T 132, Exhibit 1T at 7*. The residences at the ranch are situated along a dirt country road not maintained in winter. Lack of winter maintenance would increase the personnel required to detect problems. There are potential hazards from bad weather, vandalism, wildfire, mechanical

breakdown, damage from wild animals and livestock. Even though these types of conditions exist throughout the Wenatchee district, most extensions are not as lengthy as the ones proposed here.

51 Staff says that Verizon has not shown that there are any barriers different from those commonly faced in the Wenatchee district. *T 130-132*. Staff notes that Verizon complains about unplowed roads, yet the company places cross-country wire at various locations in Washington. *131T at 26*. Staff contends that a new rule, WAC 480-120-440, which will become effective July 1, 2003, will give telephone companies more time to repair outages and will alleviate some of the pressure on Verizon regarding maintenance of the extensions in this case. Finally, Staff claims that although the proposed Timm Ranch loop would be 23 miles long without other customers, there are thousands of loops in Washington that are 20 to 40 miles in length. *Exhibit 111T at 3; T470*. On cross examination, however, Staff witness Shirley indicated that he knew of no other loops in Washington which stretched for 23 miles without any customers. *T 563*.

5. The effect on individuals and communities involved.

52 Verizon suggests that one effect of building line extensions for the applicants in this case is that they will experience a financial windfall and their property values will increase significantly. Verizon contends the Taylors have lived at their current location for 28 years without wireline. The evidence shows that their wireless service enables them to maintain contact with their community of interest, Grand Coulee, where Mrs. Taylor has her business.

53 Verizon claims that wireline would provide an additional benefit to Timm Bros. Inc., because the primary use of the line extension would be for ranch business. *Exhibit 171D at 26*. Verizon notes that the line extension rule definition of “premises” includes farmhouses, but does not include predominantly commercial or industrial structures. *WAC 480-120-071(1)*. Verizon contends that a line extension to the Timm Ranch would create a subsidy to the already substantial commercial cattle operation located there. Furthermore, a grant of the waiver would not have a negative effect—the ranch has been successful with the type of telecommunications service it has procured to date. Several individuals have lived there for some time and all built and retained their connections to communities nearby and to the larger world of cattle ranching. *Exhibit 171D at 24*.

- 54 Finally, Verizon observes that the nearby Nespelem Valley Electrical Cooperative provides a \$1,500 credit towards extension of an electrical line. After that, the customer must pay \$7 per foot toward the construction costs.
- 55 Staff responds that just because the Taylor and Timm Ranch applicants have been without wireline service for many years does not mean they would not benefit from that service. To say that they moved to a rural area with no expectation of having wireline service is true of everyone who applies for an extension. Mrs. Taylor would benefit by a more reliable connection to 911 because she frequently cares for her grandchildren. Her current service was unable to provide her with a timely connection to 911 when her father-in-law died. *Exhibit 172D at 29-30; T 568.*
- 56 As for Mr. Nelson, wireline would help him both personally and in his business; would provide access to the internet; would allow him contact with his children in college. *Exhibit 171D at 25-26.* He would be able to participate more fully in the community. *Exhibit 590; T 717.* The line extension definition of “premises” deliberately includes farmhouses because they are to some extent both business premises and residences. As Staff witness Duft pointed out, the location of a ranch or farm is dictated by the nature of its activities and the blending of business and personal is required.
- 57 Verizon contends that ratepayers and Verizon should not subsidize a large-scale agricultural operation like the Timm Ranch on the basis that it can’t be located in a populous or urban area. Verizon points out that numerous commercial enterprises are place-bound and still would not be eligible for subsidized line extensions.

6. The effect on the public switched network.

- 58 Verizon argues that eight new customers would add only a de minimus value to other subscribers on the network at a disproportionately high cost. *T 262-263.* The extraordinary costs involved would deplete resources to maintain the existing network and to expand the network in response to projected demand and growth. *T 201.*

59 Staff questions whether this criterion refers to the proper use of funds to maintain and build the network, or to technical interference in the network caused by an extension of service. If the latter, Verizon has offered no evidence to indicate that the extensions should not be built. Staff argues that the marginal cost of adding an individual customer will often be greater than the marginal benefit. The state and federal government have recognized the need for subsidized service in high cost areas.

7. The effect on the company.

60 Verizon states that it has complied with the new line extension rule as evidenced by its construction of 85 line extensions since the rule became effective. Verizon points out that prior to the new rule, Verizon constructed one or two line extensions per year. *T 192*. Although the new rule has increased the number of extensions, Verizon has kept pace. However, Verizon contends that the extraordinary cost of the requested extensions in this case caused it to file for a waiver, due to the potential adverse effect of the projects on ratepayers and the company.

61 As noted above, Verizon objects to the fact that 40% of its Wenatchee District construction budget for 2002 would be absorbed by the projects. Verizon further objects to the exclusion of \$309,000 in what Staff terms reinforcement costs from the amount it would recover under the rule. *T 200-201; Exhibit 217C; Exhibit 7T at 7-8*. Verizon argues that it would not recover these reinforcement costs in basic rates or through universal service funding. *Bench Request Exhibit 800*.¹³ If the potential customers at the Taylor or Timm Ranch location drop their wireline service, or fail to make applications in the numbers Staff predicts, Verizon will end up with stranded investment. Verizon claims it is making less than a 2% rate of return currently and cannot afford to absorb either the reinforcement costs proposed by Staff or the stranded investment that may result from these projects.

62 Staff reiterates its arguments that Verizon's reinforcement costs, as Staff defines them, should not be considered as a factor in whether to grant a waiver. Verizon chose not to invest in developing facilities in north central Washington, making reinforcement a necessity in order to extend service to the two locations at issue here. The Commission has rejected past requests by carriers to be relieved of the

¹³ Bench Requests 800 and 801 are admitted in evidence.

duty to extend service based on “business reasons.” *Docket No. UT-961638*. Verizon already receives in base rates cost recovery for reinforcement expenses. *Exhibit 131T at 13*. Verizon also receives \$33 million in high-cost funding that includes support for the construction of these two specific projects. *UT-980311(a); Exhibit 131T at 14*.

8. Discussion and Decision.

- 63 Based on its review of all relevant factors, the Commission grants Verizon’s request for a waiver. Relative to the number of customers, the cost of each project, including future maintenance costs, is extraordinarily high. The Commission does not adopt Staff’s view that the company’s reinforcement costs must be ignored in coming to a final decision. Subsection (7)(a) of the rule permits the Commission to consider other matters necessary to reach a decision about granting a waiver. In this case, Verizon would be required to make significant expenditures to improve its existing facilities so as to make them capable of accommodating the proposed line extensions. Absent the line extension requests, there is no evidence Verizon would need to make such expenditures.
- 64 Verizon witness Danner’s testimony convincingly calls into question the value of adding so small a number of customers to the network, whether it be Staff’s count of twelve or Verizon’s count of eight, compared to the cost in money and resources that would be expended, and in light of available alternatives. Staff’s argument that Verizon and Qwest have both constructed similarly costly extensions under the new rule begs the question whether extensions of such high cost should be permitted under the rule. The provisions of the rule clearly contemplate that, in conjunction with other factors, some cost level might prove too high. Staff’s refusal to acknowledge any realistic figure that might be “too high” is inconsistent with the “reasonableness test” of RCW 80.36.090 and WAC 480-120-071(7).
- 65 Commission Staff’s argument that Verizon’s waiver request under Subsection (7)(a) precludes giving substantial weight to the cost of a project is unpersuasive. Subsection (7)(a) clearly anticipates Commission discretion to consider cost and to give cost the weight proper to achieve a balance of all the factors involved in reaching a decision.

- 66 The Commission is also persuaded that the comparative price and capabilities of the available alternative technologies dictate in the direction of a waiver in this case. Commission Staff's argument that wireless service cannot be considered unless it provides "reasonably comparable services at reasonably comparable prices" compared to wireline is incorrect. The requirement Staff cites is derived from section (2) of the line extension rule and pertains to the circumstance of a company required to extend service that undertakes to provide that service through a service or financial agreement with a wireless company. The language of the section (7) waiver provision only indicates the Commission may consider the comparative price and capabilities of wireless or other alternatives in deciding whether to grant a waiver. Staff's view here begs the question of what is reasonable in the first instance. There is no provision of federal or state law that prescribes that every location and every potential customer, no matter how remote or expensive to reach by wireline, is entitled to wireline service. We do not read the "reasonableness" test of our state law, RCW 80.36.090, to be inconsistent with a requirement for "reasonably comparable services at reasonably comparable prices."
- 67 Considering the effects of a waiver on the individuals involved, it is of course true that wireline would give them an additional mode of communication. But in view of the communications alternatives available to them, and the comparative costs discussed above, we find that the advantages of wireline do not outweigh other, counterbalancing factors. Nor do we think the nearest communities will be significantly affected.
- 68 However, the Commission is persuaded that there would be a potentially significant adverse effect on the company and other ratepayers if a waiver is not granted. 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, erode wireline business.

69 Nothing in the language of this subsection, or of the rule as a whole, would preclude later applications for service from residents at the Taylor location or the Timm Ranch if circumstances change from those presented in this case. If circumstances change, for example, more residents move into the area, or cost-saving innovations develop, a future line extension may prove to be appropriate. For now, however, taking into consideration and carefully balancing all relevant factors, we find that Verizon's waiver request is appropriate.

70 Accordingly, we grant Verizon's request to waive WAC 480-120-071(2)(a), with respect to both the Taylor and Timm Ranch locations.

B. SHOULD VERIZON BE GRANTED A WAIVER OF THE LINE EXTENSION REQUIREMENT UNDER WAC 480-120-015?

71 In light of the Commission's determination to grant Verizon a waiver under the more specific waiver provision relating to line extensions, the Commission need not address Verizon's request for relief under the general waiver provision.

C. SHOULD THE COMMISSION DISMISS QWEST AS A PARTY TO THE PROCEEDING? SHOULD THE COMMISSION REQUIRE QWEST TO SERVE THE TIMM RANCH?

72 Commission Staff initially sought to join Qwest because Staff viewed Qwest as a potential alternative provider of service to the Timm Ranch. Staff argued that Qwest's facilities are nearer the Timm Ranch than Verizon's facilities. In the event Verizon were granted a waiver, Staff asserted that, if Qwest were a party, the Commission could examine whether Qwest might serve the Timm Ranch, which would involve redrawing the exchange boundaries between Verizon and Qwest.

73 Over Qwest's objection in this case, the Commission granted Staff's motion and joined Qwest as a party to the proceeding, noting that:

While it is not clear whether and how this authority should be invoked in this proceeding, Qwest has a significant stake in the outcome since it bears a common exchange boundary with Verizon near the Timm Ranch, its facilities are closer to the Timm Ranch than Verizon's and Staff alleges that Qwest's costs to extend service to the Timm Ranch would be less than

Verizon's. Thus, to protect its interests under Civil Rule 19, *supra*, Qwest is properly made a party to this proceeding. *Third Supplemental Order at 7.*

74 In Commission Staff's original motion to join Qwest, Staff stated that: "Staff may ultimately recommend that the Commission adjust the Qwest and Verizon exchange area boundaries...and may also recommend that the Commission require Qwest to provide service to the Nelson property." *Motion of Staff to Join Qwest as a Party Respondent at 2.* However, no formal motion was made by any party to redraw the boundaries. In light of the evidence amassed thus far, we decline, on our own motion, to initiate a boundary revision, as Qwest's costs appear to be on the same order of magnitude as Verizon's. For purposes of evaluating Verizon's request for waiver, it was necessary and appropriate for Qwest to be joined and provide evidence. For that reason, we re-affirm our decision to join Qwest and deny Qwest's motion to vacate the Third Supplemental Order. Qwest has no further obligations in this docket, however, and we now dismiss Qwest from the proceeding.

D. SHOULD THE COMMISSION DISMISS RCC AS A PARTY TO THIS PROCEEDING AND FUTURE SIMILAR PROCEEDINGS?

75 Similar to Qwest, RCC was a necessary party at the outset of and during this hearing. Just as Qwest did, RCC provided valuable information and arguments regarding the issues in this case of first impression and was an integral part of the proceeding. However, no party, nor the Commission, seeks any further action be taken by RCC. Therefore, RCC is now dismissed from the proceeding. It is premature to take any action on RCC's request that it not be joined to future proceedings under the line extension rule's waiver provisions.

E. SHOULD THE COMMISSION GRANT QWEST'S MOTION TO STRIKE PORTIONS OF STAFF'S RESPONSE BRIEF?

76 Since Qwest has been dismissed from the case, Staff's Response Brief (even considering the contested portions) with respect to Qwest is moot, as is Qwest's motion to strike.

III. FINDINGS OF FACT

77 Having discussed in detail both the oral and documentary evidence concerning
all material matters inquired into, and having previously stated findings and
conclusions based thereon, the Commission now makes the following summary
of the facts. The portions of the preceding detailed findings and the discussion
pertaining to the ultimate facts are incorporated herein by this reference.

78 (1) The Washington Utilities and Transportation Commission is an agency of
the State of Washington vested by statute with the authority to regulate
rates, rules, regulations, practices, accounts, securities, and transfers of
public service companies, including telecommunications companies that
have reached the appropriate jurisdictional threshold.

79 (2) On January 1, 2000, WAC 480-120-071, the Commission's current rule
relating to service extensions, became effective.

80 (3) WAC 480-120-071(7) gives the Commission the authority to waive the
requirement that a service extension be constructed.

81 (4) WAC 480-120-015 gives the Commission authority to grant exemptions
from any rule in the chapter based on a showing of undue hardship.

82 (5) Verizon is a public service company subject to the jurisdiction of the
Commission.

83 (6) Qwest is a public service company subject to the jurisdiction of the
Commission.

84 (7) On May 31, 2002, the Commission joined Qwest as a party to the
proceeding.

85 (8) RCC is a Commercial Mobile Radio Service (CMRS) provider authorized
by the Commission on August 14, 2002 to be an Eligible
Telecommunications Carrier (ETC) serving the exchange areas material to
this case.

86 (9) On July 10, 2002, the Commission joined RCC as a party to the proceeding.

- 87 (10) Verizon is the local exchange carrier whose exchange boundaries currently include both the Timm Ranch and the Taylor location.
- 88 (11) Qwest's current exchange boundaries do not encompass either the Timm Ranch or the Taylor location.
- 89 (12) The Commission's authority to prescribe exchange boundaries for telecommunications companies under its jurisdiction is contained in RCW 80.36.230.
- 90 (13) On December 7, 2001, Kay Taylor requested that Verizon extend wireline service to her residence on Hayes Road in Verizon's Bridgeport Exchange.
- 91 (14) Since December 7, 2001, two additional residents on Hayes Road have requested that Verizon extend service to them.
- 92 (15) On June 15, 2002, Ike Nelson requested that Verizon extend wireline service to his residence at the Timm Ranch in Verizon's Bridgeport Exchange.
- 93 (16) Since June 15, 2002, four other applicants have requested that Verizon extend service to them at the Timm Ranch.
- 94 (17) The total cost estimate for a Verizon extension of wireline service to the Taylor location on Hayes Road is \$329,839.
- 95 (18) Verizon would have to install 17 miles of copper cable to extend service to the Taylor location.
- 96 (19) The total cost estimate for a Verizon extension of wireline service to the Timm Ranch applicants is \$881,497.
- 97 (20) Verizon would have to install 30 miles of facilities to extend service to the Timm Ranch.
- 98 (21) The per-customer cost for Verizon's Taylor location extension is \$27,500.

- 99 (22) The per-customer cost for the Timm Ranch extension is \$123,000.
- 100 (23) The total cost estimate for Qwest to provide service to the Timm Ranch applicants is \$811,920.
- 101 (24) The average cost of new line extensions built by Verizon under WAC 480-120-071 is \$10,000.
- 102 (25) The cost estimate for RCC to build additional communications towers to serve both locations is between \$400,000 and \$1.5 million.
- 103 (26) Verizon and Qwest would each be able to recover part of their costs of construction by means of a temporary access charge tariff pursuant to provisions of WAC 480-120-071.
- 104 (27) RCC, since it is not a wireline carrier, would not be able to recover any of its cost of construction pursuant to the new line extension rule.
- 105 (28) Wireless telephone service is available at both the Taylor location and the Timm Ranch.
- 106 (29) Kay Taylor pays approximately \$8,000 per year for wireless phone service from two different wireless companies and part of that cost is associated with her business use of the phone.
- 107 (30) Ike Nelson pays approximately \$65 per month for the wireless phone service he receives.
- 108 (31) Both Mrs. Taylor and Mr. Nelson have access to emergency services through use of their current wireless phone alternatives.
- 109 (32) RCC installed phone cell devices at both the Taylor residence and the Nelson residence.
- 110 (33) RCC phone cell service costs approximately \$1,200 per installation.

- 111 (34) RCC phone cell devices receive a signal acceptable in the CMRS industry at two residences in the Taylor location and at two residences on the Timm Ranch.
- 112 (35) Verizon and Qwest would each experience increased maintenance expenses to service the line extensions to each location.
- 113 (36) Verizon's extension to the Timm Ranch would involve building a 23-mile loop, which would have no other customers, the longest of its kind in Washington.
- 114 (37) The construction costs that Verizon or Qwest could not recover under the new rule represent funds that could potentially be used to connect a larger number of customers to the network.
- 115 (38) The construction costs to build extensions to the Taylor location and the Timm Ranch will deplete Verizon's ability to provide maintenance service and network upgrades for other customers.
- 116 (39) Taking into consideration all the factors identified in the line extension rule waiver provisions, the Taylor location applicants and the Timm Ranch applicants are not, at this time, reasonably entitled to Verizon wireline service.
- 117 (40) No party requests that the Commission order RCC to build new facilities to provide service to the applicants in this case.

IV. CONCLUSIONS OF LAW

- 118 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the following provides summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Order are incorporated by this reference.
- 119 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to, and subject matter of, this proceeding.

- 120 (2) The Commission has authority to grant a waiver of the requirement that a telecommunications company extend service to an applicant.
- 121 (3) Verizon's request for a waiver under WAC 480-120-015 is moot.
- 122 (4) The eight applicants in this case are not reasonably entitled to service from Verizon. The Commission should grant Verizon's waiver request.
- 123 (5) Qwest should be dismissed as a party to this proceeding.
- 124 (6) RCC should be dismissed as a party to this proceeding.
- 125 (7) The Commission should retain jurisdiction over the subject matter of and the parties to the proceeding to effectuate the provisions of this Order.

V. ORDER

- 126 Based on the above findings of fact and conclusions of law, the Commission enters the following Order.
- 127 (1) The Commission has jurisdiction over the subject matter of and the parties to this proceeding.
- 128 (2) Verizon's petition for a waiver under WAC 480-120-071(2)(a) is granted.
- 129 (3) Qwest's motion to vacate the Commission's Third Supplemental Order and Fifth Supplemental Orders is denied.
- 130 (4) Qwest is dismissed as a party to this proceeding.
- 131 (5) RCC is dismissed as a party to this proceeding.

Dated at Olympia, Washington, and effective this ____ day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

[Service Date April 23, 2003]

APPENDIX B

UT-011439
Analysis of Cost Estimates

| <u>Party Proposing</u> | <u>Taylor</u> | <u>Timm Ranch</u> | <u>Total</u> |
|---|---|--|---|
| Verizon/Ruosch March 2, 2002 at 5 (Verizon costs) | \$329,839 (17 miles) 3 customers \$110,000/customer | \$881,497 (30 miles) 5 customers \$176,000/customer | \$1.2 million \$150,000/customer |
| Qwest/Hubbard July 5, 2002 at 5 (Qwest's costs) | | \$811,920 | \$811,920 |
| RCC/Huskey 91T at 10-11 (RCC's costs) | \$150,000- \$1 million | \$250,000 \$500,000 | \$1.5 million |
| Staff (Verizon) 131T at 14 (Verizon's costs) | \$165,015 (excl. \$164,824 reinf.) 6 customers \$27,500/customer | \$737,672 (excl. \$143,825 reinf.) 6 customers \$123,000/customer | \$902,687 |
| Staff (Qwest's costs) | | \$435,365 (excl. \$376,556 reinf.) | \$435,365 |

[Service Date April 23, 2003]

Other Cost Analysis

Danner Threshold: \$10,000-15,000

Cost per mile of construction:

- | | |
|--|-------------------|
| 1) Verizon historic ave. cost of construction/buried cable | \$31,710 per mile |
| 2) Timm Ranch buried cable line extension cost | \$29,383 per mile |
| 3) Historic cost for aerial line | \$25,805 per mile |
| 4) Nelson aerial line cost estimate | \$19,402 per mile |