

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	Docket No. UT-040788
)	
Complainant,)	RESPONSE OF VERIZON NORTHWEST INC. TO MOTION TO STRIKE VERIZON NORTHWEST INC.'S RESPONSE TO BENCH REQUEST NO. 5, OR IN THE ALTERNATIVE, FOR AN ORDER SUPPLEMENTING THAT RESPONSE, AND AN ORDER REQUIRING THE COMPANY TO EXPLAIN PAGE 2
v.)	
VERIZON NORTHWEST INC.,)	
Respondent.)	

1. Commission Staff moves to strike the response to Bench Request No. 5 submitted by Verizon Northwest Inc. (“Verizon”). In effect, Staff is belatedly raising an objection to the Commission propounding Bench Request No. 5 in the first place. Verizon disagrees with Staff’s characterization of Verizon’s Response and Staff’s allegations regarding Verizon’s Response to Discovery Requests. In any event, Staff’s motion appears to be premature, as the Commission has not advised the parties that it intends to place the response into the evidentiary record. Verizon would not object to its exclusion from the record.

**VERIZON HAS COMPLIED WITH THE COMMISSION'S
DISCOVERY RULES**

2. Staff claims that Verizon has taken a selective approach to providing information in that it responded to Bench Request No. 5 but did not respond to Staff Data Request No. 85. Staff is wrong for several reasons:
3. First, Verizon is entitled to propound an objection to a discovery request that it deems both irrelevant and unduly burdensome, as stated in its objection to Staff Data Request No. 85. See WAC 480-07-400(4). Staff received this objection but did not make a good faith effort to resolve informally any dispute over it pursuant to WAC 480-07-425 before complaining about Verizon's non-responsiveness in its motion. If Staff disputed Verizon's objection, it should have challenged it by the proper process not by motions to strike that mischaracterize Verizon's response to discovery. Apparently Staff now advocates that Verizon must object to the Bench Request on the same grounds contained in its data request. Verizon is not aware of any rule that authorizes an objection to a bench request.
4. Verizon truthfully told Staff that the requested information would be unduly burdensome because the information did not exist. WAC 480-07-400(c)(iii) does not require Verizon to create or produce new analysis in response to data requests. Verizon interprets the definition of data request to cover existing – as opposed to specially or newly created – documents, analyses, etc. as defined in the discovery rule. Verizon does not understand how it can provide information that does not exist. Furthermore, to require Verizon to create documents, or maintain documents in a manner that it has never maintained is unduly burdensome.
5. It is unfair and inappropriate for Staff to criticize Verizon for raising a legitimate objection to what the Company perceived as an unduly burdensome data request.

**VERIZON HAD NO CHOICE BUT TO RESPOND TO
BENCH REQUEST NO. 5**

6. Bench Requests are different than data requests. Verizon has no control over the nature of Bench Requests and has not sought the introduction into the record of any Bench Request. Furthermore, under WAC 480-07-405(7)(d) Verizon “must” file a response to a Bench Request within ten business days after the request is made.
7. Verizon explained the difficulties inherent in responding to Bench Request No. 5 to the Commissioners, but felt that it was being ordered to produce this information by the Commission. Mr. Parker advised Commissioner Oshie at the hearing that it would be difficult for the Company to provide the information asked for by Bench Request No. 5.
- Mr. Parker said:

8. “Your honors, we will, you know, certainly do, you know, as requested. You know, this information on a projected basis, number one, is an internal extremely sensitive matter within Verizon. Number two, it doesn’t exist. I mean we’re going to have to go back, and for Washington itself, and create this information, and we’re just going to have to do it two more times for Idaho and Oregon. And if appropriate, I would request that we do this on a historical basis. I am, of course, I’m here at your pleasure and will do as told.” (TR. 374). (emphasis supplied)

9. In sum, the Commissioners directed the Company to create new information, and the Company has complied. There is no basis to “sanction” Verizon for making this special effort in response to Commissioner Oshie’s request.¹

**VERIZON’S RESPONSE TO STAFF DATA REQUEST NO. 13
SHOULD NOT BE ADMITTED**

10. The Commission has not yet decided whether to treat Verizon’s response to Bench Request No. 5 as a late filed exhibit. Should it decide to do so, it would be improper to

¹ Page 2 of 2 Confidential attachment B-5 is consistent with Verizon’s representations to Staff stating, “Verizon does not maintain projected financials on a state or jurisdiction basis. The financial projections presented here were developed specifically in response to Bench Request No. 5.”

“supplement” this response with the Company’s response to Staff Data Request No. 13. Staff has stated no basis for such supplementation and its connection to Verizon’s response to Bench Request No. 5 is unclear. Without further explanation as to the relevancy of Data Request No. 13 and its response, Verizon objects to its inclusion.

SUMMARY

11. The Commissioners asked for the information contained in Verizon’s Response to Bench Request No. 5. The Commissioners should decide whether it should be in the record and if it is of use to them in deciding this case. In any event, Verizon should not be prejudiced or harmed for acting consistent with the Commission’s rules regarding discovery and for honoring Bench Requests.

DATED this 31st day of August, 2004.

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