

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

VERIZON NORTHWEST INC.,

Respondent.

) Docket No. UT-040788

)
) RESPONSE OF VERIZON NORTHWEST
) TO MOTION TO COMPEL PRODUCTION
) OF DOCUMENTS AND/OR
) INFORMATION

I. INTRODUCTION

To date, Verizon Northwest Inc. (“VZNW”) has received 350 data requests from the Staff of the Washington Utilities and Transportation Commission (“Commission”) in this docket. VZNW has worked diligently to respond to each one on a timely basis. By its current motion, Staff takes issue with only three VZNW objections to producing three categories of documents for their review. The first category, the Board Minutes of Verizon Communications Inc. (Item A) was not provided for on-site review to Staff. The second category, journal entries for jurisdictions other than Washington intrastate (Item B), also were not provided for on-site review. The third category relates to documents related to the sale of the entire Hawaii operations by Verizon Communications (Item C). Staff’s motion is not clear as to whether it now wants documents responsive to its original or modified Data Request No. 277.

As explained herein, VZNW's position in resisting this discovery is reasonable for three key reasons. First, the requested records do not belong to VZNW and are not subject to inspection under RCW 80.04.070. Second, the Commission has no authority as a matter of law to examine the financial records of Verizon Communications Inc., including its board of directors minutes and records relating to the sale of its Hawaii operations. Third, the requested information is not relevant to the issues in this case – which is an examination of the intrastate operations of Verizon Northwest – not the financial results of any other Verizon entity outside the jurisdiction of the Commission.¹

A line must be drawn here, based upon the Commission's jurisdictional limits, that forecloses Staff from demanding the financial records of businesses that are unrelated to VZNW's Washington intrastate operations. Otherwise, there will be no reasonable limit to what Staff will seek under its theory of relevancy that suggests that it can basically engage in a fishing expedition concerning financial records of entities that the Commission does not regulate.

As explained herein the law does not support Staff's views.

II. ARGUMENT

A. **The Records At Issue Do Not Belong to VZNW.**

As a starting point, the Commission must determine whether the records at issue are subject to Commission examination under Washington law under its general regulatory authority. They are not because they do not belong to a “public service company.” Under RCW 80.04.070 the Commission's authority to “inspect books, papers, and documents” is limited to “public service” companies. VZNW is that “public service company,” the definition of which includes telecommunications companies that own, operate or manage “any facilities² used to

¹ As discussed in Section II, the Commission's authority to examine the financial records of an unregulated company affiliated with a regulated company is limited by the affiliated interest statutes, RCW Ch. 80.16, which requires a contractual arrangement as the basis for limited examination.

² “Facilities” means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service. RCW 80.04.010.

provide telecommunications for hire, sale, or resale to the general public within this state.” RCW 80.04.010. VZMW is the owner, operator or manager of those facilities -- not its corporate parent, Verizon Communications Inc. RCW 80.04.070 by its express terms is limited to the owner of the intrastate “facilities.” Had the Legislature intended to include parent corporations who manage the companies that own, operate or manage the intrastate facilities, it would have said so

“Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expression *unius est exclusio alterius* -- specific inclusions exclude implication. *Washington Natural Gas Co. v. Public Util. Dist. No. 1*, 77 Wash. 2d 94, 98, 459 P.2d 633 (1969).

Silver First Town Homes, Inc. v. Silver Lake Water District, 103 Wn. App. 411, 421, 12 P.3d 1022 (2000)³

Reading the definition to construe the Commission’s jurisdiction to intrastate operations is consistent with Order No. 05 in this case as well as RCW 80.01.040(3), which states the Commission’s jurisdiction pertains only to telecommunications companies operating “within this state.” Statutes should be read in harmony “to the end that a harmonious total statutory scheme evolves which maintains the interpretation of the respective statutes.” *State v. Wright*, 84 Wn.2d 695, 650, 529 P.2d 453 (1974). Thus, the statutory scheme in Title 80, RCW clearly shows that the Commission’s authority only pertains to records of the company providing the intrastate service.

Because Items A, B and C cover documents that do not belong to VZMW, but instead belong to corporations beyond the Commission’s statutory jurisdiction, the Commission has no authority to compel their examination. It is well settled that an agency has only the authority that the legislature grants it by statute. *Edelman v. State ex. rel. Public Disclosure Com’n*, 68 P.2d

³ In this case the court found that a municipal water corporation was not subject to WUTC jurisdiction because the definition of “water company” in RCW 80.04.020 makes no mention of “municipal corporations.” So too, the definition of “telecommunications company” in that statute makes no mention of parent corporations that manage the “facilities” owners, so the parent corporation is beyond WUTC jurisdiction.

296 (2003). No Washington statute grants the Commission the general authority to examine the financial records of a corporate parent that include its Board of Directors' minutes, and documents relating to the sale of properties with no relation to Washington, or journal entries not associated with Washington intrastate operations.

Rather, the only statutory authority that allows the Commission to examine records that do not belong to the utility it regulates appears in RCW Ch. 80.16 "Affiliated Interests." As explained in the next section, the Washington Supreme Court has expressly found that a utility need not produce documents from an affiliate⁴ except as required by RCW Ch. 80.16. Because the discovery requests at issue do not fall within that chapter, VZNW need not answer them.

B. The WUTC Has No General Ratemaking Authority to Inspect the Financial Records of Verizon Communications.

Staff cites no legal authority for its purported entitlement to examine the minutes of the board of directors meetings for VZNW's parent corporation, Verizon Communications Inc. and documents relating to the sale of the Hawaii telephone properties of Verizon Communications Inc. Instead, Staff relies on the NARUC Rate Case and Audit Manual but the passages relied upon fail to establish the Commission's authority over the financial records of Verizon Communications Inc. In fact, p. 7 of the Manual establishes that NARUC advises commissions that they may not have authority to examine the financial records of entities other than the utility subject to the commission's regulation. The Manual notes:

If the auditor believes that it is important to review affiliate transactions, it is useful to know early in the process whether one might be overstepping the Commission's authority to review such transactions, or whether the Commission has broad powers of review in this area. Similarly, if the auditor wants to review not only the minutes of the board of directors meetings for the utility, but also for the board of the parent company, may he/she do so? On looking at the sensitive areas, the auditor should have thought-through answers to questions of relevance to the utility operations and Commission authority.

The requests here fail both as to relevance and Commission authority.

⁴ Which by definition includes a corporate parent. RCW 80.16.010

In *Waste Management of Seattle, Inc. v. the WUTC*, 123 Wn.2d 621, 869 P.2d 1034 (1994), the Washington Supreme Court ruled that the WUTC **has no authority** to review the records of affiliated companies under its general ratemaking authority to ensure that rates are just and reasonable, but can only examine the records of affiliated companies that are “contracts or arrangements” under the affiliated interest statutes.

In *Waste Management*, Staff had requested and been denied financial records of two affiliates of the regulated utility, Waste Management of Seattle, Inc. That utility collected commercial solid waste from its customers in Seattle and transferred it to a waste processing division, paying the City of Seattle a disposal fee pursuant to a city ordinance. An affiliate, Washington Waste Systems, Inc., had a contract with the city to transport the waste to a landfill in eastern Oregon operated by another affiliate, Oregon Waste. Washington Waste, Oregon Waste, and Waste Management are all subsidiaries of Waste Management of North America, Inc., which in turn is a subsidiary of Waste Management, Inc.

In *Waste Management*, the Staff argued, like here, that it may review financial records of affiliated companies that were not affiliate contracts under its general ratemaking authority. In that case, the Court held that the WUTC’s authority to obtain records from unregulated companies stems from RCW 81.16.030, the affiliate interest statute.⁵ The Washington Supreme Court concluded that the WUTC does *not* have general authority to examine financial records of an unregulated company affiliated with a regulated company unless there is a contract or arrangement between that company and the regulated company subject to review under RCW 81.16.030. *Id.* 123 Wn.2d at 641, 869 P.2d at 1045.

Item A does not involve any contract or arrangement reviewable under the affiliate interest statutes. Rather, it is a blatant request for private proprietary financial records of a

⁵ RCW 80.16 is the parallel statutory chapter for telecommunications companies.

company not subject to Commission jurisdiction. Under *Waste Management* the Commission has no authority to compel their production.⁶

Similarly, Item C also asks for financial records of Verizon Communications Inc. and other affiliates relating to an asset sale which have nothing to do whatsoever with any contract or arrangement involving VZNW. Under *Waste Management*, the Commission utterly lacks authority to examine the financial records associated with the sale of the Hawaii properties, either under RCW Ch.81.16 or its general authority.

In *Waste Management* the Washington Supreme Court drew a clear box around the Commission's authority to examine financial records of any entity **other than the utility subject to its direct regulation**. These requests are outside that box.

C. The Data Requests Are Also Irrelevant.

VZNW objects to the data requests at issue here for another fundamental reason – they seek information that is not relevant and not reasonably calculated to lead to the discovery of information relevant to this case and, as such, fall outside the scope of permissible discovery under the Commission's rules. See WAC 480-07-400(4). In Order No. 5 in this Docket, the Commission ruled that it would only look at the Washington intrastate portion of VZNW's operations (§§ 27, 30). The Commission only has jurisdiction over telecommunications companies operating “within this state.” RCW 80.01.040(3). Thus, except as allowed by Washington's affiliated interest statutes, financial records of other companies or operations beyond its jurisdiction simply are not relevant.

Staff argues that the minutes of the parent corporation's board of directors meetings are somehow relevant to a determination of policies for Washington operations. However, of course, this argument ignores the fact that Staff data requests have already inquired into those items, on a Washington-specific basis, that are allegedly discussed at parent board meetings. VZNW has responded to data requests about “financing, income tax returns, pensions, employee

⁶ There can be no question that the WUTC has no jurisdiction over the parent corporation, Verizon Communications Inc. See Section II.A.

compensation including employee incentive plans, stock-based compensation plans and workforce reductions.”⁷ See Attachment A for examples in this respect.

Staff has made no showing that it could not obtain what it seeks from existing data requests. Nor has it shown that the Board Minutes of Verizon Communications Inc. expressly makes policy for VZNW, as opposed to the entire parent corporation. Quite simply, VZNW is not discussed at the parent board meetings. Exhibit NWH-5 to the Direct Testimony of Nancy Heuring includes the Verizon Corporation organization chart. This shows that VZNW is just a small part of a much greater business operation (less than 1%) that might be considered at a Board of Directors meeting, which would include discussion of business units at a consolidated level, such as Verizon Wireless, Verizon International Telecom or Verizon Information Services. To argue that a review of the parent Board of Directors’ meetings minutes is essential to reviewing VZNW’s Washington intrastate results of operations is a mischaracterization of the NARUC manual and stretches beyond all reason any relevancy to the issues in this case. Given the extensive discovery that has occurred, and is occurring the parent Board minutes should not be produced on relevancy grounds alone. The Staff should not be allowed to engage in a fishing expedition which is an unreasonable intrusion into corporate governance of a major private unregulated U.S. corporation.

Similarly, the discovery requested regarding Item B seeks journal entry figures for jurisdictions other than VZNW. Staff suggests that it needs to review the entire journal entry in order to follow the allocation of the total journal entry amount to the Washington level. However, as explained in Attachment B, the Declaration of Nancy W. Heuring, Staff’s view erroneously assumes that an allocation is made. Ms. Heuring explains why Staff’s position is quite simply incorrect and why all pertinent, relevant Washington numbers were provided to Staff.

⁷ Staff Motion to Compel, pp. 4-5.

Item C, which requests information about the sale of Verizon's Hawaii operations, is even more tangential and irrelevant to any issue in this case. First, the data request does not relate to any contractual arrangement between VZNW and Verizon Hawaii. Therefore, under *Waste Management*, the WUTC has no authority to inquire into the financial records that relate to the sale of that company to the parent corporation. Staff has established no connection between VZNW and any portion of the Verizon Hawaii entities sold, including directories. Second, the financial records regarding the sale of the Hawaii operations belong not only to the incorporated Verizon Hawaii units, but also to Verizon Communications Inc., the seller, all of which are well beyond the jurisdiction and authority of this Commission.

Staff cites no legal authority, nor is there any, for requiring the production of the Hawaii sale documents. It argues that, "this information is directly relevant to the valuation of directory operations, which is an issue in this case. This information may lead to relevant information to the extent it contains any evaluation of the value of the directory operations to the telecommunications operations." (Motion to Compel, p. 9.) Even if the issue of imputation of directory revenues to VZNW is proper in the general rate case, a point VZNW disputes, Staff presents no basis for connecting the sale of Verizon's entire Hawaii operations⁸ to some value for the directory operations at issue in Washington, which have never belonged to VZNW and which are not being sold. Furthermore, as the Attachment C, the Declaration of Dale Chamberlain establishes there was no such evaluation, a fact which was included in VZNW's response to DR No. 277. Therefore, Staff's factual predicate for its assumption does not exist and there is no information about the Hawaii directories' valuation that could be provided. There is no further response to compel from Verizon, even if found to be relevant.

Furthermore, Staff has made no showing whatsoever of the relevancy of requiring VZNW to list the records relating to the Verizon Hawaii sale that VZNW would not be

⁸ That consisted of operations other than the local exchange company, including the Hawaii assets of Verizon Information Systems ("VIS"), publisher of directories.

producing.⁹ There is simply no relationship between the sale of one piece of Verizon Communications Inc. thousands of miles away with VZNW's rate case in Washington. To find otherwise would give Staff the right to ask for records relating to the sale of other assets of Verizon Communications Inc. -- a right that no court of law would sustain. In sum, no connection between the non-existent evaluation of a directory operation sale in a state thousands of miles away has any bearing on the imputation of directory revenues to the Washington operations of VZNW. Verizon objected to the relevancy of this request initially, tried to work with Staff to reach a reasonable compromise, but Staff persists in asking for financial information that it has no legal right to see.

The Commission recently has refused to allow unfettered discovery that seeks information the Commission deems not relevant to the scope of the issues in the case. VZNW was denied discovery on relevancy grounds in *AT&T Communications of the Pacific Northwest, Inc. v. Verizon Northwest Inc.*, Docket No. UT-02-0406, Fifth Supplemental Order (February 21, 2003). In that decision, the Commission reversed the decision of the administrative law judge requiring AT&T to respond to VZNW data requests seeking information as to AT&T's competitive harm, as alleged in AT&T's Complaint. AT&T claimed that it did not have to provide this discovery because it was no longer claiming that it was suffering any competitive losses. The Fifth Supplemental Order took a narrow view of the scope of this case and therefore reversed the discovery ruling. VZNW should be subject to the same standard of relevancy applied by the Commission in refusing to allow VZNW discovery in the *AT&T* case. Because there is no relevancy to the issues in this case, the discovery at issue should be denied.

As stated above, the scope of the proceeding here addresses only VZNW's intrastate operations and discovery addressed to financial records beyond the intrastate borders that do not relate to those operations are simply not within the scope of this proceeding.

⁹ Staff fails to explain how a description of what was not produced about the Hawaii sale would lead to the discovery of relevant evidence in the Washington Rate Case?

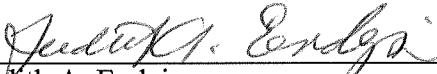
Finally, Staff asks VZNW to provide the basis for its redactions of audit reports in writing. VZNW will do so, reserving all of its rights to challenge future motions to compel on this issue.

III. CONCLUSION

For the foregoing reasons, Verizon Northwest asks the Commission to deny the Staff's Motion to Compel in its entirety.

DATED this 22nd day of September, 2004.

GRAHAM & DUNN PC

By 
Judith A. Endejan
WSBA# 11016
Email: jendejan@grahamdunn.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of September 2004, served the true and correct original along with the correct number of copies, of the attached document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Ms. Carole Washburn	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Secretary	<input checked="" type="checkbox"/> Hand Delivered (ON 9/23/04)
Washington Utilities and Transportation	<input type="checkbox"/> Overnight Mail (Federal Express)
Commission	<input type="checkbox"/> Facsimile (360) 586-1150
P.O. Box 47250	<input checked="" type="checkbox"/> Email (records@wutc.wa.gov)
1300 South Evergreen Park Dr. S.W.	
Olympia, WA 98504-7250	

I hereby certify that I have this 22nd day of September 2004, served a true and correct copy of the attached document upon parties of record, via the method(s) noted below, properly addressed as follows:

<i>On Behalf of Public Counsel:</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Simon ffitc	<input type="checkbox"/> Hand Delivered
Assistant Attorney General	<input type="checkbox"/> Overnight Mail
Public Counsel	<input type="checkbox"/> Facsimile (206) 389-2058
900 4th Avenue, Suite 2000	<input checked="" type="checkbox"/> Email (simonf@atg.wa.gov)
Seattle, WA 98164	

Robert C. Wallis	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Administrative Law Judge	<input type="checkbox"/> Hand Delivered
Washington Utilities and	<input type="checkbox"/> Overnight Mail
Transportation Commission	<input type="checkbox"/> Facsimile (360) 586-8203
1300 S. Evergreen Park Drive SW	<input checked="" type="checkbox"/> Email (bwallis@wutc.wa.gov)
Olympia, WA 98504-7250	

<i>On Behalf of The Washington Electronic</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<i>Business & Telecommunications Coalition</i>	<input type="checkbox"/> Hand Delivered
<i>("WeBTEC"):</i>	<input type="checkbox"/> Overnight Mail
Arthur A. Butler	<input type="checkbox"/> Facsimile (206-467-8406)
Ater Wynne, LLP	<input checked="" type="checkbox"/> Email (aab@aterwynne.com)
601 Union Street	
Suite 5450	
Seattle, WA 98101	

On Behalf of AARP:

Ronald L. Roseman
Columbia Legal Services
2011 14th Avenue E.
Seattle, WA 98112

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (206-568-0138)
 Email (ronaldroseman@comcast.net)

On Behalf of Commission Staff:

Don Trotter
Attorney General of Washington
Utilities & Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (360-586-5522)
 Email (dtrotter@wutc.wa.gov)

Christopher G. Swanson
Attorney General of Washington
Utilities & Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (360-586-3564)
 Email (cswanson@wutc.wa.gov)

Gregory J. Trautman
Asst. Attorney General of Washington
Utilities & Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (360-586-5522)
 Email (gtrautma@wutc.wa.gov)

On Behalf of Integra Telecom of Washington:

Karen J. Johnson
Deborah Harwood
Integra Telecom of Washington, Inc.
1201 NE Lloyd Blvd, Suite 500
Portland, OR 97232

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (503-748-1955)
 Email (karen.johnson@integratelecom.com)
(Deborah.harwood@integra.com)

On Behalf of AT&T Communications of the Pacific Northwest (AT&T):

Gregory J. Kopta
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (206-628-7699)
 Email (gregkopta@dwt.com)

Letty S.D. Friesen
Mary M. Taylor
AT&T
1875 Lawrence Street, Room 1575
Denver, CO 80202

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (303-298-6501)
 Email (lsfriesen@att.com)
(marymtaylor@att.com)

*On Behalf of Northwest Public
Communications Council (NPCC):*

Brooks E. Harlow
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (206-622-7485)
 Email (brooks.harlow@millernash.com)

David L. Rice
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (206-622-7485)
 Email (david.rice@millernash.com)

*On Behalf of Citizens' Utility Alliance of
Washington:*

John O'Rourke
Citizens' Utility Alliance
212 W. Second Avenue, Suite 100
Spokane, WA 99201

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (509-744-3374)
 Email (orourke@snapwa.org)

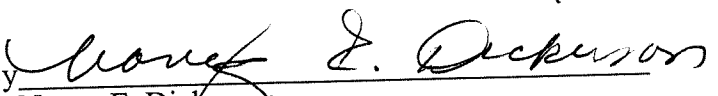
*On Behalf of The United States Department of
Defense:*

Stephen S. Melnikoff
Regulatory Law Office
U.S. Army Litigation Ctr.
Office of the Judge Advocate General
901 N. Stuart Street, Suite 700
Arlington, VA 22203-1837

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile (703-696-1643)
 Email (stephen.melnikoff@hqda.army.mil)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of September, 2004, at Seattle, Washington.

By 
Nancy E. Dickerson
Legal Secretary