

1 P R O C E E D I N G S

2 JUDGE WALLIS: This is a conference
3 established for the purpose of oral argument on a
4 motion to compel discovery that has been filed by
5 Commission staff. I want to thank all of the parties
6 for your accommodation in permitting us to have a rapid
7 process on this, understanding that in the context of a
8 complicated proceeding, a swift answer is just as
9 important as any other factor in that kind of a docket.

10 I would like to begin by asking for
11 appearances today. Mr. Trotter?

12 MR. TROTTER: For the Commission, Donald T.
13 Trotter, assistant attorney general. Also present is
14 Christopher G. Swanson, also an assistant attorney
15 general, and Paula Strain is one of our staff witnesses
16 who is present.

17 JUDGE WALLIS: For Verizon?

18 MS. ENDEJAN: Judy Endejan from Graham and
19 Dunn for Verizon Northwest, and with me is Richard
20 Potter from the Company, the regulatory affairs group.
21 I forget your exact title at the moment, but he's
22 important.

23 JUDGE WALLIS: And sitting in on the argument
24 from a respectable distance, calling sitting in from
25 Seattle, is Public Counsel. Your appearance, please.

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1 MR. FFITCH: Simon ffitch, assistant attorney
2 general, public counsel section of the Washington AG's
3 office.

4 JUDGE WALLIS: In some preliminary
5 discussions before the session went on the record,
6 there was some question regarding Mr. ffitch's
7 participation and his right to do so. We indicated
8 that we would defer a ruling on that until Mr. ffitch
9 indicated that he desired to make comments, in which
10 case the parties will have an opportunity to argue his
11 ability, his right to participate.

12 I would like to ask Mr. Trotter if he would
13 start off because the laboring war is on your side of
14 the boat today.

15 MR. TROTTER: You asked that each be argued
16 separately, so I will start with the first item. The
17 Staff asked Verizon to produce the board minutes from
18 Verizon Communications, the parent company. The
19 Company responded that they were not relevant and would
20 not be provided, so we moved to compel.

21 It is very obvious that the board of Verizon
22 Communications sets the overall policy for the Company,
23 which include Verizon Northwest. They set policy for
24 many different things, compensation policy, pensions,
25 and many other categories of operations that directly

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1 affect the costs incurred and being sought for recovery
2 by Verizon Northwest in this proceeding, so relevance
3 is not and cannot be a valid objection.

4 For the first time in their reply, they
5 raised the issue of the Commission's authority to order
6 the Company to produce these records, and they rely on
7 the waste management case for that proposition. That
8 case is relevant under slightly different circumstances
9 that are important. In that particular case, it
10 required the Commission to pass through the tipping fee
11 at the transfer station that was operated by the
12 affiliate that was owned and the price was charged for
13 by an intervening third party. I believe it was a
14 municipality. So there was no question in the court's
15 mind that the Commission had to pass through the costs.

16 In this particular case, there is no such
17 statute. The Company bears the burden of proof that
18 the rates it is seeking to put in effect are fair,
19 just, reasonable, and sufficient, and we believe that
20 in order to bear its burden of proof, it needs too
21 produce this material.

22 I would like to quote from the Commission's
23 Fourth Supplemental Order in Docket 981367. That is
24 the application of GTE Corps and Bell Atlantic Corps
25 approving a merger between those two entities, and at

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1 that time, the parent of the local company was called
2 GTE Corporation, and the local operating company was
3 called GTE Northwest.

4 On Page 16, the Commission stated, Similarly,
5 we cannot ignore the integral role of GTE Corporation,
6 both in the day-to-day operations of GTE and in shaping
7 the perfect strategy, that such a larger concern, such
8 as investments in Washington State and certain other
9 matters, impact Washington consumers very directly.
10 After the merger, Bell Atlantic Corporation will assume
11 these roles for GTE Northwest. And of course as
12 history tells, that is now Verizon Communications.

13 The fact of that case was that the statutes
14 did not permit the Commission to evaluate that merger
15 because it did not fall within the categories of
16 property transfers and other things that the statutes
17 permitted the Commission to look into.

18 But the Commission rejected those arguments
19 and said, quote, "In effect, we pierce the corporate
20 veil and conclude that GTE Corporation and GTE
21 Northwest are a single telecommunications company
22 falling within the definition of, quote, 'public
23 service company,' closed quote, for purposes of
24 considering the transaction that involves the
25 disposition of the whole of GTE Northwest property and

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1 facilities used to provide regulated telecommunications
2 services in Washington State."

3 Now granted, that latter quote did say for
4 purposes of considering the merger transaction, but in
5 terms of the integral role that Verizon Communications
6 plays in the day-to-day operations of Verizon
7 Northwest, the same conclusion applies.

8 The Company has not claimed there is any
9 burden to producing these documents. We are amenable
10 to be viewing them off-site and not to make copies of
11 them but to take notes, and we reserve our rights to
12 have copies later, and that would be a separate
13 request. We can't say what's in those minutes because
14 they won't let us see them, but we do know that the
15 policies are set at that level, the policies that apply
16 to this local exchange company, and we need to see them
17 to see what is going on at that level to make sure that
18 everything is appropriate.

19 I can't speculate whether the Company is
20 applying its policy differently based on how it can
21 collect its costs from ratepayers versus the economy
22 generally. I don't know. That would be speculation,
23 but that's the problem. We shouldn't be forced to
24 assume about their documents before we see them, a
25 theme that seems to reverberate.

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1 So we believe there is no question but that
2 the documents are relevant. We are willing to make
3 reasonable accommodation for confidentiality concerns,
4 and we believe the same analysis that the Commission
5 used in the UT-983617 should be used here to justify
6 requiring that should the Commission decide not to
7 order this be produced based on the Company's refusal
8 to produce them, we reserve all rights as to the impact
9 of that to sustain its burden in this case.

10 JUDGE WALLIS: Mr. Trotter, are there
11 questions also relating to certain committee meeting
12 minutes?

13 MR. TROTTER: Yes. The Company did actually
14 provide certain Verizon Communication board minutes
15 regarding subcommittees of the board, the board audit
16 and finance committees, and we have since asked for
17 management audit committee minutes, and we asked them
18 to state in writing the specific basis for any
19 redaction of those minutes. We do not understand the
20 Company to be opposing that.

21 JUDGE WALLIS: Is that correct, Ms. Endejan?

22 MS. ENDEJAN: That is correct. That is our
23 understanding that was really the subject of a motion
24 to compel. As I indicated in our responsive pleading
25 yesterday, we will provide in writing the basis for the

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1 redaction reserving the right to object if there is a
2 subsequent motion to compel.

3 JUDGE WALLIS: Mr. Trotter, are you
4 completed?

5 MR. TROTTER: Yes, I have.

6 JUDGE WALLIS: Ms. Endejan?

7 MS. ENDEJAN: Let me start out by trying to
8 put this in context. This is a case where Verizon has
9 received over 350 data requests from the Staff that the
10 Company has worked diligently on to provide responses
11 to. It has worked with the Staff, an on-site audit,
12 and it has bent over backwards to try to provide
13 information that theoretically we could have objected
14 to but did not on any number of occasions.

15 The Company has elected to draw a line in the
16 sand with respect to categories of documents that
17 pertain to entities that are not the regulated utility
18 subject to the Commission's jurisdiction. We have
19 three primary arguments that apply to each set of the
20 documents at issue, so let me, in the context of
21 discussing the board minutes, talk about each one of
22 those arguments.

23 The first argument is that these are not the
24 minutes of Verizon Northwest, Inc. These are the
25 minutes of the parent corporation, and as we read the

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1 waste management case, the Washington Supreme Court has
2 fairly clearly defined the limits of this commission's
3 authority to compel examination of records from
4 affiliates.

5 The waste management case stands for the
6 proposition that the Commission has no authority beyond
7 the affiliate's interest statute to compel the
8 production of records from an affiliate that are not
9 contracts or arrangements, and the board of directors'
10 minutes for the parent corporation fall into that
11 category under waste management.

12 The distinction that Mr. Trotter tries to
13 draw about type of case that waste management was as
14 opposed to this case is irrelevant because essentially,
15 Staff made the same argument in the waste management
16 case. In waste management, they said, we want to see
17 the records of your affiliates because we think that
18 there is some indirect revenue flow flowing down as a
19 result of these arrangements, and the supreme court
20 rejected that.

21 The supreme court also rejected what the
22 Commission did in the waste management case. What the
23 Commission did in the case management case was it
24 basically punished the Company by refusing to allow the
25 pass-through fee for their withholding of the records

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1 of the affiliates. The supreme court says that was
2 error. The supreme court said looking at the statutes
3 clearly, the affiliate interest statute defines the
4 boundary around which the Commission may ask for the
5 production of the records of affiliates.

6 We have done that. We have provided the
7 contracts. We have provided the financial information
8 regarding any contractual affiliate arrangement between
9 Verizon Northwest and any of the other affiliates, and
10 I don't think there is an issue on the table with
11 respect to that.

12 What is on the table is the board of
13 directors' minutes, and let me tell you what those deal
14 with. They do not deal with, as Staff surmises, the
15 individual setting of individual policies of direct and
16 specific application to Verizon Northwest. Verizon
17 Northwest is less than one percent of the entire
18 Verizon Communications, Inc., parent corporation.

19 With all due respect to my client, they are
20 small change and small potatoes when the board of
21 directors of Verizon Corporation get together in
22 New York to talk. They talk about Verizon Wireless.
23 They talk about Verizon International. They talk about
24 other business units that are completely unregulated,
25 Verizon information services, what have you.

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1 As a matter of corporate governance, the
2 corporation feels very strongly that it's board of
3 directors' minutes are not the kind of records subject
4 to production before a state public utility commission
5 in connection with a rate case.

6 I would add that that erroneously assumes
7 that specific policies are set at board of directors'
8 meetings. Well, they could have, and as a matter of
9 fact, have asked for those specific policies, which the
10 Company will respond to. Your Honor, we got this late
11 yesterday afternoon, but I would point out that on
12 September 22nd, Staff issued Data Request No. 452:
13 Please provide a list and description of all corporate
14 policy statements by Verizon Northwest, its parent, or
15 any of its affiliates that are currently in effect, are
16 in effect during the test year that apply to or affect
17 Verizon Northwest Washington operations.

18 If we tell Staff the applicable policies to
19 Verizon Northwest, then the relevancy of examining the
20 board of directors' minutes for huge corporation
21 vanishes. Staff is not prejudiced. The purpose of its
22 inquiry will be satisfied. So accordingly, by virtue
23 of issuance of this data request yesterday, which I
24 would have put in my responsive pleading had I had it,
25 I think negates any relevancy argument that they have

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1 here.

2 These arguments all sort of mesh together.

3 The first reason was basically these board of
4 directors' minutes don't belong to Verizon Northwest.
5 They are not our records. They are not the records of
6 the public service utility regulated by the Commission.
7 Mr. Trotter sites the merger order.

8 Now, for purposes of my understanding of the
9 merger order is the merger order was the result of a
10 settlement of any number of issues, and correct me if
11 I'm wrong, but I believe that's the order that reflects
12 a settlement of any number of dockets. So I don't
13 think that the passage he has cited stands for the
14 proposition that the Commission is able to assert
15 overall jurisdiction over the parent corporation just
16 because it regulates the local exchange carrier that is
17 one percent of that corporation? No court of law would
18 uphold that proposition, and we submit that that is not
19 what the merger order stands for, and for purposes of
20 the merger conditions, I would have to go back and
21 reread the order, but that's my understanding of what
22 the merger order stood for.

23 It does not stand for the broad proposition
24 that in the course of discovery in a contested rate
25 case, the Commission staff is entitled to a broad scale

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1 fishing expedition of the parent corporation's
2 financial records, particularly when there are
3 alternative means that they have availed themselves of
4 to get the information that they allege is the relevant
5 information from the board of directors' minutes, which
6 I would also add do not set the express policy that
7 Staff appears to be after. Anybody who has ever been
8 involved in corporate governance and reads board of
9 directors' minutes know that they do not get to that
10 level of granular detail.

11 Which leads to my final argument with respect
12 to the board of directors' minutes which goes to the
13 relevancy. If the policies are what are relevant, and
14 we don't contest that, then after ask for the policies.
15 They did. We will give them to them. They don't need
16 the board of directors' minutes for purposes of
17 satisfying their concerns.

18 Now, with respect to -- I'll reserve the rest
19 of my argument on the other categories of documents as
20 we go through them, but I would like to close on an
21 interesting note, which I found very curious. The only
22 authority cited in the Staff's motion to compel was the
23 NARUC manual, but the NARUC manual doesn't really stand
24 for the proposition they say it stands for.

25 They say the NARUC manual says that Staff

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1 routinely audits the board of directors' minutes of the
2 utility. What is the utility? The utility here is the
3 regulated local exchange company, Washington operations
4 of Verizon Northwest, Inc. Fine. That's consistent
5 with NARUC. The manual also cautioned in the passage
6 that I pointed out, Look, it may not be clear that you
7 have either the authority or the ability to ask for the
8 minutes of the board of directors' meetings for the
9 parent corporation. It advises -- I'm looking at the
10 sensitive areas. The auditor should have thought
11 through answers to the questions of relevance to the
12 utility operations and Commission authority.

13 That recognizes that in many jurisdictions,
14 such as Washington, there are constraints on the
15 ability of the Commission to ask for records of
16 affiliates, and that's really the legal principle that
17 we are here today talking about, and that's the legal
18 principle that the company feels extremely strongly
19 about and will assert whatever it has to assert to
20 protect its legal rights in this area.

21 So given that, Your Honor, I will conclude my
22 remarks on the first category of documents, and then I
23 guess we will go to the second category.

24 JUDGE WALLIS: At this point, I would like to
25 inquire of Mr. ffitich whether he feels it necessary to

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1 comment on the issues that have been presented.

2 MR. FFITCH: Yes. I would like to make a
3 couple of brief observations, if I might.

4 JUDGE WALLIS: Could you identify the broad
5 nature of those observations so we could have a context
6 for argument on whether you be allowed to present them?

7 MR. FFITCH: Yes. Essentially, I wanted to
8 simply indicate our general support for Staff's
9 position and express our concerns about the impact of
10 adopting the Company's position with regard to
11 discovery generally in Commission cases.

12 Our interest is that we also, of course, are
13 participating in this docket. We have a number of
14 pending discovery issues with the Company right now.
15 Depending on how those turn out, we have advised them
16 that we might also have a potential motion to compel.
17 So we have an interest in how, in general, some of the
18 issues play out in this argument; although, our
19 discovery requests don't go directly to this issue of
20 the materials in the possession of the parent
21 corporation.

22 We do have a concern about that issue as it
23 relates to this case, but also the sort of precedential
24 impact on discovery in other proceedings.

25 JUDGE WALLIS: Ms. Endejan?

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1 MS. ENDEJAN: It seems to me, and for the
2 record, I will lodge an objection to Public Counsel
3 making those remarks part of the record. Seems to me
4 that if Mr. ffitch wanted to -- it's premature. If
5 Mr. ffitch has a problem with Verizon's discovery
6 requests, then the appropriate time to address that is
7 in his motion to compel.

8 The ruling with respect to discovery requests
9 are based upon the particular nature of that particular
10 discovery request, so I think that he didn't bring the
11 motion. These aren't his discovery requests. If he
12 wants to bring a motion in connection with Public
13 Counsel's discovery requests, there are procedures that
14 allow him to do this. I think it's inappropriate for
15 him to be allowed to participate with respect to this
16 motion.

17 MR. FFITCH: I'll just indicate that --

18 JUDGE WALLIS: Mr. ffitch, you will get your
19 turn.

20 MR. TROTTER: Just briefly, Your Honor. The
21 Commission has permitted parties who do not issue a
22 data request to move to compel its response, so it is
23 appropriate for one party to move to compel another
24 party's data request response. Accordingly, we think
25 it is fair for another party to support a motion to

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1 compel data requests.

2 JUDGE WALLIS: Mr. ffitch?

3 MR. FFITCH: I was simply going to observe,
4 Your Honor, that the Commission itself called for
5 comments from other parties with respect to this
6 motion, and we did not file anything in response, but
7 we had always intended to be present at this argument,
8 and having received the Company's response yesterday,
9 we then developed a concern about some of the arguments
10 that they were making.

11 JUDGE WALLIS: Let me ask if -- and I'll
12 direct this to Mr. Trotter -- is the Staff coordinating
13 data requests with Public Counsel?

14 MR. TROTTER: There has been some of that, I
15 think, but not in this area.

16 JUDGE WALLIS: Ms. Endejan?

17 MS. ENDEJAN: Your Honor, in response to
18 Mr. Trotter's remarks, whether or not the Commission
19 allows other parties to move to compel responses to
20 Staff data requests isn't the issue before you. The
21 issue before you is Staff's motion to compel, and we
22 think Mr. ffitch will have an opportunity, if and when
23 the need arises, to express his viewpoint.

24 And my understanding of the normal rules of
25 procedure are that the two parties, the parties

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1 entitled to argue, are the movant and the respondent.
2 Otherwise, everytime there is a motion, there is going
3 to be chaos here because everyone is going to weigh in
4 on one side or the other. That's how I understand how
5 motions are appropriately handled.

6 JUDGE WALLIS: Very well. I think that the
7 observation by Mr. Trotter identifies the principle
8 that should govern this. There has been quite a bit of
9 concern over the years, and you have mentioned it a
10 couple of times today about the number of data
11 requests. The Commission has been very conscience of
12 the volume of data requests, particularly those
13 directed to the Company, and has requested in the past
14 and has directed in the past that parties do coordinate
15 their data requests to avoid duplication.

16 Along with that, in order to avoid penalties
17 for failure to coordinate, the Commission has
18 specifically identified the opportunity of parties who
19 have not made a data request to seek to compel
20 production. That avoids the need for every party to
21 make the same request in order to have the right to
22 pursue it.

23 Consequently, I am inclined to allow and will
24 allow Mr. ffitich to present his comments here. I think
25 that in the context of this administrative proceeding,

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1 that works to the benefit of all parties in that as
2 Mr. ffitch indicated, it will reduce his need to
3 identify and make separate motions on matters that
4 could be within an umbrella raised by the result of
5 this ruling. Therefore, it is also in the interest of
6 the administrative efficiency. So with that, I will
7 allow Mr. ffitch to make his remarks.

8 MR. FFITCH: Thank you, Your Honor. I hope
9 that doesn't appear anticlimactic after the previous
10 discussions, but we simply wanted to support Staff's
11 motion to obtain access to these board minutes. We
12 don't believe that Verizon Northwest should be allowed
13 to hide behind the corporate structure to keep
14 otherwise relevant information beyond the purview of
15 the Commission.

16 I think it's worth remembering that the
17 corporate structure is a matter of the Company's own
18 choice. In granting this type of objection provides an
19 incentive not only for this company but other companies
20 to increasingly place all records and conduct of as
21 many activities as possible outside of the operating
22 corporate shelf that exists within any given state,
23 thereby making the Commission's performance of its
24 statutory obligation to regulate the Company
25 increasingly difficult.

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1 We think the Commission recognized that
2 already in its rule in the GTE/Bell Atlantic, and I
3 would also suggest the PacifiCorp/ScottishPower where
4 the Commission pretty clearly announced that it felt
5 that its jurisdiction extended to scrutiny of the
6 parent as well so that it could perform its statutory
7 obligation.

8 I'm not sure about this, but I believe that
9 the GTE order that Mr. Trotter was referring to may
10 have been an interlocutory order rather than the final
11 order. He can address that, but in the PacifiCorp/
12 ScottishPower case, the issue of jurisdiction came up
13 as a preliminary matter rather than in the final order
14 adopting a settlement, and certainly was addressed more
15 extensively in the interlocutory orders.

16 So for that reason, Your Honor, we support
17 Staff. We think it's an important principle that needs
18 to be upheld, not only in this case but because of
19 potential impact on other proceedings.

20 MS. ENDEJAN: May I reply?

21 JUDGE WALLIS: Ms. Endejan?

22 MS. ENDEJAN: The argument made by Mr. ffitch
23 was specifically rejected by the Washington Supreme
24 Court in the waste management case. There, Staff had
25 argued that if you did not broadly construe the

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1 Commission's authority to essentially ask for any
2 record it wants of an affiliate, then everybody will
3 hide all their records in affiliates.

4 Well, the Washington Supreme Court said no,
5 we don't buy that argument. We don't buy that argument
6 because that would completely render superfluous the
7 affiliate-interest statutes, RCW 80.16, and the court
8 applied the rule of law here, which is the Commission
9 has the authority given to it by the legislature and
10 nothing more. There is no authority, no statutory
11 authority whatsoever that gives this commission
12 authority to examine the records of an affiliate,
13 including the parent corporation, except within the
14 context of the affiliate interest statutes.

15 Now, I am not an expert on mergers. I feel
16 disadvantaged from the standpoint of arguing about the
17 ScottishPower case or the GTE merger case, but I would
18 suspect that there is different statutory criterion and
19 different issues associated with company's merging, and
20 there are different considerations associated with the
21 benefits flowing down from the merger, and you almost
22 have to look at the benefits to the local company from
23 what's happening when these utilities merge.

24 That's an entirely different situation than
25 what we've got here, which is, the Commission is

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1 looking at Verizon in the context of a rate case, and
2 now the Commission wants to look at the records of its
3 parent, sensitive records of corporate governance. The
4 law says the Commission can't look at those, and that's
5 what we are asking the Commission to apply. So
6 therefore, as a matter of law, the Commission is bound
7 by waste management.

8 Furthermore, the argument raised by
9 Mr. ffitich, there is no evidence of that in this case.
10 There is no evidence that Verizon is trying to shield
11 all of its examination by the Commission and thereby
12 trying to thwart its statutory duty by hiding
13 everything with its affiliates. That isn't the case.
14 There is no factual basis to even make that sort of
15 unreasonable argument. The utility is bound to observe
16 its recordkeeping obligations and it's done so.

17 So I think that again, we keep coming back to
18 what is the rule of law that governs here? There are
19 limits to the Commission's authority. Otherwise, if
20 you accepted --

21 MR. TROTTER: Excuse me, Your Honor. This is
22 the same argument for the fifth time. I'm going to
23 object.

24 MS. ENDEJAN: I would like to conclude,
25 Mr. Trotter.

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1 MR. TROTTER: Please do.

2 JUDGE WALLIS: We will allow some latitude.

3 MS. ENDEJAN: Thank you, Your Honor. If you
4 took Mr. ffitch's argument to its logical extreme,
5 where would you draw the line? Would that mean the
6 Commission could examine the records of Verizon
7 Communications, Inc., if it sold its building in
8 Manhattan because somehow or other the revenues or
9 offsetting expenses would somehow trickle down to one
10 of the subsidiary corporations? Of course not. That's
11 not the principle here. The line has been drawn in the
12 sand and legitimately around the Commission's
13 authority.

14 JUDGE WALLIS: Is it your position that there
15 is no contract or arrangements between Verizon
16 Corporation and Verizon Northwest?

17 MS. ENDEJAN: Not that is at issue raised by
18 the request for these financial records. The board of
19 directors' minutes have no relationship that I'm aware
20 of or that Staff has pointed out between any existing
21 contract that is the subject of affiliate interest
22 examination. They are independent financial records.
23 They don't relate to any specific contract, so they are
24 in the same sort of category of documents that were
25 requested in the waste management case, which asked for

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1 general financial records of the affiliates, and we
2 consider board of directors' minutes to be general
3 financial records.

4 JUDGE WALLIS: Mr. Trotter?

5 MR. TROTTER: I'll start at the top. The
6 Company claims its been diligently providing DR
7 responses. We have had considerable difficulties,
8 multiple follow-up -- working with the Company at great
9 lengths to get data. We bring these motions rarely, as
10 you know, but the Company has not been as cooperative
11 as it should be.

12 Counsel talked about what these minutes talk
13 about. Well, she's apparently read them. I have not,
14 and we apparently must accept her word for it, but
15 that's not the rule of law. The rule of discovery is
16 that you should provide evidence that's relevant or
17 could lead to relevant evidence, and it should be
18 provided in order to sustain the burden of proof.

19 The merger order I talked about was a final
20 order. There was a settlement, but the language of the
21 order that I quoted clearly speaking in terms of quote,
22 "we reject applicant's primary..", unquote, and so on,
23 so that was a decision on the merits which the Company
24 is now seeking to collaterally attack.

25 DR 462, or whatever number it was, does not

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1 cause relevance to vanish. What we are looking at here
2 is the overarching policy of the Company, and that's
3 what's usually in the minutes. We understand that the
4 overarching policy may not apply exclusively to Verizon
5 Northwest, but it applies to Verizon Northwest, and
6 that's why it's relevant and that's why it ought to be
7 produced.

8 Counsel complained about or noted the quote,
9 "only authority" unquote, decided was the NARUC
10 bulletin. The only objection they made was relevance
11 so we addressed that issue. We didn't know they were
12 going to argue waste management until I read the
13 pleading this morning after it hit my e-mail at half
14 past four yesterday.

15 The Company has the burden of proof here.
16 The policies that the board and Verizon Communications
17 makes are visited on the local exchange operating
18 company. We are entitled to examine those minutes to
19 determine the actions of the board in that regard.
20 That is the complement of the Company as burden of
21 proof, and we respectfully ask that you order these
22 documents to be produced.

23 JUDGE WALLIS: What would your answer be to
24 the question that I asked Ms. Endejan, if there is a
25 contract or arrangement between the corporate bodies

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1 here?

2 MR. TROTTER: She said she didn't know if
3 there is a contract or arrangement that would be
4 calling for these records to be produced. We won't
5 know that until we see what the records are. I can't
6 give you chapter and verse sitting here right now the
7 affiliate contracts between Verizon Communications and
8 Verizon Northwest, but if counsel for the Company has
9 that information, it might help the record.

10 JUDGE WALLIS: Just a brief clarification. I
11 think it's clear on the record, but I would like to
12 ask, Ms. Endejan, when you say a certain jurisdiction,
13 you mean a certain jurisdiction only to the extent of
14 gaining information that is the specific documents?

15 MS. ENDEJAN: You mean in connection with
16 affiliate interests?

17 JUDGE WALLIS: In connection with the
18 assertion of jurisdiction over the parent company.

19 MS. ENDEJAN: The assertion of jurisdiction
20 over the parent company, again, flows from what is
21 covered by RCW 80.16. That defines what an affiliate
22 is. The parent corporation falls within the definition
23 of such an affiliate.

24 Going through the chapter, you then see that
25 what the Commission is interested in are the contracts

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1 for specific provision of services that deal with a
2 flow of revenues between those companies for the
3 purchase, sale, lease, exchange of any property, right,
4 or thing, etcetera. 80.16.020 lists that topic. It
5 talks about what the Commission would do, and the
6 purpose for the affiliate-interest statutes is
7 disallowing payments to affiliates if not reasonable,
8 and 80.16.040 actually talks about the type of records
9 that are associated with the contracts, talks about
10 cost records and other relevant information.

11 Now, the board of directors' minutes, and
12 this is an important principle, the board of directors'
13 minutes are not tied to any contract for goods,
14 services, any interchange of revenues or expenses.
15 They don't fall within the scope of the records covered
16 by 80.16. They are so far attenuated that there is no
17 connection, frankly. It is simply the parent
18 corporations' board of directors' minutes, and I guess
19 you will have to take my word on this, but I have
20 inquired up and down the legal organization of Verizon
21 and other utilities. I am not aware, and I have not
22 found any authority that stands for the proposition
23 that in a general rate case, a public utilities
24 commission can examine the financial records of the
25 parent corporation that don't tie to a specific

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1 contract or arrangement.

2 JUDGE WALLIS: Any final remarks on this
3 issue?

4 MR. TROTTER: I lost what the question was.
5 I don't know if that answer was responsive, but we just
6 want to reemphasize, the policies are set at Verizon
7 local exchange company, and we want to look at how they
8 were set.

9 MR. FFITCH: Your Honor, and I would just
10 briefly add that the focus on the affiliated
11 transaction of 80.16 we think is somewhat misplaced.
12 The argument that we are calling your attention to is
13 essentially the control argument that we saw being
14 determinative for the Commission in the merger cases,
15 and that's really the distinction from the waste
16 management cases. This is not just about a contract
17 with a parallel affiliate. This is the examining
18 matters of control and governance from the parent
19 corporation, so we believe that's a different analysis
20 and it's distinguishable from waste management.

21 JUDGE WALLIS: Responses, Ms. Endejan?

22 MS. ENDEJAN: Your Honor, I think what
23 Mr. ffitich is relying on flows from a different
24 chapter, which is Chapter 80.12, dealing with transfers
25 of property, and we are not talking about issues of

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1 transferring property between one corporation or
2 another. We are talking about financial records of one
3 company that are not the company that is at issue in
4 this rate case, and so I think that there are limits to
5 this commission's ability to compel records from
6 companies other than the company it regulates, and
7 that's simply what we are asking the Commission to do
8 and enforce. Now Mr. Trotter, if he thinks we are
9 not --

10 MR. TROTTER: Excuse me, Your Honor. I
11 believe you were asking for a rejoinder to Mr. ffitch's
12 comments.

13 MS. ENDEJAN: Okay. Then I will reserve my
14 rejoinder for later.

15 JUDGE WALLIS: Let's move on to the second
16 item.

17 MR. TROTTER: The second item, Your Honor, is
18 the journal entries. We asked prior to the Staff audit
19 that the Company provide journal entries for Washington
20 for year-end 2002 and year-end 2003.

21 As the Commission is aware, the Company
22 elected to file its case on a noncalendar-year basis,
23 often called a split test year, so looking at the
24 year-end data is important because a lot of adjustments
25 are made at year-end. A determination needs to be made

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1 whether items ought to be in or out, so you need the
2 year-end data to facilitate that inquiry.

3 The Staff received journal entries for
4 Washington for those two periods. It then selected 18
5 specific journal entries and asked the Company to
6 provide the backup for how those journal entries were
7 made. When the backup was provided, the Company had
8 redacted certain of the information on those documents.
9 That led Staff to be unable to determine how the backup
10 for the journal entry led to the journal entry that was
11 actually made for Washington at year-end 2002 and
12 year-end 2003.

13 The Company indicated they would not remove
14 those redactions, and so we moved to compel. The
15 Company has responded, and I think the key information,
16 or perhaps lack of it, is provided in Paragraph 13 of
17 Ms. Heuring's affidavit to their reply where she
18 attempts to explain the redactions. Her explanation is
19 extremely cursory. It is not specific to any specific
20 journal entries. She talked about category of, I
21 believe, ten, five, and three, journal entries without
22 identifying which ones they are or with attempts to
23 explain why they did what they did.

24 This, of course, forces Staff to accept that
25 explanation without inquiry or supporting

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1 documentation. That is not how an audit should work.
2 These are documents possessed by Verizon Northwest.
3 They are not documents held by anyone else, and we are
4 simply asking for the backup for the journal entries so
5 we can confirm that the Company correctly booked the
6 journal entries that they did. Basic accounting
7 practices call for examination of the journal entries
8 and the backups for them. We can't examine them. We
9 cannot do our job because they have been redacted,
10 making the backup information insufficient.

11 Now, on an item-by-item basis, if the Company
12 wants to explain in detail and prove that basis for the
13 journal entry going to Washington, that's one thing,
14 and provide the backup documentation, but if we get the
15 backup documentation and it's redacted, we cannot
16 confirm that the Company has borne its burden of proof,
17 that the most basic information in this case per books,
18 test year accounts, are valid. So we are asking the
19 Commission to compel the information requested without
20 redaction.

21 JUDGE WALLIS: Ms. Endejan.

22 MS. ENDEJAN: Your Honor, as I understand
23 these documents, and I purport to not be an accounting
24 person so I will do the best that I can to discuss
25 them, as stated in Ms. Heuring's declaration, there

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1 were apparently 18 redacted arguments, and the amounts
2 recorded on ten of these are not the results of
3 allocations that reflect an appropriate amount specific
4 to study area and state.

5 I would recommend to my client -- and I don't
6 think that they would have a problem, and I just didn't
7 have a chance to get the specific numbers before I
8 wrote this and she read it and reviewed it and
9 corrected it and signed it. We are happy to identify
10 which of those ten accounts are the ones that really
11 are not the result of allocation.

12 I think that the concern raised by Staff was
13 the belief that all of these entries were the result of
14 allocation, and I think the point we were trying to
15 make is no, they are appropriate amounts specific to
16 the Washington study area and state and didn't get
17 allocated down from some larger universe. I don't know
18 if that would satisfy Staff's concerns for those ten.

19 Let me explain to you why the Company had
20 issues with this in the first place, and I guess it's
21 because some of the entries here pertain to
22 jurisdictions not only outside the State of Washington
23 but outside Verizon Northwest, like, I don't know,
24 Pennsylvania or some other Verizon jurisdiction. So
25 the Company on the basis of relevancy redacted amounts

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1 for states that clearly have no connection with Verizon
2 Northwest, and that's three of the remaining eight
3 redacted journal entries.

4 As I understand the remaining five, they were
5 determined by taking a Verizon Northwest amount and
6 distributing them down to the particular Washington
7 study area. I believe that they deleted journalized
8 amounts for states outside of Verizon Northwest, such
9 as Idaho and Oregon, but it is my understanding,
10 subject to check, that the backup papers showed the
11 Verizon total from which you could determine the
12 amount, and if that is not the case, then I will
13 request that my client produce that information.

14 The interest here was in confining the
15 inquiry to Washington-specific data, so I guess there
16 is sort of three rings of analysis here. The first one
17 is ten of the 18 really only have Washington specific
18 data. We will identify which ones those are. Three of
19 the remaining eight include amounts for states outside
20 of Verizon Northwest, and those amounts should not be
21 even at issue in this case, and for the five that
22 remain, the other five redacted journal entries, if the
23 Company has not provided sufficient backup data to
24 allow Staff to establish the percentage of Northwest
25 that Washington received, the Company will work with

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1 Staff to provide that information.

2 So we are just asking that the first ten, the
3 redactions for the first ten remain in place because
4 they redact information that is totally non Washington
5 specific, and these weren't allocated. The second
6 three we will redact states outside of Verizon
7 Northwest, and for the remaining five, we will work
8 with Staff to give to their satisfaction the Verizon
9 Northwest total from which they could then derive the
10 Washington number.

11 It's a complicated issue, as I understand it,
12 from an accounting principle, and it's not the
13 Company's intent here to thwart the audit. It's the
14 Company's intent to try to keep out of this non
15 Washington data that we don't think is relevant to the
16 case.

17 JUDGE WALLIS: With regard to the three items
18 relating to company's outside of Verizon Northwest, is
19 it possible to identify the propriety of allocation
20 without knowing information about where the rest of the
21 total sum is?

22 MS. ENDEJAN: I'm not sure. I don't know. I
23 would have to ask Ms. Heuring about that. I think that
24 they clearly blanked out states such as Pennsylvania
25 and the information associated with that. I don't know

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1 what states are included in these three. So I would
2 have to go back and ask Ms. Heuring to explain to Staff
3 the basis for those three remaining redactions, with
4 the understanding that I believe it is Staff's goal,
5 they want to know how the amount got allocated down to
6 Washington, and I think that's the end goal here, and I
7 think Verizon staff is willing to work with Staff to
8 work with these documents to give Staff that
9 information.

10 JUDGE WALLIS: Mr. Trotter?

11 MR. TROTTER: First of all, no totals were
12 provided. Second, allocation is not the only issue. I
13 did use that as an example and labeled that as an
14 example on Page 7 of the motion, but if you read the
15 declaration of Ms. Heuring, it says that ten of the
16 documents reflect, quote, "an appropriate amount
17 specific to study area and state."

18 Well, that's her idea of an appropriate
19 amount, but there is no indication of the basis for the
20 appropriate amount. We are entitled to look at the
21 backup of the journal entry to make an independent
22 assessment of that.

23 Let me just say as a digression, Your Honor,
24 it's my understanding when they refer to study area in
25 Washington, there are two study areas, the former

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1 Contel territory and the GTE Northwest territory, and
2 when they talk about study areas in Washington, it's my
3 understanding that's what they are referring to.

4 Verizon Northwest is the operating company
5 doing the general rate case here. On their
6 documentation of Verizon Northwest, they are including
7 amounts in their journal entries that have been
8 redacted, and we need to see whether costs are being
9 put into the state and where they are not and why, and
10 we may not reach the end of that trail, but simply
11 looking at the complete general entry, the complete
12 backup for it, but it's a start, and that's why we are
13 asking, because it's plainly relevant and it ought to
14 be produced.

15 JUDGE WALLIS: Mr. ffitch?

16 MR. FFITCH: I don't have anything to add on
17 this item.

18 JUDGE WALLIS: Thank you. Any concluding
19 comments?

20 MS. ENDEJAN: Your Honor, I guess what I'm a
21 little confused about is I read -- and unfortunately,
22 this came in in such a rush. Mr. Trotter did not call
23 me about No. 418, so I was not aware of this dispute
24 until I got this motion to compel. We talked about the
25 other two matters, but we did not talk about 418. So

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1 I'm puzzled by, are they unredacted journal entries or
2 the backup information? I'm confused.

3 MR. TROTTER: I think it's primarily the
4 backup for the journal entries, but to the extent the
5 journal entries themselves are redacted, we need those
6 too, but I believe the redactions showed up when Staff
7 made a selective sample request for 18 of the journal
8 entries. It's not the case that on the 18 journal
9 entry backup information, items were redacted, but all
10 18 that we asked for on a select basis had redactions,
11 so we asked for the backup, and it's the backup that
12 contained the redactions. I believe we do have the --
13 I'll stop there.

14 JUDGE WALLIS: So the question does relate to
15 the information provided in the backup rather than the
16 redaction of the journal entries themselves?

17 MR. TROTTER: I believe the journal entry
18 itself, the Washington amount, contain no redaction.
19 It was just a Washington amount, but how you got to
20 that, you have to look at the backup, and that's where
21 the redactions appeared.

22 JUDGE WALLIS: Very well.

23 MS. ENDEJAN: Your Honor, perhaps if we do
24 take a break, if I might ask Ms. Strain and
25 Mr. Trotter, I would like to have a better

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1 understanding of what happened myself.

2 JUDGE WALLIS: Why don't we take ten minutes
3 right now and that will allow the conversation to
4 occur.

5 MR. TROTTER: Also, Ms. Strain is here. We
6 will be happy to make her available.

7 JUDGE WALLIS: I understand that in deference
8 of the fact that the Company does not have a comparable
9 person, I would be hesitant to pursue that except with
10 the consent of counsel.

11 MR. TROTTER: That's fine. Thank you.

12 (Recess.)

13 (Discussion off the record.)

14 JUDGE WALLIS: During a brief recess, the
15 parties engaged in some discussions about means of
16 resolving the issues, and while I understand that a
17 complete resolution may not have been achieved, I do
18 understand there was perhaps some progress. Is that
19 correct in your view, Ms. Endejan?

20 MS. ENDEJAN: Yes, Your Honor. I have spoken
21 with my client, and the client has indicated that it
22 will provide additional supporting documentation,
23 backup, what have you, to verify the appropriateness of
24 the Washington figures that were provided in the
25 journal entries. The Company maintains its position

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1 that the redactions for other jurisdictions is
2 appropriate because the only relevant jurisdiction here
3 is Washington.

4 MR. TROTTER: Your Honor, that does not get
5 us as far as we need to go, and let me just give a
6 simple example. If one of these journal entries, the
7 Washington figure, is two million and the Pennsylvania
8 figure is 20,000, that's going to generate a question,
9 and just knowing how they figured out what the
10 Washington amount was without disclosing the
11 Pennsylvania amount prohibits us from even asking the
12 question.

13 JUDGE WALLIS: Are we ready to move on to the
14 third area?

15 MR. TROTTER: Yes, thank you. Our third item
16 relates to Staff Data Request 277 in which we asked for
17 documents surrounding a sale by Verizon of its Hawaii
18 telephone operations, and that sale included directory
19 services.

20 Verizon Northwest has put into issue in this
21 case whether there should be any imputation of
22 directory revenue to Verizon Northwest from its
23 directory affiliate for purposes of setting rates in
24 this case. We refer you to the testimony of Misters
25 Doane and Trimble. This transfer is relevant to that

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1 issue. It was a sale of Verizon properties to a third
2 party. The sale included directories, and even on its
3 face, it shows what the directory's value maximized.
4 Not one as sold as a separate operation but one that is
5 sold along with the telephone company operations. The
6 benefits gain the benefit therefrom.

7 Accordingly, we asked in our data request for
8 the sales agreement, the due-diligence investigation
9 documents, the prospectus, board minutes, transaction
10 documents, and any submittals to regulatory agencies
11 and attachments to those.

12 The Company's response was it's not relevant,
13 so we pursued that, and they asked whether we could
14 refine our request. We did at their request and said,
15 well, give us the documents that refer to the
16 directory, among our categories, and then select the
17 ones that you are not providing under refinement. They
18 responded that that's unworkable because that's now an
19 undue burden, and then for the first time, once again,
20 in their reply to our motion, they now say we don't
21 have the authority to get it.

22 First of all, these documents are very
23 relevant and would lead to relevant testimony for the
24 reason I stated. It does show that the market highly
25 values the telecommunications company in conjunction

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1 with a directory operation and not a separate directory
2 company. We want to take a look at the documents and
3 see what they say about the connection between the two.

4 The Company in their reply gave us a
5 declaration of Mr. Chamberlin, which he focuses almost
6 exclusively on documents that evaluate the value of the
7 directory operations. That's not the limit of our
8 focus at all. He also says that these documents
9 associated with the highway sale are maintained in a
10 comprehensive data room that contains over fifty-eight
11 hundred documents associated with the sale.

12 Well, number one, we had two staff people in
13 Texas, and they could have made those documents
14 available for review, but more than that, to the extent
15 we have asked for all fifty-eight hundred, we've also
16 asked for due-diligence investigative documents,
17 prospectus or similar documents, like an offer
18 document, as any submittal to regulatory agencies --
19 it's certainly got a burden to provide those -- and
20 tell us even categorically what these
21 fifty-eight-hundred-and-seven-hundred-fifty other
22 documents are.

23 So this has gone on since June, and we
24 finally brought it up to the Commission, but we believe
25 it's clearly relevant and the Company should produce

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1 it. They have the documents. They should produce it.
2 If it is an undue burden, then give us the prospectus,
3 submittals to regulatory agencies, any other
4 similar-type documents, and if there is thousands of
5 two-page documents, tell us what they are categorically
6 and we will address those at another time if that's a
7 burden, or depending on how many boxes it takes, ship
8 them up here and we will take a look at them. So we
9 think these documents are highly relevant and ought to
10 be produced.

11 JUDGE WALLIS: Do you have citations to the
12 testimony of the witnesses that you referred to,
13 Mr. Doane and Mr. Trimble.

14 MR. TROTTER: Mr. Trimble's testimony is
15 DBT-1-T, and Mr. Doane's is MJD-1-T, and I would note
16 on Page 11 of Exhibit DBT-1-T, one of the issues
17 Mr. Trimble addresses is the issue of whether the
18 directory affiliates should be considered when
19 determining the appropriate compensation due to an
20 affiliated ILEC, independent local exchange company,
21 and that is an issue and is relevant to that issue.

22 Part of how the market evaluates value, we
23 believe, is already revealed in the existence of the
24 transaction, and the underlying documentation
25 will assist us in further understanding the

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1 transaction.

2 JUDGE WALLIS: Does that conclude your
3 remarks?

4 MR. TROTTER: It does.

5 JUDGE WALLIS: Ms. Endejan?

6 MS. ENDEJAN: Your Honor, this is the
7 equivalent of asking Verizon Corporation for sale
8 documents of its building in midtown Manhattan. This
9 deals with very sensitive sale documents that do not
10 belong to Verizon Northwest. There is no connection
11 between Verizon Northwest and Verizon Hawaii except by
12 virtue of its corporate parent. There is no contract
13 or arrangement at issue between Verizon Northwest and
14 Verizon Hawaii, and this is an entirely separate
15 matter.

16 These sales documents have nothing to do with
17 the issue of whether revenues from a directory company
18 should be considered and imputed into Verizon
19 Washington's rates. Now I'm hearing that apparently,
20 the thesis is that if you know how much a total company
21 sold for, you could then argue that see, because the
22 total company sale on an island seven thousand miles
23 away with a different market, different conditions, a
24 completely different scenario to Verizon Northwest is
25 somehow relevant to the principle that revenues from

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1 directory operations should be imputed. That just
2 doesn't wash. There is no connection there.

3 So we objected originally on relevancy. We
4 then worked with Staff. They said then, well, we just
5 want to know if there was a separate value associated
6 with the directories. We answered that question. We
7 said no, it's part and parcel of one price. We
8 couldn't give you any more information if we wanted to.

9 Now Staff is saying, well, we should know the
10 whole price because then that would allow us to argue
11 how valuable directory operations are. That makes no
12 sense because you don't know what all went into and
13 what comprises the total sale price. A lot of stuff
14 got sold in Hawaii, and how much value the purchaser
15 put on directories as opposed to wireless as opposed to
16 the land line, you can't tell. So the total sales
17 figure is irrelevant to establishing anything about
18 imputation about directories.

19 We've answered what we know about the value
20 of directories in response to the data request, even
21 though the Company has taken the position, as I'm so
22 vociferously arguing now, that the records of Verizon
23 corporation about the sale of one of its assets in
24 another state, the Commission has no jurisdiction over
25 because there is no connection between the operations

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1 of Verizon Hawaii and Verizon Northwest. It just so
2 happens they sold a unit of their business. It's just
3 the same thing as if they sold the building in downtown
4 Manhattan. It's an asset of the larger parent
5 corporation, and as such, there is completely no
6 relevancy whatsoever to this.

7 Now apparently, the response we gave wasn't
8 satisfactory because we didn't specify the five
9 thousand documents by title that we weren't providing,
10 and because given the tangential relevancy, we failed
11 to see how providing a list of documents that tells
12 Staff what the Company is not giving them, because
13 we've told them we are not going to give them the
14 prospectus and the sales agreement and other things, we
15 fail to see why putting the Company through that burden
16 when there are so many other data requests and issues
17 that the Company's resources should be devoted to,
18 under the circumstances, it is unwarranted and not
19 proper discovery.

20 Staff got an answer to its question about the
21 value of Hawaii directories. We don't know. We can't
22 tell you. We got a signed declaration from the
23 attorney most knowledgeable about this whole
24 transaction on that point. It would just be an
25 enormous fishing expedition to allow Staff to plow

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1 through sale documents of assets that have no
2 connection with Verizon Northwest. The Company is
3 absolutely stupefied as to why that would be relevant
4 here, and accordingly, we would reject --

5 We've tried to work with Staff. That wasn't
6 satisfactory, and now I guess as a matter of law, we
7 ask the Commission again to apply the principles of
8 waste management that drew the boundaries around the
9 Commission's ability to order companies to produce
10 records of affiliates in the context of a rate case
11 proceeding.

12 Granted, in the waste management case, what
13 was at issue was the flow-through or passage of a rate,
14 so it wasn't a context of rate-making, even though it
15 was not a full-blown rate case. I don't know to
16 mislead you on that point, but clearly under those
17 circumstances, the Washington Supreme Court said, no.
18 You can get what you want within the authority that has
19 been granted to you by the legislature, and that
20 authority specified, number one, you are entitled to
21 see the records of the public service company that owns
22 the facilities in the state where you regulate. That's
23 principle number one.

24 Principle number two is, you are entitled to
25 see records and documents that relate to contracts and

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1 arrangements with affiliates whereby there is an
2 interchange of payments, a flow of payments or revenue,
3 under the affiliate-interest statute, and that's it.
4 There is no general authority under the Commission's
5 rate-making authority to engage in an examination of
6 the sales records of an asset that they don't regulate
7 that's owned by a company they don't regulate. As a
8 matter of law, they don't have the authority.

9 So I would urge the Commission of all the
10 matters at issue here, this is the one I think the
11 Company -- well, they feel strongly about the
12 jurisdictional arguments on the other items, but this
13 one in particular, the Company is absolutely adamant
14 about. So I urge you to find that we've done what we
15 could do. We've answered the question about evaluation
16 of the directory's company, and that's it.

17 MR. FFITCH: May I be heard, Your Honor?

18 JUDGE WALLIS: Mr. ffitch?

19 MR. FFITCH: Just a few points. First of
20 all, as we argued earlier, we disagree with the
21 Company. The Commission's authority, we believe the
22 Commission clearly has authority to authorize this
23 discovery.

24 Secondly, I would suggest that if we look
25 over at the DEX proceeding, which is Docket No.

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1 UT-021120, regarding the sale by Qwest of its directory
2 publishing operation, I am not aware that there were
3 any limitations placed in that proceeding on discovery
4 regarding the transaction that sought information from
5 participants in the transaction other than the
6 participants that went beyond the operating company in
7 Washington.

8 In other words, there wasn't this kind of
9 bright line that excluded all information from the
10 proceeding other than information in possession of the
11 Qwest Corporation. I'm going from memory on that, but
12 I certainly don't recall that was a big issue in that
13 case, and there was a broader scope of discovery there.

14 Thirdly, I think this is clearly an issue in
15 this case. It's so much an issue that the Company is
16 already, I think, heightened the profile of this issue
17 by beginning to argue it in the interim proceeding.
18 The parties addressed the imputation argument in the
19 interim brief already.

20 And I would note in that connection that, for
21 example, in Exhibit 70, which came into the record -- I
22 don't believe there was Company objection to Exhibit 70
23 coming in; although, that was a staff exhibit, and my
24 memory could be imperfect on that. It certainly is in
25 the record now, and it contains information about the

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1 Company's directory operations in a number of different
2 jurisdictions, including --

3 MS. ENDEJAN: Your Honor, I'm going to
4 object to this because I'm completely -- I was not
5 aware Mr. ffitch was going to be on the line, is now
6 raising matters, cases, exhibits that I have not had a
7 fair opportunity to look at to even rebut.

8 MR. FFITCH: It's an exhibit in this case,
9 Your Honor.

10 MS. ENDEJAN: I don't have every exhibit
11 memorized, Mr. ffitch.

12 MR. FFITCH: I'm almost finished, Your Honor,
13 but I guess there is an objection on the floor.

14 JUDGE WALLIS: You may conclude your remarks
15 and I will defer ruling on the objection.

16 MR. FFITCH: I think the Company is
17 attempting to have it both ways, Your Honor. They are
18 introducing an argument, a theory about imputation that
19 really is an argument about how the entire company and
20 its operating affiliates have dealt with directory
21 publishing on a company-wide basis, not limited to
22 Verizon Northwest, and that is reflected, I think, in
23 the fact that Exhibit 70 is already in the record.

24 On the other hand, now they want to impose
25 this kind of narrow gag rule on any kind of responsive

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1 discovery on their theory which would allow it to look
2 beyond Washington State and see how, in fact, they are
3 dealing with this issue on a company-wide basis, and if
4 we look at Exhibit 70, it clearly reveals that the
5 Company has a broad policy with respect to treatment of
6 directory publishing, operations, whether imputation
7 occurs, whether royalty payments are made, whether
8 there is a value ascribed to the relationship between
9 the operating company and the publishing affiliate.

10 So all of those things are relevant, and I
11 think it's clearly relevant in order to test the
12 validity and strength of the Company's theory for us
13 and Staff to be able to look at how they are dealing
14 with this issue in other states. If they say that it
15 can't be done in Washington but they are doing in it
16 Hawaii, the Commission needs to know that.

17 JUDGE WALLIS: That they are doing what in
18 Hawaii?

19 MR. FFITCH: Giving value to the directory
20 publishing business in transactions, recognizing a
21 history of imputation, matters of that nature, taking a
22 different position with regard to those matters than
23 they are taking here either with their actions or their
24 statements.

25 JUDGE WALLIS: I would like to go back and

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1 discuss the objection to Mr. ffitch's argument. I
2 think in general terms, a party is not obligated to
3 state all of their objections at any one time or to
4 provide a signal of those objections.

5 What is essential is that you have the
6 opportunity to respond to them, and I would not strike
7 Mr. ffitch's argument, but to the extent you would like
8 to look at the transcript of his argument, you feel
9 it's necessary, and to provide a written response to
10 which a brief or rejoinder might be allowed, then you
11 would be allowed to do that. I'm speaking to
12 Ms. Endejan.

13 MS. ENDEJAN: Yes, Your Honor. I think it's
14 procedurally unfair to allow -- it puts more burden on
15 an already overburdened rate case team to respond to
16 arguments that are raised for the first time without
17 advance notice.

18 I would like to respond orally to his
19 arguments because he's so dead wrong. I mean, he's
20 assuming that the fact of the sale of an entire set of
21 assets, one unified set of assets, somehow or other has
22 some connection to whether or not there is to be
23 imputation in Washington is incredibly tenuous.

24 I want to point out that the DEX case that
25 highlights the difference between Verizon and Qwest, as

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1 established in evidence both filed in the general rate
2 case and in the interim, Verizon Northwest's
3 predecessors never owned the assets of the directory
4 company. Qwest did. The Qwest DEX proceeding dealt
5 with the sale of that asset which was partially owned
6 by a Washington corporation.

7 That is not the situation here. The issue is
8 not the sale of directories by Verizon. The issue is
9 whether or not there should be imputation allowed.
10 There is no showing that imputation has any connection
11 to market value of an entire set of assets that
12 comprise Verizon Hawaii. There is absolutely too
13 tenuous a connection there.

14 In the interim proceeding, we were forced to
15 address the issue of imputation because it was an
16 adjustment made by Staff that we were responding to.
17 It was entirely appropriate. As the Commission well
18 knows, it's the Company's position that imputation is
19 inappropriate in the first place. Now we are
20 proceeding down a bunny trail where somehow or other,
21 the sale of directories elsewhere somehow or other is
22 supposed to show a point that imputation is proper.
23 That's just a leap of logic and a total lack of
24 relevancy here.

25 It's particularly troublesome because the

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1 precedent that would be established by the Commission
2 saying to a corporation like Verizon Communications,
3 well, we get to look at anything you do in any of your
4 other jurisdictions, even if there is no contractual
5 arrangement with your Northwest company, just because
6 it may prove some tangential theory of their case.

7 Now, that would be again like saying,
8 Verizon, tell us how much you got for the sale of your
9 midtown Manhattan corporate headquarters because that
10 way, we will know how the Company values that, and we
11 will compare that with how the Company values its
12 Northwest headquarters. It's a specious argument, and
13 it's so far outside the realms of relevancy and
14 jurisdiction, it's beyond pale.

15 I don't know what Exhibit 70 says. I will go
16 back and look at it, but I would be willing to bet that
17 it doesn't stand for the proposition that sales records
18 of an entire business unit is relevant to the issue of
19 whether directory revenues should be imputed in the
20 state operations seven thousand miles away.

21 JUDGE WALLIS: Mr. ffitch, how would you
22 respond to that?

23 MR. FFITCH: Well, I don't want to be
24 repetitious, Your Honor, but I think perhaps
25 Ms. Endejan is just not taking my point, which is

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1 simply that if the Company has a unified
2 multijurisdictional policy with regard to directory
3 publishing, which does appear to be reflective in
4 Exhibit 70, then presumably, that would be dealt with
5 consistently on a state-by-state basis, and if we find
6 in looking at Hawaii, for example, in the sale of the
7 business in Hawaii that, in fact, value has been
8 ascribed to the directory publishing business, that
9 different theories have been adopted by the Company in
10 that jurisdiction with regard to the directory
11 publishing business, then I think this commission needs
12 to know that there is an inconsistent position; that
13 the Company may have, in fact, either conceded or been
14 required to acknowledge certain values in the directory
15 publishing business based on contractual or legal
16 theories. It seems to me highly relevant.

17 The Company's whole theory here that this is
18 completely different from the US West case is based
19 upon the discussion of facts which are not Washington
20 State specific, as I understand it. They have to do
21 with broader allegations regarding the factual history
22 of directory publishing within GTE.

23 So again, they are asking to have it both
24 ways. They want to defend this on the basis of a
25 company-wide policy based on the historical treatment

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1 of that publishing business, but yet they don't want us
2 to go look at the company-wide practices in the modern
3 era to see if it's consistent with their theory.

4 JUDGE WALLIS: Mr. ffitch, as I understand
5 it, the Company has indicated that there was not a
6 separate valuation of the directory business in
7 conjunction with that sale. Does that address or even
8 resolve the point that you are making here?

9 MR. FFITCH: I don't think it does, Your
10 Honor. The problem we have is when we have discovery
11 requests on the table and we get a response that's
12 essentially in the nature of testimony from counsel
13 saying well, you don't need to look at that because
14 there is nothing there that would be of interest to
15 you, I would respectfully suggest that we have the
16 right to ask the questions, review the information
17 ourselves, and then make a determination about whether
18 or not that's the case within reason, and to simply
19 have counsel come into a hearing room and, in effect,
20 testify as a form of response, it's just not adequate.

21 JUDGE WALLIS: I think there is more than the
22 indication of counsel. Isn't that right, Ms. Endejan?

23 MS. ENDEJAN: What we have submitted, the
24 response to Exhibit 277, we have submitted a
25 declaration of the, we believe, the person most

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1 knowledgeable about the documents associated with the
2 sale of the Verizon Hawaii properties. He is attesting
3 that no document exists. No such documents exists.

4 So it's not as Mr. ffitch portrays it. We
5 are not telling the Staff that well, we looked through
6 the documents and we don't think you will be interested
7 in them. We are telling them no document exists. We
8 can't prove a negative.

9 MR. FFITCH: Actually, what the Company has
10 been arguing, really the focus of my response is the
11 Company has been arguing, you don't even get to look at
12 the stuff period, no matter what. You have no
13 authority.

14 That's my concern here. I don't want to get
15 out ahead of Staff on the specific details of their
16 document request and the specific response, and I would
17 defer to Staff on that, but my concern here was on this
18 broader question of what if we next week want to look
19 at a transaction in the, I don't know, Vermont or
20 something like that. If there is a ruling in this case
21 that we can't ask about directory publishing
22 transactions in other states, that's a problem.

23 JUDGE WALLIS: Mr. Trotter, do you have any
24 concluding remarks?

25 MR. TROTTER: I do, Your Honor. Ms. Endejan

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1 was factually incorrect in stating that our refinement
2 to the data request was limited to value issue. If you
3 look at Page 7 of Attachment 9, it very clearly says
4 that any document that mentions directory operations.
5 Then we gave a nonexclusive, quote, "nonexclusive list
6 of examples," unquote, and the word "value" appears in
7 one of the examples.

8 We are not limiting our data request to a
9 document that says as part of this transaction, the
10 value of directories is X and the value of telephone
11 operations associated with directories is Y. That's
12 not what we are asking for. That may contribute to the
13 stupefication of the Company because they did not
14 recognize the data request for what it is.

15 I'm not going to debate here the distinction
16 between this company and Qwest. That was in our brief
17 in the interim case, and we are not going to repeat it
18 here. We will adopt it by reference.

19 The relevance I thought I said quite clearly.
20 Mr. Trimble testifies to the issue of whether a
21 directory affiliate's revenues should be considered in
22 determining the appropriate compensation due the
23 affiliated ILEC. This is relevant to this issue. We
24 are saying this transaction on its face.

25 The Company is in effect saying that the

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1 directory operations have greatest value when they are
2 combined with the telecommunications business such as
3 what was going on in Hawaii. Obviously, if the
4 directory operations had no value and is a separate
5 entity, separated and apart, unconnected in any way
6 with the telecommunications operation, they would have
7 sold it separately. The market said otherwise, and we
8 want to delve into that issue more. So that's why it's
9 relevant --

10 JUDGE WALLIS: May I interrupt for just a
11 moment and ask if the nexus of your concern is
12 valuation, what is the tie between your increase that
13 are not related to valuation and the issues in the
14 proceeding?

15 MR. TROTTER: There may be statements in the
16 prospectus or some of these other documents where the
17 Company describes the benefits of the package as
18 opposed to separate, encourages buyers to bid on the
19 whole package rather than separate or documents of that
20 sort.

21 There might be statements in there that
22 discuss benefits that aren't directly connected to a
23 limited consideration of the definition of the word
24 "value," and Mr. Chamberlin's affidavit is very
25 narrowly tailored to refer basically to just documents

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1 that state a value for the directory services, and
2 that's just the tip of the iceberg, as far as we are
3 concerned, and our data request was to be limited to
4 that.

5 Let me suggest one other thing.

6 RCW 80.04.020 gives the Commission the power to issue
7 subpoenas for the production of documents, quote, "in
8 any inquiry investigation, hearing, or proceeding in
9 any part of the state," unquote. Now, if the Company
10 is going to say, we are not going to produce them
11 because they are not ours, we can go through the effort
12 of subpoenaing them from the people that do have them.
13 That will take time, and we will have to ask for a
14 continuance in order to do that, but if that's what the
15 Company is saying and if that's what you tell us, then
16 that is an avenue available to us and we will take it
17 upon due consideration.

18 But they can get these documents.

19 Mr. Chamberlin has looked at them. He knows about
20 them. They are there. All it takes is a phone call,
21 so there is no question that these documents can be
22 obtained. The fifty-seven-hundred-and-ninety-two
23 documents that were identified, we didn't know there
24 were that many until we got this pleading. Counsel
25 made no effort to talk to us about that, and gee, what

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1 can we do. We don't know if there was a prospectus or
2 offer document or any of the other rather specific
3 documents we've asked for.

4 So what we are faced here is with a late
5 claim that is literally thousands of documents that
6 they can't possibly produce. I think it's a little
7 late to register that objection on a data request
8 issued in June. So we firmly believe, regardless of
9 the Company's adamant or stupification, that these
10 documents ought to be produced.

11 JUDGE WALLIS: Ms. Endejan?

12 MS. ENDEJAN: It's interesting how the theory
13 of relevance shifts from the Staff here. What was the
14 subject of all of our discussions and, in fact, what is
15 mentioned in Staff's motion to compel as a theory of
16 relevancy is oh, we need to know basically the
17 valuation of the directory because again, we are having
18 a large leap of faith here arguing that the value of
19 directories in a different market, different
20 jurisdiction, somehow or other demonstrates something
21 relating to imputation. The sale of Verizon Hawaii and
22 all of its piece parts has nothing to do with any
23 policy or company issue regarding imputation. It is
24 the sale of assets.

25 Now the shifting theory of relevancy is well,

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1 the directory operations have their greatest value when
2 combined as a whole and sold as a piece part. Now,
3 that's stretching it. I mean, that is a complete,
4 first of all, switch of position with respect to why
5 they want it and why it's relevant to them.

6 I mean, because the purchasers paid one
7 dollar amount for everything, it's not any different
8 than a fire sale when a purchaser comes in and buys
9 everything lock, stock, and barrel. By virtue of that
10 fact alone, are you going to draw the conclusion that
11 gee, the value of the couch is greater because it's
12 included in the entire universe of documents sold? I
13 mean, we are really stretching the bounds of relevancy
14 here.

15 And I have to keep circling around to, these
16 are not the records of Verizon Northwest. These belong
17 to other entities. Verizon Northwest cannot control
18 them. We will go to court and argue about the
19 subpoena, if that comes down. But the here and now is
20 the waste management case is really clear, and I
21 realize Staff and Public Counsel hate that case because
22 it puts some boundaries --

23 MR. TROTTER: I'll object, Your Honor. That
24 is not fair. We respect the supreme court decisions of
25 this state, and I object to any statements that suggest

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1 to the contrary.

2 JUDGE WALLIS: I will ask both counsel to
3 avoid characterizing the use or positions of others.

4 MS. ENDEJAN: Then I would ask also, Your
5 Honor, that Mr. Trotter withdraw his comments about
6 stupification.

7 MR. TROTTER: That was a word used by
8 Ms. Endejan to characterize the Company's reaction.

9 JUDGE WALLIS: We will disregard any
10 adjective that is applied to opposing counsel.

11 MS. ENDEJAN: The point is, Your Honor, that
12 the waste management decision is very clear on the
13 authority of the Commission to order of affiliate
14 records that have no contractual arrangement with the
15 company they are regulated. It's a black-and-white
16 proposition with respect to these Hawaii documents.

17 So no matter what attenuated theory of
18 relevancy that seems to be shifting over time, they
19 still cannot get around the jurisdictional roadblock
20 raised by the statutes which confine the Commission's
21 limits.

22 JUDGE WALLIS: If, as has been intimated, the
23 issue is raised in conjunction with the testimony of
24 Mr. Doane or Mr. Trimble or is related to Exhibit
25 No. 70, would that provide an access that would be to

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1 your mind the barrier of the supreme court case that
2 you've identified?

3 MS. ENDEJAN: Your Honor, that's a difficult
4 question to answer, and here's why. It is my
5 recollection of reading the testimony of Mr. Trimble
6 and Mr. Doane that there is no discussion about any
7 sale of directories operations as part of a total
8 package by Verizon or any other company, so I am not
9 aware of any testimony in the record or that will be in
10 the record on that point.

11 Those two witnesses talk about the issue of
12 imputation. They do not talk about the issue of sales
13 of directory operations. Those are two different
14 issues, and the Company has expressed its views on
15 propriety of the practice of imputation, but that is
16 not the same thing as saying because of imputation, it
17 somehow or other affects the price that we set or that
18 a buyer calculates in connection with the sale of an
19 entire business unit of which the directory's operation
20 is just a part. So there is really no correlation
21 between imputation theory, principle, policy, and the
22 sale of a business unit that includes directory
23 operations.

24 So it would not change my position, and
25 again, I don't know what Exhibit 70 says, but if I

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1 recall generally the exhibits in this case, I don't
2 recall that exhibit as dealing with the issue of a sale
3 of an unrelated business unit of Verizon corporation
4 that includes as a part directory operations.

5 JUDGE WALLIS: Would you like the opportunity
6 to review those documents and the opportunity, not the
7 obligation, if you wish, to make a brief statement
8 regarding them?

9 MS. ENDEJAN: In writing or orally, You
10 Honor?

11 JUDGE WALLIS: In writing.

12 MS. ENDEJAN: Yes, I would. There appears to
13 be some argument raised here that there is some
14 connection between Mr. Doane's testimony and
15 Mr. Trimble's testimony and the Hawaii sales, and that
16 isn't the case. I would have to check what Exhibit 70
17 says in order to be able to respond to it.

18 JUDGE WALLIS: What would be an appropriate
19 time frame for that? Would Monday be pushing it?
20 Faxing it in or -- what we are anticipating is not a
21 law review article but the opportunity for a brief
22 rejoinder.

23 MS. ENDEJAN: If I could beg close of
24 business Tuesday. Tomorrow is fully taken up with
25 other matters, and I won't be able to get to it until

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1 the weekend.

2 JUDGE WALLIS: And then the following day for
3 response, if necessary, by Mr. Trotter?

4 MR. TROTTER: That's fine.

5 MR. FFITCH: May public counsel respond also?

6 JUDGE WALLIS: Yes.

7 MR. TROTTER: Just a brief rejoinder, if I
8 might. Our motion said on Page 9, quote, "this
9 information may lead to relevant information to the
10 extent it contains valuation of the value of the
11 directory operations to the telecommunications
12 operations."

13 We weren't talking there about fair market
14 value of directory but rather the notion that again, as
15 it's stated, the rather clear direct correlation is the
16 value of selling these as a unit instead of selling the
17 directories separately, and we are looking for that
18 sort of document, and we are entitled to interpret
19 these documents differently than the Company, but we
20 are at least entitled to see them, and I do want to
21 apologize for using the term "stupefied" and "adamant."
22 I apologize.

23 JUDGE WALLIS: Thank you. Do parties wish
24 the opportunity to make any further comments.

25 MS. ENDEJAN: No, Your Honor.

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1 JUDGE WALLIS: There is no request to make
2 further comments. Thank you very much for appearing
3 today and for giving us the high quality arguments that
4 you have and very interesting questions, and we will
5 look forward to the opportunity to work with them in
6 light of our response, so we are off the record.

7 (Prehearing concluded at 4:42 p.m.)

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