

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET NO. UT-040788
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 09
Complainant,)	
)	
v.)	
)	
VERIZON NORTHWEST INC.,)	ORDER COMPELLING
)	PRODUCTION
Respondent.)	
)	
.....)	

1 **Synopsis:** *This order grants, in part, the Commission Staff’s motion to compel production of certain documents. The order requires production of board minutes of Verizon Corporation, the parent of Verizon Northwest, on matters that affect the subsidiary. It requires production of all information relating to year-end journal entries. It also requires the production of certain documents relating to the sale of Verizon Corporation’s Hawaii operations, but acknowledges that the production of all requested documents could be burdensome and provides for alternatives depending on Verizon’s ability to identify and produce documents.*

2 **NATURE OF PROCEEDING.** Docket No. UT-040788 relates to filings by Verizon Northwest, Inc. (“Verizon,” “Verizon NW,” or “the Company”) seeking approval of “interim” and general tariffs in support of the Company’s asserted need for general rate relief. Commission Staff on September 16, 2004, filed a motion to compel production of certain documents in conjunction with the Staff investigation of the Company regarding the proposed rate increase. Verizon answered on September 22, 2004 and argument was held on the dispute on September 23, 2004, before Administrative Law Judge C. Robert Wallis. Verizon asked the opportunity to respond to one matter that arose during argument; it

did respond in writing on September 27, 2004; Commission Staff answered on September 28, 2004, and the matter is now ripe for resolution.

3 **APPEARANCES.** The following representatives appeared: Judith A. Endejan, Graham and Dunn, Seattle, WA, representing Verizon. Simon J. ffitich, Assistant Attorney General, Seattle, WA, Public Counsel, and Donald T. Trotter, Assistant Attorney General, Olympia, WA, representing Commission Staff.

4 **Summary.** Commission Staff asks an order compelling production of three categories of information: a) Minutes of the Board of Directors of Verizon Corporation, 92.5% owner of GTE Corporation, which is 100% owner of Verizon NW;¹ b) Complete year-end journal entries for Verizon NW; and c) documents relating to the sale of Verizon's telephone operations, including the company's directory business, in the state of Hawaii. Verizon opposes the motion.

A. Verizon Communications Board minutes.

5 Prefiled testimony of Nancy Heuring indicates that Verizon Communications, Inc., provides overall corporate governance and directions for Verizon NW. Board minutes of Verizon NW contain no record of discussions on issues relating to such matters as financing, tax returns, employee compensation programs, and workforce reductions, that have been determined by the Verizon Communications board.

6 Commission Staff asked access to minutes of the Board of Directors of Verizon Corporation to determine the nature and extent of Board activity affecting the Verizon intrastate operations. Verizon refused.

¹ Commission Staff initially raised concerns about Board committee reports, but indicated at argument that proposals that Verizon offered in its response to the motion appeared to satisfy Staff's interests.

7 Verizon argues that the board and committee records do not belong to Verizon
NW and it is not obligated to provide them; that the Commission's jurisdiction
and consequently its sphere of authority is limited to the entity providing
intrastate services only and not to its owner; that the Commission's Order No. 05
in this proceeding ruled that the Commission would consider only the intrastate
operations of the company in reaching a decision, so any information about or
touching upon affiliates is irrelevant; and the Commission has no authority over
Verizon Communications because there is no contract or arrangement between
the two companies, citing a Washington State judicial decision involving two
commonly-owned companies.²

8 We believe that none of Verizon's arguments are well-taken, and direct Verizon
to disclose the information that Commission Staff seeks.

9 **Ownership of the documents.** Verizon may not own the documents in question,
but it is certainly true that Verizon has an interest in them to the extent that the
documents relate to NW's operations. To the extent that the documents govern
intrastate operations, it is necessary and appropriate that the Commission Staff
have access to them—at least to the extent needed to determine whether there are
matters of relevance. It would be inappropriate to exclude from view decisions
of the Northwest board affecting intrastate operations; it is similarly
inappropriate to exclude from view decisions of the Corporation board affecting
Northwest's intrastate operations. We trust that Verizon will be able to obtain
them from its owner and produce them for examination.

10 **Verizon Corporation is not regulated by a state commission.** Verizon is correct
that the Commission does not regulate Verizon Corporation. However, the
Commission does have the responsibility to examine the regulated operations of
Verizon NW, including the decisions of the corporate board having

² *Waste Management of Seattle, Inc., v. Utilities and Transportation Commission*, 123 Wn.2d 621, 869 P.2d 1034 (1994)

responsibility for NW. Corporation is a separate legal entity, but it is not so independent of NW that its activities in the exercise of powers affecting NW should be shielded from regulatory view. If, as Ms. Heuring contends, there are no decisions affecting NW during the requested period, there is no adverse affect on either Corporation or NW from allowing the review.³ If the Corporation Board is acting on behalf of Verizon Northwest, whether specifically or as one of a class of companies, the Board minutes should be available in a review of the activities of Verizon Northwest.

11 **The Fifth Order.** The Fifth Order by its terms addressed only the asserted need for interim rates and was entered in the context of a motion to dismiss; it holds only that the intrastate operations may be examined individually for purposes of determining eligibility for interim rates. The order also specified that other information could be required to determine the appropriateness of proposed intrastate figures.⁴ The Fifth Order is not a barrier to obtaining relevant information about the operations of Verizon Northwest or its Washington intrastate operations as they relate to a general rate case.

12 Verizon would draw blinders around multijurisdictional activities or policies that affect or govern Northwest and that are integrally related to the intrastate operations. Doing so would be improper. The Fifth Order does not foreclose this or the other requests for disclosure that Verizon opposes.

13 **Contract or Arrangement.** Finally, Verizon argues that the holding of the State Supreme Court's *Waste Management* decision⁵ forecloses the Commission from access to Corporation records. Again, we disagree with Verizon.

³ The parties have been able to agree upon redactions that shield clearly irrelevant information, and we trust that this spirit of agreement will continue.

⁴ "[O]ur inquiry is whether interim rates are in the public interest, *considering* (not requiring dispositive proof of) *all* relevant factors." Order No. 05, p. 11, paragraph 31; emphasis in original.

⁵ *Waste Management of Seattle, Inc., et al. v. Utilities and Transportation Commission*, 123 Wn.2d 621, 869 P.2d 1034 (1994).

- 14 Irrespective of any nuances in the *Waste Management* decision, its origins, and the extent of its application to regulatory situations generally, we disagree with Verizon's premise that there is no arrangement between Northwest and Corporation.
- 15 Corporation makes management decisions that are applicable to Northwest. In addition, Northwest compensates Corporation – testimony during the interim proceeding indicated that Northwest pays dividends of millions of dollars to Corporation. We see little fundamental difference between that and a management contract. Here, it is asserted that there is no contract; if that is the case, there is still obviously an arrangement between the entities. Northwest cedes to Corporation some of its authority to manage its own affairs; Corporation exercises that authority on behalf of Northwest; and compensation flows from Northwest to Corporation. The arrangement benefits Northwest, as a member of the Verizon corporate family, a matter argued on behalf of the Company in the merger docket, and it benefits Corporation both from synergies and relationships available within the corporate family but also from the earnings of Northwest.
- 16 We conclude that Verizon must produce the requested documents.

B. Year-end Verizon NW journal entries.

- 17 Verizon has denied or limited Staff's request to review all of Verizon's year-end journal entries for the years 2002 and 2003. Commission Staff contends that the Company provided only a partial list of such entries, that the Company redacted information relating to other jurisdictions and Verizon affiliates, and that the Company denied access to the remainder.

- 18 Commission Staff argues that complete, unredacted information is necessary to review how and to what extent the journal entry figures become Verizon NW Washington intrastate figures. With Verizon's asserted restrictions, Staff cannot determine the magnitude of any adjustment or evaluate the allocation.
- 19 Verizon responds that the Fifth Order in this docket stated that only the intrastate operations would be considered in determining eligibility for interim rates; exclusion of portions of transactions affecting other jurisdictions merely effects the provisions of that order.
- 20 We find Verizon's argument unpersuasive. Here, complete information about the entire transaction is necessary to determine whether any allocation to or involvement of Verizon NW and the intrastate operations is accurately portrayed. The Fifth Order addressed only issues related to eligibility for interim rate relief and is not apposite to issues in the general rate proceeding. The Fifth Order did not say that transactions involving other corporate entities are exempt from review; it said that the intrastate operations could be examined for purposes of the interim phase of this proceeding. A full review of the intrastate operations requires the review of the entirety of journal entries that determine Northwest's and the intrastate operations' results of operation for purposes of the general rate phase of the proceeding.
- 21 Verizon is directed to disclose the entire transaction for each of the relevant entries, to allow Staff to review the propriety of entries for the Washington intrastate operations.

C. Sale of Hawaii properties.

- 22 Finally, Commission Staff requested, and was denied, access to information regarding Verizon's sale of its telephone operations in the State of Hawaii, including its directory business. Staff seeks information relating to the valuation

of Verizon's Hawaii directory business. At Verizon's request and in response to Verizon's initial objection, Staff on July 21, 2004, limited its request to include only documents that mention the directory business. On September 3, 2004, the Company for the first time objected to the Staff's refinement.

- 23 In this instance, Verizon focuses on relevance, on burden, and on the separation of the corporate entities. Commission Staff responds that its inquiry was prompted by references in Exhibit 70 of the Interim proceeding and in the prefiled general rate case testimony of witnesses Doane and Trimble, that Staff asserts, in effect, collectively indicate that Verizon Corporation believes that the directory and local exchange businesses have synergies that produce value in joint operation. Staff asks access to the sales documents to determine whether there are representations in the documents that support the existence of value in the relationship.
- 24 Verizon contends in a declaration of Dale Chamberlain that there are more than 5800 documents relating to the Hawaii business sale and that reviewing the documents itself would be "onerous and burdensome," but does not specify what acts would be necessary to accomplish the task. Verizon argues that the review would produce only a limited benefit, as Verizon sold its operations as a unit and contends that its directory business was not separately evaluated. The declaration does not state that the directory business is not referenced in the sales documents nor that the relationship between the businesses is not described or mentioned in some of the documents, nor that the relationship between the local exchange business and the directory business described in the sale does not exemplify the existence of value.
- 25 We disagree with Verizon's contention that the Hawaii sale documents are totally irrelevant to this proceeding. The relationship of the directory and local exchange operations is a matter of corporate policy, as shown on Exhibit 70. Staff

may make reasonable inquiry into those policies, including inquiries into instances of their implementation.

26 Verizon argues that merely because the transaction has no geographical or financial ties to Verizon's Washington State operations, there is no relevance, any more than Verizon's sale of a Manhattan office building.

27 The question that the Commission will likely be asked to answer, according to the evidence and arguments of record in this docket to date, is whether the Commission should impute some of the value in the Washington State directory business to the intrastate operations, beyond the minimum per-line charge that Verizon may exact from any purchaser of its subscriber listings. One factor in that determination is whether there is value in the relationship between affiliates that does not exist in the relationship between the local exchange operations and third-party directory purchasers of mere listings. If the sales documents indicate that Verizon Corporation believes such value exists and that Verizon Corporation demanded or obtained that value in a third-party sale, it could have bearing on the value to Directory of the relationship with Northwest. Verizon's declaration denies knowledge about how its buyer valued the properties, but does not deny knowledge of how Verizon valued the properties. As Public Counsel's reply indicates, imputation is designed to capture the current period value while the calculation of value on sale is a function of anticipated future period value.

28 Verizon argues that there is no contract or arrangement between the Hawaii transaction and the Washington sale of directory listings, and that therefore the transaction is totally beyond the Commission's purview. We disagree.

29 We noted above that a management arrangement exists between Corporation and Northwest. If Verizon were self-managed, the Commission could review board decisions and corporate actions to determine whether they are

appropriate, or prudent, for ratemaking purposes. The gift of an asset could be determined imprudent or a violation of management responsibilities and could be revalued for ratemaking purposes. If Corporation identifies value in a relationship but either Corporation or Northwest, operating under those policies, fails to achieve value from the relationship, there could be a potential tension between maximizing benefits to Corporation and maximizing benefits to Northwest and its local operations that should receive review in the rate proceeding.⁶

30 Finally, we look to the issue of burden. We agree with Verizon that it would be inappropriately burdensome for it to produce the entire 5800 documents or to search them manually for words or phrases. However, we suspect that it will be relatively easy to reduce the volume substantially by excluding certain classes of document, and we do not know what means are available that might reduce the burden of identifying documents.

31 Verizon initially signaled a willingness to produce fewer documents if the universe were limited, and did not make a timely objection to the Staff response. We direct Verizon to produce documents that describe the entirety of the properties available for sale, that describe the relationship between directory and local exchange operations, and that describe the directory operations, whether by prospectus or otherwise. Depending on Verizon's document search capabilities, it could be unduly burdensome to require it to identify all documents mentioning Directory operations. If Verizon has word-search capabilities or equivalent, such as a key word index or other means of sorting documents, we direct it to produce the documents specified in the Staff's July 21 amended data request.

⁶ This discussion is merely hypothetical, to indicate that the discovery could lead to relevance evidence, which is a test for the propriety of discovery.

32 If Verizon cannot search the documents electronically, and does not possess
equivalent capabilities, we direct Verizon to disclose the nature of remaining
documents, by category, and all means that are available to Verizon to search the
documents. Staff may then request further documents. In the absence of
agreement about the production of other documents, the parties should
promptly schedule a conference with the presiding administrative law judge so
the issue may be resolved quickly and without undue burden to any party.

ORDER

33 The motion of Commission Staff to compel Verizon to produce certain
documents is granted, in part.

34 (1) Verizon is directed to produce for examination by Commission Staff the
minutes of the Board of Directors of Verizon Corporation for the period
January 1, 2002, to date, and future minutes as they become available,
until entry of a final order in this docket.

35 (2) Verizon is directed to produce for examination by Commission Staff the
entirety of all year-end journal entries booked for Verizon Northwest for
the years 2002 and 2003.

36 (3) Verizon is directed to produce for examination by Commission Staff all
documents relating to the sale of its Hawaii business operations that
describe the entirety of the properties available for sale, that describe the
relationship between directory and local exchange operations, and that
describe the directory operations, whether by prospectus or otherwise.
Verizon is directed to produce other documents, or disclose the nature of
remaining documents, by category, as set out in the body of this order,
above.

37 **NOTICE TO PARTIES: This is an Interlocutory Order. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**

Dated at Olympia, Washington, and effective this 1st day of October, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge