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March 22, 2006

Via E-mail and First Class Mail

Carol J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

Re: *In the Matter of the Petition of Douglas and Jessica Rupp, et al.*
Docket No UT-050778

Dear Ms. Washburn:

Enclosed for filing in the above-referenced matter are the original and six copies of Verizon's Opposition to Motion to Add Petitioners.

Very truly yours,

GRAHAM & DUNN PC



Connie Hays
Secretary to David C. Lundsgaard

CEH/ceh
Enclosures

cc: Douglas B. Rupp (w/ Encl)
Sally G. Johnston (w/ Encl)
Betsy DeMarco (w/Encl)
Hon. Karen M. Caille (w/Encl)

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

In the Matter of the Petition of: Douglas and Jessica Rupp; et al.,)	DOCKET NO. UT-050778
)	
Petitioners,)	VERIZON’S OPPOSITION TO MOTION TO ADD PETITIONERS
)	
vs.)	
)	
Verizon Northwest, Inc.,)	
)	
Respondent.)	
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I. INTRODUCTION

Verizon Northwest Inc. (“Verizon”) opposes Petitioners’ Motion to Add Petitioners. Adding fourteen new Petitioners at this late stage of these proceedings, virtually on the eve of hearing, would substantially prejudice Verizon’s ability to present its case. Verizon has researched and prepared its case, has developed a construction cost estimate, has conducted its discovery, and has prepared (and already filed) its testimony based on the existing set of Petitioners, not on the substantially increased group proposed.

In the event that the Commission does allow these additional Petitioners to join, it should strike the existing hearing date and schedule a prehearing conference as soon as reasonably possible to discuss a new schedule for resolving this docket.

II. ARGUMENT

A. It Would Be Unfair to Verizon and Not in the Public Interest to Add These New Proposed Petitioners on the Existing Schedule.

The procedural posture of this docket is substantially advanced. Hearings on this matter are scheduled for April 3 and 4, less than two weeks from now. With minor exceptions, discovery is complete, and it would be impossible to undertake a new round of discovery at this late date. The parties have submitted all of their prefiled testimony and exhibits, including opposition and rebuttal testimony. (Nothing in Verizon’s prefiled testimony addresses these

proposed new Petitioners, for the simple reason that, until now, there was no suggestion that these persons were relevant to the proceedings.)

Given the advanced stage of this docket, adding these proposed new Petitioners would substantially prejudice Verizon's presentation of its case in the following ways:

- Extension Cost Estimates: Verizon prepared its estimate of the cost of this requested extension based on the existing set of Petitioners. This motion proposes to add fourteen new persons (in at least five new residences) to the existing group. Although it is impossible to state precisely how much the cost would be increased if these proposed Petitioners were added, the cost is reasonably certain to grow, perhaps substantially.

For example, Verizon witness Keith Binney explained in his testimony that the existing facilities in Index were barely large enough to serve the existing group of Petitioners in the event that they prevailed in this proceeding, and that this proposed extension would exhaust virtually all excess capacity on the existing cable route.¹ Addition of this new group would require reinforcement of the existing facilities, which will increase costs. There may be other circumstances associated with this new group that would likewise increase costs, but it is impossible to tell at this stage.

If Verizon is forced to go forward with its case on the existing schedule with this larger group of Petitioners, it will be required to rely on cost testimony that would be known to be outdated. It would not only be unfair to Verizon to be forced to present its case at such a significant disadvantage, it also would be contrary to the public interest for this docket to proceed on the basis of such estimates.

- Expert Testimony: Closely associated with the cost estimate issue is the testimony of Dr. Carl Danner. Dr. Danner testified regarding the estimated cost-per-connection of the proposed extension and compared it to other line extensions. His testimony would be unfairly compromised by the proposed additions, because both the cost estimate provided by Verizon and the number of proposed connections would now be inapplicable. Verizon believes that the essential point of Dr. Danner's testimony, namely, that this proposed extension is not in the public interest based on a weighing of applicable costs and benefits, would be unchanged, but it would not be fair to undermine the work that Dr. Danner has done by changing the numbers at the last minute.
- Discovery. During the prehearing phase, Verizon propounded several data requests to the existing Petitioners. In the course of that discovery, Verizon learned a number of facts that it believes are highly relevant to this proceeding, including the value (or lack thereof)

¹ K. Binney Testimony, p. 9, ll. 9-15.

that certain Petitioners place on phone service, and Petitioners' experiences with alternative means of communications (such as cell phones and satellite phones). Verizon cited to those materials extensively in its own prefiled testimony.

If this motion is granted, Verizon will be forced to litigate this docket against these proposed new Petitioners without any discovery regarding their circumstances, the value they place on service, their willingness to pay for service, or their experience with alternative means of communication.

For these reasons, adding this new group of Petitioners on the existing schedule would substantially prejudice Verizon's ability to prepare and present its case. It would also not be in the public interest to consider this Petition on the basis of cost estimates and testimony that are outdated because of changed circumstances.

Verizon further requests that, in the event that this motion is denied, Petitioners be precluded from relying on these alleged new service requesters in their rebuttal testimony or at the hearing of this matter. There was no evidence submitted in Petitioners' opening testimony of the existence of these other persons, whether they actually want service, or whether they would be willing to pay for it if it were available. Verizon therefore did not take discovery or present responsive testimony on these issues. Thus, it would be unfair for Petitioners to rely on this alleged new evidence, or to impeach or cross-examine Verizon's case or its witnesses on the basis of facts that were never part of this docket and that Verizon has not had the opportunity to address. *See, e.g., Henderson v. Tyrell*, 80 Wn. App. 592, 625, 910 P.2d 522 (1996) (trial court properly excluded last-minute evidence of hospital's alleged fault on the eve of trial where the new issue would require "substantial new discovery").

The need to exclude such matters is not theoretical. A key issue in this docket is the cost-per-customer or household of the requested extension. Verizon prepared its cost calculations based on the Petitioners who were actually part of this docket, and filed those calculations with its responsive testimony on March 1, 2006. Petitioners' rebuttal testimony, filed on Friday, March 17, discusses at length the impact of these proposed new Petitioners on the cost-per-

customer calculations in this case.² Petitioners will no doubt argue that Verizon's calculations are now obsolete, and Petitioners' calculations superior, in light of the new potential customers alleged in this motion. It would be unfair to Verizon to have its testimony attacked on the basis of Petitioners' own subsequent change of position, particularly where Verizon has been deprived of any opportunity to take any discovery of these prospective new customers.

Indeed, without such exclusion, the prejudice to Verizon from this development could arise regardless of whether these persons are formally added as new Petitioners. The present Petitioners will no doubt try to argue that the existence of new potential customers who allegedly want service should reduce the cost-per-household estimates, regardless of whether they are formally part of the Petition. This prejudice can only be avoided if Petitioners are limited to the Petition as originally filed, without reference to alleged new persons who might want service.³

B. If the Commission Permits These New Petitioners to Join, It Should Strike the Existing Hearing Date and Schedule a New Prehearing Conference.

In the event that the Commission does grant this untimely motion, it should strike the existing hearing date and set a prehearing conference to discuss a new schedule. That conference would address: (1) a new schedule to permit Verizon to take discovery of the newly proposed Petitioners; (2) a new schedule for filing supplemental and/or replacement opposition testimony in light of the new Petitioners and issues; and (3) a new hearing date. There is simply no way that Verizon can conduct the necessary discovery or revise its prefiled testimony in the short time between now and the existing hearing date.

² Petitioners' rebuttal filing pre-dated the filing of the instant motion (by one business day), but Petitioners were able to incorporate the information about these additional proposed Petitioners because they apparently had become aware, following Verizon's filing but before their own, of these individuals.

³ Verizon does not suggest that Petitioners waited to file this motion until after Verizon completed its discovery and filed its testimony as a deliberate stratagem to gain tactical advantage. Nevertheless, if this motion is granted without any relief provided to Verizon, it is easy to see how, in similar cases, parties could use such a strategy intentionally.


Verizon does not believe that it would be efficient simply to pick a new hearing date and establish new deadlines without a conference. There are a number of important new issues that would need to be addressed, such as whether new prefiled testimony based on changed circumstances should be filed as an addendum or a replacement filing and the scope of any new discovery.

III. CONCLUSION

For the foregoing reasons, the Motion should be denied. In the event that it is granted, the existing hearing date should be stricken and a new prehearing conference set to discuss a new schedule.

DATED this 22nd day of March, 2006.

GRAHAM & DUNN PC

By 
David C. Lundsgaard
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Attorneys for Respondent Verizon Northwest Inc.

DECLARATION OF SERVICE

The undersigned declares, under penalty of perjury under the laws of the state of Washington, that on March 22, 2006, I transmitted true and correct copies of the foregoing document, **Verizon's Opposition to Motion to Add Petitioners**, via email and via U.S. Mail, first class, postage prepaid, to the following:

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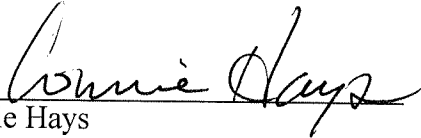
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Signed this 22nd day of March, 2006.



Connie Hays
Secretary to David C. Lundsgaard