

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

**In the Matter of the Petition of:**

Douglas and Jessica Rupp; Kathie Dunn  
and Chris Hall; Melinda Inman; Verlin  
Jacobs; Anthony Williams; Christine and  
Samuel Inman; and Sam Haverkemp and  
Chris Portrey,

Petitioners

v.

Verizon Northwest, Inc.,  
Respondent.

**NO. UT-050778**

**MOTION FOR LEAVE TO RESPOND  
AND RESPONSE**

**I. INTRODUCTION**

Petitioners hereby move for leave to file an answering brief to the response filed by Verizon Northwest Inc (“Verizon”) opposing Petitioners Motion to Add.

Petitioners reject Verizon’s contention that the potential customers mentioned in our Motion to Add Petitioners (“Motion”) come as a surprise, and therefore don’t believe sufficient cause exists to require the hearing date to be rescheduled.

## **II. ARGUMENT**

### **A. Verizon Was Already Aware**

Eleven of the 14 proposed new petitioners and three of the five new households were already known to Verizon as wanting telephone service. See attached for copies of responses to Verizon's Data Requests provided to Verizon on February 22 and 23, to wit:

- Petitioner Rupp's response to Verizon's Set 1 Data Request No. 17 concerning persons in the area who want wireline phone service listed nine members of the Skyko 2 community and their desire, or lack thereof, for telephone service. Six of those persons are included in the Motion.
- Petitioner William's response to Verizon's Data Request No. 28 concerning other residents of Skyko 2 identified his wife, who is included in the Motion.
- Petitioner Melinda Inman's response to Verizon's Data Request No. 28 identified four persons, three of whom are included in the Motion.
- Petitioner Verlin Jacob's response to Verizon's Data Request No. 28 identified his full-time caregiver, who is included in the Motion.

### **B. Verizon Refused to Acknowledge**

Verizon's expert witness, Dr. Carl Danner, failed to acknowledge these potential customers in his testimony even though he was aware, or should have been aware, of them based on discovery. Instead, Dr. Danner insisted on using the erroneous number of original households as the cost divisor, ignoring the time-consuming research performed by Petitioners on Verizon's behalf and provided to Verizon in their data request responses. Petitioners should not be punished by Verizon's obdurate behavior in failing to use the correct information that had already been provided by the Petitioners.

**C. Verizon Argues Inconsistently**

Verizon's use of the number of households is in direct contradiction to their previous arguments where they argued the number of petitioners was the cost divisor<sup>1</sup>. Verizon does not even take into account the generally accepted range for average number of lines per household (1.24 – 1.5). So we now have several competing cost divisors:

- 7: Number of households currently parties to this petition
- 12: Number argued by Verizon in MCI-Verizon merger settlement.
- 12: Number of customer households known to want phone service
- 15: Low end line count considering number of lines per household
- 18: High end line count considering number of lines per household
- 25: Number of current and prospective petitioners wanting phone service

Petitioners would like to note that the number 25, if the Motion is granted is still a low number. Not all of Petitioners inquiries about joining the petition have been answered. Other part time residents (not part of this motion) have indicated to me verbally that they would get phone service if it were not of the line extension fee, which will expire in five years. It's possible that the number 25 could still grow, but Petitioners are willing to accept the current count of 25 as the cost divisor for purposes of the hearing. A good approximation of the number of customers is highly relevant to this proceeding because it will drive the capacity of the line installed by Verizon, if the Petition is granted. The installation method proposed by Verizon is to plow the cable underground, obviously making it difficult to upgrade at some future date.

To quote Your Honor, when you over-ruled my objection to Verizon's proposed resumptive schedule: "In order for me to gather record for the Commission to make a decision on this case, I need facts in the record, ..."<sup>2</sup> Petitioners have taken this

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<sup>1</sup> In the Matter of the Joint Petition of Verizon Communications Inc., and MCI, Inc. for a Declaratory Order Disclaiming Jurisdiction Over or, in the Alternative, for Approval of, an Agreement and Plan of Merger - WUTC Docket No. UT-050814 paragraph 21

<sup>2</sup> Transcript from current Docket, Vol. II page 37 lines 14-17.

statement to heart and have made every possible attempt to provide unbiased facts in a timely manner in accordance with the spirit of those words. We now present some new relevant facts, albeit somewhat late in the process, but in good faith and request that they be given due consideration.

**D. New Discovery Not Necessary**

Petitioners submit that the only relevant issues, for the purpose of rebutting Verizon's cost argument (as was mentioned in the Motion), are:

- 1) Whether or not the proposed petitioners actually reside in the area covered by the proposed line extension.
- 2) Whether they really do want telephone service as Petitioner's claim in their Motion.

The first issue can be answered either by reference to Petitioner's Rebuttal Testimony Exhibit DBR-22 which gives property profiles including names and addresses for lots located off of Index-Galena Rd in the area in question or else Petitioners responses to Verizon Data Request Set 1 as enumerated above and attached to this filing. The second can be answered by copies of emails and signed statements, copies of which are attached hereto for twelve of the 14 proposed new petitioners to reinforce previous verbal commitments. The statements from the last two proposed new petitioners are currently being obtained and will be provided shortly.

The other issues mentioned by Verizon in their response to the Motion, e.g. whether or not the prospective petitioners have cell phones, is irrelevant for the purpose of determining an average cost per customer.

Verizon cites *Henderson v. Tyrell*, 80 Wn. App. 592, 625, 910 P.2d 522 (1996). In this case the appellant *Henderson* was aware of the “new” evidence for over a year and only raised it two weeks before the second trial. We have shown that Verizon was made aware of most the proposed petitioners in a timely manner but chose to ignore them. The balance of the group was provided to Verizon in good faith and as soon as practicable. The cited case is inapposite.

### **E. Impact to Cost**

Verizon contended in their testimony that the cost per customer was “well above the norm”<sup>3</sup>. Petitioner’s helpfully responded by finding Verizon more customers. Verizon now says that these potential customers mustn’t be mentioned, so that they can continue to assert that the cost per customer is “well above the norm.”

The reinforcement Verizon would need to add is all above ground on poles, except for the last few hundred feet at the very end of the existing grid, so it’s hard to imagine how the reinforcement cost could grow “substantially” in relation to the total cost of the line extension.

More importantly, what competent public utility would deliberately undersize a line extension to an area with a larger potential customer base? When the demand increases above 25 lines as it eventually will, what then? Will Verizon claim that no one told them there were other customers?

## **III. CONCLUSION**

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<sup>3</sup> Response Testimony of Dr. Carl Danner

For the foregoing reasons, the Motion to Add Petitioners should be granted. In the event it is denied, Petitioners should be allowed to argue the more accurate cost per customer data.

The hearing should not be postponed unless the Commission wishes for all parties to take a step back to consider a total solution for the entire North Fork area up to the road closure at about mile post 11,<sup>4</sup> an area that includes several communities and 50-100 residents.

DATED this 23<sup>rd</sup> day of March, 2006

By \_\_\_\_\_/Original Signed By/\_\_\_\_\_  
Douglas B. Rupp  
Lead Petitioner  
Email: [rupp@gnat.com](mailto:rupp@gnat.com)

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<sup>4</sup> Rebuttal testimony of Douglas Rupp page Rupp-13