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October 8, 2004

HAND DELIVERED

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

Re: WUTC v. Verizon Northwest Inc.
Docket No. UT-040788

Dear Ms. Washburn:

Enclosed please find the original and 15 copies of the Petition of Verizon Northwest Inc. for Commission Review of Interlocutory Ruling Compelling VZNW to Respond to Commission Staff Data Requests Pursuant to WAC 480-07-810 and 480-07-425.

If you should have any questions, please contact this office. Thank you.

Sincerely,

GRAHAM & DUNN PC

Nancy E. Dickerson
Assistant to Judith A. Endejan

Enclosures

cc: All Parties

m29664-542013.doc

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ORIGINAL

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. VERIZON NORTHWEST INC., Respondent.	Docket No. UT-040788 PETITION OF VERIZON NORTHWEST INC FOR COMMISSION REVIEW OF INTERLOCUTORY RULING COMPELLING VZNW TO RESPOND TO COMMISSION STAFF DATA REQUESTS PURSUANT TO WAC 480-07-810 AND 480-07-425

1. Verizon Northwest Inc. ("VZNW" or "the Company") petitions the Commission to review the attached Order No. 9 compelling VZNW to produce three types of documents in response to data requests propounded by the Commission Staff ("Staff") – documents that VZNW does not own and over which it has no control, which are sought by data requests that are not reasonably calculated to produce admissible evidence; namely (a) Minutes of the Board of Directors of Verizon Communications Inc. ("VCC"); (b) accounting journal entry documentation that includes non-VZNW information, and (c) documents relating to the sale of VCC assets, including the directory business, in the State of Hawaii.

BACKGROUND

2. Staff has propounded more than 400 data requests (not counting sub-parts) to VZNW in this case. VZNW has diligently responded to these requests on a timely basis. The Staff has taken issue with only three VZNW objections to producing certain documents. These are the subject of Staff's Motion to Compel, filed on September 16, 2004 (Attachment A). All three objections relate to documents or data that do not belong to VZNW and that do not relate to VZNW's Washington intrastate operations. Verizon filed its opposition to Staff's Motion to Compel on September 22, 2004 (Attachment B). An oral argument was held before A.L.J. Robert Wallace on September 23, 2004, at which Judge Wallace requested supplemental briefing. On September 28, 2004 Verizon responded to Judge Wallace's request (Attachment C). Public Counsel and Commission Staff filed replies on September 29, 2004 [1] (Attachment D).

3. On October 1, 2004 A.L.J. Wallace issued Order No. 9:

ARGUMENT

The Commission Should Review Order No. 9.

4. The presiding officer's discovery rulings are subject to review under WAC 480-07-810.[2] Under that rule the Commission may accept review of interim or interlocutory orders in adjudicative proceedings if it finds that:

5. (a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;
(b) a review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review or

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[1] At the September 23, 2004 hearing Verizon was first made aware that Public Counsel intended to participate in Staff's Motion to Compel Production of Staff Data Requests. Verizon objected then to Public Counsel's participation and objects to its continued participation now. Public Counsel has no standing to compel responses to questions it did not propound.

[2] WAC 480-07-425(1).

> (c) a review could save the Commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay in exercising review.[3]

6. Review is appropriate under subsections (b) and (c). More important, as explained herein, "some other factor is present" that warrants the exercise of review. That "other factor" is an erroneous interpretation of the boundaries of this Commission's jurisdiction to compel the production of documents that do not belong to the entity it regulates or documents that do not relate to the operations of that entity under controlling Washington law. In *Waste Management of Seattle, Inc. v. WUTC*, 123 Wn.2d 621, 869 P.2d 1034 (1994) (Attachment F) the Washington Supreme Court ruled that the **WUTC has no authority** to review the records of affiliated companies under its general authority to ensure that rates are just and reasonable, but can only examine the records concerning affiliated companies that are "contracts or arrangements" under the affiliated interest statutes. Order No. 9 misinterprets this binding precedent. Unless corrected, VZNW will continue to face discovery demands for records of its corporate parent, or other affiliates, and records that have no direct bearing on its Washington intrastate operations and that are not subject to examination under RCW Ch. 80.16, on Affiliated Interests. Order No. 9 could mandate such discovery, based upon an attenuated connection between VZNW and its parent simply due to an uphill revenue flow. Such an attenuated connection fails a test of logic and law. As the Ninth Circuit Judge Margaret McKeown observed in *City of Auburn v. Qwest*, 260 F.3d 1160, 1180 (9th Circ. 2001):

7.

> They [the cities] say stock ownership is linked to a company's financial well-being, which may affect its continued existence, or its ability to pay fees or other necessary costs, which may ultimately affect its use of the right-of-way. This argument has the flavor of the children's ditty, "Oh, the ankle bone connected to your leg bone, your leg bone connected to your thigh bone, your thigh bone connected to your hip bone . . .". This is simply

[3] WAC 480-07-810(2).

too tenuous a connection to the "management of rights of way."[4] (emphasis supplied)

8. The initial round of responsive testimony on the issue of revenue requirement will be due November 22, 2004, with a second round due on December 15, 2004. If Order No. 9 is allowed to stand, VZNW faces additional data requests seeking VCC's records that have no relevance to the subject of this case: VZNW's Washington intrastate operations. As the Declaration of Gregg Diamond demonstrates (Attachment E), Verizon has been asked a data request from Staff requesting information with respect to VCC's planned sale of its "Super Pages" Canada directory operations. VCC will not produce documents in connection with this international sale of directory operations that have no bearing on Washington State or any part of VZNW. The Company is considering all available legal options to prevent discovery of the VCC records at issue in Order No. 9 and other documents such as the Canadian sale documents.

9. Commission resolution of the extent to which VZNW can be ordered to produce its corporate parent's and affiliates' documents outside of the context of Washington's affiliated interest statute (RCW Ch. 80.16) is critical at this juncture.

10. In addition to its jurisdictional objection, VZNW objected to the disputed data requests on the ground that the information requested was not reasonably likely to lead to the discovery of admissible evidence and would be unduly burdensome and expensive for VZNW to produce. Logically, if VZNW undertakes the effort to produce the compelled information it will have to bear the undue burden and expense necessary to do so. As such, no post-hearing review could remedy that burden or expense. Furthermore, because the data produced could never be admitted into evidence in this proceeding, as there is no

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[4] While this case dealt with cities' over-regulation of rights-of-way, the logic and principle applies here, where Order No. 9 is based upon a series of a similar tenuous connections that go like this: VZNW is connected to VCC at the top because VZNW ultimately provides dividends to VCC, which in only an indirect way (as a holding company) "controls" VZNW. This tenuous connection does not justify unbridled intrusion into every corner of a multi-jurisdictional operation, which is the net result of Order No. 9.

demonstrable relevance, the Commission would never review the ruling compelling its production. Therefore, the only opportunity for a meaningful challenge to Order No. 9 is by full Commission review pursuant to this Motion.

11. Just last year, the Commission reversed the decision of an administrative law judge requiring AT&T Communications of the Pacific Northwest, Inc. ("AT&T") to respond to VZNW data requests seeking information as to AT&T's competitive harm, as alleged in AT&T's complaint. AT&T claimed such information was "not relevant". The Commission agreed with AT&T's definition of "relevancy" and therefore reversed the discovery ruling to prevent AT&T from the undue burden and unnecessary expense of complying with the production of this information. In the Fifth Supplemental Order in *AT&T Communications of the Pacific Northwest v. Northwest, Inc.,* Docket No. UT-020406, (February 21, 2003), the Commission demonstrated that discovery, indeed, could be narrowed on relevancy grounds. VZNW should be subject to the same standard of relevancy applied by the Commission in refusing to allow VZNW discovery in the AT&T Case where, as explained below, there is no relevancy to the issues in this case, irrespective of whether such issues were raised by VZNW or its opposition.[5]

Order No. 9 Erred as a Matter of Law in Concluding That the Commission had Jurisdiction Over Verizon Communications Inc.'s Documents.

12. While the ALJ acknowledges that VZNW does not own the requested documents and has no control over them, Order No. 9 nevertheless orders VZNW to produce them.

[5] Clearly, Order No. 9 did not find that VZNW witnesses raised the issue of "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" that would be proved or disproved by the existence of the Hawaii sales documents. The A.L.J. asked VZNW to address this point with respect to the Verizon witness' testimony in this proceeding. Verizon filed its Supplemental Response that established that Verizon's witnesses did not raise this issue. The A.L.J. must have agreed because Order No. 9 does not address this point. Because, in the AT&T case, the Commission would not find "relevancy" based on the theories of a party seeking to prove its theory of the case, in defending that case, so, too, here, the Commission should not broaden "relevancy" to allow the Commission Staff to pursue its attenuated theory of relevancy.

Thus, the Order either purports to compel VZNW to do something beyond its control, or it purports to assert the Commission's power over companies that are not subject to its jurisdiction. Order No. 9, if upheld, means that there are no limits to what a party can request in discovery about any activities of VCC, (VZNW's parent) or other Verizon companies, irrespective of the fact that the A.L.J. acknowledged that "the Commission does not regulate Verizon Corporation."[6] Order No. 9 reasons that the fact that VZNW may provide revenues upstream to its parent as dividends, constitutes an "arrangement" that justifies discovery into any activity of VCC, irrespective of any connection to Washington State activity.[7]

13. As explained below, Order No. 9 unlawfully expands this Commission's jurisdiction to allow this state regulatory commission unbridled authority to discover documents unrelated to the operation of the state local exchange company it regulates simply by virtue of a revenue producing relationship to the ultimate corporate parent.

14. As a threshold matter, Order No. 9 does not address the fact that the records requested do not belong to VZNW and are not subject to Commission examination under its general regulatory authority. RCW 80.04.070 confines that authority to the "books, papers and documents" of "public service companies." VZNW – not its corporate parent – falls within the definition of "public service companies" because VZNW owns those "facilities" used to provide telecommunications service in Washington.[8] Simply put, the Commission has only that authority granted to it by the legislature, *Edelman v. State ex. rel. Public Disclosure Com'n*, 68 P.2d 296 (2003). That authority does not extend to the financial

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[6] Order No. 9 ¶ 10

[7] According to Professor Vander Weide, any dividend contribution to Verizon Communications Inc. has not stemmed from Washington State operations, due to its negative earnings. (Ex. 3T, p. 10)

[8] See RCW 80.04.010.

records of a corporate parent that include its board of directors minutes, documents relating to the sale of VCC properties with no relation to Washington, or journal entries not associated with Washington intrastate operations or VZNW.[9]

15. Order No. 9 erroneously states that Verizon claims that all information about VZNW affiliates is beyond discovery,[10] contending that "Verizon would draw blinders around multi-jurisdictional activities or policies that affect or govern Northwest and that are integrally related to the intrastate operations."[11] This is an incorrect representation of Verizon's position, which is that this Commission has authority to examine multi-jurisdictional activities of its affiliates only to the extent allowed by RCW Ch. 80.16, as interpreted by the Washington Supreme Court in *Waste Management of Seattle, Inc. v. WUTC,* 123 Wn.2d 621, 869 P.2d 1034 (1994). There, the Supreme Court rejected the rationale upon which Order No. 9 is based. This rationale surmises that VZNW has an "arrangement" with Verizon Communications – a company the A.L.J. admits is beyond Commission jurisdiction – based upon an indirect dividend flow of revenue from VZNW to its affiliate parent.[12] The A.L.J. converts this "arrangement" into the equivalent of a management contract, even though no such document exists, to avoid the plain holding of *Waste Management*, which is that the WUTC's jurisdiction to compel affiliate records is constrained by RCW 81.16.030, which requires a **direct** agreement between affiliate companies, and not simply an indirect revenue-flowing situation.[13] The Washington Supreme Court said:

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[9] See Response of Verizon Motion to Compel, pp. 2-4.

[10] Order No. 9, ¶ 7.

[11] *Id.* ¶ 12.

[12] Order No. 9, ¶ 15.

[13] In addition, RCW 81.16.030 has its telecommunications counterpart in RCW 80.16.030.

16. [B]ecause the WUTC's finding that an indirect revenue flow is a transaction or arrangement violates the plain language of RCW 81.16.030, referring to "contracts or arrangements," we will accord it no weight.

17. 123 Wn.2d at 634. In that case, like here, WUTC Staff had asked for financial records of affiliated companies that were not in the nature of direct contracts (i.e., a balance sheet, income statement, pro forma income statement, and deferred income tax balance).[14] The Washington Supreme Court also rejected the WUTC's arguments, similar to those raised here, that access to the financial records of the affiliated companies was necessary in order to determine if there was a contract or arrangement. The Supreme Court said:

18.

> There is nothing in the records or the WUTC's arguments which lends support to the contention of the Staff that the financial records of the affiliated companies would have demonstrated whether there was a contract or arrangement, and that without these financial records, it was impossible for them to determine whether there was a contract or arrangement.

19. Similarly, here, with respect to the board of directors of Verizon Communications, Order No. 9 finds that Staff needs such minutes in order to determine whether there are decisions "affecting NW during the requested period."[15] Incredibly, Order No. 9 has no problem with allowing Staff to peruse a parent corporation minutes, even if there are no decisions affecting Northwest during the requested period. The decision notes that because the Company "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."[16] The harm comes from allowing unauthorized regulatory intrusion into VCC's matters.

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[14] The affiliates at issue, Washington Waste Systems, Inc. and Oregon Waste, were all subsidiaries of a holding company, Waste Management of North America, Inc., which in turn was a subsidiary of Waste Management, Inc.

[15] Order No. 9, ¶ 10.

[16] *Id.* ¶ 10.4. Basically, this argument questions the veracity of VZNW, when there is no evidence of lack of veracity in the discovery response activity to date, which VZNW has conducted honestly and in good faith.

20. VZNW is not discussed at the parent board meetings. It is a small part of a much greater business operation (less than 1%) that might be considered at a board of directors meeting which discusses business units at a consolidated level, including activities of Verizon Wireless, Verizon International Telecom, or Verizon Information Services.[17] In addition to dismissing the harm to VCC, the A.L.J. fails to address the fact that during oral argument, VZNW brought to the A.L.J.'s attention that the Staff had asked in a separate, targeted new data request for all corporate policies adopted by the corporation board applicable to VZNW. VZNW is working diligently to respond to this specific request. *See* Diamond Declaration. Thus, Staff has no need to examine the board minutes of Verizon Communications Inc. for the purposes of establishing overall policies that might flow down to VZNW. Given the fact that the Staff can obtain what it claims it needs from other existing data requests, that VZNW does not own or control the board minutes of its parent, and that such minutes do not directly relate to any contract or arrangement that could be examined under the affiliate interest statute, Order No. 9 erred in requiring their production.

21. Probably the greatest leap of law and logic, however, is Order No. 9's conclusion that Verizon must be compelled to provide information regarding the sale of the entire operations of VCC in the State of Hawaii ("Hawaii Assets") (including its directory business). Order No. 9 clearly does not find any "contract or arrangement" between the Hawaii Assets and the operations of Verizon in Washington State. Nonetheless, apparently based upon the same logic used to justify examination of the parent corporation's board of directors minutes, Order No. 9 concludes that these VCC records must be produced. As with the VCC Board minutes, the fact that VZNW (not Washington) provides a dividend to VCC is absolutely no justification for finding that the corporate holding parent must turn

[17] *See* Ex. NWH-5 to the direct testimony of Nancy Heuring for the Verizon Corporation organization chart.

over records of its operations in other states. Could the Commission Staff seek to review the results of operations for Verizon California because Verizon California is also owned by VCC ? Certainly not. So, too, the Hawaiian documents are not producible for Washington State rate cases, as a matter of law, under *Waste Management.*

22. Order No. 9 ignores the binding precedent of *Waste Management* on mere speculation that the Hawaii sale documents might have a bearing on directory imputation in Washington. Order No. 9 states:

> 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. (emphasis supplied)

Order No. 9, ¶ 27.

23. This last statement is simply factually wrong and is rebutted by the Declaration of Dale Chamberlain. He stated clearly that he knows how VCC valued the properties and such evaluation had no specific value associated with directory operations:

24.

> Specifically, I know that Verizon had no separate evaluation of, and determined no independent value for, the directory operations included in a Hawaii sale; such operations were part of the aggregate operations sold for a specific price to the purchaser.[18]

25. Therefore, despite the fact that Verizon has repeatedly, consistently, told Staff and the A.L.J. that what they are looking for does not exist, the fact of an entire asset sale in another state simply has no relevancy to the public policy issues associated with directory imputation in the Washington rate case.[19]

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[18] *See,* Declaration of Dale Chamberlain, Attachment C to Response of Verizon Northwest to Motion to Compel Production of Documents and/or Information. *See also,* Supplemental Response of Verizon Northwest Inc. and its attachments for a description of the Hawaii sale that demonstrates the complexity of the transaction and the sheer impossibility of segregating out an individual value associated with the $1.6 billion base purchase price, which was a total price.

[19] Order No. 9 also mischaracterizes Exhibit 70, maintaining that this shows a corporate policy of a "relationship" between the directory and local exchange operations (¶ 25). What "relationship" there is remains subject to full review under the affiliated interest statutes, which has been the subject of numerous Staff data requests. Exhibit No. 70 does not reflect any general corporate

26. Finally, Verizon has fully cooperated with Staff (and public counsel) with respect to providing information relating to relevant directory issues. It has responded to 41 Staff data requests (with numerous subparts) on directories and there has been no showing that access to the Hawaii sale documents is necessary to Staff's case.

27. The bottom line here is that Staff does not need this discovery to prove its theory, based upon corporate records over which this Commission has no jurisdiction and that factually do not prove what Order No 9 thinks it may be capable of proving. The Supplemental Declaration of Dale Chamberlain (Attachment G) demonstrates this in greater detail and also establishes the burdensomeness of going through the documents ordered to be produced.

28. Finally, with respect to the journal entries, Order No. 9, ¶ 18 erroneously concludes that "With Verizon's asserted restrictions, Staff cannot determine the magnitude of any adjustment or evaluate the allocation." These restrictions simply removed journal entries unrelated to VZNW. Contrary to Staff's argument that they cannot determine Washington's portion of VZNW expenses, the requested expense journal entries reflect the total VZNW amount from which the Washington portion could be determined. The schedules were provided in response to Staff Data Request No. 418. With respect to revenue journal entries, because revenues are typically booked on a PxQ basis for each state, revenues can be specifically identified per state, as with Washington. As the Declaration of Ms. Heuring states[20], the costs reflected in the journal entries are direct allocations or allocations limited

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policy with respect to the lawfulness or the policy ramifications of state commissions imputing directory revenues to local exchange companies in order to reduce their revenue requirement and, thereby, the rates charged for their regulated services. It merely discusses how local operating companies deal with regulatory issues associated with changing from a master publishing agreement to a fee for services contract in light of the changed competitive environment and FCC directory rules. *See* DR No. 444, which explains this further (Attached to Diamond Declaration).

[20] Attached to Verizon's Response to Motion to Compel.

to the entire VZNW company. There is no relevancy to a direct revenue or expense booked in states irrelevant to this case.

RELIEF REQUESTED

WHEREFORE, VZNW requests the following relief:

29. A. That the Commission accept review of the Order No. 9 and deny Staff's motion to compel VZNW to respond to the disputed requests; and

30. B. Such other and further relief as the Commission finds fair, just, reasonable and sufficient.

Respectfully submitted this 18th day of October, 2004.

GRAHAM & DUNN PC

By _____
Judith A. Endejan
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Email: jendejan@grahamdunn.com
Attorneys for Verizon Northwest Inc.

SERVICE DATE
OCT - 5 2004

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-040788
	)	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. ffitch, 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.

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[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

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[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* decision[5] forecloses the Commission from access to Corporation records. Again, we disagree with Verizon.

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[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.

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[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