BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of: Douglas and Jessica Rupp; et al., Petitioners, vs. Verizon Northwest Inc., Respondent.	DOCKET NO. UT-050778 **VERIZON'S OPPOSITION TO MOTION FOR LEAVE TO RESPOND**

INTRODUCTION

Verizon Northwest Inc. ("Verizon") submits this opposition to Petitioners' Motion for Leave to Respond. Although Verizon is reluctant to add to the paper that has already been filed on the underlying Motion to Add Petitioners, Petitioners' proposed "Response" is mistaken on a number of key points. It therefore does not materially add to the papers that have already been filed, and the Motion for Leave to Respond should be denied. Petitioners' proposed Response also goes deeply into the merits of this Petition, and Verizon is compelled to respond to certain of those points. In the interest of brevity, Verizon will address only the most egregious components of Petitioners' filing.

ARGUMENT

A. PETITIONERS' NEW RESPONSE DOES NOT CHANGE THE FACT THAT THIS AMENDMENT WOULD PREJUDICE VERIZON AND NOT BE IN THE PUBLIC INTEREST.

Petitioners argue that their untimely motion to add new Petitioners does not prejudice Verizon because some—but not all—of the proposed new Petitioners were mentioned in certain of Petitioners' responses to data requests. This argument is unavailing for at least four reasons:

First, the Petition in this case was very specific: It asked that Verizon be "ordered to supply service to the properties owned by Petitioners."[1] It did not ask for extension of service to other persons, much less these proposed new Petitioners. It was therefore entirely reasonable—indeed, it was required—for Verizon to prepare its case, including its discovery, its responsive testimony, and its cost estimates, on the basis of the relief requested. It would be unfair to expect Verizon to prepare its case, including alternative cost estimates, on the basis of some *other* possible relief that was *not* requested. It was not Verizon's task to anticipate that Petitioners would attempt to rewrite their Petition at this late date.

If Petitioners wanted to alter the relief they sought and to add new parties, the proper manner in which to do so was a motion to amend the Petition, not answers to data requests, as Petitioners recognized by filing their Motion to Add Petitioners.

Second, data request answers are not pleadings, they are not motions, they are not even evidence until entered into the record by the Commission.[2] It would be highly unreasonable to expect that the pleadings in this case should be deemed substantially altered *sub silentio* by portions of data request responses, such that Verizon should have prepared to address a new and different Petition, merely on the basis of guessing how Petitioners may seek to amend their Petition based on such responses.

Moreover, Petitioners concede that several of the proposed new Petitioners, including two of the new households, were not even mentioned in their data request responses. Motion for Leave to Respond and Response at 2. Thus, the level of clairvoyance in case preparation required of Verizon by Petitioners apparently would not be limited to the contents of data request responses, but would rather extend to the completely unknown as well. Petitioners offer no

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[1] Petition for Order to Extend Service Area of Respondent at 7.

[2] WAC 480-07-405(9).

explanation of how Verizon should have anticipated the information regarding these other persons in preparing its case.

Third, Petitioners contend that "it's hard to imagine" how the cost of extension could grow substantially as a result of adding these new proposed Petitioners. Motion for Leave to Respond at 5. At this point, it is unknown how much exactly costs will increase, because Verizon is still learning the locations of these newly proposed Petitioners and what unique circumstances they may present. Regardless of how much costs will increase, it is certain that they will increase, and only a revised estimate will be able to determine how much. For Petitioners to ask the Commission to force Verizon to build this line extension outside of its existing service area without an updated cost estimate is essentially equivalent to asking for a blank check. It is also not in the public interest because the Commission should know how much it would be asking ratepayers to pay for this extension.

With respect to costs and without regard for consistency, Petitioners accuse Verizon of "deliberately undersiz[ing]" the line extension. Putting aside the *ad hominem* character of this accusation (which Verizon disputes), Verizon's estimate of the cost was based on the relief requested by Petitioners themselves. Petitioners chose the form of the relief they requested, not Verizon. Moreover, neither Verizon nor the Commission have substantial evidence that this area will develop further; the evidence indicates the opposite is just as likely. The mountains of Washington State are full of ghost towns that are now entirely uninhabited due to changed economic circumstances, changed environmental laws, altered river course and/or road closures (such as that in effect on Index-Galena road itself at mile post 11). As alleged in the Petition itself, some of the Petitioners are elderly or are in poor health, which also indicates that the population may well decline rather than increase in the near future. Caution with regard to capacity in such a circumstance is prudent.

Fourth, Petitioners argue that discovery from these new persons is not necessary. Petitioners are wrong. As Verizon pointed out in its opposition, a number of Petitioners have

used satellite phones. The Commission specifically recognized in *In re the Matter of the Petition of Verizon Northwest, Inc.*, Docket No. UT-011439 ("*Taylor*"), that "communications alternatives" are relevant.[3] Indeed, the two factors that weighed most heavily in the Commission's decision to grant the line extension waiver to Verizon in that case were costs and the availability of alternative modes of communication.[4] Thus, it is entirely reasonable for Verizon to seek information about whether these proposed new Petitioners have had similar experiences with communication alternatives, such as satellite phones and VoIP technology.

Discovery would also be needed to explore whether these persons would actually sign up for service. In the emails attached to the Motion for Leave to Respond, Petitioner Rupp specifically informs a number of prospective new Petitioners that signing up for the Petition "won't obligate you." Such solicitations raise questions about whether these newly proposed Petitioners sincerely seek service, questions that can only be answered for purposes of this case through discovery.[5]

True commitment to service can be a particularly acute issue in expensive line extension cases. As Verizon pointed out in the *Taylor* case, it built the Pontiac Ridge extensions based on 44 applications for service, but soon after was only serving 37 lines.[6] Whether the new proposed Petitioners, many of whom appear to be merely part-time or seasonal visitors who reside full time in the Puget Sound area,[7] are serious about actually obtaining and paying for service is an

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[3] *In re the Matter of the Petition of Verizon Northwest, Inc.*, Docket No. UT-011439, Twelfth Supplemental Order, at 18 ¶ 67.

[4] *Id.*

[5] Petitioners assert that this question can be answered simply through the proposed new Petitioners' email responses or signed statements. Motion for Leave to Respond at 4. Even aside from the questions raised in the text, neither Verizon nor the Commission is obligated to accept such statements at face value without examination.

[6] *Taylor*, Twelfth Supplemental Order, at 11 ¶ 42.

[7] *See* Motion to Add Petitioners at 2 (mailing addresses for four of the five new households are Maple Valley, Bothell, Kenmore, and Kingston, respectively).

important issue in considering whether to force ratepayers to shoulder the burden of an expensive line extension.

B. PETITIONERS' PROPOSED RESPONSE DOES NOT ALTER THE FACT THAT EXCLUSION WOULD BE THE PROPER REMEDY.

Petitioners argue that the exclusionary rule under *Henderson v. Tyrall*, 80 Wn. App. 592, 910 P.2d 522 (1996), is inapplicable because Petitioners moved to add these new proposed Petitioners "as soon as practicable" (as opposed to the plaintiff in *Henderson*). Petitioners' reliance on their own data request responses defeats this argument. Certainly, Petitioners were aware of these persons and their alleged desires long before Verizon was, and long before the instant Motion to Add Petitioners was filed. Indeed, Petitioners were in a far *better* position to have knowledge of those facts than Verizon was. If any party should bear responsibility for the untimely raising of this, it is Petitioners, not Verizon.

C. PETITIONERS' DIVISOR ARGUMENT IS INCORRECT AND DOES NOT AFFECT THE PREJUDICE TO VERIZON OF THE MOTION TO ADD PETITIONERS.

Petitioners present an argument as to why the proper "divisor" in the cost calculations at issue here should be the number of adult persons, rather than the number of households or access lines. This argument goes to the merits of this Petition, not to the prejudice created by adding new Petitioners at this stage, and so therefore provides no basis for granting the Motion for Leave to Respond. Because Petitioners have decided to address this merits issue at length, however, Verizon is compelled to respond.

Petitioners cite no *legal authority* for the proposition that costs should be evaluated solely on the basis of adult persons living in the area; instead, they offer only a partial citation to a brief that Verizon filed in Docket No. 050814 ("*MCI Merger Docket*"). Although this is not the time for a full discussion of why Petitioners' position is incorrect, Verizon must set the record straight on certain of Petitioners' arguments, particularly since they rest entirely on allegations levied

about prior positions taken by Verizon. There are at least two reasons why Petitioners' citation to Verizon's brief in the merger case is incomplete and insufficient.

First, Petitioners' citation is incomplete and inaccurate because it overlooks that fact that, in the very same passage, Verizon describes the result in the *Taylor* decision. In the *Taylor* case, *both Staff and Verizon* agreed that the proper divisor was number of households.[8] Consistent with that approach, Verizon's brief in the *MCI Merger* docket presented the *Taylor* calculations on a per-household basis. It is simply wrong to state that Verizon has taken the position that Petitioners assert.[9]

Second, the principal point to be made regarding the cost-per-household calculations in the first place is as a comparison of the cost of this extension to other line extensions. If Petitioners wish to use "per adult" as the divisor, as opposed to "per household" or "per access line," they need to show that this is how other line extensions are calculated. If most or all line extension averages are calculated on the basis of "per household" or "per access line," Petitioners are comparing apples to oranges by using "per adult" as the standard.

CONCLUSION

Petitioners are wrong that their proposed new addition is not prejudicial to Verizon. Verizon was entitled to conduct its discovery, prepare its testimony, and provide its cost estimates on the basis of the relief that Petitioners requested, not on the basis of hypothetical alternative relief that Petitioners *might* have requested. Petitioners should not be permitted to substantially alter the ground rules of this Petition without relief for the unfair impact that has on

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[8] *See Taylor*, Twelfth Supplemental Order, at 6-7.

[9] There are other problems with Petitioners' reliance on this statement from the brief in *MCI Merger* docket. For example, the number of Petitioners used by Verizon in the *MCI Merger* docket appears to be little more than an error, particularly in light of the treatment of *Taylor* decision. Moreover, the Commission *rejected* Verizon's request to settle this docket as part of the *MCI Merger* docket. Thus, anything that Verizon said to the Commission regarding the proper treatment of Petitioners in this case was obviously not persuasive to the Commission, even if considered to be intentional on Verizon's part. At bottom, the question is not what Verizon may or may not have said in another docket; the real question here is what is the *right* method to apply here.

Verizon, either through an exclusion of this evidence or through a revised schedule. Petitioners' new Response therefore contributes nothing substantive to the decision on Petitioners' Motion to Add New Petitioners, and the Motion for Leave to Respond should be denied.

DATED this 27th day of March, 2006.

GRAHAM & DUNN PC

By _____
David C. Lundsgaard
WSBA# 25448
Email: dlundsgaard@grahamdunn.com

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 27, 2006, I transmitted true and correct copies of the foregoing document, **Verizon's Opposition to Motion for Leave to Respond**, via email and via U.S. Mail, first class, postage prepaid, to the following:

Douglas B. Rupp
P. O. Box 207
Index, WA 98256-0207
rupp@gnat.com

Carol Washburn
Executive Secretary
Washington Utilities and Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250
records@wutc.wa.gov

Sally G. Johnston
Sr. Assistant Attorney General
P. O. Box 40128
Olympia, WA 98504
sjohnston@wutc.wa.gov

Hon. Karen M. Caille
Administrative Law Judge
Washington Utilities and Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250
kcaille@wutc.wa.gov

Betsy DeMarco
Legal Assistant
Office of the Attorney General
P. O. Box 40128
Olympia,WA 98504
bdemarco@wutc.wa.gov

Signed this 27th day of March, 2006.

Connie Hays
Connie Hays
Secretary to David C. Lundsgaard