

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

In the Matter of the Petition of)	DOCKET UT-050778
)	
DOUGLAS AND JESSICA RUPP,)	
KATHIE DUNN AND CHRIS HALL,)	ORDER 05
MELINDA INMAN; VERLIN)	
JACOBS, ANTHONY WILLIAMS,)	
CHRISTINE AND SAMUEL INMAN,)	ORDER DENYING MOTION TO
SAM HAVERKEMP AND CHRIS)	ADD PETITIONERS, DENYING
PORTREY,)	PETITIONERS' MOTION FOR
)	LEAVE TO RESPOND
Petitioners,)	
)	
v.)	
)	
VERIZON NORTHWEST INC.,)	
)	
Respondent.)	
.....)	

1 *Synopsis: This order denies Petitioners' motion to add 14 new petitioners to this proceeding two weeks prior to the evidentiary hearing. Petitioners are directed to refile their rebuttal testimony without the references to the alleged new petitioners. In addition, this order denies Petitioners' motion for leave to respond to Verizon's opposition to motion to add petitioners.*

MEMORANDUM

2 **NATURE OF PROCEEDING.** Docket UT-050778 is a petition by persons in seven households near Index, Washington requesting the Commission to direct Verizon to expand its service territory to include petitioners' properties.

3 **APPEARANCES.** Petitioner Douglas Rupp represents himself and the petitioners. David C. Lundsgaard, Graham & Dunn, Seattle, Washington, represents Verizon Northwest, Inc. Sally Johnston, Senior Assistant Attorney General, represents the Commission's regulatory staff (Commission Staff or Staff).

4 **BACKGROUND.** On May 20, 2005, a group of property owners petitioned the Commission for an order extending the exchange area boundary of Verizon's exchange near Index, Washington, to include their properties. Petitioners currently do not have wireline telephone service. On June 13, 2005, Verizon answered the petition and moved to dismiss the petition.

5 The Commission convened a prehearing conference before Administrative Law Judge Karen Caillé (ALJ) on July 20, 2005. Among other matters, the Commission granted Petitioners motion to replace Petitioner Michelle Luchuga with Melinda Inman, and set a procedural schedule with an evidentiary hearing to be held on December 12-13, 2005.

6 Petitioners filed their prefiled testimony on October 12, 2005. On November 10, 2005, the Commission suspended the procedural schedule in this proceeding at the request of the parties pending the Commission's decision on a settlement agreement filed in Docket UT-050814, *In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger (Merger Docket)*. One of the terms of the settlement agreement in the *Merger Docket* could have resolved the petition in this proceeding. The Commission's decision in the *Merger Docket* rejected the settlement term for this petition. Subsequently, the parties in this proceeding requested that this docket be reactivated, and a procedural schedule be reestablished.

7 On January 31, 2006, the Commission convened a prehearing conference for purposes of reestablishing a procedural schedule in this docket. The new schedule called for Verizon to file responsive testimony on March 1, 2006, for Petitioners to file rebuttal testimony on March 17, 2006, and for the evidentiary hearing to be held April 3-4, 2006. The Commission granted Petitioners' motion to remove Robert Jacobs as a petitioner in this proceeding.

8 On February 24, 2006, the Commission entered a Protective Order in this proceeding at the request of Petitioners. On March 1, 2006, Verizon filed response testimony. On March 16, 2006, the Commission granted Petitioners' motion for extension of time to file the rebuttal testimony of one expert witness from March 17, 2006, to March 21, 2006. Petitioners filed all other rebuttal testimony on March 17, 2006.

9 **MOTION TO ADD PETITIONERS.** On March 20, 2006, Petitioners filed a motion to add 14 new petitioners to this proceeding. On March 20, 2006, the Commission issued a notice requesting responses to the motion by March 23, 2006. On March 23, 2006, Verizon and Commission Staff filed responses to the motion to add petitioners. On March 24, 2006, Petitioners filed a motion for leave to respond and attached a proposed response. On March 27, 2006, Verizon filed a pleading in opposition to Petitioners' motion for leave to respond. On March 28, 2006, Petitioners filed a response to Verizon's opposition to Petitioners' motion for leave to respond.

10 Petitioners move the addition of fourteen residents as petitioners to this proceeding. In support of the motion, Petitioners only state that they "have been influenced by Respondent's argument that the cost of the line extensions on a per customer basis is well above the norm."¹ Petitioners provide no other explanation for why the motion was made at such a late date, or why they could not have accomplished this earlier.

11 Verizon responds that "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."² Verizon states that its extension cost estimates are based on the existing set of Petitioners, and adding the proposed new petitioners would increase the cost, perhaps substantially.³ Verizon references the prefiled testimony of Mr. Keith Binney, who asserts that the existing facilities in Index were barely large enough to serve the existing group of Petitioners, and that this proposed extension would exhaust virtually all excess capacity on the existing cable route.⁴ Verizon also states that the testimony of its expert, Dr. Carl Danner, would be unfairly compromised by the proposed additional petitioners, because both the cost estimate

¹ Motion to Add Petitioners, p. 1.

² Verizon's Response, p.1.

³ *Id.* p. 2.

⁴ *Id.*, K. Binney Testimony, p. 9, ll. 9-15.

provided by Verizon and the number of proposed connections would now be inapplicable.⁵

12 Verizon contends that “[i]f this motion is granted, Verizon will be forced to litigate this docket against the 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.”⁶ Verizon states that “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.”⁷

13 Verizon requests that, in the event the motion to add petitioners is denied, Petitioners be precluded from relying on these alleged new service requesters in their rebuttal testimony at the hearing.⁸ Verizon states that Petitioners’ rebuttal testimony, filed one business day before this motion, discusses at length the impact of these proposed new petitioners on the cost-per-customer calculations in this case.⁹ Verizon argues that 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 a part of this docket, and that Verizon has not had the opportunity to address.¹⁰

14 Commission Staff takes no position on Petitioners’ motion, in light of Commission Staff’s limited role in this case. Commission Staff adds that “as a general proposition, Staff is opposed to parties to Commission proceedings substantially revising their testimony within two weeks of the scheduled hearing.”¹¹

15 **DISCUSSION AND DECISION.** Petitioners’ motion to add fourteen new petitioners two weeks before the date of the evidentiary hearing is untimely and must be denied. Petitioners have failed to provide any explanation as to why they have waited until now to move for the addition of fourteen residents as petitioners. Contrary to Petitioners’ assertion that their motion was prompted by Respondent’s

⁵ *Id.*

⁶ *Id.* p. 3.

⁷ *Id.* p. 2.

⁸ *Id.*, p. 3.

⁹ *Id.*, p. 3-4.

¹⁰ *Id.*, p. 3.

¹¹ Commission Staff’s Response, p.1.

testimony on the cost of line extensions on a per customer basis, Petitioners have known for nine months that cost recovery from Petitioners would be an issue, as reflected in Verizon's June 13, 2005, Motion to Dismiss Petition:

Requiring Verizon to provide service to Petitioners would be extremely costly, by Verizon's ballpark estimate exceeding \$200,000. Verizon would never recover the costs of providing service to the Petitioners out of direct revenues from said Petitioners and would also have to incur considerable costs in order to maintain service to such remote customers.¹²

16 Moreover, even liberally construing Petitioners' motion with a view to effect justice among the parties under WAC 480-07-395(4) requires denial of Petitioners' motion. Granting Petitioners' motion to add fourteen new petitioners at this late date would affect the substantial rights of Verizon. Verizon has prepared its cost estimates and its case based on the original Petitioners in this proceeding. It appears from Mr. Binney's testimony that Verizon would have to conduct a new engineering study to increase the existing facilities in order to provide service to the proposed additional petitioners. Nothing in Petitioners' opening testimony establishes the existence of these additional persons, whether they actually want service, or whether they would be willing to pay for it, if it were available. Discovery would be necessary to find and verify information necessary to the decision. Thus, to avoid prejudice to Verizon, Petitioners are precluded from relying on these alleged new service requesters in their rebuttal testimony or at the hearing of this matter. References to the alleged new service requesters must be stricken from Petitioners' rebuttal testimony, and the rebuttal testimony refiled by March 31, 2006.

17 In addition, Petitioners' Motion for Leave to Respond to the response filed by Verizon is denied. The Commission did not direct or invite a reply to the responses filed by Verizon and Commission Staff. *WAC 480-07-370(1)(d)(iii)*. A party may not file a reply without authorization from the commission, upon showing of cause." *WAC 480-07-370(1)(d)(i)*. Petitioners' motion fails to address whether Verizon's response raises new material requiring a response, or state other reasons why a reply is necessary. *WAC 480-07-370(1)(d)(ii)*.

¹² Verizon's Motion to Dismiss Petition, p. 2.

18 The parties in this proceeding were successful in reaching agreement in earlier settlement negotiations, even though the Commission ultimately did not accept the terms of the settlement agreement. The parties are encouraged to discuss whether they can reach resolution of the issues in this proceeding.

Dated at Olympia, Washington, and effective March 29, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. 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.