[Service Date October 14, 2004]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-040788
	)	ORDER NO. 10
Complainant,	)	
v.	)	
VERIZON NORTHWEST INC.,	)	ORDER COMPELLING PRODUCTION
Respondent.	)	

1 ***Synopsis:*** *This order grants a motion filed by Public Counsel, AARP, and WeBTEC to compel production of certain documents. This order requires production of all requested material that Verizon has not yet agreed to produce.*

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. Public Counsel, AARP, and WeBTEC on Sept. 30, 2004, filed a joint motion to compel production of certain documents in conjunction with the Staff investigation of the Company regarding the proposed rate increase. Verizon answered on October 8, 2004, and argument was held on the dispute on October 12, 2004, before Administrative Law Judge C. Robert Wallis. This order confirms a ruling from the bench that Verizon must produce the requested information.

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, also representing AARP and

WeBTEC on the motion; and Donald T. Trotter, Assistant Attorney General, Olympia, WA, representing Commission Staff.

4 **Summary.** Movants ask an order compelling production of several requested types of information. In the order argued, these are: DR-156, asking carve-out information relating to Directory financial performance related to Washington intrastate operations; DR-108, asking disaggregated income statements for Directory company affiliates and subsidiaries that earn or have expenses related to Washington intrastate operations; and DR-157, which asks the Company to provide journal entries and work papers related to an accounting change for revenue recognition associated with Verizon's directory company.[1] This order grants the motion, in full.

A. DR-157, Washington Directory results of operations.

5 Public Counsel Data Request No. 157 asked Verizon to "carve out" estimates of directory revenues and expenses associated with directory publishing in Washington. Verizon responded that it did not maintain those records, that preparing the requested information would take "several weeks," and that because the records do not exist it is not obligated to provide them.

6 Verizon's third response is directly counter to the Commission's current rule WAC 480-07-400(1)(c)(iii), which makes it clear that a party may seek responses that include, but are not limited to,

> documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy,

[1] DR-155 and DRs-160 and –162 appear to be resolved with the Company's commitment to provide information. In addition, we infer from discussions on the record that the Company has agreed to provide a full and complete response to DR-157.

> position, or a document, or the admission of a fact asserted by the requesting party.

7 Verizon is wrong in its assumption about its rights in discovery. Its failure to possess the information is not an excuse for failure to produce it. It may object to such requests when

> the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.[2]

8 Verizon contends in response to the motion to compel that producing the requested information would be burdensome, taking "several weeks" to complete. This response hardly rises above a bare allegation of burden, and offers no objective means to quantify the burden so as to compare it with the party's resources or with need for the information. We find that the information is needed for purposes of the proceeding in order for relevant and potentially significant issues to be aired and that Verizon has adequate resources to complete the necessary tasks.

B. DR-108, disaggregated income statements, by entity.

9 Data Request No. 108 asks Verizon to provide a "further breakdown" of the Company's "Information Services" segment to show information for the Directory business. In this request, Public counsel seeks a breakdown of Directory revenues and expenses by business entity, based on Public Counsel's understanding that more than one business entity within the corporate family have responsibility for pieces of the business.

10 This information also appears to be of potential relevance to providing a complete picture of the business in this proceeding and the Company is directed to respond.

C. DR-157, Journal entries and supporting work papers relating to directory publishing.

11 The Company changed its method of recording Directory revenues and expenses from a cash basis to an accrual basis, to recognize the periodicity of directory income and expenses. In so doing, the corporation took a one-time charge of approximately $1.5 billion. This data request calls for journal entries and related work papers regarding any relevant change in Directory accounting practices since January, 2000.

12 The Company has responded with summary data, without work papers. There was some confusion at the time of argument as to whether it had, in fact, produced all information available in response, or whether it had not. Verizon appeared willing to provide further information.

13 To be very clear on the point, we see no basis on which Verizon may refuse to provide the information and we therefore conclude that Verizon must produce the requested documents.

D. General observations.

14 We noted on the record of the argument that discovery in a general rate case has some aspects that are substantially different from discovery in a civil proceeding. While practices before the Commission are based in part on civil litigation, the

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[2] WAC 480-07-400(4).

unique demands of the process have demanded, and produced, some unique aspects of discovery practice.

15 One central difference from civil litigation is that Verizon has come to the Commission voluntarily to seek an increase in its rates and charges, and under pertinent law it therefore bears the burden of proving its need for the requested increase. In typical rate-related litigation before the Commission, the Company has virtually all of the information necessary for a decision, and other parties have relatively little. The Commission cannot allow an individual company's accounting practices or corporate structure limit its access to the information necessary to decide the question, and consequently the Commission has for years operated under rules that require parties, especially companies, to respond to discovery requests that ask them to do something with data in their possession. This is a normal facet of rate-related litigation.

16 A second aspect of rate litigation is its speed. The Commission resolves issues worth millions of dollars in a time frame that is astonishing when compared with civil litigation. To make the system work, it is essential that the company, the holder of most of the data, must respond quickly to requests for information and it is also understandable – given the disparity in information available to the parties at the outset of a proceeding – that there will be a large volume of requests. Some proceedings have produced literally thousands of requests, not to denigrate the estimates of 600 requests to Verizon in this proceeding.

17 Especially with a company that has not recently engaged in full rate case litigation, it is understandable that Verizon might feel overwhelmed with the volume and the nature of the activity required. However, it is still Verizon's responsibility to obtain and provide the information that is needed in a timely and cooperatively way. Verizon has considerable resources, and we are certain that it can obtain the assistance that it needs to manage its responsibility in responding to discovery.

18 In addition, Verizon may pursue means to affect discovery burdens. Under WAC 480-07-405(4), a party may seek a limitation on the number of data requests. It has not done so. Based on the descriptions of discovery challenges that have been presented of record, it appears that Verizon's burden is exacerbated by the recycling of requests; it will make an objection or partial response, then face a supplemental response, then offer something, then discover it is not what the requestor sought, and then perhaps to litigate its obligation to provide information through a motion to compel. Verizon might also ask that other parties coordinate requests, if requests are repeated.

19 It seems apparent that data requests are not always clear. A case in point is DR-108, whose ultimate goal is frankly not apparent from its supplemental request to "provide a further breakdown." Nonetheless, Verizon does not appear to be complying consistently with WAC 480-405(5), which requires the responding party to seek clarification. Doing so can reduce the number of blind alleys that add to work for Verizon as well as other parties.

20 On the record available to us it is not clear that Verizon is acting in bad faith. It is possible, however, that Verizon is choosing to provide the minimum data necessary to respond, that it is failing to seek clarity, that it is choosing to litigate points of principle rather than provide information (as is its right), and that its discovery response resources are limited. If it appears that there is a pattern of reluctance to respond shown in response to future inquiries, we will want to consider whether rules are violated and whether sanctions might provide incentives to acquire the resources and to comply fully with rules that support Verizon's ultimate goal, a speedy process that allows the Commission to make a knowledgable decision.

21 We suspect that the principal flurry of discovery activity is nearly over. However, we ask all parties to be conscious of the need for good-faith efforts to

comply with the rules—and even with the spirit of those rules as well as the letter—to expedite the process and minimize the burdens on all parties.

O R D E R

22 The motion of Public Counsel, AARP, and WeBTEC to compel Verizon to produce certain documents is granted, as to those elements that were not withdrawn from consideration.

23 In light of the need for speedy resolution of discovery issues, we limit the time for petitions for interlocutory review to six days following service of the order, provided that electronic filings will be considered timely if paper copies are delivered before noon of the following business day.

24 **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 12th day of October, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge