[Service Date October 15, 2004]

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-040788
Complainant,	)	ORDER NO. 11
v.	)	
VERIZON NORTHWEST INC.,	)	ORDER DENYING REQUEST FOR INTERIM RATES; REJECTING RESPONSE TO BENCH REQUEST
Respondent.	)	
. . . . .	)	

1 ***SYNOPSIS****: In this order, the Commission denies Verizon's request for interim rates, ruling that it did not sufficiently support its contention that it was entitled to interim rates under prior Commission orders or under alternative theories argued for relief. The Commission grants a motion by Commission Staff to keep from evidence Verizon's response to Bench Request No. 5. Chairwoman Marilyn Showalter dissents by separate opinion.*

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I. PROCEDURAL BACKGROUND

2 Docket No. UT-040788 relates to filings on April 30, 2004, by Verizon Northwest, Inc. ("Verizon NW" or "the Company") seeking interim and general increases in its rates and charges. Verizon seeks interim rates in the amount of $29.7 million on an annual basis.

3 Also on April 30, 2004, Verizon filed materials that it contended would support an annual increase in its rates of $240 million per year, and it requested that the Commission define the Company's revenue requirement before Verizon filed tariffs to produce that revenue. The Commission denied the request, and Verizon filed proposed tariffs on August 23, 2004, by which it proposes to increase its "permanent" rates and charges for regulated Washington intrastate services by approximately $109 million. The Commission has established a schedule for the review of that filing that involves hearings to be held in March, 2005.

4 Parties active in the interim proceeding moved on June 9, 2004, to dismiss Verizon's request for interim rates on the basis that the Company's filed materials in support of its interim request failed to demonstrate a need for interim relief, largely on the basis that Verizon NW faced no emergency requiring relief under prior precedent. Verizon answered. The Commission on July 2, 2004, entered Order No. 05, denying the motion. The Commission ruled that it would consider the situation of the Washington intrastate jurisdictional operations, not merely that of Verizon NW, and that the Company's case contained allegations which, if found true at hearing, could support a decision that emergency, unfairness, or hardship required the relief sought. The Commission allowed the matter to proceed to hearing.

5 This order considers only the Company's request for interim rates. It is heard on a schedule agreed by the parties at a prehearing conference on May 24, 2004, and accepted for the Commission in Order No. 03 in this docket. Pursuant to the order, the Commission held hearings at Olympia, Washington on August 10, 11, and 12, 2004, before Chairwoman Marilyn Showalter, Commissioners Richard Hemstad and Patrick Oshie, and Administrative Law Judge (ALJ) C. Robert Wallis. The Commission received testimony from members of the public at a hearing held in Everett, Washington on August 17, 2004, before Commissioner Hemstad and ALJ Wallis. The Commission received the parties' simultaneous briefs on August 27, 2004.

6 Parties who participated in the interim portion of the hearing, and their representatives, are the following: Verizon Northwest appeared by Judith Endejan, Graham & Dunn, Seattle, Washington and John T. Parker, attorney, Verizon Northwest, Austin, Texas; Washington Electronic Business and Telecommunications Coalition (WeBTEC) appeared by Arthur A. Butler, Ater Wynne LLP, Seattle; the Department of Defense appeared by Steven Melnikoff, attorney, Washington, D. C.; Citizens Utility Alliance appeared by John T. O'Rourke, Director, Spokane, Washington; Public Counsel appeared by Simon ffitch, assistant attorney general, Seattle; and the Commission Staff appeared by Donald T. Trotter and Lisa Watson, assistant attorneys general, Olympia.

7 The parties presented the following witnesses: Verizon presented Dr. James H. Vander Weide, Nancy Heuring, and Steve Banta; Public Counsel, AARP, and WeBTEC presented Charles King; and Commission Staff presented Kathy Folsom, Paula Strain, and Tim Zawislak. The Commission received briefs from Verizon, Commission Staff, The Department of Defense,[1] and WeBTEC; in

[1] The DOD brief expressed support for the positions of Staff, Public Counsel, and AARP, except on the issue of rate design.

addition, it received a joint brief from Public Counsel and AARP, in which WeBTEC joined except as to issues of rate design.[2]

8 **Summary.** The Commission denies Verizon's request for interim rates, finding that the company is not experiencing circumstances qualifying it for that extraordinary step. The Commission grants a Commission Staff motion to strike Verizon's response to Bench Request No. 5, which Verizon did not oppose.

II. DISCUSSION

9 Verizon Northwest is a subsidiary of Verizon Corporation. The latter was created in the merger of General Telephone and Electronics (GTE) with Bell Atlantic, one of the regional Bell operating companies that itself was created through divestiture by AT&T of its operating companies.[3] Verizon Northwest, previously known as General Telephone of the Northwest (GTE-NW) has served portions of Washington State for many years.

10 Verizon's most recent fully-prosecuted general rate proceeding, Cause No. U-81-61, was decided in 1982 in the 2nd Supplemental Order. Its current authorized overall rate of return, 9.76%, and its capital structure, were set on December 21, 1994, in Docket No. UT-931591.[4] Since that time, many changes have occurred in the regulatory structure for telecommunications, in the technology of

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[2] For convenience, we will refer to the Public Counsel-AARP-WeBTEC brief as that of Public Counsel, while acknowledging the contribution of the others in its preparation.
[3] The Commission approved the merger in *Application of GTE Corp. & Bell Atlantic Corp.*, Docket No. UT-981367 et al., Fourth Supplemental Order, Dec. 16, 1999.
[4] *In re the Petition of GTE Northwest Incorporated,* Docket No. UT-931591, Third Supplemental Order (December 21, 1994). That docket was not a general rate proceeding, but was a petition by GTE Northwest, Inc., for a review of its rate of return. The petition was specifically authorized in the Second Supplemental Order in Docket No. UT-910499, which approved a settlement agreement containing the provision.

telecommunications, and in the Company's rates as a result of decisions in other proceedings.[5]

11 Among other things, deregulation, the demands of a competitive environment, and regulatory changes in the telecommunications industry have led to the abandonment of prior means of sharing revenues and expenses between interstate and intrastate jurisdictions. Where formerly, interstate operations contributed revenues to share costs with local exchange companies through a separations process, now the costs of carrying long distance traffic are returned to local exchange companies through a federally-mandated line charge paid by local customers and through access charges paid by long distance carriers to the local exchange companies for originating or terminating calls on the LEC network.

12 In Docket No. UT-981367 et al., Fourth Supplemental Order, the Parties agreed as a condition of the merger of General Telephone and Bell Atlantic that Verizon NW would reduce its rates, including its access charges. The Commission approved the merger, with that condition.

13 Then, in Docket No. UT-020406, AT&T alleged that Verizon's access charges for origination and termination of AT&T's intrastate long distance traffic were discriminatory. The Commission agreed, finding that certain of Verizon's access

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[5] For purposes of the interim proceeding, we will merely acknowledge that a number of such factors exist, and will focus on one – a rate reduction that the Commission ordered – that the parties recognize as a particular concern in this docket. Others include competitive pressures on wireline rates; Verizon's parent's decision to limit its directory subsidiary to payment of a line listing charge for Verizon NW's customers; migration of Verizon customers to toll packages that are provisioned by Verizon's affiliate, Verizon LD; federal expectations as to the allocations of costs and revenues for services provided over common facilities; Verizon's depreciation schedules; and development of portions of Verizon NW's Washington territory and resulting demands for capital investment; and Verizon's use of a one-time accounting charge which, Verizon contends, reduced its responsibility for directory revenues. During this period telecommunications was a declining-cost industry thanks to technological advances and increased efficiencies.

charges illegally discriminated against interexchange carriers. On August 12, 2003, the Commission entered its 11th Supplemental Order directing that the charges be reduced. Verizon calculates the direct reduced gross revenue effect of the order to be $29.7 million,[6] which is the exact amount of Verizon's request for interim relief.

14 The Commission's final order in the AT&T complaint docket acknowledged the parties' widely differing estimates in that docket of Verizon NW earnings, Verizon's concern about its earnings, and the efforts Verizon made in determining its income and the revenue effects if the complaint were sustained. The Commission also acknowledged the potential significant effect of the access charge reduction, and it delayed the effect of the order to allow Verizon to seek a compensating rate increase. Verizon did not file for an increase in rates within the period allowed; it did not seek alternative remedies such as establishment of a deferral account; it did not ask an extension of time for it to make a filing; and it did not seek reconsideration of the period that the Commission established. Instead, it filed for judicial review of the Commission order and sought a judicial stay of the order, pending the completion of judicial review.[7]

15 On April 30, 2004, Verizon filed tariffs seeking an interim rate increase pending resolution of a general rate increase to be implemented through tariffs that Verizon proposed to file at a later time. The Commission promptly convened a prehearing conference, setting a schedule for the interim proceeding and for determination of certain procedural questions associated with Verizon's proposed general rate case filing.

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[6] The reduced charges also reduced the costs of Verizon LD's operations in Verizon NW's territory.

[7] The petition for stay was denied by the superior court, the appellate court Commissioner, the appellate court, and the Supreme Court Commissioner, and the Supreme Court.

16 The Commission convened evidentiary hearings on August 10, 11, and 12, 2004, to hear the parties' presentations on the issues of the interim rate request. The Commission also convened a hearing in Everett, Washington, on August 17, 2004, where it received testimony from 19 members of the public. The Commission received parties' briefs on August 27, 2004.

A. Framing the issues

17 The issue in this phase of the docket is easily framed. Has the Company established that the Commission should take the unusual – extraordinary – step of granting interim rate relief at the expense of ratepayers, until concluding a general rate proceeding in which the Company's operations will be thoroughly analyzed and its proper level of overall rates determined? The question is more easily framed, however, than it is answered.

18 Commission Staff and the other parties opposing interim relief cite instances in which the Commission has granted such rate relief after a review of contested positions and presentations. They point to the Commission's order in a proceeding involving Pacific Northwest Bell[8], which set out several factors for consideration in evaluating such requests, and they contend that the Commission should deny Verizon's request.

19 In contrast, Verizon argues that it is entitled to interim relief. First, it says that its intrastate jurisdictional operations meet the tests for relief that have been applied in prior orders. Moreover, it argues that the particular circumstances of the Commission's order in the access charge complaint decision entitle it to relief (sometimes called "rebalancing") in the form of a rate increase offsetting the decrease resulting from the Commission's determination in that order that Verizon's rates violated Washington State statutes and required reduction.

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[8] *WUTC v. Pacific N.W. Bell Tel. Co.*, Cause No. U-72-30 tr, Second Supplemental Order (October 10, 1972).

20 It is fair to say that the Commission has never before faced the exact questions that arise in the context of this proceeding. It is unique in many respects, but principally two regards—first, it is a request for relief to the Washington intrastate operations of a regulated telephone company doing regulated and unregulated business in several markets, when the regulated intrastate operations are a small portion of the total operation. Second, the Company reports a huge disparity in its results of its operations in different regulatory jurisdictions. It argues that it is losing money on its intrastate Washington business, but it reports earnings of more than 30% on its interstate operations in Washington. Neither the Company as a whole nor the overall Washington operations of the Company are in an emergency financial situation. In Order No. 05, the Commission determined that it would not exclusively measure Verizon's need based on the health of Verizon Northwest, but would also consider the circumstances of the Washington intrastate jurisdictional operations. That is the basis on which we proceed.

B. Legal and Policy Issues

1. What are the proper factors for interim rate relief?

21 The Commission has broad powers to award interim relief "when it deems it justified."[9] Over the past three-plus decades, the Commission has responded in 20 orders to requests for interim rate relief.[10] The Commission identified several

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[9] *Puget Sound Navigation Co. v. Department of Transportation*, 33 Wn.2d 448, 482, 206 P.2d 456 (1949)

[10] *WUTC v. Pacific N.W. Bell Tel. Co.,* Cause No. U-72-30 tr, Second Supplemental Order (October 10, 1972). After the *PNB Order*: *WUTC v. Puget Sound Power & Light Co.,* Cause No. U-73-57 (Second Supplemental Order)(1974); *WUTC v. Cascade Natural Gas Co.,* Cause No. U-74-20 (Second Supplemental Order)(1974); *WUTC v. Cascade Natural Gas Co.,* Cause No. U-74-20 (Second Supplemental Order)(1974); *WUTC v. Pacific Northwest Bell Tel. Co.,* Cause No. U-75-40 (11 PUR 4th 166)(1975); WUTC *v. Washington Water Power Co.,* Cause No. U-77-53 (Second Supplemental Order)(1977); *In re Puget Sound Power and Light Co.,* Cause No. U-79-73 (Order) (1979); *WUTC v. Puget Sound Power & Light Co.,* Cause No. U-80-10 (Second Supplemental

factors to consider when granting interim relief in a 1972 order, *WUTC v. Pacific Northwest Bell.*[11]

22 Most subsequent decisions discuss the "PNB factors" when considering whether to award interim relief. As the Commission has pointed out in recent orders,[12] these factors are neither a formula for interim relief, nor are they the only factors that the Commission may properly consider in its decision.

23 The parties agree in principle that the *PNB* factors continue to represent a "reasonable and balanced approach to the issue of interim rate relief."[13] They disagree on whether Verizon has presented evidence that supports the grant of interim relief.

24 We acknowledge that the PNB factors are not standards and that the Commission should remain open to consider unique circumstances or evolution in the factors. At the same time, we agree with Public Counsel that regulatory predictability is of value to regulated industries and their stakeholders and that consistency in this area allows companies to evaluate their need and structure

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Order)(1980); *WUTC v. Washington Water Power Co.,* Cause No. U-80-13 (Second Supplemental Order)(1980); *WUTC v. Washington Natural Gas Co.,* Cause No. U-80-111 (Second Supplemental Order)(1981); *WUTC v. Washington Water Power Co.,* Cause No. U-83-26 (Fourth Supplemental Order)(1983); *WUTC v. Skamania County Sanitary Service,* Cause No. TG-2108 (First Supplemental Order)(1987); *WUTC v. Richardson Water Cos.,* Docket No. U-88-2294-T (Second Supplemental Order)(1988); *WUTC v. South Bainbridge Water System, Inc.,* Docket Nos. U-87-1355-T and U-83-50 (Second Supplemental Order)(1988); *WUTC v. Ludlow Utilities Co.,* Cause No. U-87-1550-T (Second Supplemental Order) (1988); *WUTC v. Alderton-McMillin Water Supply, Inc.,* Docket No. UW-911041 (First Supplemental Order)(1992); *WUTC v. Puget Power & Light Co.,* Cause Nos. UE-920433, UE-920499, UE-921262 (Fifteenth Supplemental Order)(1993); *WUTC v. Washington Natural Gas Co.,* Docket No. UG-950278 (Third Supplemental Order)(1995); *In re Avista Corp.,* Cause No. UE-010395 (Sixth Supplemental Order)(2001); *WUTC v. Puget Sound Energy, Inc.,* Cause No. UE-011163 (Sixth Supplemental Order) (2001); *WUTC v. Olympic Pipe Line Co.,* Cause No. TO-011472 (Third Supplemental Order)(2002).

[11] *WUTC v. Pacific Northwest Bell Telephone Company*, Cause No. U-72-30tr, Second Supplemental Order (1972).

[12] *See, Order No. 05* in this docket, at pp. 5-6, paragraph 13.

[13] Public Counsel brief, page 2, paragraph 2.

their requests for relief with the knowledge of the Commission approach to evaluating their interim requests. We will discuss the factors, and their significance to this docket. The parties' briefing outline provides the structure to discuss other arguments, as well.

2. Order No. 05

25 Order No. 05 denied a motion for summary determination by Commission Staff and others seeking a decision that Verizon's request for interim rate relief failed to state a sufficient case for the requested relief. The Commission viewed the allegations in the light most favorable to Verizon and ruled that those allegations, if proved true at hearing, could support a grant of interim rate relief.

The parties have differing interpretations of the order and its language. Verizon identifies passages in the order in which the Commission determined to consider the Company's intrastate jurisdictional operations when weighing its request. It argues that the order foreclosed reference to matters outside the intrastate operations of the company and that we committed to consider the intrastate operations exclusively as though it were a stand-alone company. It says:[14]

> In Order No. 5, the Commission realistically observed: There is an increasing trend of utility mergers, and intrastate operations in some instances are becoming relatively smaller portions of companies' overall business. We must recognize the realities of today's regulated businesses when examining need for an interim rate increase. It is inappropriate to demand that a small piece of a large company caused the overall business to fall into jeopardy as a minimum criterion for a grant of interim rates.[15]

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[14] Verizon brief page 32, paragraphs 123-125,
[15] *Id*. page 6, paragraph 17.

26 Commission staff, on the other hand, argues that while the order points out that the Commission would consider evidence of stand-alone operations, it also makes clear that the Commission will consider other relevant evidence in making its decision:

> "[O]ur inquiry is whether interim rates are in the public interest, *considering* (not requiring dispositive proof of) *all* relevant factors."[16]

27 Verizon reads too much into the Fifth Order. The quotation from Verizon's brief in paragraph 25, above, clearly identifies its misunderstanding. In saying that the Commission would consider Verizon's intrastate jurisdictional circumstances, in addition to the circumstances of the entire company, the Commission did not say that it would disregard the facts and circumstances in which Verizon's intrastate operations are carried out. Merely that Verizon is part of a larger corporate family is not of itself relevant, but the actual condition, the actual needs of the jurisdictional operations and the actual resources available to those operations (which may involve transactions, relationships and arrangements within the corporate family), are very relevant to the inquiry. The Commission will examine whether "*an actual emergency exists"*[17] and whether interim relief is "*necessary to prevent gross hardship or gross inequity,"*[18] and it should

> review all financial indices . . . together with the immediate and short-term demands for new financing *and whether the grant or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest*."[19]

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[16] Order No. 05, page 11, paragraph 31; emphasis in original
[17] Second PNB factor, from *WUTC v. Pacific N.W. Bell Tel. Co.,* Cause No. U-72-30 tr, Second Supplemental Order (October 10, 1972).
[18] *Id*.
[19] Fourth PNB factor, *Id., emphasis added*

28 We will consider the separated jurisdictional operations, but will not remove them from reality. We will consider their actual circumstances, the actual management under which they operate, and the obligations and benefits that attach to them.

3. Precedent on interim relief from other jurisdictions

29 Public Counsel points out that in its *PNB* decision, the Commission itself reviewed at least seventeen interim rate cases in at least ten different jurisdictions. Based on "the overwhelming weight of [those] cases," the Commission concluded that "an interim rate increase is an extraordinary remedy and should be granted only where an actual emergency exists or where necessary to prevent gross hardship or inequity."[20]

30 The parties cited decisions on interim relief in other jurisdictions. Verizon presented information relating principally to jurisdictions in which it operates. It cites the following jurisdictions and results: In Alaska the standard is a balancing of hardships between company and its customers.[21] In California the Commission may authorize interim relief if it finds "sufficient justification," which may include a lengthy time until rates may become effective; emergency is specifically not a required element in California.[22] In Idaho, the Commission balances the interests of ratepayers and the companies.[23] In Oregon, the Commission has discretion to order interim rates.[24] The Federal Energy

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[20] *WUTC v. Pacific N.W. Bell Tel. Co.,* Cause No. U-72-30 tr, Second Supplemental Order (October 10, 1972) Page 13

[21] *Golden Valley Electric Association, Inc.,* Docket No. U-04-33; Order No. 5, 2004 Alaska PUC LEXIS 302 (July 2, 2004)

[22] *Re Southern California Edison Company*, 28 CPUC 2d 203, 212 (1988)(D. 88-05-074)

[23] *Re Washington Water Power Company*, Case No. U-1008-112, Order No. 13482, 22 P.U.R. 4th 485 (1977)

[24] ORS 759.185(5); *In the Matter of PacifiCorp*, Docket No. UM 995, Order No. 01-186 (Feb. 21, 2001); affirmed on reconsideration, Order No. 01-503; Docket No. UM 995, Ore. PUC LEXIS 259 (2001).

Regulatory Commission (FERC) applies a standard of "good cause"[25] without extensive discussion.

31 Commission Staff presented a matrix of decisions from other jurisdictions, concluding that the weight of authority from jurisdictions for which reported cases are available demand proof of a genuine emergency before granting emergency relief.

32 The Commission also reviewed decisions available to it, and likewise determined that many jurisdictions use an emergency standard.

33 It is fair to conclude, after this brief review, that the a large proportion of jurisdictions confine interim rate relief to situations in which an emergency exists, while other jurisdictions grant such relief upon other standards—some, granting relief almost as a matter of course.

34 The reasons for the views in individual states are not always clear. As Ms. Strain pointed out from the witness stand, in Alaska (which allows interim rates on a somewhat regular basis) the state regulatory commission has the authority to initiate show cause proceedings. Under that authority, the agency can require a company to prove that it is not earning an excessive return. In Washington, on the other hand, the Commission possesses no such authority and in order to reduce the rates of a company not seeking an increase in its rates the Commission Staff must accept the burden of proof that a rate reduction is needed. The result is that it is burdensome for the Commission to require over-earning companies to reduce rates and that it is, as a consequence, rarely done. There may be an appropriate rough balancing of interests, when "show cause" authority exists, to allow companies greater access to interim rate relief—but there is no necessary legal requirement that the two factors be paired.

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[25] 16 U.S.C. 824d(d)

35 Many states hold to a strict standard, requiring proof of an emergency, as a condition of interim rates. That standard has been upheld in judicial decisions.[26] Other states' adoption of a less strict standard may be based on factors not apparent in the decisions or may simply lie within the discretion of the respective Commission, statutes, or judicial decisions in the jurisdictions.

36 On balance, we find that the discussion of other jurisdictions' decisions support the Commission's discretion to adopt an appropriate standard in Washington State. The decisions demonstrate that an emergency standard is widely accepted, but also that other standards are viewed as appropriate in some jurisdictions.

C. Has Verizon Satisfied the Appropriate Interim Rate Relief Factors?

1. Consideration of factors: To what degree, if any, should the following factors bear on the Commission's decision?

a. Factor No. 1, Adequate hearing

37 *"[T]he Commission should exercise its authority to grant interim rate relief only after an opportunity for an adequate hearing."*[27]

38 Verizon contends that the process in this docket has afforded a hearing that is adequate for the purposes of the decision to be made. Commission Staff expresses reservations, however. It notes that the Company's interim presentation was silent on some factors of possible relevance and that the Company refused to provide information in response to Staff data requests that

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[26] The Arizona Court of Appeals has ruled that the Arizona commission cannot grant interim rate relief absent an emergency situation, the posting of a bond, and a subsequent full rate case. *RUCO v. Arizona Corp. Comm'n*, 20 P.3d 1169, 1173 (Ariz. Ct. App. 2001).

[27] The italicized factors for consideration on this and following pages are from *WUTC v. Pacific Northwest Bell Tel. Co.*, Cause No. U-72-30 tr, Second Supplemental Order (October 10, 1972).

the Company agreed to provide in response to bench requests. The inference from Staff's statement is that Verizon's refusal to provide information rendered the hearing inadequate.

39 Public Counsel also expressed reservations, saying:

> At time of brief filing, there may remain outstanding questions about Verizon responses to bench requests, and whether they should be part of the record without other parties having the chance to rebut them. Absent such rebuttal, there may be a question about the adequacy of the hearing as to those items.

40 The parties had the opportunity to object to bench requests as they were made and had the opportunity to object to responses as they were made. In fact, objections were voiced to three of the responses to bench requests and, including the ruling in this order, were sustained as to part or all of two responses. No party made a specific request for rebuttal.

41 The Commission finds that there was opportunity for an adequate hearing in this proceeding. The parties enjoyed discovery, written prefiled evidence, cross-examination of witnesses, rebuttal, and briefing. Parties also had the opportunity to object to discovery responses and to seek an order compelling production. *WAC 480-07-425.* Neither the Company's failure to provide responses to some requests for information nor the request for and receipt of responses to bench requests renders inadequate the opportunity for hearing.

b. Factor No. 2, Need, hardship, or unfairness

42 *"[A]n interim increase [is an] extraordinary remedy and should be granted only where an actual emergency exists or where necessary to prevent gross hardship or gross inequity."*

43 The second factor captures the essence of the purpose and the appropriate factors to consider in granting the extraordinary remedy of interim relief—a reason to depart from the statutory means of setting rates, to force ratepayers to pay increased rates or fees for service before the Commission knows the true condition of the company's results of operation and thus before it knows whether or to what extent the increase is needed. Because the remedy is extraordinary, we should determine whether the facts of record connote extraordinary need.

44 In the Fifth Order in this docket, we ruled that we would consider Verizon's intrastate operations in deciding whether to grant interim relief. The parties addressed application of the pertinent factors to Verizon and its intrastate operations.

i. Is there an actual emergency?

45 In determining whether an actual emergency exists, the Commission has considered not only whether a company is facing weak financial results, but whether it also has financial needs that could not be met without interim relief.

46 Verizon NW does not argue that it (as a company) faces an emergency. It does argue that the evidence demonstrates that Verizon's Washington intrastate jurisdictional operations face a financial emergency because several emergent factors exist: Verizon's intrastate rate of return is a negative 0.47%; Verizon's intrastate operations could not meet its payment obligations on its intrastate Washington debt due to insufficient revenues – *i.e.,* its cash flow is insufficient; Verizon's Washington intrastate financial condition would not support an investment-grade credit rating; Verizon's intrastate earnings are clearly insufficient to allow the Company to continue to invest in its network in Washington State; Verizon's insufficient intrastate earnings will affect its ability

to obtain financing from Verizon's parent and affiliates; and Verizon's expert witness testified that Verizon's bonds, considered on an intrastate stand-alone basis, would be below investment grade, "and that's a financial emergency as viewed by the financial community."[28] Verizon argues that, "Even Opposition witness King agreed that Verizon, viewed as a stand-alone company, would need a cushion of cash resources."[29]

47 Verizon argues that the Commission's *Olympic Pipe Line Co.* order[30] is especially apposite because that company, as Verizon, operates in more than one jurisdiction. Verizon argues that witnesses King and Strain err in their calculation of cash flow and in their evaluation of the cash flow needs of Verizon's Washington intrastate operations. It argues that the mere fact of a slight positive cash flow does not address a company's need to maintain a sufficient margin for contingencies and to maintain interest coverage ratios in order to continue to have investment-grade bonds. Verizon again cites the *Olympic Pipe Line Co.* order, above, where the Commission commented that interest coverage of 1.5 (*i.e.*, revenues equaling 1.5 times the Company's interest obligations) would be necessary to maintain a sufficient separated intrastate coverage ratio.

48 Commission staff, however, disputes need. It poses three arguments against a finding of need.

49 First, Staff argues that Verizon enjoyed excessive earnings in the past, which it chose not to reduce voluntarily, and which should offset any present need for interim rates.

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[28] Vander Weide (TR. 115, ll. 23-25; 116, ll. 1-4).
[29] Verizon brief, p. 15, paragraph 65, citing TR. 471, ll. 7-11.
[30] Docket No. TO-011472, Third Supplemental Order

50 Second, Commission Staff argues that there is no actual emergency. Staff disputes Verizon's contention that the intrastate operations face an actual emergency. It offers the following arguments.

51 Verizon's actions show no emergency. Commission Staff argues that Verizon has neither identified nor implemented steps addressed to its asserted emergent need for relief. The company produced no documentary evidence of internal discussions that identified an actual emergency or steps to meet any actual emergency. The Company did not prepare, and did not produce, a financing plan that considered an intrastate emergency. Verizon's referenced capital budget cuts do not address Washington intrastate circumstances, but "normal business practices."[31] Verizon presented no information confirming the existence of a specific strategy to address any Washington intrastate emergency, nor did it identify a contingency plan if any strategy were unsuccessful.

52 Commission Staff contends that the focus and purpose of the "Verizon Earnings Recovery Plan, State of Washington, Capital Reduction Initiatives," Ex. 83, is not any asserted emergency in Washington intrastate revenues, as the Plan was not developed when the Commission's access charge order was entered, but only seven months later. Moreover, more than half of the projects in the "recovery plan" relate to interstate-related projects and have no relationship with reduced Washington intrastate revenues.

53 Commission Staff also notes that in the Avista order on interim relief,[32] Avista proved an emergency, and proved that it took prompt, decisive actions to mitigate it. Staff argues that Verizon NW has done neither.

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[31] Witness Banta, *TR. 274:4-19.*

[32] *In re Avista Corp.*, Cause No. UE-010395 (Sixth Supplemental Order, 2001)

54 Commission Staff's third argument against a finding of emergency is that Verizon NW is able to finance its Washington intrastate operations on reasonable terms pending resolution of the general rate case.

55 The Company admitted through the testimony of Mr. Banta that "There is capital available." The Company is not in default on any of its loans, nor is it close to default. Since 1999, Verizon NW has paid dividends of nearly $1 billion to its parent, Verizon Communications, the highest annual payment being in 2003 ($221.8 million).[33]

56 Verizon NW has ready access to a $500 million cash pool for the needs of Washington intrastate operations.[34] The Company admitted this cash pool "is there for Verizon NW" as a source of funding,[35] While noting that some companies have been cut off from access, Verizon did not present the specifics of those situations, or any other related evidence, to assist in determining whether Washington intrastate operations were in any jeopardy of losing access to funding. Verizon NW demonstrated no need for additional equity for Washington intrastate operations.

57 Commission Staff contends that Verizon's access to the cash pool for Washington intrastate operations is a merger benefit, and that Verizon's proposal to discount its availability should be rejected. Verizon NW testified that the "cash pool" created by Verizon Network Funding Corp. for the use of Verizon NW is a specific benefit of the merger between GTE Corp. and Bell Atlantic.[36] This

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[33] Verizon NW testified that only Washington intrastate's portion of those dividend payments are relevant. However, Verizon NW did not provide information identifying that portion, and it is impossible to determine the relevant figure.

[34] *Folsom, Exh. No. 121-T at 16-19.*

[35] *Banta, TR. 416:5-6.*

[36] *Banta, TR. 355:2-15 and TR. 415:15-24.*

testimony, Staff argues, is consistent with representations of the merging companies to the Commission in the merger case, Docket No. UT-981367.[37]

58 Commission Staff contends that the Company's "Stand Alone" analysis does not truly reflect Verizon NW Washington intrastate operations on a "Stand Alone" basis.

59 Staff argues that Verizon NW's request should be denied because a "stand alone" analysis is purely hypothetical. Staff contends that the Company's Washington intrastate results cannot be divorced from the decisions, financial and marketing relationships, and other financial realities reflecting the corporate structure Verizon Communications has created for itself. Neither can they be divorced from the merger promise that Washington ratepayers would receive the financial benefits of a merged company, including access to the $500 million cash pool.

60 Commission staff contends that this is a purely hypothetical inquiry because, as the Company admits, its Washington intrastate operation, allocated and separated, "is not a stand alone company,"[38] is not trying to raise capital,[39] and has no bond rating.[40] Neither, Staff says, does Verizon NW "issue financings, develop budgets, or perform construction on a Washington intrastate stand-alone basis."[41] Staff argues that Verizon NW's analysis fails to account for these assumptions.

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[37] When Verizon Communications was formed, the merging companies (GTE Corp. and Bell Atlantic) testified before the Commission that the scope and scale of the merged company would assure that the local company would be "financially sound" and have "access to the capital markets." *Exh. No. 66.* According to the Merger Application, Commission approval of the merger would "translate these parent company benefits into stronger support for its operations in Washington, thereby benefiting both business and residential customers." *Exh. No. 67 at 10.*

[38] *Banta, TR. 420:19-21*

[39] *Banta, TR. 425:3-7*

[40] *Banta, TR. 424:9-10.*

[41] *Strain, Exh. No. 141-T at 36: 9-11*

Commission discussion and analysis.

61 Commission Staff's argument that revenue shortfalls are offset by overearnings in a different period may contain elements that appeal to a sense of rough justice. However appealing the argument, however, we believe the argument is a factor that should be severely discounted, for two reasons. First, the Commission was not without the ability to complain against Verizon when the Company was assertedly earning an excessive return. Although burdensome, the remedy is the avenue available by statute and it was available at the time. The Company was not required to reduce rates voluntarily and doing so would certainly have been philanthropic, but counter to basic principles of economics.

62 More to the point, however, is that Verizon's prior actions are not shown to be relevant to the narrow question of whether its *current* intrastate circumstances require the interim increase by whatever criteria the Commission adopts.

63 While the Fifth Order states the Commission's willingness to consider Verizon's intrastate jurisdictional operations on a stand-alone basis, Verizon failed to present adequate information to allow us to do so. Verizon did not provide adequate credible evidence about the intrastate jurisdiction's proper responsibility for financial performance and financial needs. On this record, Verizon's intrastate operations are too inextricably intertwined with overall company operations for the Commission to determine with respect to the intrastate operations that the Company needs interim rates. Important information necessary to determine Verizon's Washington intrastate jurisdictional revenue requirement is absent from the record. The intrastate operations are not separately accounted for, and are not separately responsible for results.

64 The potential hypothetical emergency that Verizon contends exists is not an actual emergency. The Company has demonstrated no credible actions to deal

with any asserted emergency, and its own testimony belies the existence of any emergency. The intrastate jurisdictional operations have no action plan for correction, they have no separately-stated capital needs, the capital reductions Verizon cited were defined as projects whose managers thought the Company could do without (indicating no pressing need) and include interstate projects that are presumptively irrelevant to intrastate operations; the reductions are not tied to any emergency, and the reductions are not slated to be restored if interim relief is granted, although the company would "think about" restoration.[42] The Company's personnel reductions similarly provide no evidence of intrastate fiscal urgency—the total reduction is not jurisdictionally separated, is not tied to any intrastate fiscal necessity, and is not scheduled to be moderated, revised, or reversed if the proposed interim increase is granted.

65 Verizon cites the Commission's *Olympic Pipe Line* order[43] for its calculation of a required interest coverage ratio (revenues to interest expense) of 1.5, but in that docket the pipeline company was facing a true emergency, it had lenders other than its owners, its owners were making credible assertions of reluctance to provide additional capital, and the Commission made a determination of the minimum rates necessary to provide a level of safety to the Company's finances, based on the existing record and pending resolution of the general rate case. Here, there is no actual external emergency; Verizon is not treating the Washington intrastate situation as an emergency, there is no demonstrated need for financing, there is insufficient accurate information relating to the role of intrastate operations in financing or capital matters, and there is no need to examine a hypothetical interest coverage ratio.

66 Public Counsel points out Dr. Vander Weide's testimony that, on a hypothetical stand-alone basis, Verizon's intrastate Washington financial ratios would not support an investment grade bond rating. However, there is no dispute that

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[42] *Banta, TR 385: 2-6.*

[43] Third Supplemental Order, TO-011472

Verizon's intrastate Washington operation does not issue any equity or debt. Verizon asks the Commission to ignore the real fact that no Verizon bond holder faces any actual financial threat. Moody's gives Verizon Northwest an A1 rating, Fitch gives the company an AA rating, and S&P rates Verizon as AA. Even Verizon Northwest no longer relies on external financing. It has sold no financing instruments to the public since February 2003 based on the results of its specific operations.

67 Table I shows the parties' cash flow analyses.

Verizon Washington Intrastate Cash Flow Analysis
($ in thousands)

	A Public Counsel-WebTech Test Year	B Staff Test Year with Adjustments, including Yellow Pages	C Modified Staff Test Year with Adjustments, excluding Yellow Pages	D Verizon Test Year	E Verizon Pro Forma August 04 - May 05
1 Operating Revenue, Adjusted for UT-020406	342,470	373,894	344,653	341,000	272,750
2 Operating Expense	358,286	350,310	350,310	356,800	295,088
3 EBIT	(15,816)	23,584	(5,657)	(15,800)	(22,338)
4 Add Depreciation Expense	124,692	124,692	124,692	124,700	104,508
5 EBITDA	108,876	148,276	119,035	108,900	82,170
6 Fixed Charges (Gross Interest Paid)	22,700	25,700	25,700	22,700	17,720
7 Capital Additions Allocated to WA Intrastate	84,924	76,238	76,238	84,700	55,852
8 Nonoperating Cash Commitments	107,624	101,938	101,938	107,400	73,572
9 Cash Available after Cash Requirements	**1,252**	**46,338**	**17,097**	**1,500**	**8,598**

68 Verizon asked the Commission to allow it to charge interim rates based on the financial condition of Verizon's Washington intrastate jurisdictional operations.

69 Dr. Vander Weide testified that cash flow is the proper measure to determine whether a company merits interim relief.[44] Table I examines the parties' positions on the cash available to Verizon's intrastate-only operations (cash flow), excluding outside resources such as cash available from Verizon NW and any potential cash flow from Verizon Corporation's directory business. Column A represents Public Counsel witness Charles King's statement of cash flow for

[44] Transcript pages 122, lines 20-24, and 324, lines 14-15.

the test period, as presented in Exhibit 104 and as modified by Mr. King during cross examination.[45] Column B represents Staff witness Paula Strain's statement of cash flow for the test period, as presented in Exhibit 142.[46] Column C represents Verizon's statement of cash flow for the test period, with interim rate relief**,** as presented in its Response to Bench Request 4. Column D represents Verizon's statement of its Washington intrastate cash flow, without interim rate relief, for the proposed rate relief period, as presented in its Response to Bench Request 3.

70 Even Verizon's cash flow presentation, which excludes external resources that are actually available to the intrastate operations, shows no pressing need for additional cash. While the parties disagree on the amount of cash flow surplus that Washington intrastate operations generated during the test period, each party acknowledges that Washington intrastate operations generated a surplus. Verizon's cash flow statement shows that its Washington intrastate operation generated sufficient cash flow to cover its operational expenses plus allocated interest and new investment, while generating a surplus of $1.5 million for the year. Verizon's cash flow projections show that, without interim rate relief, Washington intrastate cash flow will improve significantly to produce a surplus of over $10 million on an annualized basis. In summary, Verizon's own projections show that Verizon expects its Washington operations will cover expenses, interest, and new investment while generating a surplus—*without* the requested interim rate relief.

71 We acknowledge that the available information on this topic, as on others, contains gaps. Contingencies and outside considerations could weigh in the direction of requiring cash flow improvement. However, Verizon neither

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[45] Mr. King's testimony at TR 435-6.

[46] A column is shown in which directory imputation is excluded; we make clear that the witness did not support that adjustment but we include it to review the comparability of the witnesses' testimony.

identifies nor estimates the impact of any specific negative contingencies that the Commission should consider. Public Counsel's cash flow statement does not incorporate Verizon's updated (reduced) capital expenditure plans, which would improve Public Counsel's statement of the Company's test period cash flow by the Washington intrastate portion (75.366%) of $11.5 million, or $8.7 million. Staff argues that the Commission should impute additional revenues from Verizon's directory business, which would improve Staff's statement of the Company's cash flow by $29.2 million.

72 Public Counsel argues that this factor underlines the principle that "interim relief is an extraordinary remedy designed to be used sparingly in cases of real and imminent need."[47] Public Counsel cites the testimony of witness Charles King, that "there is no evidence in this case that either shareholders or creditors of Verizon are experiencing any detriment, nor will they if interim relief is denied."[48]

73 We also note that Verizon did not provide complete financial information for its Washington intrastate operations. For example, in its response to Bench Request 2, Verizon failed to provide the short-term portion of a Washington intrastate balance sheet. Missing items include Washington intrastate-allocated share of the Company's $41.1 million in short-term assets and short-term debt showing maturities. This information would have been useful in an interim proceeding, where the focus is on short term needs. In addition, Verizon made no claim that Washington intrastate operations should be responsible for dividend payments during the interim period.

74 On balance, we conclude that Verizon has adequate cash flow to cover its requirements pending a resolution of issues in the Company's general rate proceeding. We believe that the Commission Staff-adjusted figure is the most

[47] PC brief, p. 21.
[48] *Id*., citing testimony at TR 450.

accurate available on this record, but we exclude consideration of cash potentially available from Verizon's directory affiliate, as that matter remains in contention for resolution in the general phase of the proceeding.

75 Our assessment of the adequacy of internally-generated cash flow is true irrespective of the existence of the Verizon cash pool, from which the Northwest Company may draw for the benefit of the intrastate operations. The cash pool was represented to the Commission as a merger benefit. Verizon's failure to acknowledge in the analysis supporting its contention of emergency the continuing availability of the funding runs counter to the spirit of the merger agreement, and withdrawing access to the fund, which Verizon's witness Banta[49] mentioned as a possibility, could violate that agreement and the Commission order accepting the agreement.

76 Table II represents the parties' views relating to results of operations. Assuming for purposes of this discussion that the tables reflect the parties' comparative views and that they have some relevance to intrastate jurisdictional performance, it appears that if the intrastate operations were stand-alone, prudent management would be taking immediate and severe steps to remedy the circumstances. That Verizon's management is not doing so demonstrates that the present circumstances do not constitute an emergency for the intrastate operations.

77 In this phase of the proceeding, the available information on rate of return is exceptionally suspect. The record contains only a portion of the Company's filed presentation on rate of return, and the record contains only a preview of a small portion of the case that the Staff is developing. It is simply not proper to conclude from the evidence of record in this limited phase of the proceeding that either party's proposed rate of return will have any relationship to the regulatory rate of return that the Commission will determine after considering all proposed

Verizon Northwest Inc. - Washington Intrastate Operations
Comparison of Results of Operations
12 months Ended September 30, 2003
(thousands of dollars)

line	(a) Description	(b) Verizon Northwest	(c) Joint Parties (note 2)	(d) Commission Staff
1	Total Operating Revenues	$342,470	$371,711	$373,894
2	Total Operating Expenses BFIT	358,286	358,287	350,310
3	**Earnings Before Interest and Taxes (EBIT)**	**($15,816)**	**$13,424**	**$23,584**
4	Federal Income Taxes	-11,232	-998	2,299
5	**Net Operating Income**	**($4,584)**	**$14,422**	**$21,285**
6	**Total Rate Base**	**$985,276**	**$985,276**	**$1,018,784**
7	**Rate of Return (ROR)**	**-0.47%**	**1.46%**	**2.09%**
	Comparison of Adjustments to Net Operating Income			
8	**Per Books Net Operating Income**	$18,955	$18,955	$18,955
	Restating Adjustments:			
9	Company restating adjustments	($4,547)	($4,547)	($4,547)
	Other Restating adjustments			
10	Uncollectible adjustment	$0	* (note 2)	$1,419
11	Directory imputation	$0	$19,007	$19,007
12	Flow through income tax	358,287	* (note 2)	1,310
13	**Total restating adjustments**	$353,740	$14,460	$17,189
	Pro forma adjustments:			
14	Access reduction	($18,992)	($18,992)	($18,992)
15	Employee separation program	$0	* (note 2)	$5,185
16	Interest Synchronization	$0	* (note 2)	($1,050)
17	**Total pro forma adjustments**	($18,992)	($18,992)	($14,857)
18	**Total Adjustments**	$334,748	($4,532)	$2,332
19	**Proposed Net Operating Income** (note 1)	**($4,585)**	**$14,423**	**$21,285**
	Comparison of Adjustments to Rate Base			
20	**Per Books Net Operating Income**	$932,894	$932,894	$932,894
21	Company restating adjustments	$52,382	$52,382	$52,382
22	Flow through income tax	$0	* (note 2)	$33,508
23	**Total Adjustments**	$52,382	$52,382	$85,890
24	**Proposed Rate Base** (note 1)	**$985,276**	**$985,276**	**$1,018,784**

note 1- Positions include some pro forma adjustments but do not represent total pro forma results of operations. Amounts do not add apparently due to rounding.
note 2- The joint parties neither accepted nor objected to staff adjustments.

[49] TR 390, lines 3-10.

adjustments in the general rate proceeding. Too many questions exist—resolution of the directory compensation issue, resolution of the allocation of expenses and revenues, determination of capital structure, questions about depreciation, and others—for the proposed numbers to have serious credibility. That in itself identifies a challenge in using jurisdictionally separated results for determining interim relief, and it demonstrates the wisdom in using a simple test.[50]

78 "Is there an emergency?" is a relatively simple factor for consideration and, unlike rate of return, that factor does not require a full rate case to develop a credible answer in which we might have confidence. We define "emergency" here as an existing or looming threat to the utility's ability to provide service to its Washington intrastate customers of a magnitude that will justify the imposition of rates without a full review of all relevant evidence and a determination that the rates are fair, just, reasonable, and sufficient. This is an objective factor. It is a factor that relates clearly with a company's ability to meet its public service obligations to its ratepayers, a factor that we have found critical in granting interim relief.

79 We conclude that Verizon has not demonstrated the existence of a financial emergency as a factor to consider in granting interim relief.

ii. Is there gross hardship or inequity?

80 Verizon contends that the circumstances of its intrastate jurisdictional operations demonstrate gross hardship or inequity, factors that we highlighted in the Fifth Order as matters for consideration with regard to Verizon's interim rate request.

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[50] Even with a simplified test, the results of a full analysis in the general rate case phase of a proceeding can prove a grant of interim rates to be inappropriate and to require refund. *WUTC v. Olympic Pipe Line*, TO-011472, 20th Supplemental Order (September 27, 2002).

Verizon offers dictionary definitions for the terms, which the Commission has not considered or applied in prior proceedings:

> A "hardship" is commonly described as a deprivation;[51] an "inequity" occurs when someone is treated differently under similar circumstances,[52] and "gross" is defined as "glaringly noticeable."[53]

81 Verizon states that interim relief is appropriate when a company suffers a considerable reduction in revenue and where the company has been subject to glaringly noticeable disparate treatment. Verizon argues that the Company meets these standards. It populates its proposed dictionary definitions with its perceptions of the facts.

82 Commission Staff states that Verizon NW's basic and misplaced argument is that the access charge order was a Commission action "beyond [the company's] control," and thus the resulting revenue reductions constitute gross hardship (or gross inequity). Commission Staff disputes the characterization, arguing that hardship does not become "gross" unless it interferes with the utility's performance of its ongoing public service obligations. Staff also argues that the access charge decision was not beyond Verizon's control, as Verizon's rates were found to be in violation of statute.

83 Public Counsel cites the testimony of witness King[54] that hardship on a company can only mean hardship on the company's owners, and gross hardship would be shown by a significant drop in the price of the stock by reason of financial consequences for failure to receive interim relief, or an impending bond

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[51] Webster's Ninth New Collegiate Dictionary 553.
[52] *Id*. at 618.
[53] *Id*. at 538.
[54] Tr. 449-450.

downgrading. Public Counsel argues that no such consequences face Verizon or its intrastate operations.

84 The Commission rejects Verizon's contentions. Verizon's sole referent for hardship (deprivation of revenues) and inequality (disparate treatment) is the Commission's decision in the access charge case, UT-020406.

85 Verizon defines the reduction in revenues as a considerable reduction (a term that the Commission used in the order directing the reduction). Next, Verizon argues that it received different treatment from others in similar circumstances. Verizon cites three contentions in support of this argument.

86 First, Verizon alleges that the Commission had never considered reducing access charges outside of a general rate proceeding, and that doing so in the AT&T complaint proceeding was error. It notes that U S WEST's access charges were set in a general rate proceeding, and it argues that a prior Commission order, *MCI v. GTE-NW*,[55] ruled that it is improper to consider a complaint against access charges outside a general rate proceeding. This is an argument that Verizon strenuously made, and lost, in the access charge proceeding.[56]

87 In the *MCI v. GTE-NW* proceeding, MCI did not allege that GTE's access rates violated any statute or Commission order. Nor did MCI contend that GTE's access rates were unfair, unjust, or unreasonable under the then-current Commission-approved structure for intrastate rates. In contrast, in the access charge proceeding, AT&T specifically alleged that Verizon's access charges violated RCW 80.36.186 and 80.36.180, the Commission's imputation test, and federal law. The Commission rejected Verizon's contention regarding the MCI decision, noting that AT&T stated several statutory bases for its complaint and it

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[55] *MCI Telecommunications Corp. v. GTE Northwest,* Docket No. UT-970653, Second Supplemental Order Dismissing Complaint (Oct. 22, 1997).
[56] 11th Supplemental Order, UT-020406.

alleged violations of statute, rule, and federal law. In the *MCI* proceeding, in contrast, MCI was seeking to initiate a rate case only for the review of GTE's access charge rates, and the Commission there properly held that one company cannot in that manner force another to enter a rate case. Under Verizon's proposed rule of law, lack of a pending rate case could indefinitely bar an entity with a statutory right to complain from lodging that complaint, which would nullify the protections of the law. Considering all the circumstances, Verizon is simply wrong in its allegation that it was treated differentially in similar circumstances. Instead, the circumstances differ substantially.

88 Second, Verizon contends that it was treated differently from others because General Order No. 450 in Docket No. UT-970325 adopted a rule for setting access charges[57] that allowed all carriers to make revenue-neutral rate rebalancing filings to offset reductions in access charges resulting from the newly created rule.

89 Verizon's contention fails, for two principal reasons. One is that the rule narrowly defined the nature of permissible rebalancing: the transfer of responsibility from terminating access charges to originating access charges (WAC 480-120-540(6)), all of which access charges are paid by the same customer class, interexchange carriers. The rule did not authorize affected local exchange companies to raise any other rates—or any retail rates at all—to compensate for lost revenues from originating access charges. It addressed a narrowly defined situation that left the same wholesale customer group responsible for the same level of revenue. It did not authorize any affected local exchange carrier to impose a general rate increase upon retail customers of its choice, as Verizon sought to do in the access charge docket.

90 Reason two is that, as Verizon notes, the rule by definition implements a Commission policy, one that was argued extensively in the appellate courts and

that was ultimately upheld. The access charge order, by contrast, was not a policy vehicle but addressed a complaint alleging the violation of rules and statutes. The access charge case did not apply a whimsically different policy to Verizon than to other carriers, as Verizon implies. Instead, the Commission found that the rates established by Verizon acted to violate specific provisions of law and that the rates therefore required correction.

91 Finally, it is basic state constitutional law that a rule cannot authorize an activity forbidden by statute—agencies do not have the power to amend statutes by making rules. Because the operation of the access charges filed pursuant to the rule were found to violate statutory provisions, the rule cannot protect Verizon from the consequences of that violation.

92 Verizon also contends that it is being treated with gross unfairness because of evidence[58] that the Commission Staff at one point engaged in negotiations with another telephone company to effect a revenue-neutral rebalancing of rates. This contention needs little discussion, as it is the Commission's action and not that of Commission Staff that would determine whether or not the Commission treats Verizon differentially. Verizon is aware that Verizon itself reached a tentative settlement agreement with Commission Staff in the access charge proceeding—strongly opposed by other parties in the docket.[59] If fully implemented as parties proposed, the result would have been an increase in retail rates. The Commission never enjoyed the opportunity to rule upon the proposal, however, as Verizon rescinded its tentative accord over a disagreement about the meaning of terms. Therefore, it is not possible to say, either as to Verizon or as to the other telephone company, whether the Commission would have approved any proposed settlement, or what conditions might have been imposed. It is only

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[57] WAC 480-120-540.

[58] Verizon cites a letter of Public Counsel referencing purported discussions between Commission Staff and another telephone company.

[59] *See*, Sixth Supplemental Order, Docket No. UT-020406

possible to say that the Commission indicated a willingness to hear all parties' views on the Verizon proposal.

93 Contrary to Verizon's argument, the Commission is *not* treating Verizon differently.

94 Verizon cites language from the Commission's Fifth Order in conjunction with a discussion of subsidy as a source of inequity: [60]

> We conclude that it would be inappropriate to say, as the joint parties seem to argue, that Verizon should be ineligible for interim rate relief because the non-jurisdictional operations are sufficiently healthy that intrastate customers should not bear the responsibility to sustain their own capital needs in the same way they would if the company operated in a single jurisdiction.

95 Verizon also cites the testimony of Dr. Vander Weide, who contends[61] that the operating margins in other states are considerably higher than they are in Washington intrastate and that this results in a subsidy that constitutes inequity. Verizon's theory for inequity appears to be that the mere disparity between rates of return constitutes a subsidy that constitutes a gross inequity.

96 We reject Verizon's theory. Verizon refused to provide information that would support Dr. Vander Weide's asserted facts.[62] Moreover, the discussion misses the point of the Fifth Order, which references a postulated situation in which intrastate operations cannot support their own capital needs. This record

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[60] Verizon brief, p.7, paragraph 20, citing Order No. 5 in this docket.
[61] Verizon brief, page 20, paragraph 78, citing TR. 93, ll. 8-19
[62] Verizon refused to provide evidence about its intrastate returns in Oregon and Idaho in response to Commission Staff data requests, contending that the information is totally irrelevant to its case. Verizon did supply information in response to a bench request, but did not object to a motion to strike the response. We grant the request to strike, below.

demonstrates that Washington intrastate operations do support their own capital needs. Further, to the extent access might be needed to the Company's capital fund, that is an asserted benefit of the merger and a right of the intrastate jurisdictional operations rather than an unfair drain on other jurisdictions' customers. Finally, Public Counsel notes[63] that Washington customers purchase both intrastate and interstate regulated operations and purchase (and use, in the case of directories) unregulated services or products that are offered by Verizon's affiliates. Verizon as an integrated corporate family has the ability to structure its affiliates, the services and products they offer, and the prices charged for those services and products, in a way that can direct income and profits among the affiliates to maximize the benefits to Verizon Corporation. We expect that the effect of some of these decisions, and potential remedies for ratemaking purposes, will be explored in the general rate phase of this docket.

97 For all of these reasons, we reject Verizon's argument that the demonstrated circumstances of its intrastate jurisdictional operations is proof of any, let alone gross, inequity.

iii. Gross Hardship

98 Verizon argues that its loss of the access charge revenues occasioned by the eleventh supplemental order in UT-020406 constitutes a gross hardship that the Commission must correct through interim rates. Its thesis, noted above, is that an abrupt change in *policy* has driven a decision to reduce Verizon's access charges, and that Verizon is entitled to rebalancing to recover its reduced revenues.

[63] Public Counsel brief, page 11, paragraph 23.

99 The Commission disagrees that it is obligated by any principle of law to allow Verizon to maintain a given level of rates. As the Commission ruled in the Eleventh Supplemental Order in the Access Charge proceeding,[64]

> More telling, though, [than Verizon's failure to initiate rebalancing through filing tariff increases] is the lack of any legal or policy argument from Verizon that supports its contention that it is entitled to rate rebalancing to effect a major shift in its revenue that involves a major increase in rates for local service. We find none in its presentation, and know of none.[65] A company is not entitled to a level of revenue. It is entitled to the opportunity to earn at a level allowing it to meet its reasonable expenses, including the cost of capital needed to support its operations. An appropriate means to demonstrate the need for a general increase in its rates and charges is a general rate increase proceeding. Verizon offers no objection to reducing access rates if it is entitled to increase other rates. The Commission rules that it may be so entitled, if it demonstrates the need for a rate increase of that magnitude through a general rate case, and if it provides the Commission with the opportunity to consider a spread of rates that is fair, just, and reasonable.

100 Verizon is in no different situation from any other utility facing any substantial unexpected increase in expenses or reduction in revenues. In prior decisions, the Commission granted the request for interim rates when it found that the utility was, in essence, facing an emergency. Verizon is in no different situation, no

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[64] Eleventh Supplemental Order, paragraph 15, page 8, Docket No. UT-020406.

[65] *See, In re the Petition of GTE Northwest,* Docket No. UT-961632, Fourth Supplemental Order (Dec. 1997), where the Commission ruled that there is no obligation on this Commission to ensure that a regulated company will fully recover its costs regardless of any changes in the economic, technological, or business environments.

more nor less entitled to relief, because its revenue reduction resulted from a reduction in rates that, the Commission decided, violated provisions of law.

101 It could be said (albeit with a touch of hyperbole) that any reduction in revenues, any increase in expenses, or any damaging physical event causes hardship. Under such a broad construct, Verizon's reduction in revenues could be deemed a hardship. But we think that to constitute a *gross* hardship for application in consideration of interim rate increase requests, the appropriate definition is the one suggested by Mr. King[66] (slightly paraphrased): gross hardship occurs when a condition results in the occurrence or realistic threat of an event such as a drop in the price of stock or in the downgrading of bonds harms the owners.

102 Here, as we note throughout this order, there is simply no evidence of an occurrence, nor any realistic threat of an occurrence, of any event having the potential to harm Verizon, its shareholders, or its ratepayers.

103 In sum, we reject Verizon's contentions that it is being unfairly treated, that it is suffering gross hardship, or that it is in any way facing a financial emergency requiring an increase in its rates or charges.

iiii. Will interim rate relief resolve any emergency or prevent any gross hardship or gross inequity?

104 It is apparent from our discussion, above, that the evidence shows Verizon's circumstances to involve no emergency, no gross hardship, and no gross inequity. Allowing the Company to collect interim rates would therefore not resolve any such circumstance.

c. Factor No. 3

105 Verizon argues that rate of return is one of the most important factors to consider and that it deserves special emphasis because of the Commission's "statutory and Constitutional obligation to ensure a sufficient return."[67] Verizon contends[68] that,

> [a]ll the relevant evidence shows that Verizon's return is not "merely" below the authorized level. Indeed, Verizon showed that its current return of a *negative* .047 percent is significantly below that level. As the Commission noted in *Olympic Pipeline*, a negative rate of return reflects "considerably more need than the mere failure to achieve [the] authorized rate of return."

106 Verizon argues that in two recent interim proceedings in which utilities demonstrated a negative rate of return, the Avista and Olympic Pipeline matters, the Commission granted interim relief. Verizon disputes the rate of return calculations of Public Counsel and Commission Staff, but responds that even by their calculations, on the current record Verizon's rate of return is shown to be no higher than 1.46% (Public Counsel witness King) or 2.09% (Staff witness Strain). Verizon argues that the Commission found a return of 5.66%, two points below the authorized return, "alarming" in a 1974 proceeding involving Puget Sound Power & Light. [69]

107 Commission Staff acknowledges that the record in this interim phase of the proceeding shows Verizon to be earning a low (but not negative) return on its intrastate jurisdictional operations. Staff argues that a low

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[66] *Tr. 449-450*.
[67] We address this contention separately, below.
[68] Verizon brief, page 22, paragraph 85.
[69] *WUTC v. Puget Sound Power & Light Co.*, Cause No. U-73-57, Second Supplemental Order (1974) at pp. 4-5.

rate of return is significant for purposes of interim relief only when it contributes to a condition interfering with the Company's operations. Public Counsel argues that Verizon's intrastate return is positive, albeit slightly, before making any additional ratemaking adjustments that would occur during a general rate case. Public Counsel cites instances in which the rate of return found at the conclusion of a general rate proceeding exceeds the rate accepted for purposes of an interim rate increase. Public Counsel argues that the determination of Verizon's actual rate of return is not possible to make at this stage, and is properly a matter for the general rate case.

108 The Commission disagrees strongly with Verizon's characterization of Commission responsibility in the Company's reference to, "the Commission's statutory and Constitutional obligation to *ensure* a sufficient return.[70] The Commission has no such obligation. Instead, the Commission's obligation is to provide Verizon with *the opportunity* to earn a fair rate of return.[71] Verizon has the responsibility to act in its own best interests, consistent with the public service laws.

109 Verizon's intrastate jurisdictional rate of return, according to the limited evidence in this record, is a matter for concern. However, as the PNB order indicated, and as our Fifth Order did not alter, rate of return should be considered in the context of the entire circumstances of the company. Here, several factors are at play.

110 One is that, to the extent Verizon is earning less than its authorized return, it is starting from a base that is very low and, according to the testimony, has been low for some time. Verizon chose not to initiate a proceeding

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[70] Verizon brief, p. 21, paragraph 83. *(Emphasis added)*

[71] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1924).

that would update its financial information and rate of return, although it has been legally able to do so, and that decision was entirely within its prerogatives as a public utility.

111 Verizon's reference to the Commission's 1974 order in Puget Sound Power & Light,[72] above, notes that Puget's performance at about two percentage points below the Company's authorized return, and falling, was "alarming." That, however, as the order itself notes, is merely one factor to consider. At that point, Puget was experiencing very high load growth, resulting from increased consumption and from a high rate of population growth within its service territory. It was a sponsor or joint sponsor in new generating facilities, including a proposed nuclear power plant. To meet these commitments, which were necessary to maintain its service, it was planning an imminent substantial stock issue. Puget was thus faced with immediate and continuing capital needs that were very large compared with its existing rate base, as the projects completed licensing, design, and construction, and it demonstrated the emergent nature of its circumstances. In contrast, Verizon according to its testimony is experiencing reduced growth and has described no need for capital that it cannot meet with its existing rates. In contrast, the reduction in return due to the access charge order is less than two percent, and Verizon has described no need for capital that it cannot meet with its existing rates.

112 In conclusion, the Company's intrastate jurisdictional rate of return on its face, whether by Verizon's calculation or that of other parties, is of concern to the extent that it reflects the actual condition of the intrastate operations. However, the Company's proposal is subject to substantial adjustment in the general rate case. In context, the intrastate operations have no substantial needs for capital—none that can't be supported through the intrastate cash flow—and in consequence neither the

Washington intrastate operations nor Verizon NW face any need to borrow or to sell equity on the market. Verizon's asserted low or negative rate of return is not sufficient, either independently or in concert with other factors, to require interim rate relief.

d. Factor No. 4

113 *"The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage, and the growth, stability, or deterioration of each, together with the immediate and short-term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest."*

114 Verizon argues that the performance of its intrastate jurisdictional operations is poor and subject to further decline. We have addressed rate of return above. Verizon cites concerns about its interest coverage on intrastate-allocated interest responsibility, earnings coverage, and the asserted deterioration of each.

115 **Results of operations.** Verizon expends a considerable portion of its brief addressing its presentation on results of operations and other parties' proposed adjustments. It identified further issues that must be addressed during the general rate proceeding.

116 As Verizon's presentation demonstrates, the evidence of record makes it clear that—as in other interim proceedings, including *Olympic Pipe Line Docket No. TO-011472*, which is cited in the materials and in this Order—it can be futile to seek a clear picture of results of operations in the opening weeks of a proceeding when there has been limited opportunity for

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[72] **citation to brief and to Puget order**

discovery and examination. At this juncture there can be, as here, more questions than answers about the ultimate determinations on revenues, expenses, rate base, and rate of return.

117 For purposes of the interim proceeding, the parties acknowledge that the statement of results is at best tentative, and we conclude that it should not be given great weight. In this context, we show the parties' comparative presentations on results of operations in Table II.

118 Given the tentative nature of the presentations and their similarity, we find it inappropriate and unnecessary to make definitive findings as to results of operations. The presentations start from the same point—the Company's filing—and address some but not all of the adjustments that the parties acknowledge will be at issue in the general rate proceeding. Verizon asks us to accept its version of the results because the opposing adjustments are not thoroughly supported. We find that neither Verizon's presentation nor the adjustments of witnesses King and Strain are persuasive as to the Company's actual results of operations. It is clear that in proposing its intrastate jurisdictional results, Verizon has made some decisions regarding allocations, transactions and relationships with affiliates, and many other matters, that simply cannot be verified without more-detailed examination. Verizon has not made a jurisdictionally-separated presentation that we can accept as true, even for purposes of the interim proceeding.[73] Instead, we merely find it likely that Verizon's Washington intrastate jurisdictionally separated operations are earning below the 9.76% overall return authorized on Dec. 21, 1994 in Docket No. UT-931591.

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[73] We find credible Ms. Strain's testimony that, "the Company has not proved that its intrastate results of operations reflect a proper match of revenues, expenses and rate base." *Strain, Exh. No. 141-T, at 30:20 to 31:2.*

i. Levels and trends in financial results

119 Verizon reports a "steady and dramatic decline in revenues for Verizon since 2000,"[74] concluding with the $29.6 million annual reduction resulting from the access charge order. Staff agrees with the reductions in revenue, but attributes the majority of the reduction to decisions of the Company. For example, Staff asserts that Verizon accepted a voluntary rate reduction of $30 million in Verizon's voluntary settlement of three proceedings, including the merger proceeding; it accepted reduced payments from an affiliate, Verizon Directories, which had totaled $34 million in 1999; its depreciation schedule was updated, requiring it to book increased depreciation charges;[75] it suffered lost business to affiliates, including Verizon Long Distance, which could have been retained by the local exchange company; it is subject to a potential mis-match of jurisdictional allocations, with some expenses of providing services such as DSL allocated to intrastate operations when the revenues from those services are allocated exclusively to interstate operations.

120 Verizon responds to these points by challenging the depth of the Staff analysis and contending that Staff' s point is that the revenues might never be recovered; Verizon alleges a reductions in growth in lines served, although its witness, Ms. Heuring, testified that Verizon's Washington intrastate lines increased by 400,000 between 1999 and 2003.

121 Our conclusion in reviewing Verizon's income trend is that it has moved from over-earning to its alleged under-earning principally because of specific events that are quantifiable at present: loss of directory revenue,

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[74] Verizon brief, page 28, paragraph 106.

[75] We note that another depreciation proceeding involving Verizon is pending in Docket No. UT-040520.

agreed reductions, a change in its depreciation schedule, and the access charge order. In addition, other factors awaiting review in the general rate case include the relationship between Verizon and Verizon Long Distance and the treatment of DSL in calculating the Company's earning ability.[76]

122 While the trend in earnings is down, as the Company contends, the greatest contributors to that decrease appear to be factors unrelated to its provision of telecommunications services, but rather business and regulatory matters that have been accumulating over the past several years. Verizon has demonstrated no dramatic drop in its business, nor has it demonstrated any factors that are likely to further erode its income or increase its expenses substantially in the period between now and the time the Commission order on the general rate proceeding is expected.

ii. Rate of return/capital structure

123 Verizon's authorized rate of return and its capital structure for ratemaking purposes were set in a 1994 proceeding. No changes are proposed in the interim phase of this proceeding. We discussed above the concerns we perceive with regard to calculation of the earned intrastate rate of return there are too many questions at this juncture to have a high level of confidence in its calculation. We observe that the Company watched the reductions (and caused some) over a period of several years, and did not think them sufficiently alarming to seek rate increases.

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[76] As Public Counsel notes, "Thus, much of the 'problem'" is hypothetical, resulting from separations, accounting, and the way Verizon chooses to structure its business." *Brief, page 18, paragraph 38.*

iii. Interest coverage; use of the financial information

124 We have addressed interest coverage and use of financial information, above.

iv. Intermediate and short term financing demands

125 Verizon argues that the Commission must let Verizon's intrastate jurisdictional operation "stand on its own feet."[77] Unfortunately, the Company has provided insufficient evidence to indicate where those feet must stand.

126 The Company identifies $112 million in capital projects for Washington, but does not identify whether they are interstate or intrastate in character, or to what degree. Similarly, it has identified $12 million in capital projects that it has deferred, but its list includes projects related to DSL that, by FCC order, provide an exclusively interstate service and are not on their face properly the responsibility of intrastate jurisdictional ratepayers.

127 Moreover, the Company fails to identify any priority or need associated with the deferred projects. It does not link the deferral of Washington projects to intrastate results, does not indicate that the projects are necessary (in fact, says that they are considered non-essential), and does not link completion of the projects to any interim rate increase. In short, the Company fails to make a case that its jurisdictionally separated Washington intrastate operations need any additional money for capital projects.

v. Effect of a grant of interim relief on financing demands

128 As noted above, Verizon fails to identify any needed Washington intrastate projects that require financing but that will not, as a result of financial difficulties. It fails to identify any effect at all of a grant of interim rates on financing needs. We have already found that its cash flow is sufficient to meet the Company's stated capital needs. Verizon speaks of a burden that its current low earnings allegedly pose upon the Company's other operations, but it provides no facts that illustrate any such alleged burden. The Company cannot seek interim support of its Washington intrastate operations without expecting to provide facts to support allegations of the needs of those operations. In this regard, the Company fails to show any need for interim rate relief.

e. Factor No. 5

129 *"Interim relief is a useful tool in an appropriate case to fend off impending disaster. However, the tool must be used with caution and applied only where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders. That is not to say that interim relief should be granted only after disaster has struck or is imminent, but neither should it be granted in any case where full hearing can be had and the general case resolved without clear detriment to the utility."*

This factor sets out the essence of interim rate relief as the Commission has applied it.

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[77] Verizon's brief, page 32, paragraph 123.

130 Verizon argues that it has demonstrated the kind of clear danger of jeopardy to the utility that this factor addresses. It argues that the Washington intrastate financial factors it has posited—cash flow, interest coverage, rate of return – "demonstrate the clear detriment to Verizon if some immediate effort is not made to restore its intrastate operations to some level of financial health."[78] Commission Staff responds that Verizon's asserted emergency is illusory, as the Company has not demonstrated any difficulty in financing during the period until the general rate case is decided.

131 As thoroughly as it looks at Verizon's evidence, the Commission cannot find any "impending disaster." Verizon's evidence discloses no clear jeopardy to the utility, nor any realistic detriment to Verizon's ratepayers and stockholders. There is no clear detriment to the utility if it receives no rate relief pending conclusion of the general rate phase of the docket. As Public Counsel states, "The company's concededly hypothetical case for financial need has no nexus to any real world problem faced by Verizon's Washington intrastate operations."[79]

132 In the Fifth Order we determined to examine the condition of the intrastate operations as well as Verizon NW overall. In support of its contention that the intrastate operations need interim rates, Verizon cites to financial indicators that have no significance in terms of impending disaster or detriment to the utility or the ratepayers. It points to no capital needs, it points to no borrowing needs, it points to no need for the sale of stock, at all, that would be faced by or on behalf of the Washington intrastate jurisdictional operations.

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[78] Verizon brief, page 34, paragraph 130.
[79] Public Counsel brief, page 14, paragraph 35.

133 Verizon cites the Third Supplemental Order in the *Olympic Pipe Line* proceeding to support its position that the financial condition of intrastate operations demonstrates need for interim rates. There are two significant—controlling—differences between that decision and this: first, Olympic *was* facing a potential financial disaster, in terms of the practical and regulatory consequences of a major explosion; second, there were serious questions on the record about whether Olympic could obtain necessary financing for its intrastate operations without interim rates. Here, there is no demonstration of relevant essential projects or other causes of financial need during the interim period, other than the Company's regular capital budgetary needs, and the intrastate operations have no difficulty in obtaining necessary funds—the cash flow is adequate and there is no threat to Verizon's access to corporate pool financing, which is a benefit constituting a condition of the merger that appears to be Verizon NW's right on behalf of the Washington intrastate operations.

134 The essence of Verizon's request seems to be contained in the following passage, from pages 33-34 of its brief, at paragraph 128:

> [I]n the mix of considerations before the Commission in this case, a grant of $29.7 million in interim rate relief *on equitable grounds* will go a long way to alleviating the financial pressures of Verizon's Washington intrastate operations until the general rate case can be resolved. It *would be inequitable* to deprive Verizon of these levels when there is such a strong likelihood that permanent relief will be granted as a result of the general rate case. *(Emphasis added)*

135 We have addressed Verizon's equitable argument throughout this order, and will address it again in our conclusion. Suffice it to say that we understand Verizon's perspective but believe that the equities lie more

with ratepayers, who had no role in the decisions leading to Verizon's declining earnings, than with stockholders, whose management made decisions that reduced rates and, at least in the decision relating to reducing Verizon's directory compensation to the operating company, appear to have shifted revenues from regulated to unregulated operations.

f. Factor No. 6

136 "*As in all matters, we must reach our conclusion with the statutory charge to the Commission in mind, that is, to 'Regulate in the public interest.' (RCW 80.01.040). This is our ultimate responsibility, and a reasoned judgment must give appropriate weight to all salient factors.*"

137 Verizon argues that an order granting relief would be consistent with the public interest. It urges that it is likely to prevail in the general rate proceeding, that its intrastate jurisdictional return under Staff's calculations is 767 basis points[80] below its authorized return, that it merely requests restoration of revenues that the Commission eliminated in the access charge case, and that its circumstances in this matter are so unique that the proceeding will offer no precedent to other, future, proceedings.

138 Commission Staff responds that adhering to the principles the Commission has consistently applied in the past does serve the public interest, and that that this factor militates against granting Verizon's request. Public Counsel also supports application of the factors identified in the PNB proceeding to deny Verizon's request, citing to the hardship of the proposal on low- and fixed-income citizens and citing comments of

[80] A basis point is one/one-hundredth of one per cent.

Verizon customers Valerie Studyvin, Don W. Spencer, and Patricia Larson.

139 The Commission believes that Commission Staff cites the appropriate principle for application in this matter: We recognize the concerns raised by public witnesses – an interim rate subject to refund is not a neutral remedy. Ratepayers are required to pay a higher price (which might be unwarranted) for an essential service, and with the concern that any overpayments might never be returned to some ratepayers.

140 Regulating in the public interest[81] means regulating consistently with laws, rules, and pertinent prior decisions. Doing so provides certainty, consistency, and fairness to both utility companies and their customers. This factor militates against granting the rate relief Verizon requests.

2. Should this request, seeking rebalancing for reductions in revenue that the Commission ordered, be considered as different in character from other requests for interim relief?

141 The Commission addressed this topic above.

3. Remaining issues

142 The hearing addressed, and the parties briefed, additional issues related to the interim rate request, those involving the spread of rates among customers and terms of any refund to be applied. Those issues are irrelevant to this decision given our determination to deny Verizon's request for an interim rate increase.

4. Public hearing presentations

143 The Commission convened a hearing in Everett on August 17, 2004, before Commissioner Hemstad and Administrative Law Judge Wallis, to receive evidence from members of the public. The testimony was almost equally split. Many witnesses called attention to the Company's civic-minded approach to its responsibilities and its many contributions to the community and its needs, both financial and through other resources and kinds of support. Other witnesses focused on the hardships faced by persons, particularly those on low or fixed incomes, who sometimes must make many unpleasant choices between equally compelling necessities.

144 All of the witnesses were sincere in their comments, and deserve recognition for their efforts. We reaffirm that the Commission respects the Company's contributions to its communities. We reaffirm our commitment to regulation that provides the Company the opportunity to earn a fair rate of return through rates that are fair, just, reasonable and sufficient as required by prior Commission decisions, Washington State statutes, and the United States Constitution. At the same time, we acknowledge our responsibility to ratepayers to ascertain that Company rates are no higher than necessary, recognizing the hardships to customers that may result from rates that are unnecessarily high.

145 We express our appreciation to all of the witnesses who appeared.

5. Discovery and evidentiary issues.

146 During the hearing, the Commission requested that Verizon present additional evidence for consideration, in the form of bench requests B-2 through B-7. The Company did respond to the requests. Commission Staff objected to aspects of Verizon's responses to B-2 and B-3. The Staff's objection to B-2 was overruled

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[81] *RCW 80.01.040(2)*

and its objection to B-3 was sustained in Order No. 06, in that certain textual information was rejected and additional information requested. The Company did supplement its response as requested.

147 Staff has also objected to a portion of the Company's response to B-5, contending that certain information in the Company response had been previously requested by Commission Staff and improperly withheld, and that certain information was omitted that is essential to understanding the response. Staff asked that the omitted information be supplied, or that the response be rejected. The Company answered, but did not oppose the motion. On balance, we find that the response should not be received in evidence and we grant the Commission Staff motion.

148 The Commission is concerned about two aspects of the Company's responses to the bench requests. First, the Company objected to Commission Staff data requests at least in part on the basis that it did not have the information, when it did have information from which the requested information could be derived. WAC 480-07-400(1)(c)(iii) and WAC 480-07-400(4) make it clear that companies (which have possession of most information on which rate proceedings are resolved) are expected to compile data, break down summary data, or otherwise analyze information in its possession, unless the task is unduly burdensome. In at least one of the instances, the Company did not protest that responding to the request would be burdensome, and it did not quantify the asserted burden.

149 Second, as to the items that the Company deemed particularly burdensome, it was able to provide prompt responses when the Commission requested the data, albeit with some burden that the Company cited but neither described nor quantified. While we appreciate the responses that the Company did provide, and recognize that the Company may be willing to go to a greater level of effort in response to a request directly from the Commissioners, we are concerned that the information was not available earlier to Staff and others and that it was not

subject to clarification the cross-examination that could have been undertaken had the information been available at the hearing.

150 We are concerned that the Commission have an adequate record for decision in the general rate proceeding. It is essential that the company provide information fully and promptly. The Commission will schedule reviews promptly, upon request, and will work to resolve disputes swiftly. The parties' ability to prepare for the complex and significant litigation involved in rate cases, and the Commission's ability to resolve issues in those cases, all depend on parties' gaining swift access to necessary data that is, for the most part, directly or indirectly in the possession of the Company.[82]

151 The Commission receives in evidence the responses to Bench Requests Nos. 2, 3 (as limited and supplemented), 4, 6, and 7. They will be recorded as exhibits bearing the respective bench request designations. Bench Request No. 1 did not request evidence, but information as to where evidence was contained in the Company's presentation. Consequently, the response is not received in evidence.

Summary and conclusion.

152 In conclusion, the Commission denies Verizon's request for interim rates. The limited evidence available in this phase of the hearing, considering all relevant factors including the financial performance, needs, and resources of Verizon's Washington intrastate jurisdictional operations, indicates that while Verizon's earnings may be relatively low, this results from a number of contributing factors, some of which are subject to adjustment in the general rate phase of this proceeding. Neither Verizon as a Company

[82] *See*, Docket No. TO-011472, *WUTC v. Olympic Pipe Line Co.*, 13th and17th supplemental orders relating to penalties assessed for violations of rules and orders relating to discovery.

nor its Washington intrastate jurisdictional operations faces any actual emergency, any actual gross hardship, nor any actual gross inequity.

153 We have reviewed the Company's needs, and find no evidence that the company will face financial difficulty maintaining existing operations during the period until the Commission can resolve issues in the general rate proceeding. The company's service is shown to meet pertinent standards, there is no revenue shortfall that signifies a failure to meet real financial terms, and no claim is made that lack of funds renders the Company's facilities or operations unsafe. We have reviewed the Company's cash flow, and find that it is adequate to meet the Company's stated cash needs—and generate a surplus—until an order is expected in the general rate phase of the docket. Finally, the Company has access to capital funding. In other words, failure to grant the requested interim increase will have no substantial adverse effect on the Company, on its intrastate operations, or on the public. There is no financial emergency to be staved off. According to the evidence of record, disaster has neither struck the intrastate operations, nor is it imminent, nor is difficulty in meeting financial or service requirements of the intrastate operations over the interim period an objective possibility.

154 In short, Verizon fails to demonstrate the existence of the factors on which the Commission should grant interim relief. As a result, the Company's request for interim relief is denied and its filed interim tariffs are rejected.

III. FINDINGS OF FACT

155 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

156 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including pipeline companies. *Chapter 80.01 RCW*.

157 (2) Verizon Northwest, Inc. ("Verizon)" is a "public service company" as that term is defined in RCW 81.04.010, and a common carrier telephone company under RCW 80.04.xxx, and as those terms otherwise may be used in Title 80 RCW. Verizon Northwest is engaged in Washington State in the business of providing the telephone service to the public for compensation.

158 (3) Verizon filed on April 30, 2004, certain tariff revisions that were suspended by Commission order entered in this docket on May 12, 2004. In its filing, Verizon asked that the rates be authorized on an interim basis, subject to refund. This order considers only the application for the requested interim rates.

159 (4) Neither Verizon Northwest, Inc., nor its Washington intrastate jurisdictional operations, have demonstrated an immediate need for funds for operations or capital for investment, prior to the expected conclusion of the general rate proceeding that cannot be readily obtained from the pertinent cash flow or sources of investment funds.

160 (5) Verizon Northwest's cash flow is adequate to meet the cash needs demonstrated of record to occur until the expected conclusion of the general rate proceeding.

161 (6) There is insufficient credible evidence of record to determine Verizon Northwest's achieved overall rate of return for purposes of the interim phase of this docket. The evidence demonstrates that it is more probable than not that Verizon's achieved rate of return is below its last-authorized overall rate of return of 9.76 per cent.

162 (7) Verizon has not demonstrated with credible evidence of record that clear detriment to the utility or to its intrastate operations before full hearing can be had and the Company's pending general case resolved with a final Commission order.

163 (8) The rates proposed by Verizon's filed tariff revisions that are the subject of the Commission's inquiry in this proceeding, if implemented, would not be fair, just, and reasonable.

164 (9) Verizon Northwest's proposed interim tariffs should be rejected in their entirety.

IV. CONCLUSIONS OF LAW

165 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

166 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceedings. *Title 80 RCW*.

167 (2) The rates proposed by tariff revisions filed by Verizon Northwest, Inc., on April 30, 2004, and suspended by Commission order, are not just, fair, or reasonable and should be rejected. *RCW 80.04.130.*

168 (3) Verizon Northwest, Inc.'s existing rates and charges for telephone service are sufficient to fund the cash needs of the Company and of the intrastate jurisdictional operations, pending resolution of the Company's general rate proceeding in this docket. Verizon has sufficient capital available to it to meet its projected needs and those of its intrastate jurisdictional operations, pending resolution of the Company's general rate proceeding in this docket.

169 (4) Verizon Northwest does not require immediate interim rate relief, subject to refund, pending full review by the Commission of its general rate proceeding in this docket.

170 (5) The Commission should deny Verizon's request for interim rate relief.

V. ORDER

171 THE COMMISSION ORDERS That the application of Verizon Northwest, Inc., for interim effect of tariff revisions filed by the Company on April 30, 2004, and suspended by prior Commission order, is denied.

DATED at Olympia, Washington, and effective this 15th day of October, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

MARILYN SHOWALTER, Chairwoman (dissenting):

172 I respectfully dissent. The majority construes PNB[83] too narrowly. In essence, the majority subordinates all of the PNB factors under the overriding test of emergency financial need, *i.e.*, whether, pending the rate case, the company's cash-flow or financial stability threatens service to customers. But emergency need was (until now) only one of three alternative prongs for relief under PNB. The other, as-yet undeveloped prongs are gross inequity and gross hardship. I support a broader perspective in applying those standards, one that considers "gross

[83] *WUTC v. Pacific N.W. Bell Tel. Co.*, Cause No. U-72-30 tr, Second Supplemental Order (October 10, 1972).

hardship" and "gross inequity" to have meanings independent of emergency financial need.

173 In my view, the facts on this record demonstrate gross inequity justifying interim rates, subject to refund. The salient factors justifying relief are low and declining intrastate returns over a lengthy period and a current intrastate return that is negative, according to the Company, or grossly low (2%), according to the only other evidence presented. While it is true that the evidence is preliminary and yet to be fully scrutinized, I think it is sufficient and convincing for purposes of interim relief that is subject to refund.

174 I am also concerned that the majority's constricted view is difficult to reconcile with, and may be used to attack, a variety of sensible regulatory mechanisms whereby revenues or rates are increased, temporarily or otherwise, without completing a general rate case or a finding of a financial emergency.

175 Finally, I think the broader standard I recommend is more harmonious with the practices of our neighboring states, and will further cooperation with them, which is desirable for our state as well as for our region.

The emergency-only standard is too narrow.

176 Appropriately, the majority has surveyed our own orders on interim relief, as well as those of other states' courts and commissions, to see how they approach the question.

177 It is difficult to generalize from those decisions, because of different state laws and different regulatory regimens, and because the regulatory environment in which many of those decisions were made may have since

changed. It does appear that an emergency standard is used in many jurisdictions, but it is not clear that the emergency standard was the exclusive standard for relief or that it would be exclusive in today's environment.

178 As Verizon points out, nearby Western jurisdictions appear to have a more modern view, in which a commission employs some type of "reasonableness" or "balance of hardships" test, based on preliminary evidence. I say more "modern" because most of the cases cited by the majority (Arizona is an exception) come from an era in which the general financial, competitive, and regulatory environment for telecommunications companies was more stable, more predictable, and more uniform. The adaptable standards used in our neighboring states (i.e., Oregon, Idaho, California, and Alaska) are better suited to the more volatile, less predictable, and fast-changing environment we operate in today. They are also, as I will discuss later, more consistent with our own, other practices in regulating under the public interest standard.

179 In Oregon, interim relief is appropriate if "deemed reasonable" by the commission.[84] In Idaho "an attempt to devise a single test to determine whether interim relief is a fruitless task. Such decisions ordinarily involve a balancing of short-term costs versus long-run benefits for both the utility and consumers."[85] In California, "the existence of a financial emergency is no longer a standard which must be met in granting interim relief."[86]

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[84] OR S 759.185(5):

> "The commission may in a suspension order authorize an interim rate or rate schedule under which the telecommunications utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility. An interim rate or rate schedule shall remain in effect until terminated by the commission. "

[85] Re: Washington Water Power Company, Case No. U-1008-112, Order No. 134_82, 22 P.U.R. 4th 487 (1977).

[86] Re: Southern California Edison Company, 28 CPUC 2d 203, 212 (1988) (D. 88-05-074).

Rather, the commission can "set interim rates as long as the rate is subject to refund and sufficient justification for the interim relief has been presented."[87] The California Commission relied on an opinion of the California Supreme Court, which upheld an earlier commission order that had expressly declined to make any finding that "the interim rate increase was required by a financial emergency, or that the reasonableness of the pertinent costs was undisputed."[88] In Alaska, the commission considers "a balance of hardships."[89]

180 In all of these instances, a commission, court, or legislature has determined that interim relief is warranted under conditions *other than* a financial emergency. These approaches are also consistent with a wide

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[87] In the matter of Kerman Telephone co., Decision 03-03-009; Application 02-01-004 (filed January 4, 2004, 203 Cal. PUC Lexis 181). The California commission said:

> The California Supreme Court addressed precisely this issue [interim relief] in *TURN v. CPUC*, (44 Cal. 3d 870, 878 (1988)). In the underlying decision, the Commission granted an interim rate increase while expressly declining to make any finding that "the interim rate increase was required by a financial emergency, or that the reasonableness of the pertinent costs was undisputed." (*Id*. at 875.) The Commission's decision was upheld by the Supreme Court, which found that the overriding circumstance was the prospect of many months and years of hearings and deliberations before a final rate could be determined. (*Id.* at 879.) The Court affirmed that the Commission could set interim rates as long as the rate is subject to refund and sufficient justification for the interim relief has been presented. (*Id*. at 880.) [footnote omitted].

[88] TURN v. CPUC, (44 Cal. 3d. 870, 878 (1988)).

[89] Golden Valley Electric Association, Inc., Docket No. U-04-33; Order No. 5, 2004 Alaska PUC Lexis 302 (July 2, 2004). The Alaska commission said:

> In analyzing requests for interim and refundable rate relief, we rely on the standard set forth in *A.J. Industries, Inc. v. Alaska Public Service Commission*, 470 P.2d 537 (Alaska 1970). In that case, the Alaska Supreme Court ruled that to determine if a utility qualifies for interim rate relief, we are to consider a balance of the hardships. If the balance weighs in favor of the utility, "it will ordinarily be enough that the plaintiff [utility] has raised questions going towards the merits so serious, substantial, difficult, and doubtful, as to make them a fair ground for litigation and this for more deliberate investigation." *A.J. Industries, Inc.*, at 540. The Court went on to find that if a utility's claims of confiscatory rates are true, it will be irreparably harmed because it cannot recoup those losses.

variety of forms of judicial relief that are granted on an emergency, temporary, or preliminary basis. The courts recognize that the evidence in front of them is preliminary, but so is the relief. Both the evidence and the relief are subject to further proceedings. These approaches also recognize that no interim decision – either way – is "neutral." Rather, a commission or court makes a preliminary determination for or against relief, subject to later adjustments based on further process.

181 It is important to note that PNB and its progeny are case law -- not a statute or a rule, in which a prescriptive test is deductively laid out for the universe of situations the statute or rule is defined to cover. Rather, case law evolves inductively, and prior cases are generally only as controlling as the current facts and current environment fit with the earlier-defined framework. New facts or situations, or entirely new questions, may or may not fit into earlier analyses. In other words, just because the cases to date that have granted relief under the PNB factors concerned emergency-based requests for interim relief does not mean their holdings or even their analytical frameworks cover the universe of situations in which interim relief might later be requested or be appropriate. If one simply proceeds down the list of PNB factors, as one would under a governing statute or rule, one sidesteps the important question whether the PNB framework comprehends the situation at hand. In general, I find that the parties and the majority have proceeded just that way, arguing that PNB controls, that using PNB brings certainty and consistency, and that the instant facts do not (or do, in Verizon's view) fit the PNB criteria.

182 As it happens, I think the PNB criteria can be, and should be, interpreted in a way that encompasses this case, and in a way that justifies relief. But I don't proceed from the *a priori* premise that PNB controls. PNB is informative, but my starting point is, as I think it must be under our

statutes, the public interest standard.[90] As with many things we do under the public interest test, we should balance all relevant factors (including but not necessarily limited to the PNB factors[91]) and arrive at the decision that best serves the public interest.

183 With respect to interim relief, the burden should of course be on the petitioning company, and the evidence and proof should be commensurate with the nature of the proceeding. Here, the company should make a convincing case, but the case should be viewed through the realistic light that the evidence is preliminary, that the remedy requested is temporary and subject to refund, and that the time to consider the request is necessarily short (or else the purpose of the request will have been defeated). The majority may complain that this test is too subjective, but it is no more subjective than many of the tests we employ, and it is no more subjective—just broader—than the test the majority articulates (which it asserts is "objective"): a financial threat "of a magnitude that will justify the imposition of rates without a full determination that the rates are fair, just, reasonable and sufficient."[92]

184 In my view, PNB doesn't need revision, as long as all of its terms are given full meaning. The balancing that the public interest nearly always requires is inherent in the terms "gross inequity" and "gross hardship." Without ever quite defining what "gross inequity" might be, the majority doesn't find it. I would.

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[90] *Puget Sound Navigation Co. v. Department of Transportation*, 33 Wn.2d 448, 482, 206 P.2d 456 (1949).

[91] The PNB order itself permits other factors, and acknowledges the public interest test, but that has not stopped a persistent tendency to treat the expressly stated factors as controlling.

[92] Majority opinion, paragraph 78.

A broader standard is consistent with the public interest.

185 The majority would confine interim relief to situations in which a company is at risk to the point of endangering service to its customers. That standard is unduly confining. It deprives the Commission of the breadth of options that would be available in a continuum of relief that could be tailored to individual circumstances. An "either-or" standard of emergency is ineffective to deal with many potential situations where relief might be an appropriate tool.

186 For example, in numerous proceedings the Commission has authorized temporary rates at its open meeting, without the process and the expense now associated with requests for interim relief.[93] These are illustrated by *WUTC v. Olympic Van Tours, First Supplemental Order, Docket No. TC-980299 (March 25, 1998),* action taken to avoid putting company in an overall loss position; and *Northwest Waste Industries, Inc., Docket No. TG-000726 (June 28, 2000),* action taken to facilitate adoption of deferred commodity recycling revenues and avoid a later increase. The Commission has granted temporary relief in utility proceedings, as well, including *Tall Timbers Water Systems, LLC, Docket No. UW-000253* (to allow extension of company tariff to newly-acquired systems, subject to refund, pending review of the proposed tariffs).

187 The majority suggests that there may be a different standard for "temporary" rates approved at an open meeting where the company and staff are in agreement, compared to contested "interim" rates in an adjudication. This poses two concerns. First, in deciding whether to agree

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[93] There may be confusion between the terms "temporary rate" and interim rate." I see no distinction between a "temporary rate" pending completion of a rate case and an "interim rate." Sometimes, however, a "temporary rate" is simply one that expires on a date certain or after its purpose (*e.g.,* a surcharge) has been accomplished. Thus, interim rates are best seen as one type of the broader set of "temporary rates."

to temporary rates, the Staff needs to consider precedent of the Commission, including this case**,** and including the principles that prior Commission decisions adopt. Second, it's the Commissioners, not the Staff, who must approve temporary rates, based on a defensible standard. How can the Commissioners use one standard at an open meeting and a different standard in a later, contested proceeding? (In most instances, an open meeting item is not, as the majority suggests, a "settlement situation," because no adjudication has been commenced. On the contrary, settlements are more common after an adjudication is underway.) The majority implies that there could be a different outcome in the following two situations: 1) an open meeting at which no one objects to a temporary rate, subject to refund, pending full adjudication of a rate request, even though it is apparent that the company is not in dire financial straits; and 2) a contested interim rate proceeding, in which all of the objective information is the same but a single party objects to the interim rate because the company has not shown severe financial distress. (Harder yet, assume one person objects at the open meeting. Which standard applies?) The proceedings may be different, but the posture of the company and its ratepayers is the same; the result should be the same, or at least be based on a common set of principles and standards.

188 In addition to approving temporary rates, the Commission regularly exercises a continuum of options in dealing with rate requests at its open meetings. In the vast majority of situations, the commission takes no action at all and thereby allows the rates to become effective—without any further process and with no findings. In some instances, the Commission allows rates to become effective without waiting the full statutory suspension period. In other cases, the Commission has suspended the proposed tariffs, and then lifted the suspension upon receipt of further information—without an adjudicatory hearing and without any finding of emergency. In yet other cases, the Commission has allowed the tariffs to

be re-filed with amendments satisfactory to the Commission, and then allowed the new tariffs to take effect. Finally, the Commission has suspended general rates for a full hearing, as it has in this case. All of these processes serve the public interest, and none of them – other than suspension followed by a full hearing – adjudicates the full and final interests of the parties.

189 How is it that the public interest can permit these various forms of relief without any final finding of emergency need, but then, once a general rate case is filed, that same public interest should *insist,* exclusively, upon emergency-level financial hardship proven by definitive evidence as the only ground for interim relief pending completion of the full rate case? In my view, a broader set of criteria is consistent with the public interest and consistent with our other practices under the public interest standard.

190 The "emergency-only" standard poses problems in the case of a multi-jurisdictional utility. Obviously, the same intrastate revenue picture that would justify relief for a single-jurisdiction utility will not necessarily justify relief in the multi-jurisdictional situation—because the utility has revenues from other sources. The flexibility and efficiencies of a multi-jurisdictional utility are, indeed, reasons mergers are proposed and approved, and those benefits can be observed in this case: Verizon's revenues from other jurisdictions are providing it a cushion from the financial consequences it would face if it were a Washington intrastate-only company. But the cushioning advantages of a multi-jurisdictional utility are only sustainable if each jurisdiction, including Washington, 'does its part' when evidence is put before it that its contributions are well below and persistently below sustainable levels. Pooled resources should not be treated as a license to "lean" on them. We share a mutual interest with other jurisdictions in ensuring that each jurisdiction lives up to its responsibilities. In my view, Washington is not living up to its

responsibility if it fails to contribute to an interstate company in roughly the same manner it would if the company were stand-alone intrastate.

191 The majority faults the Company for asking for relief on an intrastate basis but failing to demonstrate, in symmetrical fashion, that its intrastate functions are in trouble or have been subjected to intrastate-specific cost-cutting measures. Such an approach again misses the point of multi-jurisdictional utilities: Their *operations* are combined, for many good reasons, but *contributions* of revenues must come from each jurisdiction, with no jurisdiction unfairly leaning on the others. Thus, for example, if Verizon embarked on a company-wide early retirement plan, one should not also expect to see a Washington-only employee-reduction plan as if the company-wide plan did not exist. If the Company is really expected to mount this sort of demonstration of "Washington-only" operational need, it will first have had to set up Washington-only operations—thus defeating public interest in the efficiencies of a multi-state company, for our state and others.

192 In my earlier list of situations in which the Commission permits rate increases without full adjudication or a finding of financial emergency, I did not mention off-setting rate changes. The Commission allows, under the terms of our rule, revenue-neutral changes in access charge rates, without a hearing and without any specific findings, save the general ones already made in the rulemaking order. These off-setting rate changes are also neutral with respect to the customer *class* paying them, but not necessarily neutral with respect to the *individual customers* (interexchange carriers) paying. Also, on a case-by-case basis, off-setting rate changes have been allowed for other appropriate regulatory purposes – shifting burdens from basic services to optional services, for example – and doing so is proper. The majority is correct in its observation that the access-charge rule is not precedent for broad-scale, inter-class rebalancing of the

sort Verizon requested in the AT&T complaint proceeding. However, the Commission *has* recognized that off-setting rates are supportable in appropriate settings and for appropriate legal and public policy reasons – *i.e.*, the concept is not foreign to us and it is not inappropriate to consider variations that meet all other necessary standards.

193 The majority isolates the access-charge reduction from Verizon's financial context. First, the majority portrays the Commission's access-charge order as the Company's "sole referent"[94] for establishing gross hardship or gross inequity. Second, the majority observes that "the reduction in return due to the access charge order is less than two percent,"[95] as if that reduction does not account for much of Verizon's problem, if it has one. But Verizon's witness Mr. Banta made it quite clear on the stand that the access-charge reduction was the straw that broke the camel's back—a rather heavy, "considerable" straw, to use the term from our access charge order. It came on top of a history of declining returns. While Verizon may feel that the access-charge reduction alone warrants off-setting rates, it also made the case, which is what I find persuasive for purposes of interim rate relief, that its total intrastate return—definitely including but *not* solely limited to the effect of the access charge reduction—is so low (or negative) as to constitute gross inequity.

194 In any situation of declining returns, a company will have to make a judgment whether to ride out what might be a temporary trough or to seek redress through a rate case. We should not hold against Verizon its failure to come in earlier (before the access-charge reduction) to seek a rate increase. After all, if in fact Verizon could have demonstrated need earlier, then Washington's ratepayers have only benefited by the delay.

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[94] Majority opinion, paragraph 84.
[95] Majority opinion, paragraph 111.

195 Similarly, that the Company failed to seek in interim rates the larger amount to which they claim entitlement (in the general rate case) should not be held against it. What a company needs to remedy a gross inequity in its intrastate return presumably *would* be less than what it needs for general revenue purposes. Further, the smaller an interim increase, the less likely it will need to be refunded. In a comparative sense, and without prejudging whether Verizon will be entitled to any increase at the completion of its general rate case, it is surely preferable, from the ratepayers' point of view, for a company to ask for less in interim rates than it thinks it can ultimately justify in the general rate case.

Applying a balancing of interests and responsibilities in this docket.

196 Regulation imposes a balance of responsibilities as well as rights among the affected interests. To my mind, the balance is grossly askew when the evidence – preliminary though it may be—indicates that rates are so low that the Company is maintaining a near-zero return.

197 I accept the evidence regarding the Company's rate of return for what it is – an indication of performance, subject to revision after the Commission evaluates proposed adjustments in the general rate phase of the proceeding.[96] The Commission has in the past considered earnings of 25% below the authorized return, in a context of falling return, to be a significant factor in granting interim relief.[97] The evidence of earnings before us demonstrates that the Company is earning in the neighborhood of 100% below its authorized return. That the Company is not facing a financial emergency—the majority's reason for denying relief—should not

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[96] That such information is subject to revision in the general rate case is illustrated well in the Olympic Pipe Line Co. proceeding, docket No. TO-011472, Third and Eleventh Supplemental Orders.

[97] *WUTC v. Puget Sound Power and Light Co.,* Cause No. U-73-57 (Second Supplemental Order, 1974).

obscure the fact that the *reason* the Company is not in dire financial straits is that it is drawing on resources from other jurisdictions. Under the evidence presented, it is grossly inequitable for Washington to lean on these other jurisdictions and the shareholders while it completes its rate case. In the longer term, Washington does not help itself, either, by failing to hold up its end of a multi-jurisdictional arrangement. Verizon has asked only for as much as will offset the reductions we ordered in the access charge case, and only as much as will remedy a gross inequity—subject to refund in the event the full rate case demonstrates it was not justified. Under these circumstances, I would grant interim relief.

198 The Commission should articulate a clear yet full interpretation of the PNB factors that will allow us to deal with requests for interim relief quickly, with procedural flexibility, and with due consideration of the equities and the hardships in individual settings. Such a standard would be consistent with a large number of sound and sensible practices of this Commission, consistent with the decisions of courts and commissions in a number of other jurisdictions, and consistent with the mutual interests we share with our neighboring states.

199 For these reasons, I respectfully dissent.

MARILYN SHOWALTER, Chairwoman

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.