

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

VERIZON NORTHWEST, INC.,

Respondent.

DOCKET NO. UT-040788

PUBLIC COUNSEL RESPONSE TO
VERIZON PETITION FOR
INTERLOCUTORY REVIEW

Pursuant to the Commission's Notice of Opportunity to Respond dated October 12, 2004,¹ Public Counsel files this joint response to the Petition of Verizon Northwest, Inc., for Commission Review of Interlocutory Ruling Compelling VZNW To Respond To Commission Staff Data Requests Pursuant to WAC 480-07-810 And 480-07-425, filed October 8, 2004 (Petition).

A. Public Counsel Has Standing To Participate In This Matter.

At the September 23, 2004, oral argument in this matter, Verizon objected to Public Counsel's participation at the oral argument, and continues to object to Public Counsel's participation now, asserting that "Public Counsel has no standing to compel responses to questions it did not propound." Petition, p. 2, n.1. The Administrative Law Judge properly overruled the objection. Public Counsel notes that the Commission Notices of September 17 and October 12 call for responses from "parties" and do not limit participation to the movant and the party which is the subject of the discovery. Public Counsel's participation is somewhat mischaracterized by Verizon as an effort to directly compel, as if it were acting as a movant. Public Counsel's role has been to support Staff's motion and to comment on issues raised by Staff and Verizon. Public Counsel has a legitimate interest in these proceedings, namely,

¹ The Notice of Opportunity to Respond (October 12, 2004) references the Public Counsel, AARP, WeBTEC Motion to Compel. That motion was granted in Order No. 10 and is not involved in the Petition, which is directed to Order No. 09 granting Staff's earlier Motion to Compel.

concerns about Verizon's position with regard to relevancy of directory publishing information. The issues raised in Staff's motion directly bear on directory publishing issues which Public Counsel is also litigating and addressing in its own discovery. As Judge Wallis noted at the oral argument, parties have a broad interest in each other's discovery because data produced to one party is available to all, thus eliminating the need for duplication in discovery. Furthermore, any ruling in this matter is likely to directly impact not only Staff's discovery, but that of Public Counsel and other parties on directory publishing topics, and potentially even bears on the merits, to the extent the Verizon is arguing that the Commission may not look beyond the borders of Washington in its examination of Verizon's directory publishing business and policies.

B. Verizon's Petition Should Be Denied.

1. Staff seeks relevant information.

As we have stated earlier in responding to Staff's motion, Public Counsel's fundamental concern here is with Verizon's assertion that the Hawaii sale documents have no relevancy to any issue in this case and with the arguments it makes in support of that proposition.

There can be no dispute that directory imputation is a significant issue in this proceeding, as Judge Wallis noted. Order No. 09, ¶ 25; *see* Tr. 591- 592 (response of Paula Strain to questions of Commission Hemstad). Verizon's assertions that the directory valuation issue in Hawaii has no relevance to the Washington proceeding and that there is no nexus between valuation of the business and directory imputation is based on a misunderstanding of the directory issue. Directory revenue imputation is based on the current period value of the business income stream, while valuation for purposes of a complete sale of the business is essentially a monetization of the expected future revenue and profit stream from the directory business. The two are related and there is a nexus between them. *See e.g., In the Matter of the Application of Qwest Corporation Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC, a non-affiliate*, Docket No. UT-021120, ¶ 28 (order approving a stipulation that

replaced the directory income stream being sold with a fixed imputation value and a cash payment to customers); *In Re the Petition of U S West Communications, Inc. for an Accounting Order*, Docket No. UT-980948, Fourteenth Supplemental Order, ¶¶ 170-175. Moreover, that value, whether for sale or for imputation purposes, is enhanced by the relationship of the publishing business to the local operating company. That is why it is relevant to be able to look at Hawaii, or another state, to see whether and how Verizon directory transactions reflect the existence of that synergistic value. The point is not to compare specific dollar valuations with Washington, which concededly does not have a sale or merger under way, but to compare the Verizon treatment of a comparable relationship in a different jurisdiction.

That also is the point of the reference to Exhibit 70. What Exhibit 70 indicates is that company wide, Verizon's predecessor GTE had agreements between the GTE local operating companies and the directory affiliate that allocated the majority of the revenue to the telephone company as a "royalty payment" for the exclusive right to publish. This reflects a company-wide policy of recognizing a significant source of business value arising from being the exclusive publisher of the GTE local telephone directory. This information about a nationwide practice is clearly relevant to the examination of the directory imputation issue in any individual state, such as Washington, and has been admitted into the record. What the argument boils down to is that Verizon's actions regarding the directory business in other states provide valuable and relevant information to the Commission in evaluating the factual accuracy, credibility, and consistency of its claims regarding the directory business in this proceeding.

2. Commission jurisdiction is broader than Verizon acknowledges.

Verizon's view of the Commission's reach in terms of discovery is unduly limited.² For guidance on this issue, the Commission need simply look back at its order approving the merger

² Public Counsel assumes that Staff will address Verizon's *Waste Management* arguments and therefore does not do so here.

of GTE Corporation and Bell Atlantic.³ In the merger application, the applicant corporations argued that the Commission lacked jurisdiction over the merger transaction because neither parent corporation was a “public service company” within the meaning of RCW 80.12.010 or RCW 80.04.010.⁴ This argument essentially parallels the argument made in this Petition with regard to Commission jurisdiction.⁵

The Commission, in the Merger Order, opined that it did not “believe that the Legislature meant under RCW 80.12.020 to allow companies to avoid scrutiny of transfers of control over their jurisdictional enterprises *by the simple expedient of erecting particular corporate structures* [.]” Merger Order, p. 15. (emphasis added). In rejecting this argument, the Commission looked carefully at the relationship between the Washington operating company and the parent:

We agree with Staff and Public Counsel that the focus of our inquiry in this proceeding should be on GTE Northwest, indisputably a public service company under RCW 80.04.010 and RCW 80.12.010. In taking that focus, we cannot ignore GTE Corporation’s exclusive power, as the parent corporation, to effect the disposition of the whole of GTE Northwest by an indirect transfer of control to the newly constituted Board of Directors and officers of Bell Atlantic Corporation. To that extent, a decision by GTE Corporation’s Board of Directors to transfer control of GTE Corporation and its wholly owned subsidiaries is just as effectively a decision by the subsidiaries, including GTE Northwest, to dispose of the whole of the public service company within the meaning of the Disposition Clause of RCW 80.12.020. *Similarly, we cannot ignore the integral role of GTE Corporation both in the day-to-day operations of GTE Northwest and in shaping the corporate strategy that will determine larger concerns such as investment in Washington State, service offerings, and other matters that impact Washington consumers very directly. After the merger, Bell Atlantic Corporation will assume these roles for GTE Northwest. To the extent of this direct involvement by the parent corporation in the operations and decisions of the subsidiary, there is such identity of action and purpose that the two corporate entities should be considered a single entity subject to our statutes governing the conduct of public service companies as defined for purposes of Chapter 80.12. RCW.* Merger Order, pp. 15-16 (emphasis added).

³ *In the Matter of the Application of GTE Corporation and Bell Atlantic Corporation for an Order Disclaiming Jurisdiction or, In the Alternative, Approving the GTE Corporation-Bell Atlantic Corporation Merger, UT-981367 et al.*, Fourth Supplemental Order Approving and Adopting Settlement Agreement, Granting Application, Subject to Conditions (“Merger Order”).

⁴ Merger Order, p. 9.

⁵ Petition, ¶ 14.

Earlier in the Merger Order, in setting out the “essential facts” of the case, the Commission found:

In connection with GTE Corporation’s activities that are part of GTE Northwest’s operations in Washington state, including decisions reserved to the parent under the company’s corporate structure, *we find that the activities, decisions, and acts of the parent necessarily are the activities, decisions, and acts of the subsidiary.* Merger Order, p. 6.

Notwithstanding these holdings, which were not appealed by the merging companies, Verizon now attempts to persuade the Commission that there is at best only a “tenuous connection” between the Washington operating subsidiary (now Verizon Northwest), and the parent (Verizon Communications), limited to the provision of dividends to the parent, which allegedly in only an indirect way controls the Washington company.⁶ The point to be made here is that Verizon’s narrow and restrictive view of the Commission’s jurisdiction is not consistent with the Commission’s view, as expressed with direct application to the facts of Verizon’s own corporate structure. Just as the Commission found adequate authority in Title 80 to enable it to assert jurisdiction over a major merger of two national parent corporations as it affected Washington, so to can the Commission exert jurisdiction to compel production of information when it is necessary in pursuant to its authority to regulate in the public interest under RCW 80.01.040.⁷

Dated this 15th day of October, 2004.

CHRISTINE O. GREGOIRE
Attorney General

Simon J. ffitch
Assistant Attorney General
Public Counsel

⁶ Petition, p. 4, note 4. Moreover, Verizon makes light of the nature of the relationship with its citation to Judge McKeown’s language in the *City of Auburn* case, Petition ¶ 7, a relationship referred to in the Merger Order as “functionally intertwined.” Merger Order, p. 9.

⁷ See also, *In the Matter of the Application of Pacificorp and Scottish Power PLC*, UE 981627, pp. 8-12.