

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

WASHINGTON UTILITIES AND)	DOCKET NO. UT-040788
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 12
Complainant,)	
)	
v.)	
)	ORDER GRANTING
VERIZON NORTHWEST INC.,)	INTERLOCUTORY REVIEW
)	AND COMPELLING
Respondent.)	PRODUCTION
)	
.....)	

1 **Synopsis:** *This order affirms an interlocutory order compelling Verizon Northwest to produce certain documents in response to data requests. The order requires production of board minutes of Verizon Corporation, the parent of Verizon Northwest, on matters that affect the subsidiary. It requires production of all information relating to year-end journal entries. It also requires the production of certain documents relating to the sale of Verizon Corporation’s Hawaii operations.*

2 **NATURE OF PROCEEDING.** Docket No. UT-040788 relates to filings by Verizon Northwest, Inc. (“Verizon,” “Verizon NW,” or “the Company”) seeking approval of “interim” and general tariffs in support of the Company’s asserted need for general rate relief. Commission Staff on September 16, 2004, filed a motion to compel production of certain documents in conjunction with the Staff investigation of the Company regarding the proposed rate increase. Verizon answered on September 22, 2004 and argument was held on the dispute on September 23, 2004, before Administrative Law Judge C. Robert Wallis. Verizon asked the opportunity to respond to one matter that arose during argument; it did respond in writing on September 27, 2004; Commission Staff answered on September 28, 2004, and the matter is now ready for resolution.

3 **APPEARANCES.** The following representatives appeared on the petition and the answers: Judith A. Endejan, Graham and Dunn, Seattle, WA, representing Verizon. Robert Cromwell, Assistant Attorney General, Seattle, WA, Public Counsel, and Christopher Swanson, Assistant Attorney General, Olympia, WA representing Commission Staff.

4 **The Interlocutory Order Compelling Production.** The interlocutory order granted, in part, a motion by Commission Staff and compelled production of three categories of information: a) Minutes of the Board of Directors of Verizon Corporation, 92.5% owner of GTE Corporation, which is 100% owner of Verizon NW; b) Complete year-end journal entries for Verizon NW; and c) documents relating to the sale of Verizon's telephone operations, including the company's directory business, in the state of Hawaii.

5 **Petition for review of the interlocutory order.** Verizon asks for a Commission order reversing the interlocutory order. It recognizes that such review is optional with the Commission and asks that the Commission exercise its discretion to hear the petition. Commission Staff and Public Counsel oppose the petition on its merits, but neither party opposes the Commission's exercise of discretion to hear the petition. The Commission finds that the exercise of its authority to grant interlocutory review is appropriate in this particular situation, and agrees to hear the petition.

6 **The petition for interlocutory review.** Verizon makes two contentions in support of its petition.

7 **Commission Authority.** Verizon argues first that the Commission has no authority ("jurisdiction") to examine documents that are owned by Verizon Communications ("Communications" or "VZC" in this order) because there is no "contract or arrangement" between VZC and VZNW. It argues that the mere fact

that VZNW pays dividends that reach VZC does not satisfy the legal requirements for Commission review of an affiliate's records, and the Commission therefore has no right to examine any of VZC's operations.

- 8 In support of its contention, Verizon cites *Waste Management of Seattle, Inc. v. WUTC*, 123 Wn.2s 621, 869 P.2d 1034 (1994). There, a solid waste carrier serving commercial clients within Seattle delivered collected waste to a transfer station and paid to the City of Seattle the fee established for receipt of the waste. Seattle had independently contracted with the operator of a landfill and with a company providing transportation of the waste from Seattle to the landfill, both Waste Management affiliates, to receive all Seattle waste. Seattle included in the "tipping" fee for use of the transfer station the charges for transportation and disposal at the landfill. RCW 81.70.160 provides that solid waste carriers must pass through to their customers such charges as Seattle's for the disposal of solid waste.
- 9 The Commission Staff sought to gain information about the affiliate's costs of receiving the waste in order to determine whether the transfer station fee should be disallowed, in part, in the carrier's costs of operation. Waste Management appealed a Commission order. The state court ruled that the Commission was barred from exploring the costs to the affiliate in the absence of a contract or arrangement between the two affiliates that would permit review under RCW 81.16.030. That statute permits review of an affiliate's operations when there is a "contract or arrangement" between the affiliates. The court observed that in the situation under review there was no direct connection and no apparent contract or arrangement between the two affiliates in the three independent transactions, in which all three affiliates dealt independently with the City of Seattle. The court ruled that the Commission's statutory authority did not permit the Commission to review the landfill affiliate's cost of providing the service.

10 Verizon alleges that, because there is no contract or arrangement between VZC and VZNW, the Commission has no authority to order production of the documents in question.

11 Commission Staff responds in support of the order, arguing that there is clearly an arrangement between VZNW and VZC. It points to the Commission's language in the order approving the merger between Bell Atlantic and GTE, noting that the applicants for merger represented that Verizon Communications, Inc., would be exercising management control. Public counsel also appears in support of the interlocutory order,¹ arguing that the merger order² in recognizing the exercise of control to be assumed by Verizon Corporation resolves the issue.

12 We find that Verizon's contentions about the lack of an arrangement between Verizon Corporation and Verizon Northwest are untenable. They contradict evidence in this proceeding, Verizon's submissions in support of its petition for review, and the clear language of the Commission order authorizing the merger of Bell Atlantic with GTE. Verizon argues, strenuously and repeatedly, that the only connection between the two corporations is a revenue flow from VZNW to VZC, and it argues strenuously and repeatedly that the revenue flow was the sole basis for the interlocutory order.³ In this regard, Verizon repeatedly ignores the clear language of the order, which demonstrated VZC's exercise of management control

¹ Verizon in footnote 1 of its petition expresses displeasure with a ruling at argument on the motion that allowed Public Counsel to appear in support of the motion to compel. Verizon states a continuing objection in the footnote but neither asks for review of the decision in the body of its petition nor presents any argument in support of review. We find no error.

² *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").

³ Verizon petition, page 3, paragraph 7; page 6, paragraph 12; page 6, paragraph 13; page 7, paragraph 15.

over VZNW,⁴ and Verizon's representation is clearly and repeatedly contradicted by its own evidence in this docket⁵

- 13 The Verizon Corporation board is not, as Verizon contends, a mere passive shareholder whose sole role is to collect dividends. Instead, as the Merger Order notes in a slightly different context but which also relates to the exercise of control,

[W]e 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 . . .⁶

- 14 Commission Staff notes that Verizon's direct evidence demonstrates the existence of management and control by Verizon Corporation over Verizon Northwest:

The arrangement between Verizon NW and Verizon Communications is demonstrated by the Company's own testimony and data request responses. For example, Verizon NW testifies that Verizon Communications owns virtually all of Verizon NW and provides "overall corporate governance and direction" for Verizon NW. *See, Exhibit ___ (NWH-1T), Direct Testimony of Nancy W. Heuring, at 37, ll. 1-19.*

⁴ *See, e.g.*, page 5, paragraph 15, and page 3, paragraph 9, Docket No. UT-040788, Order No. 9.

⁵ *See, e.g.*, Exhibit 70, in which Corporation policies are stated for local exchange companies, including Northwest, with regard to the relationships between the LECs and Verizon's Directory operations.

⁶ Merger Order, above at note 2, page 16. The parties did not seek reconsideration or judicial review of the order.

15 Staff also notes that Verizon Northwest itself has placed into issue in this docket the costs of implementing policies imposed on it by Verizon Corporation.

16 In this case, Verizon NW has placed into issue the fact that Verizon Communications Inc. dictates its policies. It has placed into issue the fact that it is seeking rates to recover costs incurred as the direct result of implementing those policy decisions. It has placed into issue the payments it receives from Verizon's directory affiliate.

17 The *Waste Management* decision involved three subsidiaries of a single parent that dealt independently with the City of Seattle. It is not applicable to the present situation, in which the VZC board directly controls policies of Verizon Northwest, in which Verizon Northwest is responsible directly to VZC, and in which Verizon has put into issue the policies established by Verizon Corporation's board.

18 Several subsidiary points should be mentioned.

19 Verizon argues that RCW 80.16.030 requires a "direct agreement" between affiliated companies to justify an inquiry into their relationship, and it denies that a direct agreement exists here. We find no such requirement in the statute, which merely requires a "contract or arrangement."

20 Verizon contends that it does not own the documents in question and that the interlocutory order conceded the lack of ownership, implying that lack of ownership decided the question of right to discovery. It also has argued that an order compelling production would assert jurisdiction over the parent company. The interlocutory order did not concede ownership in saying that Verizon Northwest "may not" own the documents—the parties have not briefed it. The question before the Commission is whether the parties have a right to discover the documents. Verizon has not denied that it possesses or has access to the documents, or that it has a right to the documents, which in part relate to Verizon

Northwest's governance or which reflect the application of policies that also apply to Verizon Northwest. Neither has it denied that Verizon Corporation will provide the documents to Verizon. The interlocutory order merely requires Verizon Northwest to produce documents that relate to matters Verizon Northwest has put in issue, and Verizon has not denied the ability to secure them.⁷ It appears unnecessary to determine, and the parties have not briefed, issues related to ownership of the documents or conceivable Commission "jurisdiction" over Verizon Corporation for the sole and limited purpose of reviewing Verizon Corporation's management of Verizon Northwest.

21 Verizon disputes that the Washington operations pay dividends, because those operations are in an asserted negative earnings situation. Verizon does not dispute that Verizon Northwest has paid hundreds of millions of dollars in dividends during periods when the Washington operations were admittedly earning money, that Verizon Corporation has the ultimate right to dividends that are declared, and that the very economic purpose of Verizon Northwest to Verizon Corporation (and the economic purpose of this proceeding) is to produce earnings from which dividends may be paid. The level of Washington earnings are not necessarily relevant to Verizon Northwest's payment of dividends—dividends may be paid from funds other than direct earnings, such as retained earnings and cash assets. Moreover, Verizon failed to provide information from which the Commission could determine Washington's responsibility for any dividends, so Verizon can hardly be heard to argue the origins of dividends to us now.

22 Verizon charges that the interlocutory order erroneously contends that Verizon is withholding all information about affiliates, when it is doing so only selectively. In context, the cited passage of the order clearly refers to a prior statement that refers only to information Verizon is attempting to withhold.

⁷ We note that Verizon *has* produced other Corporation documents.

23 In sum, Verizon is wrong in its allegation that there is no “arrangement” between it and Verizon Corporation beyond the transfer and collection of dividends. There is no failure to satisfy conditions set out in RCW 80.16.030 for access to records of an affiliate of a public service company.

24 **“Relevancy” of the disputed documents.** Verizon challenges the three groups of documents that it disputes, on the basis of relevancy. We note that the issue in determining whether a matter is subject to discovery under WAC 480-07-400(4) is not whether the matter is admissible during a hearing on the issues, but rather whether it is

information that is relevant to the issues in the adjudicative proceeding *or that may lead to the production of information that is relevant.*

(Emphasis added.)

25 Commission Staff asked for access to minutes of the Board of Directors of Verizon Corporation to determine the nature and extent of Board activity affecting the Verizon intrastate operations. Verizon refused.

26 Verizon argues that the Communications board minutes are irrelevant because the minutes rarely, if ever, mention Verizon Northwest by name. Verizon would thus have us believe that the Communications Board decisions involving local exchange companies or their relationships with other members of the Verizon corporate family are irrelevant to Verizon Northwest unless the board minutes specifically mention Verizon Northwest. That is clearly not the case. The Verizon Communications board exercises management authority over Verizon Northwest. The minutes of VCZ board discussions are therefore likely to include records of decisions that affect Verizon Northwest and, in the words of the rule, “may lead to the production of information that is relevant.” WAC 480-07-400(4).

- 27 None of Verizon's arguments are well-taken, and we direct Verizon to produce the Verizon Communications Board information that Commission Staff seeks.
- 28 Commission Staff asked Verizon to produce information about the complete transactions reflected in certain journal entries. Verizon refused, arguing that only the Washington intrastate portion of the journal entries need be supplied as only Washington intrastate figures are relevant.
- 29 We reject Verizon's position. A responsible audit must review the entirety of a transaction to determine whether the entries related to it are proper and complete. Verizon has put the Washington portions of these entries into issue and must disclose the entire transactions to allow a responsible audit. We direct Verizon to produce the requested information.
- 30 Finally, Verizon objects to the order compelling disclosure of information relating to the sale of the Hawaiian business. Commission Staff asked to review documents related to the Hawaii sale because Verizon has put into issue the value of the relationship between a local exchange company and a related directory company. Staff asks to view certain documents related to the sale to determine whether Verizon in those documents makes representations about that relative value.
- 31 Verizon responds that the documents are irrelevant, because the Hawaiian transaction does not involve any interests of Verizon Northwest or its Washington operations. It submits a Declaration of a person knowledgeable about the documents, alleging that the directory and local exchange properties were not separately valued in the sale and that no independent valuation was undertaken relative to the sale.
- 32 The initial order ruled that the information must be compelled, because (to paraphrase) statements in the documentation may make representations about the

intrinsic, if not the financial, value of the local exchange operations to the directory business.

33 We believe that the interlocutory order was correct. Verizon is contending through its prefiled evidence that there is no value in the relationship between Verizon Northwest and its directory publishing affiliate. Staff should be permitted a review to determine whether statements or representations in the sale-related documents are consistent with the Company's litigation position in this matter. We direct Verizon to produce the requested information.

34 **Conclusion.** In conclusion, we reject Verizon's challenges to the interlocutory order, and require it to produce the documents that are the subject of the order, no later than seven days after the entry of this order unless Staff specifies a later date. Verizon argued to the administrative law judge that the burden of searching for the requested documents would be extensive and that the task would consume several weeks. Because Verizon did not make this argument to us,⁸ it appears that the argument was abandoned, and we make no accommodation for the previously-asserted burden.

35 Verizon's behavior as reflected in this record concerns us. There is not always a clear line between zealous and over zealous advocacy. Here, however, Verizon misstated to us the terms of the order of which it sought review, and it made representations to us that are counter to its own evidence in the proceeding. This kind of conduct frustrates, not advances, resolution of the genuine disputed issues.

36 In addition, it appears that Verizon is failing at times to comply with the requirement of rule that it state its objection to discovery no later than the time the response is due, and the requirement that it communicate promptly with the

⁸ Verizon mentioned burden as one of its arguments to the judge in its historical account of the circumstances.

requestor of information when a response will be delayed. Failure extends the time and effort related to discovery and reduces the ability of parties to present a sufficient record for Commission evaluation. Verizon must improve or sanctions may be appropriate.

ORDER

- 37 The motion of Commission Staff to compel Verizon to produce certain documents is granted, in part.
- 38 (1) Verizon is directed to produce for examination by Commission Staff the minutes of the Board of Directors of Verizon Corporation for the period January 1, 2002, to date, and future minutes as they become available, until entry of a final order in this docket.
- 39 (2) Verizon is directed to produce for examination by Commission Staff the entirety of all year-end journal entries booked for Verizon Northwest for the years 2002 and 2003.
- 40 (3) Verizon is directed to produce for examination by Commission Staff all documents relating to the sale of its Hawaii business operations that describe the entirety of the properties available for sale, that describe the relationship between directory and local exchange operations, and that describe the directory operations, whether by prospectus or otherwise. Verizon is directed to produce other documents as set out in the statement of Commission Staff at the argument on the motion to compel.
- 41 (4) Verizon must produce the documents in Olympia, Washington, no later than seven days after the date of this order unless the date be extended to a later time at the request of the movant, Commission Staff.

42 **NOTICE TO PARTIES: This Commission order reviews an Interlocutory Order in this docket. No further Commission review is available under pertinent Commission rules.**

Dated at Olympia, Washington, and effective this 22nd day of October, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner