

00198

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 UNITED AND INFORMED CITIZEN)
4 ADVOCATES NETWORK, a non-profit)
Washington Corporation,)
5)
Complainant,)
6)
vs.) DOCKET NO. UT-960659
7) Volume VI
PACIFIC NORTHWEST BELL TELEPHONE) Pages 198 - 216
8 COMPANY, d/b/a U S WEST)
COMMUNICATIONS, INC.,)
9)
Respondent.)

10 -----
11 GTE NORTHWEST, INCORPORATED,)
Complainant,)
12)
vs.) DOCKET NO. UT-970257
13) Volume VI
14 UNITED AND INFORMED CITIZEN) Pages 198 - 216
ADVOCATES NETWORK, a non-profit)
15 Washington Corporation,)
Respondent.)

16 -----

17

18 A prehearing conference in the above matter
19 was held on November 13, 2001, at 1:42 p.m., at 1300
20 South Evergreen Park Drive Southwest, Olympia,
21 Washington, before Administrative Law Judge MARJORIE
22 SCHAER.

23

24 Kathryn T. Wilson, CCR
25 Court Reporter

00199

1 The parties were present as follows:

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

U S WEST COMMUNICATIONS, INCORPORATED, (QWEST CORPORATION), by ADAM L. SHERR, Attorney at Law, 1600 Seventh Avenue, Suite 3206, Seattle, Washington 98191.

GTE NORTHWEST, INCORPORATED, (VERIZON NORTHWEST, INCORPORATED), by TIMOTHY J. O'CONNELL, Attorney at Law, Stoel Rives, 600 University, Suite 3600, Seattle, Washington 98101.

THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by SHANNON E. SMITH, Assistant Attorney General, 1400 South Evergreen Park Drive Southwest, Post Office Box 40128, Olympia, Washington 98504.

00200

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE SCHAER: Let's be on the record. This is a hearing in Docket No. UT-960659, which is a complaint brought by United and Informed Citizen Advocates Network against US West. Also consolidated with this case is Docket No. UT-970257, which is a complaint by General Telephone, Incorporated, against U&I CAN claiming that U&I CAN has improperly avoided paying access charges when using long-distance service on a GTE network.

This afternoon, we are here for a status conference to address any discovery issues and to attempt to schedule the remainder of the proceeding. Today is November 13th, 2001, and we are in the Commission's hearing room 206 in the Commission headquarters in Olympia, Washington.

We are set to convene at 1:30 this afternoon. One of the counsel who normally appears at these hearings has not arrived, so we have taken already a 10-minute recess to give him an opportunity to appear, and it is now 1:40 as we begin. Let me inquire again on the record as to whether there is anyone on the Commission bridge line in this hearing. If so, please identify yourself at this point. Hearing no one, we will proceed.

00201

1 I'm Marjorie Schaer, and I'm the
2 administrative law judge assigned to these proceedings,
3 and I would like to start by taking appearances,
4 please, starting with you, Mr. O'Connell.

5 MR. O'CONNELL: Timothy J. O'Connell with the
6 Stoel Rives law firm. Address and telephone I have
7 already entered into the record.

8 MR. SHERR: Adam Sherr on behalf of Qwest.

9 MS. SMITH: Shannon Smith, assistant attorney
10 general, on behalf of the Commission staff.

11 JUDGE SCHAER: Thank you. Are there any
12 preliminary matters to come before us in this hearing
13 today? Then going forward, I would like to get a
14 report from counsel who are here as to where we are on
15 discovery and scheduling in this matter, and again,
16 I'll start with you, Mr. O'Connell.

17 MR. O'CONNELL: I think it can be summarized
18 that things have not gone very far very fast. US West
19 served discovery on U&I CAN as did Verizon. Responses
20 are now overdue as to both discovery responses, and no
21 objections or responses were received by either of the
22 complainants in response to the discovery. We are, in
23 fact, prepared to filed today a joint motion for the
24 issuance of a Commission subpoena to compel that that
25 material be produced.

00202

1 JUDGE SCHAER: When were the responses due?

2 MR. O'CONNELL: They are summarized in the
3 motion. The Qwest responses were due October 4. The
4 responses to Verizon were due October 30. Speaking
5 only on behalf of Verizon, we received not only no
6 responses but no contact from U&I CAN or its
7 representatives whatsoever.

8 JUDGE SCHAER: Mr. Sherr, did you have
9 anything you wanted to add to this?

10 MR. SHERR: I did, Your Honor. For the sake
11 of clarity, Mr. Holcomb did contact Qwest last week --
12 I believe it was Wednesday. I believe it was November
13 7 -- and simply asked for another copy of the discovery
14 responses. He has not served any objections or served
15 any responses to the data requests served by Qwest back
16 on September 20th. They are now substantially overdue,
17 and I concur with the rest of what Mr. O'Connell said.

18 JUDGE SCHAER: I think you may have misspoken
19 when you said he asked you for another copy of the
20 discovery responses. Do you mean the discovery
21 requests?

22 MR. SHERR: Yes. Thanks for clarifying. I
23 should add they were faxed to him at his request.

24 JUDGE SCHAER: Ms. Smith?

25 MS. SMITH: I have nothing to add.

00203

1 JUDGE SCHAER: This case has already come to
2 the point at one stage where there was a request for a
3 Commission subpoena to be issued, and a subpoena was
4 issued, I believe, Ms. Smith, and so I guess I would
5 like to know -- I can't rule on that motion, of course,
6 today because I haven't seen it yet nor have I seen a
7 response to it, but I would like to know how you plan
8 to proceed beyond that point in the hypothetical
9 situation that a subpoena were granted.

10 MR. O'CONNELL: Your Honor, I've had
11 discussions with both my client and with Ms. Anderl on
12 behalf of Qwest, and we have contemplated a game plan
13 which assumes that the Commission would grant the
14 motion to issue a subpoena. Your memory is absolutely
15 correct in that a subpoena was issued previously and
16 not complied with by U&I CAN, and frankly, the parties
17 did not pursue the matter further after that, because
18 you may also recall, simultaneously or approximately
19 simultaneously with that, U&I CAN had appealed the
20 Commission's rulings concerning its jurisdiction over
21 U&I CAN, and the parties have reached a conclusion that
22 it made sense for that to play out before proceeding.

23 What we have discussed between Verizon and
24 Qwest is that assuming that the Commission does, in
25 fact, approve the motion and issue a subpoena, the

00204

1 parties will attempt to conduct a deposition as is
2 authorized by the subpoena, and if U&I CAN doesn't
3 comply, we will initiate an action which we imagine to
4 be a single consolidated action in an appropriate
5 Superior Court to compel compliance, and the court, of
6 course, has appropriate remedial authority to compel
7 U&I CAN to comply at that juncture.

8 JUDGE SCHAER: Mr. Sherr, anything to add to
9 that?

10 MR. SHERR: Nothing, Your Honor.

11 JUDGE SCHAER: Mr. O'Connell mentioned the
12 other case involving U&I CAN, which, I believe, you
13 reported in our last prehearing had been decided by a
14 court of appeals and that U&I CAN had sought review by
15 the Supreme Court. Is there anything further in that
16 arena that you have to report, Ms. Smith?

17 MS. SMITH: No, there is nothing further to
18 report with respect to that case, but the petition for
19 review is still pending before the Supreme Court, and
20 the petition and the answers to the petition have all
21 been filed. I believe that the court will take up that
22 petition for review sometime next year, so it may be
23 awhile before we hear back from the Supreme Court
24 whether it will accept review of that case.

25 JUDGE SCHAER: I have a couple of

00205

1 questions -- go ahead, Mr. O'Connell.

2 MR. O'CONNELL: Judge Schaer, just to kind of
3 echo the timing issue from what I know of an
4 enforcement proceeding, because I'm frankly
5 contemplating that's the road we are looking to end up
6 going down if U&I CAN continues to attempt to ignore
7 discovery in this proceeding and appropriate Commission
8 procedures, assuming that the Commission were to rule
9 on and consider the motion for a subpoena sometime in
10 November, since the motion is being filed today, if we
11 were to seek to conduct the deposition that would be
12 contemplated by the subpoena within two weeks, a month
13 of when the subpoena is issued, we are looking at it
14 taking place sometime in the December time frame. If
15 they decline to participate and enforcement action,
16 which we think would be brought in King County Superior
17 Court, it's not real realistic to look at a hearing on
18 that anytime much before the end of January, just from
19 the nature of how the King County Superior Court would
20 process such a proceeding.

21 JUDGE SCHAER: So in terms of timing, it's
22 sounding to me like you need to file a motion and need
23 to get answers to that motion and rule on that motion,
24 and I'm comfortable in indicating that that could be
25 done in a November time frame, and then get in the

00206

1 hypothetical that that motion were granted, it's
2 sounding to me like a checkback point where I could
3 find out what was happening and how we could proceed
4 might be early February; is that a correct
5 understanding?

6 MR. O'CONNELL: Judge Schaer, I would say
7 perhaps towards the middle part of February would be
8 more realistic, but I think it's unlikely that there
9 will be substantial developments before then.

10 JUDGE SCHAER: Any other counsel wish to
11 address that?

12 MR. SHERR: No, Your Honor.

13 JUDGE SCHAER: I'm not willing to let this
14 float without some kind of a checkback provision. I
15 think that we need to figure out how to get the issue
16 framed, how to get the data we need and to get this
17 proceeding concluded in as timely manner as we can.

18 MS. SMITH: I'm sure all of the parties would
19 agree to keep you informed as things go. For example,
20 Mr. Sherr indicated that Mr. Holcomb had contacted him
21 last week, I believe, to ask for a second copy of the
22 data requests. If those data requests are forthcoming,
23 assuming that that's possible, then perhaps we could
24 all agree to keep you informed as to any events that
25 happen with respect to the discovery. So we'll take

00207

1 that responsibility and not wait until you schedule
2 something.

3 JUDGE SCHAER: Thank you. One other question
4 I want to ask the parties, and that is what is the
5 status at present of the service that Verizon or Qwest
6 are providing to U&I CAN? Is this ongoing at this
7 time, or have you taken any action that would cut off
8 service to the extent you are aware of numbers? Where
9 is that process right now, and I want to hear from you,
10 Ms. Smith, in particular.

11 Also, if the Commission has any concerns
12 about enforcement, particularly given the other
13 proceeding involving this company, which the Commission
14 has determined it is a telecommunications company, I
15 want to know if we are doing the things we should be
16 doing while this is going forward and to hear your
17 thoughts on that, and I will let you decide who is
18 going to go first, I guess. Should we just follow the
19 same order? I see you consulting with Mr. Sherr, and
20 if you would like him to go first, we can do that.

21 MR. O'CONNELL: I'll go first. I think you
22 have put your finger on the nub of the problem, which
23 was to the degree that we know what numbers U&I CAN is
24 using. The problem is that we don't. When we have
25 located numbers that they were using on the Verizon

00208

1 network, we took appropriate action. The problem is,
2 as we understand their method of operation, they then
3 turn around and solicit replacement numbers from other
4 members, and they are very conscious of the fact that
5 the telephone companies are watching for them, and they
6 ask those questions and try to screen people out. So
7 the bottom line is I'm not sure Verizon has a good
8 handle on what numbers they are using in Verizon
9 service territory.

10 JUDGE SCHAER: When you say you took
11 appropriate action, what actions did you take to the
12 extent you know right now?

13 MR. O'CONNELL: To the extent I know, at some
14 point -- you are pressing me because this is now about
15 two years ago. In order for their method of operation
16 to work, they had to access an unusually large number
17 of NARS, so when we located those networks, the
18 customer contacts, because they were using residential
19 lines to do this, ramped them down to a more typical
20 number of NARS, which I believe is on the order of at
21 most four NARS per line. They had 20. So the line is
22 still fully capable of any potential residential
23 service, but it was not able to use for these
24 call-switching purposes. As I say, that was two years
25 ago. To my knowledge, we have looked but not been able

00209

1 to find numbers that we know they are using to provide
2 service.

3 JUDGE SCHAER: Mr. Sherr, do you know what
4 NARS are?

5 MR. SHERR: I sure don't, Your Honor. As you
6 know, this matter well precedes my history with the
7 company, and unfortunately, I don't have a great depth
8 of knowledge as to what actions Qwest has taken. I do
9 know from reading the Sixth Supplemental Order that
10 that does outline the history that this matter sprang
11 up originally when then US West disabled the
12 call-transfer capability of certain lines, but the
13 discovery requests that we have propounded are -- the
14 purpose of them in part is to seek the information,
15 which is the names and numbers of the members of
16 U&I CAN. So echo what Mr. O'Connell said, which is
17 that this is the nub of the problem is we don't know
18 all of the numbers and therefore have been unable to
19 take the appropriate actions in all cases.

20 JUDGE SCHAER: Thank you. Ms. Smith?

21 MS. SMITH: Thank you. The Commission staff
22 really isn't in a position to investigate whether
23 U&I CAN is using the facilities of Verizon or Qwest.
24 That really is better left to the company. So the
25 Commission staff really doesn't have the tools that it

00210

1 would need to investigate U&I CAN's usage.

2 With respect to enforcement, the Commission
3 has authority over U&I CAN pursuant to its order
4 classifying U&I CAN as a telecommunications company,
5 and like with any telecommunications company, the
6 Commission has authority to issue whatever orders are
7 necessary and appropriate to require U&I CAN to comply
8 with Title 88 and the rules and regulations that the
9 Commission has issued.

10 The problem is that U&I CAN is a company that
11 doesn't want to be registered as a telecommunications
12 company and has no incentive to work within the
13 regulatory framework that the Commission has developed
14 with those companies that are regulated and conduct
15 business as regulated companies. The Commission
16 certainly can penalize U&I CAN for any failure U&I CAN
17 has with respect to its compliance with the law and
18 issue whatever orders are reasonable and seek
19 enforcement in Superior Court against U&I CAN for its
20 failure to comply with those orders.

21 At this point, the Commission staff doesn't
22 know but we hope to find out in this case whether or
23 not U&I CAN is still using the facilities of Qwest and
24 using the facilities of Verizon to provide the service
25 that we believe can't be provided without at least the

00211

1 payment of access charges, which is the issue in this
2 case.

3 JUDGE SCHAER: So in terms of this status
4 conference, my understanding is that data requests that
5 have been sent have not been responded to; that a
6 motion to compel in seeking a Commission subpoena will
7 be filed today. I've heard an offer that the parties
8 will keep the Bench informed so if at some point
9 answers are received and we could move forward in
10 putting together a schedule along the lines of what was
11 discussed at our last prehearing conference that I will
12 be contacted with that information.

13 Just as a reminder, what we determined at
14 that conference was an outline for further proceedings
15 is that once full and complete answers to discovery are
16 received, US West, GTE, and Staff will file direct
17 testimony and exhibits 60 days later, and U&I CAN will
18 file responsive testimony 30 days thereafter with
19 rebuttal testimony and exhibits another 30 days later
20 and then a hearing scheduled two to four weeks after
21 that.

22 So if at some point, you do receive these
23 complete responses to data asks as contemplated by the
24 orders, I will expect the parties to contact me and to
25 let me know that so that we may schedule another status

00212

1 conference and sit down together and plan a schedule
2 for the remainder of the proceeding. Lacking that, I'm
3 going to set a date in mid February of next year for a
4 further status conference. I don't think it is a good
5 idea to let this matter go on without some form of
6 checkback so that the Commission is aware that the
7 matter is still being actively pursued. So I'm going
8 to suggest in a moment that we go off the record and
9 find a date for that that works for everyone's
10 schedules and then come back on and schedule that date.

11 If, however, the parties discover that that
12 date is not going to be the best date --
13 hypothetically, you have something scheduled in King
14 County Superior Court and it's three days after the
15 date we choose, certainly do contact me and discuss
16 when we should continue that date to a time that's
17 going to make sense for finishing up what we are
18 working on here today. Does that sound like an
19 appropriate way to proceed to Counsel?

20 MR. O'CONNELL: Yes.

21 MR. SHERR: Absolutely.

22 MS. SMITH: Yes.

23 JUDGE SCHAER: Is there anything else that
24 needs to come before the Commission this afternoon?
25 Thank you for your continued good work in this matter,

00213

1 and I look forward to reading the motion and answers to
2 the motion, and we will go forward as just described.
3 Thank you, and we are off the record.

4 (Discussion off the record.)

5 JUDGE SCHAER: Let's be back on the record.

6 We had briefly adjourned this hearing, and then the
7 judge started to have second thoughts about how long it
8 takes to answer a motion. I have had in mind discovery
9 motions under WAC 480-09-480, wherein accelerated times
10 for response are allowed by Section 7, and had been
11 thinking of a time period for answer of somewhere in
12 the realm of five days, and based on that have made a
13 commitment that I should be able to have an order out
14 by the end of the month on the motion being filed
15 today.

16 However, giving a little bit more thought
17 about what my understanding of the nature of the motion
18 is, and it's not just a motion to compel in a discovery
19 sense but is, in fact, a motion seeking issuance of a
20 subpoena, my thought now is it is more likely that the
21 rule in WAC 488-09-425, allowing 20 days for answer,
22 would be the rule that would apply, and given that time
23 and given concern about having someone represent and
24 U&I CAN being able to respond to that motion, I
25 suggested off the record to the parties that we

00214

1 reconsider the time lines we had discussed and come
2 back on the record to reflect a somewhat changed
3 understanding.

4 It is now my understanding that there will be
5 a motion to file today and that there will be
6 approximately 20 days to answer that motion after which
7 I will have to rule on it. It's also, I believe, the
8 parties' understanding, and I'm going to ask them to
9 reflect their own understandings in a moment, that it
10 still makes sense to have a mid February checkback time
11 so the Commission can know where this matter is
12 procedurally and when we can expect to have a status
13 conference where we can set a schedule for the
14 remainder of the proceeding and get this proceeding
15 done.

16 So I'm going to set on the record now another
17 prehearing conference for 1:30 in the afternoon on
18 February 21st, 2002, and ask if any of the parties have
19 anything further they wish to place on the record,
20 starting with you again, Mr. O'Connell, because that
21 seems to be our order today.

22 MR. O'CONNELL: Thank you, Your Honor. The
23 status conference on the February 21 time frame seems
24 appropriate. Although, I will restate my recollection
25 of what you said earlier that if the parties conclude,

00215

1 based on whatever the status might be, that it would be
2 appropriate time to revise that date that we could
3 attempt to do so by contacting you.

4 JUDGE SCHAER: Let me reflect also that I had
5 indicated to the parties that if there are full answers
6 received to the discovery requests that are outstanding
7 in an earlier time frame that would allow us to get
8 back together before February 21st and hold another
9 status conference to plan the remainder of this
10 proceeding that they should contact me and that we
11 would do that, and on the other hand, if, for some
12 reason, there are other dates, perhaps dates involving
13 Superior Court or something of that nature that are
14 going to be happening in an order that it would make it
15 make sense not to get back together on the 21st but
16 perhaps sometime slightly later that the parties should
17 be free to contact me with that inquiry, and we can
18 hold a telephone conference and talk about what that
19 date should be also. Go ahead, Mr. O'Connell.

20 MR. O'CONNELL: That's all I need to say.

21 MR. SHERR: Nothing further to add.

22 MS. SMITH: No, thank you.

23 JUDGE SCHAER: Anything further that should
24 go on and be reflected in the record of this
25 conference? Hearing nothing, we are off the record.

00216

1 (Prehearing conference concluded at 2:28 p.m.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

