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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

UNITED & INFORMED CITIZEN)	Docket No. UT-960659
ADVOCATES NETWORK, a non-profit)	Volume VII
Washington corporation,)	Pages 217-227
Complainant,)	
v.)	
PACIFIC NORTHWEST BELL)	
TELEPHONE COMPANY, d/b/a US)	
WEST COMMUNICATIONS, INC.,)	
Respondent.)	
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GTE NORTHWEST, INCORPORATED,)	Docket No. UT-970257
Complainant,)	
v.)	
UNITED & INFORMED CITIZEN)	
ADVOCATES NETWORK,)	
Respondent.)	
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A hearing in the above matter was held on February 21, 2002, at 1:37 p.m., at 900 Fourth Avenue, Suite 1995, Seattle, Washington, before Administrative Law Judge MARJORIE R. SCHAER.

The parties were present as follows:

QWEST, by Adam Sherr, Attorney at Law, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191.

VERIZON NORTHWEST, INC., by Timothy J. O'Connell, Attorney at Law, Stoel Rives, 600 University Street, Suite 3600, Seattle, Washington 98101.

THE COMMISSION, by Shannon Smith, Assistant Attorney General, 1400 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington 98504-0128.

Barbara L. Nelson, CSR
Court Reporter

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1 JUDGE SCHAER: Let's be on the record.
2 This is a hearing in Docket Number UT-960659, which
3 is a complaint brought by United and Informed Citizen
4 Advocates Network against US West, now Qwest. Also
5 consolidated with this case is Docket Number
6 UT-970257, which is a complaint by General Telephone,
7 Incorporated, now Verizon, against U&I CAN, claiming
8 that U&I CAN has improperly avoided paying access
9 charges when using long distance service on a GTE
10 network.

11 This afternoon we are here for a status
12 conference to address any discovery issues and to
13 attempt to schedule the remainder of the proceeding.
14 Today is February 21st, 2002, and we are in
15 Conference Room 1995, in the office of the Attorney
16 General in Seattle.

17 Notice of this hearing was provided in the
18 Sixth Supplemental Order in this matter entered
19 November 16th, 2002. Additional notice of this
20 hearing and notice that the hearing site had been
21 changed from Olympia was provided on February 4th,
22 2002. We are set to convene at 1:30 this afternoon,
23 but counsel for one of the parties has not arrived,
24 so we are going to take a ten-minute recess to give
25 him an opportunity to appear, and at that point we

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1 will go forward with the hearing. We are off the
2 record.

3 (Recess taken.)

4 JUDGE SCHAER: We're back on the record
5 after a brief recess. It's now ten minutes to 2:00,
6 and we have waited to see if counsel for U&I CAN, Mr.
7 Holcomb, is going to arrive and be present at the
8 hearing, and he has not arrived at this point. I'm
9 Marjorie Schaer, and I'm the Administrative Law Judge
10 assigned to these proceedings. I'd like to start by
11 taking appearances, please, starting with counsel for
12 Qwest.

13 MR. SHERR: Good afternoon, Adam Sherr,
14 in-house counsel for Qwest. My address and phone
15 number are previously of record.

16 JUDGE SCHAER: Mr. O'Connell.

17 MR. O'CONNELL: Tim O'Connell, with the
18 Stoel Rives Law Firm, attorney here for Verizon.
19 Again, my appearance is already in the record in this
20 case.

21 JUDGE SCHAER: Ms. Smith.

22 MS. SMITH: Yes, this is Shannon Smith of
23 the Attorney General's office, representing
24 Commission Staff, and I too have made an appearance
25 on this record before.

1 JUDGE SCHAER: Thank you. Are there any
2 preliminary matters to come before us in this hearing
3 today? Hearing none, going forward, I would like to
4 get a report from counsel who are here as to where we
5 are in discovery and scheduling in this matter.
6 Again, I'll start with you, Mr. Sherr.

7 MR. SHERR: Your Honor, I'd be happy to
8 defer to Mr. O'Connell to describe the current status
9 of this, if that's okay with you.

10 JUDGE SCHAER: That's fine. Go ahead, Mr.
11 O'Connell.

12 MR. O'CONNELL: Thank you, Judge Sherr.
13 After the last status conference in this case, I
14 think actually contemporaneous with that status
15 conference, Qwest and Verizon had filed a motion for
16 the issuance of a subpoena, and we didn't proceed
17 further awaiting the ruling on that motion.

18 And Judge Schaer, we then received on
19 February 12, 2002, your communication addressed to
20 the parties of record in this case, which responds to
21 the subpoena and suggests that some aspects of the
22 proposed subpoena that had accompanied our November
23 motion were inappropriate and pointed the parties
24 towards the subpoena and deposition procedures
25 available under the APA.

1 And Judge Schaer, I think the report then
2 is that is about as much as has happened. We would
3 like to discuss with you on the record some questions
4 that arise out of that subpoena and your response in
5 your February 12 letter.

6 And then I think, when we get around to
7 scheduling -- well, if you don't mind, Your Honor, it
8 might make sense to have that discussion about the
9 subpoena and where to go from here first before we
10 address scheduling.

11 JUDGE SCHAER: Okay. Did you have specific
12 questions of me, or --

13 MR. O'CONNELL: I did.

14 JUDGE SCHAER: Go ahead, please.

15 MR. O'CONNELL: I was hoping that you could
16 clarify for us what aspects of the subpoena are not
17 appropriate for the Commission to adopt and serve, as
18 identified in your February 12 letter. To be
19 specific, if the concern is purely the procedural
20 issue that the way some of these questions are
21 presented is not appropriate in a subpoena, that's
22 one aspect and we can cure that either through the
23 deposition procedures or the subpoena procedures in
24 the APA.

25 But if there is a concern that some of the

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1 topics or the substance of the questions addressed in
2 the subpoena are in any way inappropriate, I guess
3 we'd like to have that identified, because we frankly
4 do not want to go forward on something that the
5 Commission thinks is substantively inappropriate for
6 us to be inquiring into.

7 JUDGE SCHAER: Well, let me describe
8 briefly my thought process involving this subpoena.
9 As I understand it, there are two different ways that
10 you can have authority to issue a subpoena in a case
11 before the Commission. The first is provided in
12 Title 80, and is the ability to send out a subpoena
13 duces tecum and seek provision of documents in some
14 kind of a hearing which the Commission conducts.

15 It's my understanding that the subpoena
16 that was filed with your motion in November is that
17 kind of a subpoena, in that it seeks to be issued by
18 the Commissioners themselves. And the concern with
19 this subpoena is that it goes far beyond just asking
20 for documents and asks the kind of information that
21 could be asked in a question or could be asked in a
22 data request.

23 The second type of subpoena that is
24 available is the subpoena that is provided for under
25 the Administrative Procedures Act in RCW 34.05.446

1 and for which there is authority to seek court
2 enforcement in RCW 34.05.588.

3 The Commission has a discovery rule that
4 allows for depositions, and that rule was triggered
5 at the request of U&I CAN in the first prehearing
6 conference in this matter, and has been reaffirmed at
7 other times in this proceeding that it is still in
8 effect.

9 Under that provision, counsel can subpoena
10 someone to a deposition, and if that person does not
11 appear, then they can enforce this as provided in the
12 APA. They also can accompany that, as I understand
13 it, with a subpoena duces tecum that would require
14 documents to be brought to that hearing.

15 And if counsel should have any concerns
16 about that, then you should communicate those to me.
17 But I think that, at this point, it may be more
18 workable to have the APA subpoena power used.

19 And in answer to your concern about what
20 the questions asked, Mr. O'Connell, let me say that I
21 have reviewed each of the questions, and I think that
22 the information that you ask is both material and
23 relevant and it is appropriate for that kind of
24 information to be revealed to the parties.

25 There is a protective order in place in

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1 this docket, and that was specifically extended to
2 cover the Verizon docket when the two were merged, so
3 that U&I CAN has the protection of any of its records
4 that it chooses to claim confidentiality for in
5 accordance with that order, and I would expect that
6 that party should come forward with the documents and
7 with the information sought in the questions
8 indicated in the subpoena and provide those in this
9 forum.

10 I will note that there have been past
11 motions to compel that have been granted and not
12 followed through on, and I believe it is entirely
13 appropriate that if these subpoenas are not honored,
14 then the Superior Court should become involved in
15 their enforcement.

16 Were there any other questions that you
17 had?

18 MR. O'CONNELL: Not from me, Judge Schaer,
19 thank you.

20 MR. SHERR: None, Your Honor.

21 JUDGE SCHAER: Ms. Smith, was there
22 anything else you wanted to ask about in this
23 proceeding?

24 MS. SMITH: No. Thank you, Your Honor.

25 JUDGE SCHAER: Okay. Is there any other

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1 matter to come before the Commission at this time?

2 MR. O'CONNELL: Just to address the
3 scheduling issue, I think I can commit that certainly
4 on my client's behalf, and I think we're going to
5 coordinate this with Qwest, as well, that in light of
6 what we've just covered in this conference, we will
7 be issuing this subpoena -- I'd like to say tomorrow,
8 but that's Friday -- certainly next week, and we
9 intend to provide a reasonable period of time to
10 respond to U&I CAN, but not an excessive amount of
11 time. Certainly, we were thinking 20 days would be
12 sufficient. And if there is not a response in that
13 time frame, we will begin appropriate enforcement
14 proceedings.

15 JUDGE SCHAER: Is that your intent, also,
16 Mr. Sherr?

17 MR. SHERR: It is.

18 JUDGE SCHAER: Well, I would encourage you
19 to go forward.

20 MR. O'CONNELL: Thank you.

21 JUDGE SCHAER: I think that we have spent a
22 great deal of time trying to accommodate this party's
23 concerns.

24 MR. O'CONNELL: I agree.

25 JUDGE SCHAER: But there is information

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1 that needs to be provided so that we can follow
2 through and finish this proceeding.

3 MR. SHERR: Your Honor, can I suggest that
4 we set up a telephonic status conference for two
5 months from now to allow sufficient time for the
6 subpoena to be issued and complied with or not, so
7 that we can check back in, but to do so
8 telephonically?

9 JUDGE SCHAER: I think that would be
10 appropriate. I will go back to Olympia and check
11 calendars and try to set up something around April
12 21st, and I'm not -- and I will be checking with you
13 to see what will work in all of our schedules, but I
14 think it will be appropriate to have a teleconference
15 at that time.

16 MR. SHERR: Just for your information,
17 April 21st is a Sunday, but April 22nd, that entire
18 week and the first two days of the next week are 271
19 proceedings.

20 JUDGE SCHAER: Okay. We'll look at that.
21 Is there anything further to come before the
22 Commission?

23 MR. SHERR: No, Your Honor.

24 MR. O'CONNELL: No, Your Honor.

25 JUDGE SCHAER: Hearing nothing, we are off

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1 the record.

2 (Proceedings adjourned at 2:03 a.m.)

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