

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 UNITED & INFORMED CITIZENS)
 4 ADVOCATES NETWORK,) Docket No. UT-960659
)
) Complainant,) Volume VIII
 5) Pages 228 to 242
) vs.)
 6)
 7 PACIFIC NORTHWEST BELL)
 8 TELEPHONE COMPANY d/b/a U.S.)
 9 WEST COMMUNICATIONS, INC.,)
) Respondent.)
 10 _____)
 11 GTE NORTHWEST, INC.,)
) Docket No. UT-970257
) Complainant,)
 12) Volume VIII
) vs.) Pages 228 to 242
)
 13 UNITED & INFORMED CITIZENS)
 14 ADVOCATES NETWORK,)
) Respondent.)
 15 _____)

16 A hearing in the above matter was held on May
17 23, 2002, at 9:30 a.m., at 1300 South Evergreen Park
18 Drive Southwest, Room 206, Olympia, Washington, before
19 Administrative Law Judge MARJORIE SCHAER.

20
21 The parties were present as follows:

22 QWEST CORPORATION, via bridge line, by ADAM
23 SHERR, Attorney at Law, 1600 Seventh Avenue, Suite 3206,
24 Seattle, Washington 98191, Telephone (206) 345-1574, Fax
25 (206) 343-4040, E-mail asherr@qwest.com.

Joan E. Kinn, CCR, RPR
Court Reporter

1 THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION, by SHANNON SMITH, Assistant Attorney
3 General, 1400 South Evergreen Park Drive Southwest, Post
4 Office Box 40128, Olympia, Washington, 98504-0128,
5 Telephone (360) 664-1192, Fax (360) 586-5522, E-Mail
6 ssmith@wutc.wa.gov.

7
8 VERIZON NORTHWEST, INC., via bridge line, by
9 TIMOTHY J. O'CONNELL, Attorney at Law, Stoel Rives, 600
10 University Street, Suite 3600, Seattle, Washington
11 98101, Telephone (206) 624-0900, Fax (206) 386-7500,
12 E-mail tjoconnell@stoel.com.

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1 P R O C E E D I N G S

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

11 This morning we are here for a status
12 conference to address any issues regarding how this
13 matter should proceed and to attempt to schedule or
14 learn a plan for going forward in this matter. Today is
15 May 23rd, 2002, and we are in Room 206 of the
16 Commission's headquarters, although two counsel are
17 appearing on a phone bridge. Notice of this hearing was
18 provided on April 11th, 2002, to an earlier date that
19 had been agreed on at the pre-hearing conference, and at
20 request of parties, the date for the hearing was
21 continued until today.

22 I would like to start at this point by taking
23 appearances of the parties and letting those of you on
24 the bridge line so indicate. And right now I have not
25 heard from counsel for U&ICAN. He is not present in the

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1 hearing room, and I have not heard from him over the
2 bridge. So if he does not appear during that time, we
3 will probably take a slight recess and wait to see if he
4 is going to join us.

5 So let's start with you, Mr. O'Connell, if
6 you would, please.

7 MR. O'CONNELL: Good morning, Your Honor, Tim
8 O'Connell from Stoel Rives law firm appearing on behalf
9 of Verizon Northwest. My identifying and contact
10 information is already on file in this case. With me in
11 this conference room is Ms. Joan Gage of Verizon.

12 JUDGE SCHAER: And then Mr. Sherr.

13 MR. SHERR: Good morning, Your Honor, Adam
14 Sherr, spelled S-H-E-R-R, house counsel at Qwest,
15 appearing by telephone today, and my information is on
16 the record as well.

17 JUDGE SCHAER: Thank you.

18 And Ms. Smith.

19 MS. SMITH: Shannon Smith for Commission
20 Staff, and again, my address and telephone number are a
21 matter of record.

22 JUDGE SCHAER: Is there anyone else who has
23 appeared on the conference bridge who would like to make
24 an appearance at this time?

25 Hearing no reply, I will indicate that it is

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1 now 9:35. This hearing was set to begin at 9:30, and in
2 case there has been some kind of a traffic problem or
3 some other problem for counsel in arriving here on time,
4 I'm going to suggest that we take a break until 9:45 and
5 then get back together and continue with the hearing, so
6 we are off the record.

7 (Recess taken.)

8 JUDGE SCHAER: Let's be back on the record
9 after a brief recess. It's now 9:45 a.m., and we have
10 waited to see if counsel for U&ICAN, Mr. Holcomb, is
11 going to arrive and be present at the hearing either in
12 person or by telephone over the conference bridge. He
13 has not arrived at this point, and I'm going to go ahead
14 and start the hearing.

15 I'm Marjorie Schaer, and I'm the
16 Administrative Law Judge assigned to these proceedings.
17 At this point, we have designated this as a status
18 conference, and I'm going to ask counsel to report on
19 where we are and where things are going. Before I do
20 that, let me tell you that the court reporter has told
21 me that Mr. O'Connell and Mr. Sherr have very similar
22 voices, and it would assist her and the record if you
23 would identify yourself before you speak.

24 I think I will start with you, Mr. O'Connell,
25 because as I recall at our last hearing, you were I

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1 think taking the lead oar in getting something more
2 done, so why don't you tell me what's happened since we
3 last met.

4 MR. O'CONNELL: I will, Your Honor, this is
5 Tim O'Connell. After our last status conference, the
6 parties did follow the procedure that had been discussed
7 at that status conference, and we issued a subpoena
8 jointly signed by Verizon, Qwest, and Commission Staff
9 to U&ICAN. The responsive date for that subpoena has
10 now come and gone, and we have received no responsive
11 documents or any response in a formal sense from U&ICAN
12 whatsoever. I have received a letter from Mr. Holcomb,
13 not producing any documents and not in any formal sense
14 a pleading. It does, however, register several
15 objections to the subpoena and makes various, I don't
16 know any other way to characterize them, threats should
17 we proceed to seek enforcement of the subpoena. I have
18 conferred with my client, and I have also conferred with
19 Qwest, and parties have agreed that we will initiate a
20 single proceeding to enforce the subpoena, which we will
21 file in King County Superior Court to obtain enforcement
22 of the subpoena.

23 JUDGE SCHAEER: And what's your time line for
24 doing that, Mr. O'Connell?

25 MR. O'CONNELL: Because of the holiday, I

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1 anticipate filing the petition for enforcement no later
2 than the end of next week.

3 JUDGE SCHAER: Okay.

4 MR. O'CONNELL: The time lines, you know,
5 thereafter it gets a little subject to court rules.
6 U&ICAN would have in the normal course 20 days to
7 respond to such a subpoena. It is my contemplation that
8 as soon as they have appeared, whether it's within that
9 20 days or thereafter, to move on a summary fashion to
10 obtain enforcement of the subpoena. So I would
11 contemplate that we would have a court order enforcing
12 the subpoena as few as 30 days, perhaps more likely 45
13 to 60 days out.

14 JUDGE SCHAER: Okay, so you're going to file
15 by I believe that's May 31st?

16 MR. O'CONNELL: Yes, Your Honor.

17 JUDGE SCHAER: And you're expecting to have
18 some action within 60 days after that?

19 MR. O'CONNELL: I would think that's a
20 realistic expectation, Your Honor, just as I say given
21 that the longest that they could defer responding is 20
22 days. Court rules contemplate that a motion of that
23 type needs at least six court days notice to the other
24 side. And then, of course, in King County, cases are
25 assigned to an individual judge. On the whole, that's a

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1 good thing because it means one judge monitors the case
2 all along, but it does mean sometimes that on a motion
3 like this you have to schedule it for when the judge has
4 available time. So I can't guarantee that the motion
5 would be heard by the judge, and by a motion I mean a
6 motion for the order enforcing the subpoena, I can't
7 guarantee that the motion would be heard on the sixth
8 court day after it's filed. So I think realistically 45
9 to 60 days out from when the case is served is a
10 realistic set of expectations.

11 JUDGE SCHAER: Okay. Is there anything that
12 you're going to need from the Commission in pursuing
13 this task, not Commission Staff, but from the Commission
14 itself in terms of any kind of order or any record of
15 what has happened to this time? There's nothing I can
16 think of that you might need, but I thought I should
17 ask.

18 MR. O'CONNELL: And I appreciate that, Your
19 Honor. No, and I will be candid and tell you that we
20 would, my current intent is to include as part of the
21 enforcement petition some of the record evidence, not
22 evidence, excuse me, some of the record that I think
23 demonstrates fairly clearly that the subpoena that was
24 issued is a wholly proper device. And so we probably
25 will include as part of that enforcement petition, for

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1 example, the proceedings that came out of the last
2 status conference, which was directed toward the
3 appropriate form of seeking this information from
4 U&ICAN. But I think with that information, there's
5 nothing further that we need at this juncture.

6 JUDGE SCHAER: All right.

7 Mr. Sherr, did you have anything you wanted
8 to add at this point?

9 MR. SHERR: This is Adam Sherr, no,
10 Mr. O'Connell I think covered everything quite
11 appropriately. Having practiced extensively before King
12 County Superior Court, I think that his projections are
13 fair. It won't be done within 30 days of when we file,
14 because assigned judges never seem to have openings in
15 their schedule exactly when you can get a hearing heard,
16 so I think the 30 to 60 day time frame is appropriate.

17 JUDGE SCHAER: Okay. Well, I have written in
18 my notes that we hope to have action by August 1st,
19 which if it proves to be optimistic, we will have to
20 deal with that. Sometimes judges even go on vacation or
21 do other things that are inconvenient to parties.

22 Is there anything you wanted to add,
23 Ms. Smith?

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

25 JUDGE SCHAER: Okay. Then my remaining

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1 question is, after you have gone to court and after you
2 have reached the point of enforcement, what's our next
3 step as far as getting this hearing done? Are you then
4 hoping to obtain information and then be able to set up
5 a schedule for going forward, or what comes next? How
6 do I make sure that this keeps moving and doesn't just
7 kind of float around for a little bit?

8 MR. O'CONNELL: Your Honor, Tim O'Connell
9 again, I will rush in I guess. Our goal is to obtain
10 the information that we need from U&ICAN. You know,
11 this is our position, of course, that once we obtain the
12 data we're seeking, most of which is directed really
13 towards the volume and duration of U&ICAN's unlawfully
14 access charge evading traffic, and once we obtain that
15 information, it is our intent to move forward either to
16 a hearing, if necessary, or for summary determination
17 given the Commission's previous rulings. You know,
18 frankly, I'm not sure if we will be able to do that, but
19 once we obtain the information about the amount of
20 traffic at issue, I think this case will move forward
21 pretty quickly.

22 JUDGE SCHAEER: I think I would like to put a
23 duty on one of you to get back to me sometime after
24 August 1st but fairly close to that time just to let the
25 Commission know where we are. And then as things move

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1 forward, and I don't need reports on substance, but just
2 reports on the fact that certain events have happened,
3 and then I will be looking for some kind of message
4 either asking some kind of motion for summary
5 determination or a request that a hearing be scheduled
6 with some kind of proposed guidelines for time and how
7 we do that. And who would like to volunteer to be the
8 reporter?

9 MR. SHERR: Your Honor, this is Adam Sherr,
10 you know, I would suggest that we continue with the
11 process that we have followed thus far, at least since
12 I've been involved, which is the scheduling of status
13 conferences. I think this is helpful, this is a helpful
14 way not only to keep the process moving but to get
15 everyone together at the same time so that we have all
16 the information in the room at the same time. So that
17 would be my suggestion is that we set up another status
18 conference for sometime around August 1st.

19 JUDGE SCHAER: How do the other parties view
20 that?

21 MR. O'CONNELL: Your Honor, I think that is
22 entirely appropriate if that's the way we want to
23 proceed. If we're going to do that, my suggestion
24 though would be that we next circle back around in the
25 latter part of August rather than the first part of

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1 August. Because getting an order out of a superior
2 court judge will not, I think, I mean we have been at
3 this long enough, I think getting the order out of the
4 superior court judge will not in and of itself resolve
5 the question of whether we're going to get the
6 information. If we would need to, you know, I am
7 reasonably confident that if a superior court judge
8 enters an order enforcing the subpoena, he or she is
9 going to give U&ICAN a certain period of time to
10 respond. You know, I will argue vigorously that that
11 should be a relatively short period of time, but
12 nonetheless, you know, I think the judge is going to end
13 up giving U&ICAN some period of time to respond, and we
14 will have to be able to evaluate whether they have
15 responded fully and completely at that point. So I have
16 no objection at all to suggesting that we should be
17 scheduling another status conference. I would just
18 suggest that given the time frame we have discussed,
19 such a time should be perhaps at the end of August
20 rather than August 1.

21 MR. SHERR: And this is Adam Sherr, I would
22 agree with that and --

23 MS. SMITH: And I beg your pardon, Mr. Sherr,
24 I didn't mean to interrupt.

25 I have no objection to that. The only

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1 comment I have is that I am on vacation on August 1st,
2 so I would prefer that if anything were scheduled it
3 would be scheduled later in August.

4 JUDGE SCHAER: I think what I would like
5 counsel to do at this point is look at your calendars
6 and give me any conflict dates during the last couple of
7 weeks of August, and then I will work with our
8 scheduling person to find a time when we could set this
9 up. And I will expect, of course, to hear from you if
10 for some reason the date's not going to be workable
11 because you don't have information yet. And just as
12 this conference was continued until after the service
13 time for the subpoenas and the time to answer had run,
14 if things go slowly, then we could reschedule that
15 conference to some time later.

16 MR. SHERR: Your Honor, did you want that
17 information right now?

18 JUDGE SCHAER: I think that would be the most
19 efficient if you have it. If you have your calendars
20 available, just give me your conflict dates.

21 MR. SHERR: Sure, and by the way, this is
22 Adam Sherr. At present, I don't see any conflict dates
23 on my schedule in August in terms of availability.

24 JUDGE SCHAER: Okay.

25 Mr. O'Connell.

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1 MR. O'CONNELL: Your Honor, Tim O'Connell,
2 and the week of August, Sunday, August 25, Monday,
3 August 26, that entire week I am wide open. I have
4 several commitments already scheduled for the previous
5 week, but the week of Monday the 26th is wide open.

6 MS. SMITH: This is Shannon Smith, my
7 calendar for August is somewhat in flux because I don't
8 know what the status of the Puget Sound Energy
9 settlement negotiations, I don't know what those
10 negotiations will bring forth. But I will commit to the
11 parties that if they come up with a date during that
12 last week in August, I will either make that date or
13 have somebody from my office sit in for Staff in my
14 behalf, so I will just defer to what the other parties
15 want to do schedulingwise.

16 JUDGE SCHAEER: Okay. Well, then what I will
17 do is try to schedule a time in the last week of August,
18 and if I discover that there is no space or time in the
19 last week of August, then I will have to get back with
20 you or have Kippi get back with you, but we will get
21 that set up, and we can again do it as a telephonic
22 conference if that is more convenient to the parties.

23 Is there anything else that we need to
24 discuss today?

25 MR. O'CONNELL: This is Tim O'Connell, I see

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1 nothing else at this time, Your Honor.

2 JUDGE SCHAER: Mr. Sherr?

3 MR. SHERR: Nothing else, Your Honor, thank
4 you.

5 JUDGE SCHAER: Ms. Smith?

6 MS. SMITH: Nothing, Your Honor, thank you.

7 JUDGE SCHAER: Well, thank you all for
8 continuing to work diligently on resolving this problem,
9 and I will look forward to seeing you or hearing from
10 you near the end of August.

11 We are off the record.

12 (Hearing adjourned at 10:00 a.m.)

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