



600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

January 28, 2005

VERONICA MOORE
Direct (206) 386-7519
vmoore@stoel.com

VIA E-MAIL AND FEDERAL EXPRESS

Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transportation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Re: Docket No. UT-041127

Dear Ms. Washburn:

Please find enclosed an original and seven copies of Verizon's Motion to Strike Tel West Communications, L.L.C.'s Statement of Supplemental Authority and a Certificate of Service.

Please contact us if you have any questions, and thank you in advance for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Veronica Moore".

Veronica Moore
Assistant to Timothy J. O'Connell

Enclosures

cc: ALJ Ann Rendahl
Parties of Record

Oregon
Washington
California
Utah
Idaho

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

In the Matter of

THE JOINT PETITION FOR
ENFORCEMENT OF
INTERCONNECTION AGREEMENTS
WITH VERIZON NORTHWEST INC.

Docket No. UT-041127

**VERIZON'S MOTION TO STRIKE
TEL WEST COMMUNICATIONS,
L.L.C.'S STATEMENT OF
SUPPLEMENTAL AUTHORITY**

Verizon Northwest Inc. ("Verizon") moves to strike Tel West Communications, L.L.C.'s ("Tel West") Statement of Supplemental Authority submitted in this matter on January 7, 2005. Tel West's submission does not comport with Washington law governing the submission of supplemental authorities.

1. On January 7, 2005, Tel West submitted as supplemental authority in this matter a discovery order entitled "Administrative Law Judge's Ruling Confirming Hearings and Amending Schedule" (the "discovery order") that was issued by the California Public Utilities Commission on December 27, 2004. This discovery order was issued in a California matter separate and distinct from this action.

2. As part of its submission, Tel West presented argumentation, including contentions that:

- Order No. 2A in this matter prematurely deprives Washington consumers of unbundled network platform, (Tel West's Statement of Supp. Auth. ¶ 1); and

- Order No. 2A in this matter incorrectly resolved a material factual dispute, (Tel West’s Statement of Supp. Auth. ¶ 3).

Yet, Washington law is plain: statements of supplemental authority may not contain argument. Rye v. Seattle Times Co., 37 Wn.App. 45, 55-56 (1984) (“The rule permitting the furnishing of additional authorities to the court . . . [only] permit[s] a party to file a statement of additional authorities *without argument.*” (emphasis in the original, internal quotes omitted)); see also Wash. R. App. P. 10.8 (“A party . . . may file a statement of additional authorities. The statement should not contain argument[.]”).

3. Furthermore, the discovery order does not constitute a proper “authority” which may be submitted in supplement. Only published opinions are authoritative and have precedential value in Washington. Cf. In re Marriage of Schweitzer, 132 Wn.2d 318, 328 (1997) (unpublished opinions have no precedential value and are not authoritative); Wash. R. App. P. 10.4(h). See also General Electric Co. v. Latin American Imports, S.A., 187 F. Supp.2d 749, 752 n.1 (W.D.Ken. 2001) (supplemental submissions are limited to “new, controlling case law – not for recently discovered case law, nor for arguments which the parties did not think to make in their pleadings.”). An interlocutory procedural ruling such as the discovery order unmistakably is not “authoritative,” nor could it even reasonably be considered to be such. Discovery rulings of the California commission have no precedential value in matters before the Washington Commission.

4. Lastly, Tel West’s submission encourages the Commission to consider in review a discovery order arising out of a matter in a different state, and which was not part of the record before the ALJ. Yet again, this is contrary to Washington law which limits reviewing officers to consideration of evidence in the record. See Towle v. Wash. State Dept. of Fish and Wildlife, 94 Wn.App. 196, 204-06 (1999) (reviewing officers may not go outside the record or consider additional evidence when reviewing decisions by presiding officers such as administrative law judges); see also RCW 34.05.464 (same).

5. As shown, Tel West's Statement of Supplement Authority does not comport with Washington law governing the submission of supplemental authorities. It should therefore be stricken.

Respectfully submitted,



Timothy J. O'Connell

John H. Ridge

STOEL RIVES LLP

One Union Square

600 University St., Suite 3600

Seattle, WA 98101

(206) 624-0900

(206) 386-7500

Counsel for Verizon Northwest Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of January, 2005, served the true and correct original, along with the correct number of copies, of *Verizon's Motion to Strike Tel West Communications, L.L.C's Statement of Supplemental Authority* and a *Certificate of Service* upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn, Executive Secretary
Washington Utilities & Transportation
Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98503-7250

Hand Delivered
 U.S. Mail (1st class, postage prepaid)
 Overnight Mail
 Facsimile (360) 586-1150
 Email (records@wutc.wa.gov)

I hereby certify that I have this 28th day of January, 2005, served a true and correct copy of the foregoing documents upon parties noted below via E-Mail and U.S. Mail:

MICHAEL E. DAUGHTRY
United Communications, Inc., d/b/a UNICO
389 SW Scalehouse Court
Bend, OR 97702

Email: mike@ucinet.com

JUDITH ENDEJAN, ATTORNEY
Graham & Dunn PC
Representing Verizon Northwest, Inc.
Pier 70, Suite 300
2801 Alaskan Way
Seattle, WA 98121-1128
Email: jendejan@grahamdunn.com

LETTY FRIESEN
Attorney at Law
AT&T Communications of the Pacific North
1875 Lawrence Street, Floor 15
Denver, CO 80202

Email: lsfriesen@att.com

BROOKS HARLOW
Miller Nash LLC
Representing Advanced TelCom, Inc.
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352
Email: brooks.harlow@millernash.com

Donald Taylor, Director
Carriers Relationso & Regulatory Affairs
Tel West Communications, L.L.C.
3701 South Norfolk St., Suite 300
Seattle, WA 98118
Email: dtaylor@Telwestservices.com

David Mittle
Law Office of David E. Mittle
208 Maynard
Santa Fe, NM 87501
Email: dmittle@att.net

MICHEL SINGER NELSON
Worldcom, Inc.
Representing MCImetro Access
Transmission
707 17th St., Suite 4200
Denver, CO 80202
Email: michel.singer_nelson@mci.com

DAVID RICE
Miller Nash LLC
Representing Advanced TelCom, Inc.
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352
Email: david.rice@millernash.com

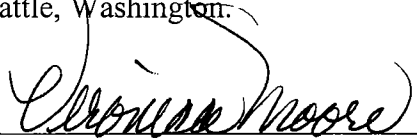
I hereby certify that I have this 28th day of January, 2005, served a true and correct copy of the foregoing documents upon parties noted below via U.S. Mail:

MCIMETRO TRANSMISSION ACCESS
CORP.
707 17th St., Suite 3600
MCI Tower
Denver, CO 80202

AT&T COMMUNICATIONS OF THE
PACIFIC NORTH
2120 Caton Way S.W., Suite B
Olympia, WA 98502

I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 28th day of January, 2005, at Seattle, Washington.



Veronica Moore