

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 UNITED & INFORMED CITIZENS)
 4 ADVOCATES NETWORK,)
 5 Complainant,)
 6 vs.) DOCKET NO. UT-960659
 7 PACIFIC NORTHWEST BELL) Volume XI
 8 TELEPHONE COMPANY d/b/a U.S.) Pages 264 - 278
 9 WEST COMMUNICATIONS, INC.,)
 10 Respondent.)

 11 GTE NORTHWEST, INC.,)
 12 Complainant,)
 13 vs.) DOCKET NO. UT-970257
 14 UNITED & INFORMED CITIZENS) Volume XI
 15 ADVOCATES NETWORK,) Pages 264 - 278
 16 Respondent.)

17 A hearing in the above matter was held on
18 December 3, 2002, at 9:48 a.m., at 1300 South
19 Evergreen Park Drive Southwest, Olympia, Washington,
before Administrative Law Judge MARJORIE SCHAER.

20 The parties were present as follows:

21 QWEST CORPORATION, via bridge line, by ADAM
22 L. SHERR, Attorney at Law, 1600 Seventh Avenue, Suite
23 3206, Seattle, Washington 98191; Telephone, (206)
398-2507; Fax, (206) 343-4040; e-mail,
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24 Kathryn T. Wilson, CCR
25 Court Reporter

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

7 VERIZON NORTHWEST, INC., via bridge line, by
8 KENDALL J. FISHER, Attorney at Law, Stoel Rives, 600
9 University Street, Suite 3600, Seattle, Washington
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1 P R O C E E D I N G S

2 JUDGE SCHAER: We are on the record. This is
3 a prehearing conference in the matter of Docket No.
4 UT-960659, a complaint by United and Informed Citizens
5 Advocates Network against U.S. West, now Qwest. It is
6 consolidated with Docket No. UT-970257, a complaint by
7 General Telephone, Incorporated, now Verizon, against
8 U&I CAN, claiming that U&I CAN has improperly avoided
9 paying access charges when using long distance service.

10 This morning, we are here for a prehearing
11 conference to address the status of this matter and the
12 process that is being undertaken in this and other
13 venues to contribute to an ultimate resolution in this
14 matter. My name is Marjorie Schaer, and I'm the
15 administrative law judge assigned to this proceeding.

16 I would like to start by taking a brief
17 statement of appearance, please, beginning with your
18 name and the name of the client for whom you are
19 appearing, and let's begin with counsel appearing over
20 the conference bridge, starting with you, Ms. Fisher.

21 MS. FISHER: My name is Kendall Fisher,
22 K-e-n-d-a-l-l, F-i-s-h-e-r, from Stoel Rives LLP. I'm
23 here representing Verizon.

24 JUDGE SCHAER: Is there anyone else on the
25 bridge line who would like to make an appearance at

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1 this time? Looking to counsel in the hearing room,
2 Ms. Smith, would you like to appear, please.

3 MS. SMITH: Shannon Smith for Commission
4 staff.

5 JUDGE SCHAER: Thank you.

6 MS. FISHER: Your Honor, this status
7 conference is to give you an update on how we are
8 proceeding in state court actions to obtain discovery
9 in the form of a subpoena requesting documents from U&I
10 CAN.

11 JUDGE SCHAER: Yes.

12 MS. FISHER: I guess when we last left off,
13 we had informed you that we received an order enforcing
14 the agency subpoena, and after that order was issued,
15 Mr. Holcomb on behalf of U&I CAN moved for
16 reconsideration of that order, which was subsequently
17 denied as improper and also was denied on the merits.

18 On November 13th, we received an order
19 assigning the case to an individual judge named Laura
20 Middaugh, and now we are in the process of preparing
21 the motion for contempt, which will enable us to bring
22 U&I CAN into court and to do appropriate sanctions
23 against them for failing to comply with the agency
24 subpoena.

25 All throughout this process, we have been

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1 attempting to work with Mr. Holcomb's schedule. He
2 apparently travels quite frequently, and one of the
3 reasons why we suspect he may not be here today is we
4 received a call from him just before the Thanksgiving
5 holiday indicating that Mr. Holcomb would be
6 unavailable through the end of this week, and he also
7 requested that any contempt proceedings be brought no
8 sooner than the 13th of December, so we are in the
9 process of preparing some papers to move for contempt
10 and to schedule that in accordance with his request and
11 also with the court's calendar. At this point, I don't
12 have anything further.

13 JUDGE SCHAER: So tell me again what it is
14 you are going to be filing and how that differs from
15 what's already been filed and upheld.

16 MS. FISHER: We sought and obtained an order
17 enforcing the agency subpoena, and that order directed
18 U&I CAN to produce the documents no later than
19 October 8th. Mr. Holcomb attempted to have that order
20 set aside and failed. Subsequently, since no documents
21 have been produced to date, U&I CAN is automatically in
22 contempt, but we need to seek an order of contempt, so
23 we are preparing a motion in that regard.

24 JUDGE SCHAER: So they are in contempt
25 according to the papers you presently have available,

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1 but now you need to file a motion that would confirm
2 that information?

3 MS. FISHER: Basically, yes. We need to file
4 a motion for contempt to show the court that we still
5 have not received any documents, and that as a result,
6 he's automatically in contempt, and therefore,
7 sanctions would be appropriate, and in order to do
8 that, we needed to have the case assigned to an
9 individual judge, which we did. We did that a couple
10 of weeks ago, so we received that order on November
11 13th assigning the matter to an individual judge.

12 JUDGE SCHAER: When you speak about
13 sanctions, would these be sanctions against U&I CAN or
14 sanctions against its counsel or either or both?

15 MS. FISHER: We are evaluating whether or not
16 the sanctions would also apply to U&I CAN's counsel.
17 The sanctions would be directed towards U&I CAN for
18 failure to comply, and I've not decided whether or
19 not -- we are evaluating whether or not to seek
20 sanctions against U&I CAN's attorney. The motion for
21 contempt will be seeking sanctions against U&I CAN.

22 JUDGE SCHAER: Thank you.

23 MR. SHERR: Your Honor, this is Adam Sherr.
24 I just joined. I apologize greatly for being late. I
25 had the wrong time on my calendar.

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1 JUDGE SCHAER: Good morning, Mr. Sherr. I
2 hope your trip home yesterday was safe.

3 MR. SHERR: It was. It was just late. I
4 greatly apologize.

5 JUDGE SCHAER: Would you enter a simple
6 appearance into the record, please?

7 MR. SHERR: This is Adam Sherr appearing
8 telephonically on behalf of Qwest.

9 JUDGE SCHAER: How long have you been with
10 us, Mr. Sherr? Did you hear the report from
11 Ms. Fisher?

12 MR. SHERR: I heard the last sentence of it,
13 so no. I apologize.

14 JUDGE SCHAER: I think perhaps if you could
15 maybe just hit the high spots but inform Mr. Sherr
16 what's happening at this point, that might be useful,
17 Ms. Fisher.

18 MS. FISHER: We are in the process of
19 preparing the motion for contempt having received an
20 order assigning the state court case to an individual
21 judged named Laura Middaugh on November 13th. We also
22 are attempting to schedule the motion to be heard at a
23 time where Mr. Holcomb has indicated that he would be
24 available, which would be anytime after December 13th.

25 MR. SHERR: Thank you for recapping that. I

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1 assume Mr. Holcomb is not on the call?

2 MS. FISHER: That is correct. We received a
3 voice message from Mr. Holcomb shortly before the
4 Thanksgiving holiday where he indicated that he would
5 be traveling on the east coast through the end of this
6 week, so I did not anticipate that he would be
7 attending today.

8 MR. SHERR: Thank you, Ms. Fisher. Thank
9 you, Judge.

10 JUDGE SCHAER: I need to ask again, what are
11 the parties' views on the effect of the process that's
12 just been described on this docket, and what is your
13 preference in terms of proceeding here, and I will
14 start with you again, Ms. Fisher.

15 MS. FISHER: Your Honor, this process is
16 moving along slowly but surely. We've been struggling
17 a little bit with Mr. Holcomb's schedule, his not being
18 in town and having difficulties reaching him to try and
19 get this case resolved. However, we do have an order
20 enforcing the agency subpoena, which is a valid and
21 binding order, and we do have the case assigned to a
22 judge, and our next step is to file a motion to compel.
23 So we feel that although it might be taking longer than
24 we wanted to that ultimately we may have resolution and
25 get satisfaction either by the production of that

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1 document or some other remedy.

2 JUDGE SCHAER: When you speak of some other
3 remedy, could you give me an idea of what other
4 remedies you think might be available?

5 MS. FISHER: In a contempt proceeding, we
6 have the option of seeking monetary sanctions against
7 U&I CAN for failing to comply with the court order, so
8 that would be one partial remedy, but in terms of
9 helping us obtain additional information to help us
10 resolve this case before the Commission, the monetary
11 sanctions may not do much of anything, so what we are
12 hoping for is to finally have production of the
13 documents.

14 MS. SMITH: This is Shannon Smith from
15 Commission staff. If I might interject with a
16 suggestion on how to proceed with the docket pending
17 before the Commission, I understand from Ms. Fisher's
18 recitation of the state court proceeding that she and
19 her cocounsel are working with both Mr. Holcomb and the
20 Superior Court assigned judge to find a date for the
21 contempt matter to be heard after December 13th.

22 I would suggest, and of course this is
23 subject to agreement by the parties and the judge, that
24 Ms. Fisher inform the Commission by letter as soon as a
25 contempt hearing date is established, and then after an

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1 appropriate period of time following the contempt
2 hearing, perhaps we could schedule another status
3 conference in this case to plot out what the proper
4 schedule would be before this Commission once U&I CAN
5 complies with the subpoena that was enforced by the
6 Superior Court.

7 MR. SHERR: I agree with that suggestion, and
8 what we've been trying to do all along is to gauge how
9 long it would take to get to the next step, and since
10 we don't have total control of everything and we
11 haven't along the way in terms of service of the
12 parties or the Superior Court calendar or Mr. Holcomb's
13 schedule, and so rather than trying to predict how long
14 it's going to get to the next step, leaving it somewhat
15 open with an obligation on the parties to inform the
16 Commission where we are might be a better way to go.

17 MS. FISHER: This is Kendall Fisher, and I
18 concur.

19 JUDGE SCHAER: I think that it may be more
20 efficient not to continue to hold monthly status
21 conferences, as it seems we have been doing. I did
22 have a concern. For a period in this case, we did have
23 the schedule suspended and that that had happened after
24 a time when the hearing had granted requests from the
25 attorney general's office appearing on behalf of

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1 Commission staff for a subpoena in determining that
2 that subpoena was one that could go forward, so I'm not
3 willing to just suspend the schedule. I think that
4 there is some benefit to report, so that may be once a
5 month, at least, and hopefully more frequently, and
6 parties look at this and what needs to be done next and
7 try to keep moving things on a timely schedule.

8 I would consider going to a system where we
9 had like a monthly update provided to the Commission
10 telling us what had happened in that month and also
11 what expectations were for getting first some kind of a
12 contempt sanction or order against the corporation and
13 then for being able to find someone at the corporation
14 with records and get those supplied and as to what
15 other steps might be necessary going forward, and if
16 that could be part of what the suggestion is that
17 Ms. Smith just made, I would have a great deal more
18 comfort going forward.

19 MS. SMITH: If I might clarify, I would
20 assume that Verizon is using its best efforts to get
21 this matter heard before the Superior Court judge, and
22 as Mr. Sherr for Qwest noted, the parties don't have
23 complete control over when the matter may be heard by
24 the Superior Court, and at this time, U&I CAN has not
25 produced the documents requested by the agency subpoena

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1 and has repeatedly refused any request to get this
2 information.

3 Once Verizon knows what the hearing date is,
4 I think that we would all have a better idea of what
5 type of time line we are looking at. If perhaps the
6 contempt motion could be heard sometime in December,
7 and if we get a letter from Verizon indicating that
8 perhaps hypothetically the hearing may be held on
9 December 15th, then I would suggest a status conference
10 for the middle of January, and at that status
11 conference, the parties could report on whether or not
12 U&I CAN has produced the documents; if those documents
13 were produced, how much time the parties need to review
14 those documents and get prepared for hearing, which I
15 imagine could be scheduled any time beginning, say, in
16 February, assuming that the contempt motion was heard
17 in December, but a lot of this depends on when the
18 court is going to hear this matter, because I suspect
19 that U&I CAN is not going to comply with the subpoena
20 absent an order of contempt by the court.

21 JUDGE SCHAER: Let me indicate that I agree
22 with everything Ms. Smith just said. The only
23 suggestion I was making beyond what she said is we have
24 some kind of a regular time interval, so if we have not
25 been contacted and decide to schedule another status

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1 conference that we get some kind of report telling
2 what's happened, and if hearing dates slip or other
3 things change, which I know happens, just some kind of
4 a record of what's going on in the proceeding so that I
5 can stay informed and I can continue to inform the
6 commissioners about what's happening in this
7 proceeding.

8 I've heard the suggestion, Ms. Fisher, that
9 you be the one to undertake this responsibility since
10 you seem to be taking the leading oar in doing the
11 follow-up in contempt and subpoenas. Are you willing
12 to do that?

13 MS. FISHER: Yes, I am.

14 JUDGE SCHAER: Would that be satisfactory to
15 you, Mr. Sherr?

16 MR. SHERR: It is, and Qwest has been kept up
17 by Verizon's counsel, so I have complete confidence in
18 that.

19 JUDGE SCHAER: Would that work for you,
20 Ms. Smith?

21 MS. SMITH: That would work for Commission
22 staff, and perhaps we could agree on the first date for
23 a status report from the parties perhaps sometime in
24 mid December and then continuing on a monthly basis
25 until we have all of this figured out.

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1 JUDGE SCHAER: Let me suggest that the letter
2 we are discussing be sent on about the 15th of every
3 month unless something happens before that that would
4 be of interest to the Commission and the parties and
5 then that we would be informed at the time of an
6 action, and let's see how that works going out for a
7 few months, and if we need to revisit this, we could do
8 that then. It's December 3rd today, but it sounds like
9 there may be some action this month, so I think perhaps
10 starting with mid December would be a good idea.

11 MS. FISHER: That sounds good. I would be
12 happy to send out the letter writing the status report
13 on or around December 15th and the following months as
14 needed.

15 JUDGE SCHAER: Thank you. Was there anything
16 further to come before the Commission at this time?

17 MR. SHERR: No, Your Honor.

18 JUDGE SCHAER: Let the record show there is
19 no affirmative response. I would like the record to
20 reflect that this matter was scheduled to begin at the
21 hour of 9:30, and we delayed the start of this
22 proceeding by 15 minutes to provide an opportunity to
23 any other party, in particular a U&I CAN
24 representative, to join us either in person or on the
25 bridge line, and we did have Mr. Sherr join us on the

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1 bridge line but have not had anyone from U&I CAN to
2 appear. I would like the record to reflect at this
3 time that no representative appeared in the hearing
4 room and that there was no tonal notification that any
5 other party joined the bridge line during the period
6 from the time the hearing was schedule to begin.

7 I have heard from Ms. Fisher that in terms of
8 the Superior Court case, there has been contact with
9 her and her client from Mr. Holcomb on behalf of U&I
10 CAN, but I would indicate there has been no contact, to
11 my knowledge, with the Commission, either about a
12 conflict for today or about any other need to appear
13 telephonically or in any other way in this proceeding.
14 So with that note, this conference is concluded. Thank
15 you all for attending. We are off the record.

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17 (Prehearing concluded at 10:11 a.m.)

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