

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.,

Complainant,

vs.

VERIZON NORTHWEST INC.,

Respondent.

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) Docket No. UT-020406

)  
) MOTION TO COMPEL AT&T DR  
) RESPONSES

Pursuant to WAC 480-09-480(7) Verizon Northwest Inc. (“Verizon”) moves the Commission to compel AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) to respond to data requests.

**I. INTRODUCTION**

In its Complaint AT&T makes numerous allegations that it is being harmed by the switched access charges it pays Verizon Northwest in Washington. Similarly, AT&T alleges that reducing Verizon Northwest’s switched access charges will result in lower toll rates charged by AT&T and others. It also alleges that Verizon Northwest is dominating the toll market in Washington, to the great economic harm of AT&T. AT&T also attempts to have the Commission rewrite its imputation test for toll prices in this case.

Verizon propounded a set of data requests to test AT&T's allegations on October 10, 2002. On October 25, 2002 AT&T responded to these data requests (DRs), refusing to provide answers to DR Nos. 5, 6-11, 14, 17, 25 and 26. Counsel for the parties conferred about DR Nos. 6-11 and AT&T continued to refuse to provide answers. In preparing this motion to compel, Verizon determined that it needs answers to DR Nos. 5, 14, 17, 25 and 26, as well. Counsel for Verizon will attempt to confer with AT&T counsel about these additional data requests and will promptly remove them from this motion if AT&T agrees to provide answers. Given AT&T's position on DR Nos. 6-11, Verizon does not anticipate that this will occur. Therefore, given the tight timeframe left in this case, it is necessary to include all non-responsive answers from AT&T to compel full and complete answers. These are necessary for Verizon to prepare for cross-examination and possible additional testimony.

Verizon is entitled to conduct discovery on all AT&T's assertions, and the data requests at issue in this motion were propounded to AT&T in a good faith effort to obtain this information.<sup>1</sup> The Commission must compel AT&T to provide accurate and complete responses to data requests on these topics. In the alternative, the commission should strike the allegations in AT&T's complaint and the passages in its prefiled testimony that make these assertions.

The information sought by Verizon is reasonably calculated to lead to discovery of admissible evidence and should be produced by AT&T in discovery, pursuant to WAC 480-09-480(6)(a)(vi). The Commission has generally taken a very broad view of relevancy for discovery purposes, ordering production even if the information sought "may be redundant or marginally relevant." *WUTC v. Puget Sound Power & Light*, 1996 Wash. UTC LEXIS 12 \*15, 172 PUR 4<sup>th</sup> 304 (1996).

The precedent set in this case calls for a broad view of relevancy. On December 19, 2002 the ALJ in this case ruled that "all questions are relevant for purposes of discovery" when

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<sup>1</sup> The Data Requests and AT&T's responses are appended to this motion.

ordering Verizon to respond to AT&T data requests. So, too, Verizon's questions should receive the same treatment from this Commission and AT&T should be ordered to respond.

## II. AT&T'S ALLEGATIONS AND ASSERTIONS

AT&T's complaint includes the following allegations:

¶ 1. In this paragraph, AT&T alleges that Verizon Northwest is monopolizing "Washington intrastate toll markets."

¶ 2. In this paragraph AT&T alleges that Verizon Northwest "has been able to dominate the provision of intrastate toll services." It also alleges that "Verizon's inflated switched access rates force competitors either to operate at a loss or to price themselves out of the market."

¶ 3. In this paragraph AT&T alleges that "Verizon can effectively preclude other carriers from offering "one-stop shopping" by pricing its retail toll service at a level competitors cannot match."

¶ 4. The gist of this lengthy paragraph is that reducing Verizon Northwest's switched access rates will give "Washington consumers the ability to obtain long distance telephone services at lower prices."

¶ 9. This paragraph states that AT&T obtains switched access services not only from Verizon Northwest but also "from other local exchange carriers ("LECs") when AT&T's customers make calls to, or receive calls from, those LECs' customers."

¶ 11. This paragraph describes the switched access services generally used by AT&T, namely "tandem switching, interoffice transport, and end office switching."

¶ 16. This paragraph describes costs in addition to switched access that AT&T incurs to provide toll service, "including billing and collection, retailing costs, and costs to query the local number portability ("LNP") database."

¶ 17. In this paragraph AT&T alleges that "carriers [which presumably includes AT&T itself] are unable to match Verizon's retail [toll] price without pricing their service below cost."

¶s 24 and 25. In these paragraphs AT&T alleges that it is at a “competitive disadvantage” because of the price of Verizon’s switched access service.

¶s 29-31. In these paragraphs AT&T alleges that Verizon Northwest is in violation of the Commission’s imputation test. (As discussed below, AT&T actually attempts in this case to rewrite the test.)

AT&T’s prefiled testimony of Lee L. Selwyn includes the following assertions:

- Verizon’s access rates diminish competition and Verizon ignores the Commission’s imputation standard. p. 4 L22-23, p. 5 L1-8.
- Verizon’s access rates suppress consumer demand and diminish competition overall, and provide Verizon a competitive advantage. p. 9 L5-17.
- Verizon’s access rates allow implementation of an anticompetitive price squeeze that is detrimental to efforts to foster competition, and may cause adverse repercussions in the competitive local market. p. 17 L1-10.
- Reductions to cost-based rates will eliminate any kind of monopolistic advantage on the part of Verizon and will likely result in lower retail rates for consumers. p. 27 L13-17.
- Until access rates are lowered to cost, Verizon’s gross margin for toll services will always be higher than its competitors. p. 28 L1-14.
- Competitors are forced to set toll rates at levels that guarantee a revenue shortfall and zero or negative profit margin, and also affect their ability to compete in the interstate toll market. p. 45 L1-9.

### III. DATA REQUESTS

#### A. Market Domination Claims

In order to test AT&T’s assertions that Verizon Northwest is monopolizing or dominating Washington’s toll markets, information on AT&T’s market share in the state’s toll market is critical. Therefore **Data Request No. 11** seeks obviously relevant, straightforward, basic information on this issue. AT&T has refused to provide it.

## **B. Financial and Competitive Harm Claims**

Bearing in mind that AT&T charges uniform toll rates across the state, in order to assess AT&T's allegations and assertions it is essential to determine the following:

- the extent to which AT&T uses Verizon Northwest's switched access services in relation to other local exchange carriers' access services and AT&T's self-provisioning of access;
- the fraction of AT&T's costs of providing toll service that are represented by Verizon Northwest switched access charges; and
- whether any of AT&T's toll rates in Washington are actually set below the costs AT&T incurs across the state.
- the extent to which the level of Verizon's access charges has caused a reduction in the demand for AT&T's toll service over time.<sup>2</sup>

In addition, the Commission may evaluate AT&T's allegations that Verizon Northwest is causing it to operate at a loss in Washington's toll market by simply comparing AT&T's total costs to its rates.

Verizon also needs to know its share of AT&T access market so it can assess the impact a reduction in Verizon's access rates would have on AT&T's toll rates, assuming a flow-through of access reductions to toll rates.

**Data Request No. 5** seeks basic information about the mix of facilities being used by AT&T in Washington. This is plainly relevant and will provide a foundation on which to build

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<sup>2</sup> Using illustrative numbers, the following example demonstrates why this information is relevant.

- Assume that Verizon Northwest's switched access services account for 10 percent of AT&T's total minutes of use in Washington.
- Assume that for the total state, AT&T incurs an average access cost of 3 cents per minute.
- Therefore, Verizon Northwest's switched access charges represent a cost of 3/10's of a cent per minute to AT&T.
- If Verizon Northwest's switched access charges were reduced by 50 percent, the reduction in costs to AT&T would be 15/100's of a cent per minute.

more specific and detailed information to test AT&T's allegations and assertions. AT&T's answer that information on its services is available in its filed price lists and that the information Verizon seeks "is not available in the form requested" are non-responsive and evasive. The price lists do not contain the requested information, and Verizon will accept good faith information that goes to the substance of its inquiry even if AT&T presents it in a somewhat different "form."

**Data Request Nos. 6, 7, 8, 9, and 10** seek information that is essential to determining the extent to which AT&T uses Verizon Northwest switched access services in comparison to other sources of access in Washington. As discussed above, this is highly relevant information.

In its response to the Data Request No. 6, (besides failing to supply the requested information) AT&T asserts that it "is or should be in Verizon's possession." Verizon does have records of its billings to AT&T, but is entitled to examine AT&T's own records in order to avoid unnecessary claims down the road by AT&T that Verizon's information is inaccurate.

In its responses to Data Requests 7, 8 and 10, AT&T includes an objection that the requests seek "proprietary confidential information related to third parties not participating in this proceeding." It is essential to identify the other access providers utilized by AT&T so that the prices AT&T pays for those services can be ascertained. This is crucial to the highly relevant assessment of AT&T's allegations and assertions discussed above. Any confidential or proprietary concerns are addressed by the existing Protective Order in this case or by modifying that Order to enhance confidentiality as discussed during the December 19, 2002 hearing on AT&T's motion to compel.

**Data Request Nos. 14, 17, 25, 26 and 30** seek highly relevant basic information essential to assessing AT&T's allegations and assertions that Verizon Northwest's switched access rates are causing AT&T to operate at a loss in the Washington toll market.

### **C. Imputation Test**

AT&T attempts to rewrite the Commission's imputation test, claiming that national legal, regulatory, and policy standards and considerations require it. **Data Request No. 29** legitimately seeks information on imputation tests that AT&T has advocated or performed elsewhere. Such

information is highly relevant to the integrity and accuracy of the claims AT&T is making to the Commission in this case.

#### **IV.RELIEF REQUESTED**

Verizon requests the Commission issue:

A. An Order compelling AT&T to respond to the Verizon data requests referenced in this motion;

B. Such other further relief as the Commission finds fair, just, reasonable and sufficient.

DATED this \_\_\_\_\_ day of January, 2003.

GRAHAM & DUNN PC

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