

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

AT&T COMMUNICATIONS OF THE	)	Docket No. UT-020406
PACIFIC NORTHWEST, INC.,	)	
	)	RESPONSE IN OPPOSITION TO
Complainant,	)	VERIZON'S MOTION TO
	)	COMPEL
vs.	)	
	)	
VERIZON NORTHWEST INC.,	)	
	)	
Respondent.	)	
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AT&T Communications of the Pacific Northwest, Inc. ("AT&T") hereby submits its Response in Opposition to Verizon Northwest Inc.'s ("Verizon") Motion to Compel. By this response AT&T respectfully requests that the Administrative Law Judge deny Verizon's Motion. As grounds therefore, AT&T states as follows:

**INTRODUCTION**

Switched access rates are the rates long distance companies pay to local exchange carriers ("LECs") to originate and terminate long distance calls over the LECs' network. This case is about the unjust and unreasonable rates charged by Verizon for its switched access service *in Verizon's territory* in Washington. This case is not about specific harm to AT&T nor has AT&T alleged specific damages. This case is not about "AT&T's market share in the [entire] state's [sic] toll market."<sup>1</sup> This case is not about other "access providers used by AT&T."<sup>2</sup> This case is not about "imputation tests that AT&T

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<sup>1</sup> Verizon Motion at 4.

<sup>2</sup> *Id.* at 5.

has advocated or performed elsewhere.”<sup>3</sup> This case is not about Verizon’s switched access rates in relation to AT&T’s total minutes of use in the State or across the country.<sup>4</sup>

Nevertheless, Verizon attempts to recast AT&T’s complaint and thereby mischaracterize AT&T’s allegations in the hope it may burden AT&T with irrelevant discovery demands that are not reasonably calculated to lead to the discovery of admissible evidence. When judging discovery requests, the threshold inquiry is whether the discovery seeks relevant information. If it does not, the discovery should be denied. Such is the case with Verizon’s discovery at issue here.

## **DISCOVERY REQUESTS AT ISSUE**

### **I. Verizon’s Data Requests Fail to Meet the Relevance Standard.**

Commission discovery rules mandate that all data requests and responses shall be signed as compliant with Civil Rule 26(g).<sup>5</sup> Civil Rule 26(g) states that data requests and responses are compliant with CR 26 generally. CR 26(b) requires, among other things, that:

Parties may obtain discovery regarding any matter, not privileged, which *is relevant* to the subject matter involved in the pending action ...<sup>6</sup>

Washington’s CR 26 is identical to Rule 26 in the federal courts and that of numerous other state courts. This rule clearly mandates that the threshold consideration regarding

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<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> WAC 480-09-480(6)(a)(i).

<sup>6</sup> CR 26(b)(1)(emphasis added).

whether discovery is proper is whether it is relevant.<sup>7</sup> And the Washington Commission has recognized and upheld the requirement of relevancy.<sup>8</sup> In fact, the United States Supreme Court has stated:

[D]iscovery, like all matters of procedure, has ultimate and necessary boundaries. . . . And as Rule 26(b) provides, further limitations come into existence when the inquiry touches upon the irrelevant . . . .<sup>9</sup>

The fundamental problem, among others, that AT&T has objected to regarding the discovery requests at issue here is that they are irrelevant to this proceeding. As noted above, this case is only about Verizon's excessive switched access rates for use of its network and its improper imputation of those excessive rates to itself. Verizon's attempt to broaden the scope of this proceeding into areas not plead by either AT&T or Verizon is inappropriate and they do not provide grounds upon which to likewise expand discovery obligations. Examination of the individual data requests at issue here reveal their irrelevance to this proceeding.

## **II. Examination of Verizon's Specific Requests Reveals Their Inadequacy.**

### **A. Data Request 5**

Data Request 5 demands AT&T "list and describe all its switched and non-switched local exchange and long distance services,"<sup>10</sup> offered in Washington. Bearing in mind that the only service under consideration in this docket is intrastate toll service

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<sup>7</sup> *Hickman v. Taylor*, 329 U.S. 495, 507 (1946); *Lurus v. Bristo Lab., Inc.*, 574 P.2d 391, 394 (Wash. 1978); see also, *Hofer v. Mack Trucks, Inc.*, 981 F.2d 377, 380 (8<sup>th</sup> Cir. 1992) ("threshold showing of relevance must be made before parties are required to open wide the doors of discovery"); *Lyeth v. Chrysler Corp.*, 929 F.2d 891, 899 (2d Cir. 1991) (discovery is properly denied where not relevant); *Payton v. NJ Turnpike Authority*, 691 A.2d 321, 326 (NJ 1997) (whether material is discoverable depends upon its relevance); *Rokeby-Johnson v. Derek Bryant Ins. Brokers, Ltd.* 594 N.E. 2d 1190, 1196 (Ill. Ct. App. 1992) ("Discovery should be denied where there is insufficient evidence that the requested discovery is relevant.").

<sup>8</sup> *Washington Utilities and Transp. Comm'n v. Puget Sound Power and Light Co.*, 172 P.U.R. 4<sup>th</sup> 304; 1996 WL 601392 at 47 (finding that the information sought was relevant and describing that that finding should not be read as prejudging the case because relevant information may not be essential or may be redundant).

<sup>9</sup> *Hickman*, 329 U.S. at 507.

<sup>10</sup> Verizon Data Request 5 at 5 (emphasis added), attached.

offered over Verizon's network, AT&T objected to the breadth of this request and referred Verizon to AT&T's tariffs, which list and describe all services AT&T offers in Washington.

Nonetheless, Verizon demands that AT&T generate yet another list with descriptions of all its services and then describe the underlying facilities over which all these services are provided by AT&T across the entire State. Not only is this request utterly irrelevant to Verizon's excessive switched access rates, it requires AT&T to extract information from material that is readily available to Verizon, and then AT&T must perform a special study to determine which services are provided over which facilities for each service it offers across the entire State of Washington.

Such demands far exceed AT&T's obligations under the Rules of Discovery before this Commission or any court in the State. Moreover, Verizon's explanation of the alleged relevance completely misses the mark. Verizon declares such information is "plainly relevant and will provide a foundation for more specific and detailed information to test AT&T's allegations."<sup>11</sup> AT&T's allegations have nothing whatsoever to do with its many services offered throughout this State. AT&T's allegations only deal with toll service offered over Verizon's network in Verizon's incumbent territory. AT&T requests that the ALJ protect AT&T from having to respond to this hugely irrelevant and burdensome discovery request.

**B. Data Request 6**

Data Request 6 is allegedly aimed at testing the allegations in AT&T's complaint, paragraph 11—a general allegation paragraph describing what switched access is. In Data Request 6, Verizon demands that AT&T organize and turn over six years of

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<sup>11</sup> Verizon Motion at 5-6.

intrastate switched access minutes-of-use in Verizon's incumbent territory. AT&T's minutes of use over a six-year period are irrelevant to whether Verizon's access rates are just and reasonable, and they have little, if anything, to do with the allegations contained in paragraph 11 of the complaint.

More importantly and by its own admission, Verizon already has this information in its possession, custody and control.<sup>12</sup> Nevertheless, Verizon wants AT&T to engage in the burdensome task of collecting, organizing and comparing six years of data so that Verizon may allegedly test the accuracy of its own records.<sup>13</sup> For whatever limited value the use of these minutes has—if any—Verizon should employ its own effort to collect and organize the same data from its own records and not attempt to shift the burden to AT&T. Because this request goes far beyond the obligations demanded of parties in discovery, AT&T requests that the ALJ deny Verizon's attempt to shift the burden of preparing its own case on to its opponent.

**C. Data Requests 7, 8, 9, 10**

Like Data Request 6, Data Requests 7, 8, 9 and 10 seek the same six years of AT&T minutes from other access providers organized in various ways for Verizon's convenience. Data Request 10 is merely a redundant, catch-all request seeking the same minutes sought in response to Requests 7 through 9 along with all other data that might exist showing these minutes.

These requests are enormously burdensome, and it will take months to collect the information just so it may be organized in the manner Verizon wishes AT&T to present it. Furthermore, the data has nothing to do with Verizon's switched access rates in its

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<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.*

incumbent territory. The law is quiet clear, irrelevant and burdensome discovery is not permitted; as such, this discovery should be denied.

**D. Data Request 11**

Data Request 11 demands that AT&T produce “all documents, studies and analysis” showing AT&T’s share of the intrastate toll market in Washington, and list all its intrastate toll rates.<sup>14</sup> The entire intraLATA toll market in Washington is not at issue here nor are AT&T’s intrastate toll rates (which are available to Verizon through AT&T’s tariffs and already sought in previous requests).

At the outset it is important to remember that Verizon started with all the intraLATA toll customers in its territory; it knows well what its market share was and is. It is Verizon’s market share that is at issue in this proceeding, not AT&T’s individual share. This discovery request should be denied as irrelevant and the toll rate request redundant.

**E. Data Request 14**

Based upon paragraph 18 from the complaint, Data Request 14 again demands that AT&T list all its intrastate toll service rates and those of other providers. It then expects AT&T to provide all rates that guarantee a revenue shortfall and zero negative profit margin.<sup>15</sup>

Paragraph 18 in the complaint is a discussion limited exclusively to Verizon’s intrastate long distance toll calling plans, their rates and the applicable price floors. It has nothing to do with specific competitors’ rates or their specific shortfalls, but rather, it describes the effect of Verizon’s pricing below the price floor and predicts revenue

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<sup>14</sup> Data Request 11 at 11, attached.

<sup>15</sup> Data Request 14 at 14, attached.

shortfalls based upon the Commission's requirements of Verizon not selling below the prescribed floor. Thus, the allegation does not support the discovery sought.

**F. Data Request 17**

Like many other requests, Data Request 17 again demands "all" AT&T intrastate toll rates across the entire State. It also seeks all "gross margins" for all such rates and every document that supports such margins.<sup>16</sup> AT&T's intrastate toll rates in Qwest or other territories served by LECs other than Verizon are not at issue in this proceeding. The relevant market is Verizon's incumbent territory, and its access rates. Access rates charged by other incumbents as well as toll rates charged by other long distance providers are equally available to Verizon and AT&T through the respective carriers' tariffs. AT&T should not be put to the task of doing Verizon's burdensome, irrelevant research.

**G. Data Requests 25 and 26**

Data Requests 25 and 26 require that AT&T identify all costs incurred to provide intrastate toll service in Washington and produce all documentation related thereto. Again, the issue before the Commission is the reasonableness or lack thereof of Verizon's access rates, not AT&T's toll rates. AT&T's costs for its toll rates across the entire State are not at issue and therefore utterly irrelevant to this proceeding. AT&T requests that the ALJ deny this discovery request.

**H. Data Request 30**

Data Request 30 demands that AT&T produce "AT&T's LRIC studies" that support AT&T's toll rates in Washington. The Washington Commission does not require AT&T to generate nor support its toll rates with Long Run Incremental Cost ("LRIC") studies. No such study exists or is available.

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<sup>16</sup> Data Request 17 at 17, attached.

Thus, Verizon seeks to compel the production of something that does not exist;  
such request must, therefore, be denied.

Respectfully submitted this 27<sup>th</sup> day of January 2003.

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

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