BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. Complainant, v. VERIZON NORTHWEST INC., Respondent.	)	Docket No. UT-020406 AT&T PETITION FOR COMMISSION REVIEW OF INTERLOCUTORY RULING COMPELLING AT&T TO RESPOND TO VERIZON DATA REQUESTS

Pursuant to WAC 480-09-480(7) and 480-09-760, AT&T Communications of the Pacific Northwest, Inc. ("AT&T") petitions the Commission to review the interlocutory ruling compelling AT&T to respond to data requests propounded by Verizon Northwest, Inc. ("Verizon").

BACKGROUND

1. Verizon propounded its first set of data requests on AT&T in this proceeding on October 10, 2002. AT&T timely provided objections and responses to those requests on October 25, 2002. Verizon filed a motion to compel AT&T to respond to data requests numbers 5-11, 14, 17, 25-26, and 30 ("Disputed Requests")[1] on January 21, 2003, and AT&T filed its opposition to Verizon's motion on January 27, 2003. A copy of Verizon's motion (including the data requests and responses at issue) and AT&T's opposition are attached to this Petition.

2. On January 28, 2003, Administrative Law Judge Theodora Mace conducted a

[1] During the hearing on Verizon's Motion to Compel, Verizon modified its Motion by

hearing on Verizon's motion in the absence of Administrative Law Judge Marjorie Schaer, who has been assigned to preside over this case. Judge Mace, ruling from the bench, overruled all of AT&T's objections to the disputed data requests and ordered AT&T to provide responses ("Interlocutory Ruling").

DISCUSSION

A. The Commission Should Review the Interlocutory Ruling.

3. "Discovery rulings are subject to review under WAC 480-09-760."[2] The Commission may review such rulings upon finding that "review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing reviewing" or "review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review."[3] The Commission should make such a finding with respect to the Interlocutory Ruling.

4. AT&T objected to the disputed data requests principally on the grounds that the information requested was not reasonably likely to lead to the discovery of admissible evidence and would be unduly burdensome and expensive for AT&T to produce. Obviously, if AT&T undertakes the effort to produce the requested information, it will already have born the undue burden and expended the excessive resources necessary to do so, and no post-hearing review could remedy that burden or expense. Indeed, if the data produced were never admitted into evidence in this proceeding – which it could not based on its lack of any

---

substituting its desire to compel Data Request No. 30 with a demand on Data Request No. 29.

[2] WAC 480-09-480(7).

[3] WAC 480-09-760(1)(b) & (c).

demonstrable relevance – the Commission would never review the ruling compelling its production. Accordingly, the only opportunity to challenge the Interlocutory Ruling that is, or likely will be, available to AT&T is this Petition.

B. The Commission Should Reverse the Interlocutory Ruling.

5. Commission rules establish the proper scope of discovery requests:

> The scope of any request for data shall be for data relevant to the issues identified in the notices of hearing or orders in the adjudicative proceeding. It is not grounds for objection that the information sought will be inadmissible at the hearing, ***if the information sought appears reasonably calculated to lead to the discovery of admissible evidence***. The frequency, extent, or scope of discovery shall be limited by the commission if it determines that the discovery sought is unreasonably cumulative or duplicative, or ***is obtainable from some other source that is more convenient, less burdensome, or less expensive***; the party seeking discovery has had ample opportunity to obtain the information sought; or, ***the discovery is unduly burdensome or expensive***, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.[4]

The Interlocutory Ruling erroneously failed to apply these standards to the disputed data requests.

1. The Disputed Data Requests Are Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

6. The Commission rule requires that the information sought in discovery requests "must be reasonably calculated to lead to the discovery of admissible evidence." Verizon ignored this standard and represented that "precedent set in this case calls for a broad review

of relevancy. On December 19, 2002 the ALJ in this case ruled that 'all questions are relevant for purposes of discovery' when ordering Verizon to respond to AT&T data requests."[5] Judge Schaer made no such ruling. Rather, she stated only with reference to AT&T's data requests to Verizon that "I consider all of *these* questions relevant for purposes of discovery."[6] A statement that *AT&T's* specific requests are relevant is not in any way equivalent to Verizon's representation that *all* questions are relevant. Neither Judge Schaer nor the undersigned counsel for AT&T were able to participate in the hearing on Verizon's Motion and correct this mischaracterization of Judge Schaer's ruling. Because the Interlocutory Ruling is based on this mischaracterization, the ruling is erroneous.

7. A review of the disputed data requests under the appropriate standard demonstrates that Verizon is not entitled to the data it has requested. AT&T's complaint alleges that Verizon has denied unaffiliated toll providers the *opportunity* to compete effectively within Verizon's local exchange service territory because (1) Verizon imposes unreasonably high switched access charges, and (2) Verizon prices its toll services below Verizon's costs. AT&T has made no claims that AT&T has suffered losses in providing toll service in Washington, nor has AT&T sought any damages from Verizon for any such losses. Requests for data on AT&T's market share outside Verizon's service territory and the costs that AT&T incurs to provide toll and other services throughout the state thus is not reasonably

---

[4] WAC 480-09-480(6)(a)(iv) (emphasis added).

[5] Verizon Motion at 2-3 (emphasis in original).

[6] Transcript of December 19, 2002 Hearing at 138, lines 12-13 (emphasis added).

calculated to lead to the discovery of admissible evidence on the issues raised by AT&T's complaint.

8. Such data, however, is precisely what Verizon has requested in the Disputed Requests and which the Interlocutory Ruling compels AT&T to provide. Verizon DR No. 5 asks for nothing less than a map of AT&T's entire Washington network used to provide both toll and local exchange service, including specific identification of those portions of AT&T's network that were constructed by AT&T, those portions that have been obtained from Verizon, and those portions that have been obtained from other providers. Verizon DR Nos. 14, 17, 25-26, and 30 request data on the costs AT&T incurs to provide toll services and the extent to which those services are profitable. How AT&T obtains facilities used to provide service to its customers – including its local exchange customers – and the costs that AT&T incurs to provide toll services bear no relationship whatsoever to whether Verizon's switched access rates are reasonable or whether Verizon's toll rates satisfy appropriate imputation standards.

9. Similarly, Verizon DR Nos. 6-11 request information on the extent to which AT&T obtains switched access services, including interstate access, from local exchange providers in Washington and AT&T's share of intrastate toll markets, both within and outside of Verizon's service territory, over the past seven years. AT&T's costs and market share – particularly outside of Verizon service territory – have no tendency to prove or disprove any disputed fact in this proceeding. Imputation, regardless of the standard used, examines *Verizon's* costs, not competitors' costs in general or AT&T's costs in particular. Verizon,

moreover, stated in response to an AT&T data request in this proceeding that Verizon does not provide toll service to Washington customers located outside the geographic areas in which Verizon provides local exchange service. The extent to which AT&T has obtained switched access or been successful in obtaining customers in those geographic areas or for interstate services over the last seven years thus is no more relevant to this proceeding than AT&T's market share for toll services in Nebraska.

10. The disputed data requests are not designed to obtain evidence that Verizon could introduce in this proceeding. Rather, these requests represent nothing more than Verizon's attempt to obtain highly sensitive marketing and cost data from a competitor in the guise of discovery. The Commission adopted standards to preclude just such abuse of the discovery process.

2. The Disputed Data Requests Are Unduly Burdensome and Expensive.

11. The Commission also will limit the scope of discovery if it "is unduly burdensome and expensive" or "is obtainable from some other source that is more convenient, less burdensome, or less expensive."[7] The Interlocutory Ruling included no consideration of this limitation. Identifying each and every component in AT&T's Washington network and determining how that component was constructed or obtained and which services it is used to provide would require nothing less than a Herculean effort and expense. Similarly, reviewing and evaluating seven years of records of the access charges that AT&T has paid to each and every local exchange carrier in Washington would require a monumental effort and expense. Data on AT&T's costs to provide toll service and profitability would also require enormous resources to research and compile when AT&T has not been required to maintain such data in that form for over 20 years.

12. The burden and expense that AT&T would incur to gather this information far outweighs any of "the needs of the adjudicative proceeding," particularly when, as discussed above, that information bears no reasonable relationship to any legitimate issue in this proceeding. Indeed, neither Verizon's Motion nor the Interlocutory Ruling even attempt to address AT&T's specific objections on these grounds. Particularly egregious is Verizon's DR No. 6, which requests records of the switched access charges that AT&T has paid Verizon over the last seven years.[8] Verizon concedes that it has its own records of these charges but

[7] WAC 480-09-480(6)(a)(iv).

[8] Similarly, Verizon DR No. 11 seeks intrastate market share information, but Verizon, as the monopoly switched access provider to all toll providers within Verizon's local exchange

nevertheless seeks AT&T's records "in order to avoid unnecessary claims down the road by AT&T that Verizon's information is inaccurate."[9] Verification of the accuracy of Verizon's own records does not even arguably justify the burden and expense to AT&T of providing such "verification" and would render meaningless the Commission standard that discovery shall be limited when the information requested "is obtainable from some other source that is more convenient, less burdensome, or less expensive."[10]

13. Verizon cannot be unaware of the burden and expense that the Disputed Requests impose on AT&T. Again, such requests – particularly when the information requested is not reasonably calculated to lead to the discovery of admissible evidence – are designed to increase AT&T's costs in seeking relief from this Commission and to discourage similar complaints in the future. The Commission should not condone, much less encourage, such abuse of its discovery procedures.

---

service territory, has far better and more accessible data than AT&T.

[9] Verizon Motion at 6.

[10] WAC 480-09-480(6)(a)(iv).

RELIEF REQUESTED

WHEREFORE, AT&T requests the following relief:

A. That the Commission accept review of the Interlocutory Ruling and deny Verizon's motion to compel AT&T to respond to the Disputed Requests; and

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

DATED this 7th day of February, 2003.

DAVIS WRIGHT TREMAINE LLP
Attorneys for AT&T Communications of the Pacific Northwest, Inc.

By _____
Gregory J. Kopta
WSBA No. 20519