BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainant, v. VERIZON NORTHWEST, INC., Respondents.	DOCKET NO. UT-020406 COMMISSION STAFF'S ANSWER IN OPPOSITION TO PUBLIC COUNSEL'S MOTIONS TO STRIKE AND IN LIMINE

1 The Commission Staff (Staff) submits this answer to Public Counsel's motions to strike testimony and in limine to preclude certain testimony during the remainder of this proceeding. As set forth below, the Utilities and Transportation Commission (Commission) should deny Public Counsel's motions.

A. The Doctrine of Single Issue Ratemaking Does Not Compel an Order Striking the Testimony

2 Public Counsel argues that the Commission must strike the identified testimony because the doctrine of single issue ratemaking "prohibits" rate rebalancing in this docket. Earlier in this docket, Verizon Northwest, Inc. (Verizon) moved to dismiss AT&T Communications of the Pacific Northwest, Inc.'s (AT&T) complaint, alleging that

the complaint was improper "single-issue" ratemaking. Verizon's Motion to Dismiss at 1 (April 24, 2002). Verizon argued that the request to reduce access charges must be dismissed because AT&T did not propose to increase any other rate, and that the complaint necessarily constituted single-issue ratemaking. *Id.* at 3.

3 In its Answer to Verizon's Motion to Dismiss, Staff stated that AT&T's complaint should not be dismissed on the grounds of single-issue ratemaking. Staff noted that whether the docket would address a "single issue" depended upon the nature of the evidence presented in the case. Staff's Answer In Opposition to Verizon Northwest's Motion to Dismiss at 2 (May 17, 2002).[1] Verizon has presented evidence in this case relating to rates other than access charges. Therefore, this docket does not present "single-issue" ratemaking. Instead of granting Public Counsel's motion, Staff believes the Commission should consider the testimony on its merits.[2]

4 Verizon's testimony reflects its position that a decrease in its access charges must be accompanied by a corresponding increase to its residential rates. While Staff disagrees with Verizon's proposed outcome, Staff does not believe that the Commission should preclude Verizon from attempting to support its position. It is reasonable for

[1] Like Verizon, Public Counsel argues that the Commission's decision in *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, Docket No. UT-970653, Second Supplemental Order Dismissing Complaint (October 22, 1997), renders single-issue ratemaking "impermissible." *See* Public Counsel's Motion at 3. Rather than repeat them here, Staff incorporates its arguments against reliance on the *MCI* decision.

[2] In the rebuttal testimony filed by Timothy Zawislak, Betty Erdahl, and Glenn Blackmon, Staff demonstrates why Verizon's testimony should be rejected on its merits. By opposing Public Counsel's motion, Staff does not argue that Verizon's testimony justifies any increase to residential rates.

the Commission to consider the possibility of offsetting some portion of the access rate decrease with a local rate increase, and even though Staff opposes such a shift it has provided the Commission with testimony analyzing potential local rate increases. The Commission is entitled to, and should, consider this evidence. In any event, there is nothing about the testimony Public Counsel seeks to exclude that would compel the Commission to rebalance rates as Verizon proposes.

5 Even if the Commission concluded that a discussion of local rate increases was improper for this proceeding, Public Counsel's motion goes too far in seeking to strike Staff's testimony. Public Counsel requests that the Commission "issue an order limiting the remedies available in this proceeding to the subject of the Petition, changes in Verizon's access charges." Public Counsel Motion at 7. Despite this characterization of the boundaries of this case, Public Counsel nonetheless seeks to strike Staff's testimony that discusses changes in Verizon's access charges. The portion of Dr. Blackmon's testimony that Public Counsel would strike discusses an alternative approach of establishing a "retail switched access charge." *See* Ex. _____ (GB-T-1 at 8, l.22).

6 Public Counsel may take issue with this alternative—as Verizon has done in its testimony—but to strike testimony about an alternative structure for access charges hardly seems consistent with Public Counsel's plea to limit the case to "changes in Verizon's access charges."

B. Due Process Does Not Compel Granting Public Counsel's Motion

7 Public Counsel also contends that due process requires notice and opportunity for the public to be heard regarding a potential increase to Verizon's rates. Public Counsel's Motion at 5. This contention fails.[3] Assuming such notice is required, the Commission can order notice or public hearings as part of an administrative proceeding under WAC 480-120-197. Notice to customers and even one or more public hearings may well be appropriate in this case, given the range of proposals that the Commission is being asked to consider. It would be more reasonable and productive to invite Public Counsel to make such a proposal rather than attempt to limit the evidence and the Commission's options in this proceeding.

8 The statutes and rules Public Counsel cites do not support its argument that the Commission cannot consider Verizon's evidence. RCW 80.36.100 does not prevent the Commission from considering Verizon's testimony, in which it proposes to raise residential rates. That statute requires tariffs to be filed and open to public inspection.

9 Nor does RCW 80.36.110 compel the Commission to strike the testimony. That statute requires Verizon to file tariffs reflecting a rate increase at least 30 days prior to

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[3] No statute or rule requires an evidentiary hearing before rates can be increased. Consumers are afforded an opportunity to comment on proposed rate increases through the requirements of WAC 480-120-194, which takes effect upon the filing of proposed tariff. The Commission also may schedule a hearing to take public comment.

In addition, the complaint and Verizon's answer are posted to the Commission's web site and available for members of the public or other interested persons to inspect.

the effective date. The statute also permits the Commission to approve such tariffs on less than 30 days' notice.

10 Public Counsel cites *former* WAC 480-80-125 in support of its motion. That rule has been repealed. In seeking to raise rates, Verizon must now comply with WAC 480-120-194, which sets forth the customer notice requirements that are triggered upon the filing of a tariff that increases rates. If the Commission agrees that Verizon should be entitled to raise its general rates, Verizon must do so by filing a tariff, which would trigger the customer notice rule. Until Verizon files a tariff, the rule is not operative.

11 Public Counsel also argues that WAC 480-09-310 through –335 support its motion. These procedural rules do not preclude the Commission from considering the testimony. Rather, these rules apply when a regulated company files a general rate case. The detailed filing requirements allow the Commission, the Staff, and all other interested parties to hit the ground running, so that complex evidence can be reviewed and heard within the statutory time limit for a suspended tariff filing. These rules also limit regulated companies from making a very sketchy presentation in direct testimony followed by rebuttal testimony that introduces substantial new information, after Staff and other parties already have filed their cases. Those circumstances simply do not apply here. It is plain from Verizon's testimony that it is not independently seeking an increase to its local rates. Rather, Verizon's proposal to increase local rates is a

component of its response to claims by AT&T and Staff that access charges should be reduced. Moreover, the Commission has not suspended any tariff, and indeed, the opportunity for discovery has been available since July 24, 2002—more than six months ago. At any point, Public Counsel could have asked Verizon to produce the information required by WAC 480-120-330. Given this circumstance, the Commission should not strike Verizon's testimony for failure to comply with the technical procedural rules for filing a general rate case.[4]

12 Public Counsel also has not demonstrated that the gross revenue provided by residential customers would increase by three percent. *See* Public Counsel's Motion at 6 (citing WAC 480-09-310(b)). Verizon's proposal would increase local rates and decrease access charges, so the overall effect on the residential class is ambiguous.[5]

C. Conclusion

13 The Commission should deny Public Counsel's motion. This case is not one of single-issue ratemaking. Nor will the public be harmed by the consideration of this testimony. If the Commission allows Verizon to increase any rate as a result of this proceeding, Verizon must file a tariff reflecting that increase. At that time, customer

[4] While WAC 480-120-330 does not bar the testimony Public Counsel asks the Commission to strike, the rule does provide a measure against which the Commission may evaluate Verizon's testimony on its merits. The Commission may decide to give less weight to Verizon's evidence because it does not provide all of the information contained in the rule.

[5] Staff does not believe Verizon's proposal in this docket is revenue-neutral on its merits.

notice can be accomplished through operation of the statutes and rules requiring customer notice.

Dated: February 12, 2003

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