

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

COMMISSION STAFF'S
ANSWER IN OPPOSITION TO
VERIZON'S MOTIONS FOR
CONTINUANCE, DEFINITION
OF SCOPE, AND FOR LEAVE
TO FILE SURREBUTTAL
TESTIMONY

1 The Commission Staff (Staff) opposes the motions brought by Verizon Northwest, Inc. (Verizon) for a continuance of the hearing, definition of the scope of this proceeding, and leave to file surrebuttal testimony. As argued below, Verizon's motions are without merit and should be denied in their entirety.

A. The Scope of This Docket Is Defined By the Complaint and the Evidence Filed by the Parties. There Is No Need for the Commission to Decide the Scope.

2 Verizon argues that the parties do not agree on the scope of this proceeding. Verizon's Motion at 2. Verizon states that the outstanding motions by Public Counsel to strike portions of Verizon's and Staff's testimony, and Staff's and AT&T of the Pacific Northwest, Inc.'s (AT&T) rebuttal testimony "raise significant questions about the scope of this proceeding." *Id.* at 2-3. There is no merit to these arguments.

3 First, Public Counsel's motion, which Staff opposes, does not create any
uncertainty about the scope of this proceeding. Public Counsel asks that certain
testimony be stricken, which, if granted, would narrow the scope of this docket. In such
case, Verizon will not need to file additional testimony or prepare additional evidence.

4 The issues in this case are known to all parties. In its complaint, AT&T alleged
that Verizon's access charges are excessive and anticompetitive. *See* Compl., ¶ 2. On
September 30, 2002, AT&T and Staff filed testimony in support of AT&T's allegations.
On December 3, 2002, Verizon filed testimony contesting the allegations in AT&T's
complaint, and by alleging that any decrease to its access charges must be offset by a
corresponding increase to its local rates in order to recover the lost revenue, Verizon
brought its earnings into issue in this proceeding. Therefore, the issues are certain, and
properly framed for hearing. There is no need to continue the hearing in order to
identify the issues.

5 In addition, the rebuttal testimony filed by AT&T and Staff does not upset either
the scope or schedule of this case. After Verizon filed its responsive testimony and
injected the issue of its earnings into this case, AT&T and Staff filed rebuttal testimony
on January 31 and February 7, 2003, respectively, in which they stated that Verizon's
testimony regarding its earnings was insufficient to show that any decrease to access
charges would necessitate an increase to local rates. There is nothing even mildly

unusual about a case where the complainant presents its evidence first, followed by the respondent, and ending with rebuttal evidence by the complainant. Surrebuttal testimony is only proper where new issues are raised in the rebuttal testimony. The issue of Verizon's earnings was not raised in rebuttal but rather by Verizon in its direct case. Rather than being in "disarray," this docket is proceeding on a very orderly—and ordinary—course. See Verizon's Motion at 3.

6 Verizon implies that it is prejudiced by Staff's recommendation that if Verizon needs to raise local rates, it must file a separate rate case. Verizon Motion at 3. Verizon contends that this is inconsistent with Staff's answer to Verizon's motion to dismiss, where Staff noted that Verizon may file testimony supporting an increase to other rates.¹ *Id.* Of course, when Staff answered Verizon's motion to dismiss last May, Staff could not have known the content of the testimony Verizon would file in December. While Staff recognized that Verizon may file such testimony, Staff in no way agreed last

¹ Verizon quotes selectively from Staff testimony in an effort to create the misleading impression that Staff is taking a different position now than it did last May in our answer to Verizon's motion to dismiss. The statement in Mr. Zawislak's February rebuttal testimony is:

With respect to Verizon's claims that it cannot reduce its access charges without raising local rates, Staff believes that it is more appropriate for Verizon to file a separate rate case, in accordance with Commission rules, rather than to try to justify half-heartedly its intrastate revenue requirements as it has attempted in this case.

Ex. T-___ at 2 (TWZ-RT). This statement is consistent with Staff's position that Verizon should be (and now has been) provided the opportunity, within this proceeding, to demonstrate that an offsetting rate increase is justified. Having seen the result in Verizon's direct case, Staff's position in rebuttal is that Verizon has not justified its request. The Staff rebuttal testimony also acknowledges that this is not Verizon's only opportunity, because it still has the right to file a general rate case.

May that Verizon would not have to file a general rate case. It left open the possibility that Verizon would justify its contention that an offsetting increase was required.

Staff's rebuttal testimony calls into doubt the credibility of Verizon's testimony—which is the purpose of rebuttal testimony—and in doing so, does not “raise fundamental questions about the scope of this proceeding.” See Verizon's Motion at 3.

B. The Current Schedule Affords Verizon Sufficient Time to Conduct Discovery and Prepare for Cross-Examination

7 Verizon argues that it cannot be ready for hearing on March 3 because AT&T has petitioned for interlocutory review of the order compelling AT&T to respond to data requests. This is no reason to grant a continuance. The Commission has authority to consider AT&T's petition and compel AT&T to answer the data requests, if they are proper, in shortened time. If the Commission finds that Verizon's data requests are not likely to lead to the production of relevant evidence, Verizon will not be prejudiced because it has no right to present inadmissible evidence at the hearing.

8 Verizon also laments the one week continuance granted to Staff to file rebuttal testimony. Verizon Motion at 4. As a practical matter, a one-week continuance for filing rebuttal testimony does not justify a four to six-week continuance for the hearing. If Verizon needs to obtain responses to the data requests it propounds to Staff sooner than ten business days, it can request an accelerated response deadline. Staff will work with Verizon to respond to data requests on shortened time, where at all possible.

C. The Commission Should Deny Verizon’s Request to File Surrebuttal Testimony

9 The Commission should not allow Verizon to file surrebuttal testimony. As a preliminary matter, AT&T and Staff, as the parties with the burden of proving the allegations, should have the last word in this case.

10 In addition, surrebuttal testimony is proper only where a party introduces new issues in rebuttal testimony that the party requesting surrebuttal did not have a fair chance to address in its earlier filing. Verizon had a fair chance to address the issue of its earnings in its response testimony, in fact Verizon introduced the earnings issue in its testimony.

11 Verizon faults AT&T and Staff for not “bother[ing]” to address the earnings issue in their direct testimony, instead focusing on the issue of Verizon’s access charges. Verizon’s Motion at 4-5. AT&T and Staff focused on the access charge and price squeeze issues in their direct testimony for the unremarkable reason that these were the issues raised in the complaint. AT&T and Staff did not raise the earnings issue in their direct testimony because they were unsure whether Verizon would offer any evidence on the issue. While Verizon had indicated that it likely would present testimony regarding its earnings, Staff was in no position to anticipate what that testimony would be.

12 Verizon also argues that AT&T and Staff have the burden of proving that Verizon's intrastate earnings are sufficient if access charges are reduced. This is wrong. AT&T and Staff have the burden of proving that Verizon's access charges are excessive or anticompetitive. By complaining against Verizon's access charges, AT&T in no way took upon itself the burden of proving that Verizon's earnings are sufficient. To place such a burden on competitors would circumvent the purposes of the statutes prohibiting anticompetitive conduct.

13 Verizon contends it must have an opportunity to rebut the adjustments Staff and AT&T made to its earnings analysis. The adjustments are not new issues, but were made to cast doubt on the credibility of Verizon's earnings analysis. This is the very purpose of rebuttal testimony.

14 It is important to note that Staff's adjustments are at a very high level—that is to say they are few and general. See Ex. T- ___ at 4 (BAE-RT). If this were a rate case, which it is not, Staff likely would make more adjustments to Verizon's earnings analysis. See *id.* at 12. In fact, Verizon admitted that it is not presenting a rate case financial package. Ex. T. ___ at 6 (NWH-1T). Staff made its adjustments simply to show the Commission that Verizon has not demonstrated that any reduction to access charges must be accompanied by a corresponding increase to local rates. Therefore,

these adjustments do not raise new issues, but rather rebut the earnings issue raised by Verizon.

15 By making its earnings an issue in this proceeding, Verizon opened its earnings analysis to the scrutiny of Staff and AT&T. Under the schedule of this case, Verizon had ample opportunity to show that it cannot withstand a reduction in access charges, and, as Staff states in its rebuttal testimony, Verizon squandered that opportunity. In short, the Commission should not reward Verizon's lackluster testimony with a second bite of the apple.

CONCLUSION

16 The Commission should not grant Verizon's motions. There is no need to further contemplate or define the scope of this case. The issues are known and the parties have filed their evidence. The Commission should not grant Verizon leave to file surrebuttal testimony. Neither Staff nor AT&T raised new issues in their rebuttal testimony that would justify surrebuttal testimony. For these reasons, there is no good cause for a continuance. The evidentiary hearing should go forward as scheduled.

Dated: February 14, 2002

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