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February 13, 2003

VIA FEDERAL EXPRESS

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

Re: AT&T Communications of the Pacific Northwest, Inc. v. Verizon Northwest Inc., Docket No. UT-020406

Dear Ms. Washburn:

Enclosed please find the original and 14 copies of Verizon's Second Motion to Strike and For Summary Determination in the above-referenced matter. Also enclosed is the are 14 copies of Attachment C, which is filed under seal pursuant to the Protective Order. Please stamp one of the copies and return it to us in the enclosed stamped self-addressed envelope provided for your convenience.

If you should have any questions, please contact me. Thank you.

Sincerely,

GRAHAM & DUNN PC

Nancy E. Dickerson
Legal Secretary

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ORIGINAL

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainant, vs. VERIZON NORTHWEST INC., Respondent.	Docket No. UT-020406 **VERIZON'S SECOND MOTION TO STRIKE AND FOR SUMMARY DETERMINATION**

VERIZON'S SECOND MOTION TO STRIKE AND FOR SUMMARY DETERMINATION

Verizon Northwest Inc. ("Verizon") requests that the Commission strike the testimony of AT&T that (1) purports to address the retailing, marketing, and other costs of Verizon Long Distance (VLD) and (2) proposes an imputation test that differs from the Commission's existing test. Verizon also requests summary determination that all of Verizon's toll plans pass imputation except the residential "Sensible Minute Plan" and the "Easy Savings Flat Plan" for business.

I. MOTION TO STRIKE TESTIMONY CONCERNING VERIZON LONG DISTANCE

AT&T claims that VLD's existing toll plans do not pass imputation. It also claims that VLD does not incur any retailing, marketing, and sales expenses beyond what it pays Verizon for joint marketing. AT&T's testimony on these points must be stricken, because VLD is not a party to this case and AT&T has presented no evidence on VLD's costs of providing toll service in Washington or VLD's retailing, marketing, and sales expenses. Quite simply, AT&T is trying to benefit from its failure to name VLD as a party by tossing out hearsay evidence of "IXC industry" costs in a transparent and unlawful attempt to shift the burden of proof on these issues to Verizon.

AT&T has proffered the testimony of one witness, Dr. Lee Selwyn. His testimony alleges (or assumes) the following with respect to VLD:

1. VLD's toll rates are below its "imputed price floor," and thereby fail the Commission's imputation standards (Selwyn Direct at 5).

2. The Commission must treat VLD's services and operations within Washington State "as if they were being performed on a fully integrated basis by Verizon" (Selwyn Direct at 24).

3. VLD has the same price floor as Verizon (Selwyn Direct at 42-43, and Attachment 3).

4. All of VLD's toll plans are below the price floor (Selwyn Direct at 43, Table 2, when compared to Selwyn Direct, Attachment 3).

5. VLD does not use direct trunked transport when it provides toll services in Washington (Selwyn Rebuttal at 18).

6. The fair market value Verizon provides VLD is $300-$600 per customer, because VLD avoids *all* customer acquisition costs as a result of its joint marketing arrangement with Verizon (Selwyn Rebuttal at 31-35).

The first five allegations are premised on Dr. Selwyn's assumption that VLD, which provides long-distance services throughout Washington and throughout the United States, and Verizon, which provides only intraLATA toll service in its local serving area footprint in Washington, *have exactly the same costs*. But nowhere does Dr. Selwyn support his assumption. In fact, AT&T has failed to offer *any* evidence on VLD's costs and VLD's "price floor."[1] Instead, AT&T is trying to shift the burden of proof to Verizon by requiring Verizon to rebut AT&T's presumption about VLD's costs.[2] If AT&T wanted to attack VLD's plans and costs and have the Commission impose an imputation test upon VLD, then it should have named VLD as a party.

AT&T certainly knows how to do this: in Texas, it filed an access charge complaint against SBC *and* SBC's long-distance affiliate (SBC-LD).[3] There, AT&T made the same arguments it is making here and sought precisely the same relief: a reduction in the ILEC's access charges. Because AT&T named SBC-LD as a party, it was entitled to – and in fact did – propound discovery to SBC-LD. For example, AT&T asked SBC-LD to "identify by name each provider of service to SWB-LD which facilitates the transport of long distance calling across

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[1] As Verizon explained in earlier pleadings, VLD is not subject to the Commission's imputation requirement. But even assuming it is for purposes of this motion, AT&T has failed to meet its burden of proof.

[2] AT&T has the burden of proof on *all* its claims, and it – not Verizon – must produce the requisite evidence to support its claim. *See, e.g.*, GTE Northwest v. Whidbey Tele. Co., 1996 Wash. UTC LEXIS 23, *15.

[3] *Complaint of AT&T against Southwestern Bell and Southwestern Bell Long Distance Co.*, Docket No. 23063 (Texas P.U.C. filed Sept. 22, 2000).

LATA boundaries within Texas."[4] We will not bother to list every discovery request propounded by AT&T in that docket; rather, the point here is that AT&T should have named VLD as a party if it wanted to address VLD's rates, costs, and plans in this proceeding. It failed to do so, and therefore its "testimony" relating to VLD must be stricken.

Finally, the sixth allegation enumerated above – AT&T's claim that VLD avoids *all* customer acquisition costs as a result of its joint marketing arrangement with Verizon – also must be stricken because it assumes VLD does not incur any customer acquisition costs beyond its joint marketing arrangements with Verizon. Here, too, AT&T should have named VLD as a party if it wanted to pursue this claim.

The specific portions of Dr. Selwyn's testimony about VLD that must be stricken are set forth in Attachment A.

II. MOTION TO STRIKE TESTIMONY PROPOSING A NEW IMPUTATION TEST

In his rebuttal testimony, Dr. Selwyn proposes two principal adjustments to Verizon's imputation study. First, he claims that Verizon should not have used a mix of tandem switched transport and direct trunk transport rate elements in its study because Verizon actually uses only tandem switched transport when transporting its own intraLATA toll calls (Selwyn Rebuttal at 18). This rebuttal testimony must be stricken because it conflicts with Dr. Selwyn's *direct* testimony on this very point. On page 18, footnote 27 of his direct testimony, Dr. Selwyn explains that when IXCs provide toll service, they must pay Verizon for several interoffice transport and switching functions; when Verizon provides toll service, the route may involve fewer transport and switching functions, resulting in lower costs. According to Dr. Selwyn,

[4] AT&T Request 2-1, filed in Docket No. 23063.

"[t]his is why Verizon Northwest is required to impute the access charge that its competitors pay rather than its own costs for the equivalent functionality in determining whether its retail price satisfies the imputation price floor" (Selwyn Direct at 18-19, n.27).

Verizon did precisely what Dr. Selwyn advocated in his direct testimony: it calculated the transport costs IXCs would incur, which include a mix of tandem switched and direct trunked transport. It is this very calculation Dr. Selwyn now attacks in his rebuttal testimony. The bottom line is that Dr. Selwyn's rebuttal testimony is nothing more than a self-serving reversal of the position he took in his direct testimony as well as an unlawful attempt to re-define the Commission's imputation test, and therefore must be stricken.

Dr. Selwyn's second adjustment proposes to develop a price floor based on something other than Verizon's *incremental* cost of billing and collection (B&C) and retailing/marketing activities. Specifically, he states that the use of incremental costs is inappropriate and that the "correct policy should be that 100% of the gains from joint production of a regulated and non-regulated service should inure to the regulated service" (Selwyn Rebuttal at 19-20). In other words, he proposes the use of a stand-alone cost standard rather than an incremental cost standard.

Dr. Selwyn's testimony on this adjustment also must be stricken, because it proposes to change (or nullify) a Commission policy, as embodied in a Commission rule, which requires the use of incremental costs. Staff appears to recognize this point in its rebuttal testimony. As Staff witness Tim Zawislak explains in his Rebuttal Testimony (page 18):

> To the extent any input also has been classified as competitive (such as B&C) it may be imputed at total service long run incremental cost ("TSLRIC"). To the extent that any input has not been classified as competitive (such as tariffed carrier access charges) they must be imputed at tariffed rates. The Commission has recently clarified this in its "Tariff, Price List, and Contract," rulemaking in Docket UT-991301, when it adopted WAC 480-80-204(6), which states in pertinent part:

> *"The rates, charges, and prices of services classified as competitive under RCW 80.36.330 must cover the cost of providing the service. Costs must be determined using a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method . . . ."*

In short, Dr. Selwyn is attempting to re-write the Commission's price floor policy and imputation test as embodied in a rule. Indeed, he admits he is trying to change what he believes is the "*in*correct policy" on imputation. To do this, however, AT&T must petition for a rulemaking change under the appropriate Commission rule (WAC 480-09-220) and the Washington Administrative Procedure Act (RCW 34.05.330); it cannot change the rule in this proceeding. Accordingly, Dr. Selwyn's testimony on this point must be stricken. The specific portions of the testimony are shown on Attachment B.[5]

III. MOTION FOR SUMMARY DETERMINATION

The legal standard for summary determination is well-settled: The moving party is entitled to summary judgment *as a matter of law* "where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact."[6] The decision-maker must view the evidence in a light most

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[5] In his direct testimony, Dr. Selwyn proposed to revise the Commission's imputation policy by applying a 1.8% "uncollectibles" factor in an attempt to reduce the tariffed rate for each Verizon toll plan (Selwyn Direct at 42). As noted above, the Commission's imputation test looks to the actual rates charged for competitive services, not "adjusted" rates as Dr. Selwyn proposes. In his rebuttal testimony, Dr. Selwyn revised his position by adopting the per minute-of-use rate calculation provided by Verizon (Selwyn Rebuttal at 26-27). To clarify the record, his direct testimony on the uncollectibles factor should be stricken. This material is included in Attachment B.

[6] *Brannan v. Qwest*, Docket No. UT-010988, et al., Final Order at 10-11 (W.U.T.C. Jan. 11, 2002). *See also* WAC 480-09-426.

favorable to a non-moving party; however, the non-moving party "may not rely upon speculation or on argumentative assertions that unresolved factual issues remain."[7]

When AT&T's improper adjustments to Verizon's price floor are stricken, the undisputed record evidence proves that all of Verizon's toll plans pass imputation except the residential "Sensible Minute Plan" and the "Easy Savings Flat Plan" for business.[8] Similarly, even if Staff's adjustment is accepted – Staff disputes Verizon's calculation of its conversion factor[9] – only these same two plans fail imputation.[10] Verizon does not agree with Staff adjustment or AT&T's other adjustments, but they present issues of fact that Verizon will address in its surrebuttal testimony and at the hearing. For purposes of this motion, however, the lawful, undisputed evidence shows that all of Verizon's toll plans pass imputation except for two, and Verizon is entitled to summary determination on this point.

Respectfully submitted,

Verizon Northwest Inc.

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Dated this 13th day of February, 2003.

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[7] *Id.*

[8] Dr. Selwyn's price floor, calculated to remove his illegal adjustments, is shown on Attachment C.

[9] Zawislak Rebuttal at 10.

[10] The effect of Staff's adjustment, based on Verizon's current access charges, is shown on page 10, lines 1-2 of Staff witness Zawislak's rebuttal testimony (confidential version).

ATTACHMENT A

Verizon Long Distance (Selwyn Direct Testimony)

1) Page 5, Lines 6-8
2) Page 9, Lines 10-17
3) Page 18, Lines 14-17
4) Page 22, Lines 11-15
5) Page 23, Lines 6-8
6) Page 24, Lines 1-5
7) Page 24, Footnote 34
8) Page 35, Lines 9-13
9) Page 36, Lines 1-4
10) Page 41, Lines 3-4
11) Page 41, Lines 12-15
12) Page 43, Table 2
13) Page 44, Lines 1-3
14) Page 44, Footnote 67
15) Page 46, Lines 4-6
16) Attachment 3

ATTACHMENT A

Verizon Long Distance – (Selwyn Rebuttal Testimony)

1) Page 26, Lines 17-19

2) Page 56, Lines 9-14

ATTACHMENT B

Imputation (Selwyn Direct Testimony)

1) Page 34, Lines 9-12

2) Page 35, Lines 1-5

3) Page 35, Footnote 52

4) Page 35, Lines 9-13

5) Page 36, Lines 15-19

6) Page 37, Lines 4-6

7) Page 37, Lines 15-20

8) Page 38, Lines 1-3

9) Page 40, Lines 10-13

10) Page 40, Lines 18-19

11) Page 41, Lines 1-15

12) Page 42, Table 1

13) Page 43, Table 2

14) Attachment 3, Line 13

ATTACHMENT B

Imputation (Selwyn Rebuttal Testimony)

1) Page 16, Footnote 37

2) Page 18, Lines 1-3

3) Page 18, Lines 14-22

4) Page 19, Lines 1-4

5) Page 19, Footnote 46

6) Page 19, Lines 12-21

7) Page 20, Lines 5-24

8) Page 21, Lines 1-3

9) Page 21, Lines 9-20

10) Page 22, Lines 1-14

11) Page 22, Footnote 51

12) Page 23, Lines 1-19

13) Page 24, Lines 1-13

14) Page 26, Lines 11-12

15) Page 31, Lines 6-20

16) Page 32, Lines 9-17

17) Page 34, Lines 1-5

18) Page 35, Lines 1-3

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainant, vs. VERIZON NORTHWEST INC., Respondent.	Docket No. UT-020406 CERTIFICATE OF SERVICE

Nancy E. Dickerson affirms and states:

That on this day, I caused to be served true and correct copies of **Verizon's Second Motion to Strike and for Summary Determination**, by the method indicated below, and addressed to each of the following:

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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

Executed at Seattle, Washington this 13th day of February, 2003.

By Nancy E. Dickerson
Nancy E. Dickerson
Legal Secretary