

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**AT&T Communications of the Pacific
Northwest, Inc.**

v.

Verizon Northwest, Inc.

DOCKET NO. UT-020406

**PUBLIC COUNSEL'S ANSWER TO
VERIZON'S MOTION TO CONTINUE
HEARINGS, DETERMINE SCOPE
AND TO FILE ADDITIONAL
TESTIMONY**

Pursuant to the Commission's Notice of Opportunity to Answer Motion to Continue Hearing, Determine Scope and File Additional Testimony served on February 12, 2003 the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files this answer in opposition to the motion filed by Verizon Northwest Inc. (Verizon).

I. ANSWER

Verizon has not demonstrated good cause for the continuance and surrebuttal requested by their motion. The Commission should deny the motion to continue the hearings and the request to file additional testimony. Verizon is not prejudiced if the Commission grants in whole or part the pending Motion filed by Public Counsel.

A. Verizon's Assertion Of Prejudice Is Not Yet Ripe.

The Commission has not yet ruled on Public Counsel's motion to strike the testimony and limit the hearings regarding Verizon's request to rebalance any access charge reduction on to the rates of Verizon's residential customers. The doctrine of ripeness avoids the waste of judicial resources by barring consideration of matters which are not final. *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 106, 38 P.3d 1040, 1047 (2002). The Commission has not yet ruled on Public Counsel's motion and therefore no prejudice can, as a matter of law and fact,

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have yet accrued to Verizon. Verizon's assertion of prejudice is not yet ripe and its motions to continue the hearing and for additional evidence should be denied on this basis.

B. Public Counsel's Motion, If Granted, Does Not Prejudice Verizon.

Hypothetically, if the Commission grants Public Counsel's motion there similarly will be no prejudice to Verizon. Public Counsel's motion seeks to strike testimony and to limit the hearings regarding Verizon's request to rebalance any access charge reductions on to residential customer's basic rates. See Public Counsel's *Motion to Strike Testimony and In Limine to Limit Hearings* filed on February 5, 2003. If the Commission strikes the testimony and limits the hearings as requested it will presumably be because the Commission agreed that the subject matter of the hearing was properly limited to the gravamen of AT&T's complaint; namely that Verizon's access charges are too high. Public Counsel's motion seeks a limit on remedies (rate rebalancing) and does not preclude Verizon from presenting its case regarding access charges.

Any decision by the Commission to limit the scope of this proceeding is not prejudicial to Verizon provided that Verizon has an adequate opportunity to present evidence, to rebut the evidence of other parties and to cross-examine witnesses. If the Commission limits the scope of the proceeding to the proper level of Verizon's access charges, then Verizon cannot properly claim to have been prejudiced. Verizon has been on notice since the beginning of this proceeding that its access charges were at issue in the case. Verizon has had the opportunity to present evidence regarding its access charges, to rebut the evidence of other parties, and at the evidentiary hearings will have the opportunity to cross-examine witnesses. Public Counsel has not sought to strike testimony regarding access charges or in any way limit the scope of hearings regarding Verizon's access charges. All that Public Counsel has sought is a limitation on the remedies available to Verizon (rate rebalancing) in this docket in the event that the Commission determines that Verizon's access charges are too high.

A limitation on remedies is not prejudicial to Verizon's ability to answer and rebut the case presented by AT&T, Commission Staff, and other parties regarding its access charges. Further, Verizon has provided no evidence in support of its assertion of prejudice. Such an unsubstantiated assertion of prejudice from an as yet hypothetical limitation on available remedies should be rejected by the Commission.

C. Verizon Is Not Entitled To Surrebuttal.

Verizon improperly asserts in its motion that AT&T and Staff have a burden of proof on earnings issues to prove that Verizon's over-all earnings will be sufficient. *Verizon's Motion to Continue Hearings* at p. 5. Neither AT&T nor the Commission Staff have a burden of persuasion that includes the sufficiency of Verizon's overall earnings. As stated in Public Counsel's pending motion, the proper context for considering Verizon's earnings is a general rate case. If the Commission decides to lower Verizon's access charges, and if Verizon then determines it is under-earning, it may file a general rate case. Public Counsel believes this would be the proper sequence of proceedings before the Commission.

Verizon also seeks to file surrebuttal to address adjustments proposed by Staff & AT&T. *Id.* Verizon neither identifies these adjustments with specificity nor cites to the testimonial filings to identify them. Verizon also does not identify what it is about these alleged adjustments that would justify surrebuttal or continuance of the hearings. The mere allegation that "Verizon must have an opportunity to rebut these adjustments" is not "good cause" for permitting surrebuttal.

II. CONCLUSION

Verizon has failed to make more than bare allegations regarding its need to continue the hearings or file surrebuttal. Good cause does not exist to support granting the requested motion.

Verizon has known that its access charges were at issue all along and has had every opportunity to address this issue. Verizon's motion should be denied.

DATED this 14th day of February, 2003.

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