

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF)	
THE PACIFIC NORTHWEST, INC.)	
)	Docket No. UT-020406
Complainant,)	
)	AT&T RESPONSE TO VERIZON
v.)	MOTION TO CONTINUE
)	HEARINGS, DETERMINE
VERIZON NORTHWEST INC.,)	SCOPE AND TO FILE
)	ADDITIONAL TESTIMONY
Respondent.)	
_____)	

AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) hereby responds to the motion of Verizon Northwest Inc. (“Verizon”) to continue the evidentiary hearings, create a schedule to determine the scope of this proceeding, and to file additional testimony (“Verizon Motion”). Verizon is the only party who allegedly is confused about the issues being presented to the Commission for determination in this proceeding, and any legitimate confusion in Verizon’s understanding is attributable solely to Verizon. AT&T strongly opposes continuance of the hearings.

INTRODUCTION

AT&T filed its Complaint initiating this proceeding almost one year ago, on April 3, 2002, and Verizon has been trying to delay Commission resolution of the Complaint ever since. Verizon filed a motion to dismiss the Complaint, which the Commission denied. The Administrative Law Judge proposed that hearings be conducted in December 2002, but Verizon claimed that it needed more time to respond to the allegations in the complaint. Accordingly, the parties – including Verizon – agreed on the existing procedural schedule.

Now Verizon seeks further delay of the schedule, claiming that “the procedural posture of this case is in disarray, and none of the parties know for certain what issues the Commission will entertain and decide and what evidence may properly be submitted.” Verizon Motion at 3. Verizon is the only party claiming confusion, and Verizon is the source of any such confusion.

DISCUSSION

Beneath its hyperbole, Verizon claims three grounds for continuing the currently scheduled hearings: (1) Public Counsel’s motion to strike portions of Verizon’s testimony and the rebuttal testimony filed by Staff and AT&T allegedly raise “fundamental questions about the scope of this proceeding,” Verizon Motion at 2-3; (2) Verizon allegedly has not obtained the data it needs through the discovery process in order to prepare for the hearings; and (3) Verizon claims a need to reply to the AT&T and Staff responsive testimony. None of these grounds justify further delay in this proceeding.

1. The Scope of This Proceeding Is Well-Established.

Verizon cannot legitimately contend that the scope of this proceeding is in doubt. AT&T’s Complaint is and always has been about two issues: (1) whether Verizon’s intrastate switched access charges are excessive, negatively impact Washington toll markets and thus are not fair, just, and reasonable; and (2) whether Verizon prices its intrastate toll services at levels that do not exceed an appropriately calculated cost floor. Verizon initially attempted to characterize AT&T’s Complaint as single issue ratemaking. The Commission disagreed. Verizon then insisted that it had the right to produce evidence that its existing rates did not enable it to earn its authorized rate of return and that any decrease in access charges should be

offset by increases to other charges. While evidence of Verizon's overall earnings may be germane to the issue of the reasonableness of Verizon's switched access and toll rates, this case is not, and never has been, about rate rebalancing of Verizon's intrastate services.

AT&T has challenged the lawfulness and propriety of Verizon's intrastate switched access rates. Verizon's claim that its residential local rates need to be increased is not relevant, much less a defense, to AT&T's claims. If the Commission agrees with AT&T and requires Verizon to reduce its switched access charges, Verizon may seek to increase other rates *as part of a separate rate case filing*, as Public Counsel has stated in its motion. Verizon's improper attempts to shoehorn those issues into this proceeding do not justify a delay in the hearings while the Commission resolves Public Counsel's Motion.

As a practical matter, moreover, Public Counsel's motion does not necessitate a delay in the hearings regardless of whether that motion is granted or denied. Verizon already has submitted the testimony that Public Counsel has moved to strike and the hearings are not scheduled to begin for more than two weeks. AT&T has no reason to believe that Public Counsel's motion will not be resolved prior to the hearings – or, indeed, prior to the prehearing conference on February 24. Whatever clarification Verizon needs of the scope of the issues, therefore, can and will be made prior to the currently scheduled hearing dates.

Verizon also claims that AT&T and Commission Staff have exceeded the scope of this proceeding by raising issues in their respective responsive testimony with respect to Verizon's interstate earnings. Verizon, however, raised the issue of its earnings in its testimony. AT&T has responded, in part, with testimony explaining why the Commission cannot focus solely on

intrastate earnings when determining whether a reduction in switched access charges could be construed as a regulatory taking, while Staff has questioned Verizon's allocation of costs and revenues between interstate and intrastate jurisdictions. Such testimony is directly responsive to Verizon's testimony on its earnings and does not expand the issues presented to the Commission beyond those that Verizon has raised. Again from a practical perspective, the Commission will likely rule on Verizon's motion to strike this testimony, as well as permit Verizon to file responsive testimony, prior to the hearings as currently scheduled.¹ Verizon thus has failed to demonstrate that this testimony in any way necessitates a delay in the hearings.

¹ Verizon states its alleged need to file additional testimony but appears to request the opportunity to file that testimony only in conjunction with its request for a continuance of the hearings. *See* Verizon Motion at 5-6 (listing requested relief, including both a continuance of the hearings and leave to file surrebuttal testimony). To the extent that Verizon is also requesting the opportunity to file additional testimony as contemplated in the existing schedule, AT&T does not object to that request, although AT&T reserves the right to seek to respond at the hearings to any such testimony directed to issues on which AT&T bears the burden of proof.

2. Verizon Has Not Been Denied the Opportunity to Prepare for Cross-Examination of AT&T and Staff Witnesses.

Verizon's second ground for requesting a continuance of the hearings is that Verizon allegedly cannot prepare cross-examination without additional data from AT&T and Commission Staff. Verizon's own actions and strategic decisions belie this contention.

Verizon complains that AT&T has denied Verizon access to information it needs to prepare for cross-examination of AT&T's witness because AT&T has sought Commission review of an interlocutory order compelling responses to Verizon data requests.² As AT&T explained in its petition, the information requested has no bearing whatsoever on the issues AT&T raised in its Complaint, and certainly does not go "to the central thesis of AT&T's complaint" as Verizon contends. Verizon Motion at 4. More to the point of this Motion, AT&T provided objections and responses to Verizon's data requests on October 25, 2002. Verizon waited almost three months to seek to compel AT&T to respond to the requests to which AT&T objected – long after Verizon had filed its responsive testimony (although less than one month after AT&T successfully moved to compel Verizon to respond to AT&T data requests). Verizon obviously did not need the requested data to prepare its own testimony.

Nor does Verizon need the requested information to cross-examine Dr. Selwyn. None of those requests were directed to Dr. Selwyn or his testimony. Rather, the information requested relates to AT&T's market share and costs to provide toll and local services in

² In the cover letter accompanying the Verizon Motion, Verizon mischaracterizes AT&T's petition as "late filed." AT&T filed its petition on February 7, 2003, 10 days after the Administrative Law Judge's ruling on January 28, 2003, as authorized under WAC 480-09-760.

Washington over the last several years – subjects on which Dr. Selwyn did not testify and about which he has no personal knowledge. Any information or documents that Verizon could receive in response to those data requests, therefore, would be useless for cross-examination of Dr. Selwyn, AT&T's sole witness. These circumstances lead to the inescapable conclusion that Verizon is pursuing responses to these data requests not to obtain information it needs in this case, but to increase AT&T's litigation costs and to further delay Commission resolution of AT&T's Complaint. Such tactics do not justify continuance of the hearings. At a minimum, Verizon should have anticipated that AT&T would seek Commission review of any adverse ruling on Verizon's motion to compel and should have brought that motion sooner than three months after receiving AT&T's objections. The Commission should not reward Verizon's failure to do so.

With respect to the prejudice Verizon claims resulted from the one week continuance granted to Staff to file its responsive testimony, again Verizon's actions speak louder than its words. Verizon must have known that affording Staff an extra week would reduce the amount of time that Verizon would have to respond, but Verizon never raised that issue or objected to Staff's request for continuance. Verizon, moreover, has propounded data requests to Staff since it filed its testimony, and Verizon has yet to request that Staff attempt to expedite its responses (all of which are due, in any case, prior to the date that the hearings are scheduled to begin). Verizon is not entitled to request a delay in hearings that were scheduled months ago – with Verizon's agreement – when Verizon has not made a good faith effort to prepare for

those hearings within the scheduled time.

3. Verizon's Alleged Need to File Additional Testimony Does Not Justify a Continuance.

Verizon's third ground for seeking a continuance is the need to file additional testimony responding to the reply testimony filed by Staff and AT&T. Verizon acknowledges, however, that the existing schedule already permits Verizon to request permission to file such testimony, yet Verizon has not done so outside the context of its request for a continuance. Verizon does not claim, much less offer to explain why, it cannot prepare and file the necessary testimony prior to the currently scheduled hearings as Verizon agreed it could do when the schedule was originally established. Verizon thus has identified no basis on which the Commission should delay the hearings to accommodate Verizon's alleged need to file additional testimony.

4. AT&T Would Be Prejudiced by a Continuance of the Hearings.

Verizon falsely represents that continuance of the hearings "will ultimately save the Commission and the parties' time and expense" and "will not prejudice the other parties." Verizon's last minute motions – including this motion – have already needlessly increased parties' expenses. Verizon's proposal for a delay to consider these and other disputes that Verizon has manufactured (and likely will continue to create) would result in nothing less than an additional waste of Commission and party resources.

A delay would also prejudice AT&T and other toll carriers unaffiliated with Verizon by further postponing a remedy for Verizon's excessive intrastate switched access rates and predatory pricing of toll services. Even the two month delay that Verizon has requested potentially represents millions of dollars in excess switched access charges that unaffiliated

carriers must pay to Verizon. The need to coordinate the Commissioners' schedules when setting new hearing dates, moreover, would probably require an even longer continuance and greater harm to unaffiliated toll providers. Of course, such multi-million dollar losses to unaffiliated toll carriers are Verizon's gains, and tellingly, Verizon has not offered to compensate carriers for those losses resulting from the continuance that Verizon has requested. AT&T and toll providers unaffiliated with Verizon thus will suffer substantial harm by any further delay in the Commission's resolution of AT&T's Complaint.

CONCLUSION

Verizon has identified no legitimate basis on which the Commission should continue the hearings or conduct additional proceeding to clarify the scope of this proceeding. Verizon agreed to the current schedule and has failed or refused to make good faith efforts to live up to its agreement. If Verizon believes, contrary to the facts, that it has not had adequate opportunity to prepare its case, Verizon has no one but itself to blame. Accordingly, the Commission should deny Verizon's Motion and should proceed with the hearings as currently scheduled.

DATED this 14th day of February, 2003.

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