

BEFORE THE WASHINGTON STATE 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 TO
STRIKE AND FOR SUMMARY
DETERMINATION

1 The Commission Staff (Staff) opposes the motions brought by Verizon
Northwest, Inc. (Verizon) to strike portions of the rebuttal testimony of Betty A. Erdahl
and for summary determination. Neither motion has merit and both should be denied.

A. Verizon Has Failed to Demonstrate that the Testimony Should Be Stricken

2 Verizon asks the Commission to strike portions of Ms. Erdahl's testimony on the
grounds that those portions "ignore" a Federal Communications Commission (FCC)
order on separations. Verizon's Motion at 3 (citing *In the Matter of Jurisdictional
Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and
Order, FCC 01-162, 16 FCC Rcd 11,382 (May 22, 2001)). Contrary to Verizon's argument,
Ms. Erdahl's testimony is proper and wholly consistent with FCC rules. The
Commission should deny the motion.

3

Verizon contends that the FCC's separations freeze prevents the Commission from even considering evidence that Verizon burdens intrastate ratepayers with the expenses associated with its interstate operations, while the interstate services benefit from increased profits. *See* Verizon's Motion at 2-3; Ex. T-___ at 6-7 (BAE-RT).

Verizon's argument misstates the purpose of the separations freeze and the FCC's plain statement that its separations rules do not prevent state commissions from considering the jurisdictional nature of accounts for ratemaking purposes. To grant Verizon's motion would, in effect, condone yet one more form of financial statement manipulation.

4

The FCC expressly has stated that its separations rules do not limit state commissions from considering the type of information Verizon seeks to strike:

The separations procedures described in this part are not to be interpreted as indicating what property, revenues, expenses and taxes, or what items carried in the income, reserve and retained earnings accounts, should or should not be considered in any investigation or rate proceeding.

47 C.F.R. § 36.1(h). In this rule, the FCC gave state commissions the discretion to consider whether a company's expenses and investment should be allocated to the intrastate jurisdiction when investigating its intrastate rates, regardless of the FCC's separations guidelines.

5 Therefore, the FCC’s separations freeze is no reason to strike Ms. Erdahl’s
testimony. Nothing in the FCC’s rules prevents the Commission from considering this
evidence.

6 Verizon also contends that the Commission should strike targeted portions of
Ms. Erdahl’s rebuttal testimony, as well as portions of the rebuttal testimony filed by
Lee Selwyn on behalf of AT&T Communications of the Pacific Northwest, Inc. because
those portions relate to Verizon’s interstate operations, over which the Commission has
no jurisdiction. Verizon’s Motion at 4. Verizon says that this point is “indisputable,”
and cites a report of State Members of the Federal-State Joint Board on Jurisdictional
Separations to support this contention. *Id.* at n.12.

7 The Commission should not hold that it is precluded from considering a
company’s interstate operations when it determines the correct level of the company’s
intrastate earnings. In fact, in comments responding to the report Verizon cites as
authority, the Commission Staff noted that:

Although 47 CFR Part 64 and Part 36 could be better coordinated in a reformed process, the Washington UTC Staff wishes to clarify that both of these processes are merely regulatory tools and that any perceived shortcomings should not prohibit the respective jurisdictions from making the appropriate adjustments when justified, whether reformed or not. The reform of these two mechanisms will enhance the usefulness of these tools, but should not be construed as limitations on proper ratemaking adjustments. . . .

In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket 80-286, Reply Comments of WUTC Staff, at 5 (April 14, 1999).

These comments reflect the plain text of 47 C.F.R. § 36.1(h)(quoted above).

B. Verizon Is Not Entitled to Summary Determination That It is Not Earning Its Authorized Return

8 The Commission’s procedural rule governing summary determination is WAC 480-09-426(2), which provides:

Motion for summary determination. A party may move for summary determination if the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the civil rules for superior court.

9 Under CR 56, summary judgment will be allowed only if there is “no genuine issue of material fact and . . . the moving party is entitled to summary judgment as a matter of law.” CR 56.

10 Verizon utterly has failed to show that it is entitled to judgment as a matter of law. Verizon moves to strike only the portions of Ms. Erdahl’s testimony regarding jurisdictional separations. Verizon’s Motion at Attachment B. Ms. Erdahl also testified regarding other adjustments that would cast doubt upon Verizon’s earnings analysis. *See, e.g.*, Ex. T-___ at 5 (directory revenue imputation adjustment); 7-8 (line sharing

adjustment) (BAE-RT). This testimony casts doubt on Verizon's earnings analysis for reasons unrelated to the separations issue.¹

11 Therefore, even if the Commission were to grant Verizon's motion to strike, which it should not, there would remain a significant factual dispute about whether Verizon's earnings are so low that the Commission must permit the company to raise local rates to offset any Commission-ordered decrease to access charges. Because Verizon is not entitled to a ruling that, as a matter of law, it is not over earning, the Commission should deny Verizon's motion for summary determination

CONCLUSION

12 The Commission should not grant Verizon's motions. There is no reason to strike Ms. Erdahl's testimony. If Verizon believes the testimony is wrong on its merits, it can cross-examine Ms. Erdahl and argue its reasons why her testimony should be

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¹ In addition, in their testimony, Glenn Blackmon and Timothy Zawislak explain why Verizon's rates are unreasonable and unlawful, irrespective of its earnings.

disregarded in its brief at the conclusion of the hearing. Verizon has failed to show that it is entitled to summary determination on the earnings issue. Therefore, the Commission should deny Verizon's motions.

Dated: February 20, 2003.

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