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 AT&T RESPONSE TO VERIZON SECOND MOTION TO STRIKE AND FOR SUMMARY DETERMINATION

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") hereby responds to the second motion of Verizon Northwest Inc. ("Verizon") to strike certain testimony filed by AT&T and for summary determination ("Second Verizon Motion"). The Second Verizon Motion states no grounds on which Verizon is entitled to strike testimony or to summary determination on any issue in this proceeding. AT&T, therefore, recommends that the Commission deny the motion.

DISCUSSION

1. The Commission Should Deny Verizon's Motion to Strike Testimony.

Verizon seeks to strike portions of the testimony of Dr. Lee L. Selwyn that (1) makes any reference to Verizon's affiliate, Verizon Long Distance ("VLD"), (2) alleged is internally inconsistent, and (3) proposes a different imputation analysis than the Commission has used in the past. All of this testimony properly supports the allegations in AT&T's Complaint, and Verizon has failed to state any legitimate basis on which it should be stricken.

a. VLD

Verizon claims that testimony concerning VLD should be stricken because AT&T did not name VLD as a party in the Complaint. AT&T, however, is not making any claims against VLD in the Complaint or in Dr. Selwyn's testimony. Rather, AT&T has presented evidence that Verizon and its affiliates that provide long distance services in Washington share marketing, billing, and other costs incurred to provide toll service and that Verizon uses improper cost allocation to artificially reduce the costs of Verizon's toll service for purposes of calculating an imputed price floor. Verizon, not VLD, is the entity accused of anticompetitive and improper conduct, and thus Verizon is the sole party AT&T named in its Complaint. The fact that AT&T does not name VLD in its Complaint does not preclude AT&T from supporting its allegations against Verizon – including presenting evidence with respect to the costs incurred or likely incurred by VLD or other carriers that share costs with, or otherwise enjoy preferential treatment from, Verizon.

Verizon primarily appears to be attempting to defend VLD from what Verizon perceives as an "attack" by AT&T on VLD's plans and costs. AT&T has made no formal claims against VLD or requested any Commission action against, or relief from, VLD. No defense of VLD, therefore, is necessary. Even if it were, counsel for Verizon has not appeared on behalf of VLD in this proceeding, and Verizon lacks standing to undertake the defense of a third party. If Verizon seeks to maintain the fiction that Verizon and its affiliates are entirely separate companies, Verizon must be consistent. Verizon may not represent the interests of VLD any more than Verizon may represent the interests of Qwest or any other third party.

Finally, Verizon contends that AT&T has presented insufficient evidence to prove any

costs incurred by VLD in providing toll services. Verizon certainly may make that argument as part of its case, but the alleged insufficiency of evidence is no grounds on which to request that the evidence be stricken.

b. Alleged Internal Inconsistency

Verizon's second basis for striking testimony filed by Dr. Selwyn is that his rebuttal testimony is inconsistent with his direct testimony on the issue of adjustments to Verizon's imputation study. Again, Verizon is entitled to cross-examine or otherwise explore any inconsistencies it believes exist in Dr. Selwyn's testimony, but Verizon's belief that an inconsistency exists is no ground on which any portion of the testimony should be stricken.

c. Imputation

Verizon's third ground for striking portions of Dr. Selwyn's testimony is that his discussion of a proper calculation of billing and collection and retailing/marketing activities costs for imputation purposes "proposes to change (or nullify) a Commission policy." Second Verizon Motion at 5. As AT&T explains in its response to Verizon's first motion to strike, the Commission historically, and properly, has considered such claims following the evidentiary hearing to enable the Commission to make a fully informed decision. The Commission should continue to follow that practice.

Even if the Commission chose to address this legal issue now, Verizon is incorrect. The Commission rule on prices for competitively classified services offered by a company that is not classified as competitive expressly permits Commission consideration of Dr. Selwyn's proposed cost analysis:

> 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***.

WAC 480-80-204(6) (emphasis added). The Commission has not limited itself to consideration of an incremental cost analysis under the rule, and Dr. Selwyn proposes that the Commission approve and use a modified cost analysis under the circumstances presented here. Such testimony is fully consistent with the Commission rule. Nor has the Commission ever determined that this rule precludes the Commission from imposing additional requirements when undertaking an appropriate imputation analysis.[1] Verizon thus has identified no basis on which Dr. Selwyn's analysis could or should be stricken.

[1] To the contrary, AT&T and other interested parties proposed that the Commission adopt a rule establishing an imputation standard during the last rulemaking on telecommunications rules, but Staff refused to include that proposal as being outside the scope of that rulemaking. While WAC 480-80-204(6) incorporates some of the concepts of an imputation test, it does not, nor was it intended to, establish all appropriate considerations when conducting an imputation analysis. The Commission has developed such considerations on an individual case basis under the circumstances presented, precisely as Dr. Selwyn has proposed to do in this proceeding.

2. Verizon Is Not Entitled to Summary Determination on the Issue of Imputation.

As is true of Verizon's first motion to strike and for summary determination, Verizon's motion for summary determination on imputation is predicated on the Commission granting Verizon's motion to strike. Second Verizon Motion at 7. If the Commission denies that motion, therefore, Verizon's motion for summary determination also should be denied. Verizon, moreover, bases its motion solely on prefiled testimony, which is not evidence, has not been subject to cross-examination, and cannot form the basis for summary determination of contested issues of fact.

CONCLUSION

Verizon has stated no basis on which the Commission should strike any portion of the testimony filed by AT&T or on which the Commission should grant summary determination of any contested issue in this proceeding. Accordingly, the Commission should deny the Second Verizon Motion.

DATED this 20th day of February, 2003.

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