

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
VERIZON NORTHWEST, INC.
For waiver of WAC 480-120-071(2)(a).

Docket No. UT-011439

QWEST CORPORATION'S
OPPOSITION TO STAFF'S
MOTION TO COMPEL
RESPONSES

COMES NOW QWEST CORPORATION (hereinafter "Qwest") and opposes the motion by the Staff that Qwest be compelled to answer Staff's data requests 33-39. Staff's motion should be denied.

1. As to requests 33 and 38, Staff's motion fails to address Qwest's objections based on improper use of discovery and vagueness and it therefore presents no grounds on which to compel Qwest to respond.

Staff's motion fails to address the pertinent issues and therefore presents no ground on which Qwest could be compelled to respond. Staff's motion treats Qwest's objections as uniformly based on the argument that Staff's data requests are not calculated to produce admissible evidence, but Qwest raised additional grounds for objection with regard to requests 33 and 38. Staff's argument in support of its motion to compel fails to address these grounds and it therefore fails to establish a basis on which to compel responses as to these two requests.

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Qwest objected that request 33 sought information which was as available to the Staff as to Qwest. The request seeks information on whether a named Qwest employee contacted the Staff during a period of time and discussed with the Staff a specific topic. Thus, Staff already has this information. It is not the function of discovery to substitute for Staff having introduced affirmative evidence in its testimony on this issue and to thereby enable Staff to introduce evidence which is within Staff's knowledge through the "back door" of having an opposing party's responses to data requests admitted in evidence. Staff's motion fails in any way to show why Staff could not have put on evidence of the alleged contact by the Qwest employee with Staff, in Staff's own evidence, if it were relevant, and the motion to compel on this request should be denied for this reason as well as the fact that the request seeks information which is not reasonably calculated to lead to the discovery of admissible evidence.

Staff also failed in any way to respond to Qwest's alternative basis for objecting to request 38. Qwest objected that the request was unduly vague. Clearly the phrase "in the vicinity of Turtle Lake" is unduly vague in a request which seeks information about line extensions. Staff's motion to compel on these two requests should be denied.

2. Staff's requests fail the test of CR 26(b)(1) and the motion to compel should therefore be denied.

Staff has failed to show that its requests to which Qwest objected are reasonably calculated to lead to the discovery of admissible evidence. WAC 480-09-480(6)(a)(ii) incorporates the test of CR 26(g) for data requests. That section in turn refers to the requirements of CR 26 which include the scope of discovery limit in CR 26(b)(1). Discovery

may be sought of relevant information or information which is reasonably calculated to lead to the discovery of admissible evidence. The sole justification which the Staff's motion offers on this point, for all nine data requests, is contained in three sentences:

Qwest contends, in part, that it does not make "good economic" sense to require Qwest to provide a line extension in this case. Information regarding other line extensions is relevant to the question of whether Qwest should be required to provide service to the Timm Ranch in that instance, for the same reasons as it is relevant to Verizon—namely, such information provides context for the line extensions at issue in this case, rather than having the Commission view them wholly within a vacuum, as Verizon and Qwest apparently advocate. Moreover, information regarding line extensions provided by Qwest (their cost, customers served, etc.) may well also prove relevant, in providing additional context, to the question of whether Verizon should be required to provide service.

This purported justification does not address Qwest's objection to Request 33 on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. That request sought an answer about *discussions on recovery of investment in service extensions*, not "information regarding line extensions provided by Qwest." Staff has not shown in its motion why the information sought in this request provides "context for line extensions at issue in this case," as Staff claims. If "context" is shown by such evidence, then all companies who have assertedly had such discussions with Staff in the last year should be required to provide this information. Staff has not chosen to make all such companies parties, and there is no basis for the "context" argument on this issue. Staff's claim that the answer to this request would provide "context" to "the question of whether Verizon should be required to provide service," is a *non sequitur*.

Requests 34, 35, 36, 37, 38 and 39 seek information on extensions which qualify for the recovery of costs under WAC 480-120-071. Staff's "context" arguments likewise fail to

show that these requests are reasonably calculated to produce admissible evidence. Staff's claim that these requests "provide context for the line extensions at issue in this case" is mistaken as to Qwest. Qwest has received no request for service from anyone at the Timm Ranch. The fact that if its exchange boundary is redrawn as Staff seeks Qwest expects that it may receive such a request, does not transform Staff's irrelevant requests into "context." Qwest will have its opportunity to file a request for a waiver of WAC 480-120-071 at such time as it receives any such request.

Staff's argument about "context" with regard to these requests is inconsistent with its stated grounds for moving to have Qwest made a party to this case. Staff argued and the Commission found in the Third Supplemental Order at p. 2, ¶4, that Qwest should be made a party so that the issue could be decided "whether the Commission should redraw exchange boundaries to allow another adjacent carrier to provide the requested service *if the cost to build the extension would be less than for the original exchange carrier.*" [emphasis added.] It was this specific claim by Staff on which the Commission relied at p. 7, ¶28, over Qwest's objection, to make Qwest a party to this proceeding. Qwest provided the requested evidence on its cost to build the extension. Staff never suggested in its motion to join Qwest or otherwise until its motion to compel that facts such as those sought in the data requests would provide a basis for a much broader inquiry into the cost, length and number of customers served for all of Qwest's and Verizon's, but not other companies' past, pending and future extensions under WAC 480-120-071. Staff's motion does not explain how information on this context will be admissible on the issues of whether Verizon should be required to serve or whether Qwest's exchange boundary should be redrawn. Staff's argument that responses to

these six requests would provide context for “whether Verizon should be required to provide service” is illogical. If Qwest’s extensions would provide context on whether Verizon should be required to serve, that context would be incomplete without evidence on all of the extensions of all other companies which have extended under WAC 480-120-071. Staff has not made those companies parties to this case, and Staff’s evidence is affirmatively that at least one company besides Qwest and Verizon, namely Sprint, has made extensions under WAC 480-120-071.¹

Staff’s motion accuses Qwest of seeking to have this case decided in a vacuum. To the contrary, Qwest has stated in its testimony that the Staff has not provided evidence of what its claims are to justify redrawing Qwest’s exchange boundary.² Never in Staff’s testimony did the Staff indicate that if Qwest had made other extensions of a specified length and cost in a specified area, serving a certain number of customers and subject to recovery under WAC 480-120-071 or had discussed recovery of investment with the Staff, which are the subjects of these data requests, that would mean that Qwest’s exchange boundary should be redrawn in this case. In fact the four factors which Staff identified in its testimony as those which the Commission should consider in deciding whether to redraw Qwest’s exchange boundary do not mention this subject of other extensions Qwest had made, was making or might make in the future.³ Staff’s failure to identify in its testimony or its motion to compel, any basis on which the requests which are the subject of this motion could be considered reasonably calculated to lead to admissible evidence, is fatal to the Staff’s motion. This

¹ See, e.g. Exh. (RBS-1T, at p. 10)

² See, e.g. Exh. (TAJ-1T, at p. 25)

evidence would not be properly admissible even if discovered. At this late point in the proceedings Qwest would not have had a reasonable opportunity to know or respond to the claims of the Staff on this issue. This eleventh hour discovery is based on an entirely new Staff theory and Qwest should not be required to respond to it.

Conclusion

Based on the foregoing argument, Qwest respectfully requests that the Staff's motion be denied.

Respectfully submitted this 15th day of January, 2003.

QWEST CORPORATION

LAW OFFICES OF DOUGLAS N. OWENS

/s/

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³ See, e.g. Exh. (RBS-4T at pp. 5-6)

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document on all parties to this proceeding by depositing copies of the said motion in the United States mail, properly addressed and with postage prepaid.

Dated January 15, 2003.

_____/s/_____
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