

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.)	
)	
Complainant,)	Docket No. UT-020406
)	
v.)	AT&T MOTION TO STRIKE
)	VERIZON SURREBUTTAL
)	TESTIMONY OR
VERIZON NORTHWEST INC.,)	ALTERNATIVELY TO FILE
)	RESPONSIVE TESTIMONY
Respondent.)	
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AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) hereby moves the Commission to strike the Surrebuttal Testimony of Carl R. Danner, the Surrebuttal Testimony of Terry R. Dye, and the Surrebuttal Testimony of David G. Tucek that Verizon Northwest Inc. (“Verizon”) prefiled on February 25, 2003. This testimony far exceeds the scope of the “brief” surrebuttal testimony that the Commission authorized Verizon to file and should have been filed, if at all, as part of Verizon’s December 2002 testimony. The Commission, therefore, should strike this testimony for failure to comply with the procedural schedule established in this proceeding. Alternatively, the Commission should grant AT&T the opportunity to file responsive testimony that addresses the improper surrebuttal testimony Verizon has filed.

DISCUSSION

The Commission determined that “Verizon should have the opportunity to *briefly* respond to AT&T and Commission Staff testimony.” Fifth Supp. Order ¶ 58 (emphasis added). The Commission stated that it was “confident that Verizon has a plan to complete *brief* surrebuttal testimony and file it by February 24, 2003.” *Id.* ¶ 59 (emphasis added). Implicit in the Commission’s decision (and Verizon’s request for permission to file surrebuttal testimony) is the requirement that this testimony address only those issues and arguments that are unique to the rebuttal testimony filed by AT&T on January 31, 2003, and Commission Staff on February 7, 2003.

The surrebuttal testimony that Verizon provided to the parties after the close of business on February 24, 2003, and after Noon on February 25, 2003 is anything but brief.¹ That testimony and accompanying exhibits approaches 100 pages and includes testimony that addresses issues and arguments raised by AT&T and Commission Staff in their direct testimony. Verizon’s response to these issues and arguments should have been included in the testimony Verizon filed on December 3, 2003. The Commission, therefore, should strike this surrebuttal testimony for failure to comply with the Fourth and Fifth Supplemental Orders in this proceeding.

¹ The electronic mail message with testimony and exhibits for all Verizon witnesses other than Terry R. Dye was dated February 24, 2003, at 5:17 p.m., and Verizon first provided a copy of Mr. Dye’s surrebuttal testimony to the parties via electronic mail message dated February 25, 2003, at 12:19 p.m.

1. The Commission Should Strike the Prefiled Surrebuttal Testimony of Carl R. Danner.

The Surrebuttal Testimony of Carl R. Danner is a particularly egregious violation of the Commission's orders. This testimony is 39 pages long – over twice as long as Dr. Danner's December 2002 testimony – much of which does not even make a pretense of responding to any rebuttal testimony filed by AT&T and Commission Staff. Pages 2 to 17 of Dr. Danner's surrebuttal testimony is provided under the heading "General Responses to AT&T and Staff," and includes testimony on the purposes of imputation, the nature of predatory pricing, the appropriate methodology for calculating costs, and the economic principles that should be used to establish prices based on those costs. All of this "general response" testimony could – and should – have been filed with Verizon's direct and primary rebuttal testimony in December.

Pages 17 to 31 of Dr. Danner's Surrebuttal Testimony is provided under the heading "Response to Dr. Selwyn." Although this section of the testimony refers to portions of Dr. Selwyn's rebuttal testimony, Dr. Selwyn raised the concepts and arguments that Dr. Danner discusses in his direct testimony. *See* Attachment A (cross reference of Danner Surrebuttal Testimony to Selwyn Rebuttal and Direct Testimonies). Dr. Danner largely ignores or gives short shrift to responding to these concepts and arguments in his Direct Testimony but expansively addresses them in his surrebuttal testimony. The fact that Dr. Selwyn briefly reinforces points from his Direct Testimony in his Rebuttal Testimony does not entitle Dr. Danner to address those points (generally for the first time) in his surrebuttal testimony.² Nor is

² The same conclusion is equally applicable to pages 31 to 39 of Dr. Danner's surrebuttal testimony provided under the heading "Responses to Staff."

Dr. Danner entitled to file surrebuttal testimony on the issue of rate rebalancing (pages 28-30), which the Commission has stricken from this proceeding.

Commission practice has been to discourage procedural gamesmanship by precluding testimony filed as surrebuttal that could have been filed in an earlier round of testimony. The Commission should do so again here.

2. The Commission Should Strike the Prefiled Surrebuttal Testimony of Terry R. Dye.

The prefiled Surrebuttal Testimony of Terry R. Dye also improperly responds to issues and arguments that AT&T and Commission Staff witnesses raised in their direct testimony. Specifically with respect to AT&T, Mr. Dye's surrebuttal testimony addresses AT&T's assessments of Verizon's costs for tandem switched/dedicated transport, billing and collection, and retailing/marketing for purposes of toll imputation, but Dr. Selwyn first made these assessments in his Direct Testimony. *See* Attachment B (cross reference of Dye Surrebuttal Testimony to Selwyn Rebuttal and Direct Testimonies). Mr. Dye, like Dr. Danner, is not entitled to wait to respond to these issues until he files surrebuttal testimony when AT&T and Commission Staff have no opportunity to respond. When Mr. Dye could have provided such a response in his December 2002 testimony, the Commission should not permit him to respond in testimony filed almost three months later on the eve of evidentiary hearings.

3. The Commission Should Strike the Prefiled Surrebuttal Testimony of David G. Tucek.

The prefiled Surrebuttal Testimony of David G. Tucek provides Verizon's calculations of the total service long-run incremental costs ("TSLRIC") for tandem switching, direct

trunked transport, entrance facilities, and multiplexing. Verizon was obligated to prove *all* of its cost estimates with the testimony it filed in December 2002. Mr. Tucek offers no explanation for why the cost estimates he provides in his surrebuttal testimony were not provided as part of his earlier testimony or how these cost estimates relate in any way to the rebuttal testimony filed by AT&T and Commission Staff. Nor does Mr. Tucek provide any explanation for why Verizon is offering its own cost estimates when the Commission has already established costs (including a proper allocation of common costs) for these services as unbundled network elements and interconnection services. Verizon is not entitled to present cost estimates – particularly estimates that vary from those recently determined by the Commission – as part of surrebuttal testimony filed one week before the evidentiary hearings begin.

CONCLUSION

The Surrebuttal Testimony of Carl R. Danner, the Surrebuttal Testimony of Terry R. Dye, and the Surrebuttal Testimony of David G. Tucek are not confined to issues or arguments raised in the rebuttal testimony filed by AT&T and Commission Staff as contemplated in the Fourth and Fifth Supplemental Orders. Rather, this surrebuttal testimony responds primarily, if not exclusively, to issues and arguments contained in the direct testimony filed by AT&T and Commission Staff and thus could – and should – have been filed in December 2002. Accordingly, the Commission should strike this testimony. Alternatively, the Commission should permit AT&T as the Complainant to prepare brief responsive testimony that addresses Verizon’s untimely surrebuttal testimony.

DATED this 26th day of February, 2003.

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