

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF)	
THE PACIFIC NORTHWEST, INC.)	
)	Docket No. UT-020406
Complainant,)	
)	AT&T RESPONSE TO STAFF
v.)	PETITIONS AND VERIZON
)	MOTION ON FIFTH
VERIZON NORTHWEST INC.,)	SUPPLEMENTAL ORDER
)	
Respondent.)	
_____)	

AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) hereby responds to (1) Commission Staff’s Petition for Interlocutory Review of the Fifth Supplemental Order and Alternative Motion for Summary Determination; (2) Commission Staff’s Petition for Clarification of the Fifth Supplemental Order; and (3) Verizon’s Motion for Clarification of the Fifth Supplemental Order. AT&T agrees that the Commission should clarify its Fifth Supplemental Order along the lines that Commission Staff proposes,¹ but not in the self-serving manner proposed by Verizon Northwest Inc. (“Verizon”).

¹ Commission Staff styles its initial petition as one for interlocutory review, but Staff essentially is requesting that the Commission resolve apparent internal inconsistencies in the Fifth Supplemental Order. Accordingly, AT&T believes that this petition should be considered by the Commission as a request for clarification, rather than interlocutory review, of the Fifth Supplemental Order.

DISCUSSION

1. **The Commission Should Clarify That the Issues Raised in AT&T's Complaint Are Broader Than Described in the Fifth Supplemental Order.**

The Commission properly concluded that the scope of the hearings in this proceeding “should be limited to the questions raised by AT&T’s complaint,” but as Commission Staff accurately observes, AT&T’s complaint raises issues beyond the specific issues that the Commission identifies in its Fifth Supplemental Order. See Fifth Supp. Order ¶ 25. AT&T’s position has consistently been that Verizon’s switched access charges, like local interconnection charges, should be based on the costs of providing the service. AT&T’s Complaint, however, alleges that Verizon’s switched access charges are excessive on a variety of grounds. The issue thus is potentially broader than whether Verizon’s access charges exceed their costs. Commission Staff accurately observes that no party disputes that they do, but parties do not agree on whether those charges nevertheless are reasonable or nondiscriminatory, or whether those charges should be reduced but to a level that still exceeds cost. The Commission should permit the parties to address these related issues, which are within the scope of AT&T’s Complaint.²

The Commission also does not accurately state AT&T’s imputation claim. AT&T alleges that Verizon’s retail *toll* prices do not exceed Verizon’s costs to provide those prices,

² Commission Staff also requests that the Commission permit the introduction of evidence on Verizon’s earnings. As discussed below, AT&T believes that information on Verizon’s earnings are marginally relevant at best and thus does not join Commission Staff in recommending that the Commission clarify its order to permit evidence to be introduced on this issue.

including Verizon's switched access charges. Verizon does not actually pay itself switched access charges, so those charges must be "imputed" into the costs that Verizon is deemed to incur when it provides retail toll services. Again as Commission Staff correctly observes, the focus of this inquiry is on whether Verizon's toll rates exceed costs (including switched access charges), not whether switched access services exceed costs. The Commission should clarify that this was its intent in stating AT&T's imputation claim.

AT&T also agrees with Commission Staff that Verizon has failed to make any showing of the need to file surrebuttal testimony, particularly given its position that AT&T (and Commission Staff) bears the burden of proof on all issues in this proceeding. Verizon has demonstrated the legitimacy of Commission Staff's and AT&T's concerns by filing surrebuttal testimony that vastly exceeds the scope of the surrebuttal testimony the Commission contemplated in its Fourth and Fifth Supplemental Orders. AT&T, however, addresses its concerns more specifically in its Motion to Strike Verizon Surrebuttal Testimony or Alternatively to File Responsive Testimony and thus does not take a position on whether the Commission should revisit its decision to permit Verizon to file surrebuttal testimony.

2. The Commission Should Not Clarify the Fifth Supplemental Order as Verizon Proposes.

Verizon requests clarifications of the Fifth Supplemental Order that are similar to those that Commission Staff requests, but Verizon proposes that the Commission extend its order far beyond the Commission's intent. Verizon's Motion for Clarification thus represents nothing more than reargument on issues that the Commission has already resolved. As such, Verizon's motion is procedurally and substantively improper and should be denied.

Creation of Second "Phase"

Verizon first mischaracterizes the Fifth Supplemental Order as creating two phases in this docket and segregating issues with respect to remedies into a separate, subsequent phase. The Fifth Supplemental Order created no such bifurcation. Rather, the Commission simply recognized that Verizon may seek to raise issues arising from *implementation* of any remedies that the Commission awards. Leaving the door open for such a request is a far cry from granting it in advance or establishing a separate "phase" for remedies. To the contrary, the parties established a schedule for this proceeding that contemplated no additional "phases." As the Commission recognized, Verizon has always had, and continues to have, the option to file a rate case if it believes that rate rebalancing is appropriate. Any subsequent consideration of that or related issues should be in such a separate case, not a subsequent "phase" of this proceeding.

Indeed, any delay in providing appropriate relief to AT&T and other interexchange carriers ("IXCs") that are not affiliated with Verizon would serve only to further perpetuate the harms resulting from Verizon's unlawful rates. Continued harm to competitors, of course,

benefits Verizon and its affiliates, and the Commission should not be surprised that Verizon proposes to indefinitely delay any consideration of appropriate relief – much less implementation of that relief – to which AT&T and other IXC's are entitled. The Commission, however, should act in the best interests of a competitive market and of Washington consumers and should provide appropriate relief as expeditiously as possible following the scheduled hearings in this proceeding.

Verizon's Earnings

Verizon mischaracterizes AT&T's position that "evidence of Verizon's overall earnings may be germane to the issues of the reasonableness of Verizon's switched access and toll rates." AT&T made that statement but never stated, and does not agree, that "'if Verizon's access charges are above *incremental* cost, they could be 'just and reasonable' because they allow Verizon the opportunity to earn a 'sufficient' return." Verizon Motion at 2 (emphasis in original). AT&T's position is, and always has been, that Verizon's switched access rates are excessive without regard to whether or not Verizon is earning its authorized rate of return. Verizon's alleged need for the revenues generated from its switched access charges does not justify charges that harm effective competition in intrastate toll markets.

The only potential relevance of Verizon's earnings to the issues raised in AT&T's Complaint is to demonstrate that Verizon is using revenues from switched access charges to fund the anticompetitive toll prices that Verizon charges to its end user customers and its affiliates. Such potential relevance, however, does not justify reconsideration of the Commission's decision to strike testimony on Verizon's earnings.

Price Squeeze and Competitive Harm

Verizon also seeks to “clarify” that AT&T’s evidence with respect to the price squeeze created by Verizon’s switched access charges and toll rates and the resulting harm to interexchange markets should be stricken because the Commission denied Verizon’s motion to compel AT&T to provide data on AT&T’s costs and market plans. The Fifth Supplemental Order does not even reference AT&T’s evidence on price squeeze and competitive harm. Verizon’s request to strike this testimony thus is a motion strike in the guise of a motion for “clarification,” and as such, is procedurally improper.

Even if the Commission were to consider this request on the merits, it has none. AT&T’s costs – or the costs of any interexchange carrier that is not affiliated with Verizon – have never been part of this case. The Commission correctly concluded that once an appropriate imputation analysis has been established using *Verizon’s* costs, unaffiliated carriers “will have to rely on those costs, no matter what their competitive positions are.” Fifth Supp. Order ¶ 25. That conclusion is fully consistent with AT&T’s Complaint. AT&T contends that it and other IXCs that are not affiliated with Verizon do not have a full and fair opportunity to compete in Washington intrastate toll markets because of the level of Verizon’s access charges and the price squeeze that Verizon has created. The resulting harm is broadly to competition – and ultimately to consumers – not specific to AT&T or to any one competing carrier. Dr. Selwyn’s testimony on this issue is precisely to this effect and is consistent with the Fifth Supplemental Order. Accordingly, Verizon has provided no basis on which the Commission should strike that testimony.

Tucek Testimony

Verizon claims that the Commission should admit all of the cost studies and testimony sponsored by David G. Tucek despite granting Public Counsel's motion to strike this potential evidence. AT&T agrees with Commission Staff that to the extent that this information addresses the costs of Verizon's switched access and toll services, it is relevant and should not be stricken. The remainder of the testimony and exhibits, however, address other Verizon services, including basic exchange services, and should be stricken consistent with the Fifth Supplemental Order. Even if the Commission were to permit evidence on Verizon's earnings, the total service long-run incremental costs ("TSLRIC") of individual Verizon local exchange services is irrelevant to an earnings analysis or to any issue legitimately raised in this proceeding.

Verizon First Motion to Strike

Order Paragraph (4) in the Fifth Supplemental Order states, "Verizon's First Motion to Strike and for Summary Determination, filed with the Commission on February 13, 2003, is denied." Fifth Supp. Order ¶ 70. Some of the language in the body of the order, however, appears to be inconsistent with this order. AT&T agrees that the Commission should resolve any apparent discrepancy but that the Commission should do so by affirming Ordering Paragraph (4).³

CONCLUSION

³ To the extent that the Commission strikes all testimony on Verizon's earnings, all of the testimony Verizon requested to strike in its First Motion to Strike would be included but not on the basis stated in Verizon's Motion. Accordingly, the Commission properly denied the

For the foregoing reasons, the Commission should clarify its Fifth Supplemental Order as generally requested by Commission Staff, but the Commission should deny Verizon's Motion for Clarification.

DATED this 26th day of February, 2003.

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motion, even if the testimony cited ultimately is stricken.