

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC.,

Complainant,

v.

VERIZON NORTHWEST, INC.,

Respondents.

DOCKET NO. UT-020406

COMMISSION STAFF'S
MOTION TO STRIKE
VERIZON'S SURREBUTTAL
TESTIMONY

1 The Commission Staff (Staff) moves to strike the surrebuttal testimony filed by
Verizon Northwest, Inc. As argued below, the 100 pages or so of surrebuttal testimony
and exhibits Verizon filed is wholly improper and should be stricken.

**A. Verizon's Surrebuttal Testimony Is Improper Given the Procedural Nature of
this Case**

2 Verizon has devoted much energy to complaining about the procedural path of
this case. See Verizon's Motions to Continue Hearing, Determine Scope and File
Additional Testimony; Verizon's Reply to Oppositions to Motions to Continue
Hearings, Determine Scope and to File Additional Testimony. However, Verizon has
no one but itself to blame for its concerns about the procedural course of this docket.

3 Following Staff's and AT&T's objections to Verizon's request to file surrebuttal
testimony, Verizon stated that it was "forced" to make a direct case on its earnings
issue, and therefore must have the opportunity to rebut whatever was filed in response

to that direct case. Verizon's Reply to Oppositions of Motion to Continue Hearings, at 3. However, Verizon chose to make its earnings an issue in this case, it was not forced to do so. Verizon then states that because it "was forced to present what amounts to a 'direct case,' Verizon should have the opportunity to file rebuttal." *Id.* at 3. Verizon's decision to cast its responsive testimony as a direct case is no reason to grant it the opportunity to file weighty surrebuttal testimony, most of which should have been filed as responsive testimony in December 2002.

4 Verizon makes a big deal over the burden of proof in this case in an attempt to convince the Commission that it should be allowed to file surrebuttal testimony. See Verizon's Reply to Oppositions of Motion to Continue Hearings, at 3-4. Staff concedes, and has approached this case with the understanding, that Staff and AT&T of the Pacific Northwest, Inc. (AT&T) have the burden of proving that Verizon's access charges are unfair, unreasonable, or discriminatory. However, Verizon chose to defend this allegation with testimony regarding its earnings, thereby injecting the earnings issue into this case. The earnings issue is Verizon's defense to the access charge complaint, and Verizon has the burden of proving that its access charges should not be reduced because of the impact any such reduction may have on its overall earnings. Staff and AT&T properly filed evidence to rebut Verizon's claim that any reduction to access charges must be offset by a corresponding increase to retail rates. Verizon's

attempt to cast its earnings evidence as direct evidence, and thereby entitling it to rebut Staff's and AT&T's responses thereto, should be denied.

5 AT&T as the complainant, and Staff as a party in support of AT&T's complaint, have the "last word" in this proceeding. No argument Verizon has made is sufficient to overcome this fundamental rule of procedure.

B. Verizon's Surrebuttal Testimony Is Not Proper Surrebuttal

6 In the two short paragraphs devoted to its request to file surrebuttal testimony, Verizon stated that it should have an opportunity to rebut the "new" adjustments to its imputation study and the adjustments to its earnings analysis proposed by Staff and AT&T in their rebuttal testimony. Verizon's Motion to Continue Hearings, Determine Scope and File Additional Testimony, at 4-5.

7 Rather than rebut the rebuttal testimony filed by Staff and AT&T, Verizon's surrebuttal testimony is simply a second attempt to make the case it should have made when it filed its responsive testimony last December. The Commission should strike this testimony as an improper second bite of the apple.

8 For example, Verizon offers surrebuttal testimony from Nancy Heuring, ostensibly to rebut the testimony of Betty Erdahl and Lee Selwyn that was filed to direct the Commission's attention to a few obvious weaknesses in the so-called earnings

analysis Ms. Heuring filed in response to the Staff's and AT&T's direct testimony regarding Verizon's access charges.

9 First, Ms. Heuring disputes Ms. Erdahl's use of 2001 as a test year. Heuring Surrebuttal, at 3-4. Then, Ms. Heuring takes issue with each of the adjustments Ms. Erdahl made to Verizon's 2001 results of operations. *Id.* at 5-14.¹ This is not proper surrebuttal and should be stricken.

10 The purpose of Ms. Erdahl's rebuttal testimony was to cast doubt upon Ms. Heuring's December 2002 testimony. In her testimony, Ms. Erdahl described the "very high-level adjustments" she made to counter Verizon's claim that it is under earning. Ex. T-150, at 4 (Erdahl, Rebuttal). In making these adjustments, Ms. Erdahl followed known ratemaking principles, such as the use of an entire test-year, in this case 2001. In a rate case, the Commission considers an entire year, not annualized results of less than a year. Thus, had Verizon wanted to put credible evidence of its earnings in the record, it should have used a test year in its December testimony, rather than annualized data. Verizon should not have a second chance to make its earnings case.

11 Ms. Heuring criticizes Ms. Erdahl for making "selective" ratemaking adjustments. Heuring, Surrebuttal at 9. However, Ms. Erdahl made her adjustments to

¹ The portion of Ms. Heuring's surrebuttal testimony devoted to her response to Ms. Erdahl's rebuttal testimony is longer than whole of her December 3, 2002, testimony. She filed 14 pages of testimony in December, and 21 total pages of surrebuttal testimony less than one week prior to the hearing.

show the Commission just how incomplete Verizon's earnings analysis was as presented. Verizon should not be permitted to file a more complete earnings analysis now, in the guise of surrebuttal, when it should have done so last December.

12 Verizon also offers 39 pages of testimony from Carl Danner as surrebuttal, which is twice the number of pages he offered in his December 2002 testimony. Dr. Danner testifies generally to "bring some consistency and clarity to the issues," before moving on to "specifically" respond to Staff's and AT&T's rebuttal testimony. Danner, Surrebuttal at 1. This portion of his testimony, which can be re-titled, "This Case According to Carl Danner," should be stricken because it either restates, or should have been included in, his December testimony. *See Id.* at 2-17.

13 The remainder of Dr. Danner's testimony purports to respond to the rebuttal testimony filed by Glenn Blackmon and Lee Selwyn. *Id.* at 17-39. However, the issues Dr. Danner rebuts are issues that were raised by Drs. Blackmon and Selwyn in their direct testimonies and should have been addressed by Dr. Danner in his December testimony. Dr. Danner chose to touch upon these issues only briefly in his direct testimony and should not be allowed to expand on them less than one week prior to the hearing.

14 Likewise, Staff moves to strike the surrebuttal testimony filed by Terry Dye. Mr. Dye responds to issues that were raised in Staff's and AT&T's direct cases, and should

have been included in his December testimony.

15 The Commission should strike the surrebuttal testimony filed by Orville Fulp. Much of his surrebuttal testimony actually is argument, which is more properly reserved for a post-hearing brief. *See* Fulp, Surrebuttal at 1-4, 8-9, 10. Significantly, Mr. Fulp criticizes Ms. Erdahl’s review of Verizon’s earnings and the fact that she makes only a few adjustments. *Id.* at 9. Ms. Erdahl testified that her adjustments were high-level, made to call into doubt the credibility of Verizon’s earnings testimony, and that if this were a rate case, Staff likely would make additional adjustments. Exhibit T-150 at 2, 4. Mr. Fulp’s criticism is more properly addressed in cross-examination or a legal brief. It is not proper surrebuttal.

16 All of David Tucek’s surrebuttal testimony should be stricken. Mr. Tucek doesn’t even attempt to say that he is rebutting the rebuttal testimony filed by Staff and AT&T. Rather, he states that the purpose of his surrebuttal testimony “is to present the TSLRIC of tandem switching, direct trunked transport, entrance facilities and multiplexing.” This is evidence that should have been introduced during Verizon’s earlier phase of testimony. It is not proper to introduce it now.

17 All of Dennis Trimble’s surrebuttal testimony should be stricken. He claims that his testimony “responds to AT&T and Staff’s claim that Verizon should impute to its regulated earnings the revenue generated by an unregulated affiliate, Verizon

Information Services (VIS).” Trimble, Surrebuttal at 2. In her December testimony, Nancy Heuring briefly testified about Verizon’s directories business and stated that she did not include such revenues in her pro forma returns. Exhibit T-242, at 6. Thus, Verizon should have filed the Yellow Pages imputation testimony in December. Instead, Verizon chose to introduce it less than a week before the hearing.

18 Yellow Pages imputation can be a complicated matter. Verizon paid short-shrift to it in its first round of testimony, and now wishes to dispute Staff’s high-level adjustment. As this Commission is well-aware, Yellow Pages imputation can be a complex and contentious issue. For example, the Yellow Pages imputation dockets involving Qwest (and US West) have been lengthy and litigious. For Verizon to address the policy behind Yellow Pages imputation a week before the hearing, when it should have done so several months ago, is prejudicial to the other parties. The Commission should not allow Verizon to do so.

19 Finally, the Commission should strike the surrebuttal testimony Duane Simmons. The bulk of this testimony is argument, which should be briefed.

C. Verizon’s Weighty Surrebuttal Exceeds the “Brief” Surrebuttal Granted by the Commission

20 In the Fifth Supplemental Order, the Commission granted Verizon “the opportunity to briefly respond to AT&T and Commission Staff testimony.” Fifth Supplemental Order, ¶ 58 (emphasis added). Verizon’s surrebuttal testimony, which is

a few pages shy of its December filings, goes beyond the brevity contemplated by the Commission in its order. Verizon should not be allowed to game the process by holding back its direct case, only to introduce it less than a week before the hearing.

21 Finally, it appears that Verizon's voluminous surrebuttal case is a back-door attempt to gain a continuance of the March 2, 2003, hearing. Perhaps Verizon hopes the Commission and other parties will no longer oppose a continuance in light of their need to review, conduct discovery of, and prepare for cross-examination of the surrebuttal testimony and exhibits.

Dated: February 27, 2003

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