

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Complainant,

vs.

VERIZON NORTHWEST INC.,

Respondent.

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) Docket No. UT-020406  
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) **RESPONSE OF VERIZON NORTHWEST**  
) **INC. (VERIZON) TO THE MOTIONS TO**  
) **STRIKE FILED BY PUBLIC COUNSEL,**  
) **AT&T AND STAFF**  
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In their most recent filings, Public Counsel seeks to strike a portion of Verizon’s surrebuttal testimony, and AT&T and Staff seek to strike all of it. The Commission should deny their motions, because Verizon’s surrebuttal testimony is well within the scope of the rebuttal testimonies to which it responds.

**Overview**

Public Counsel, AT&T, and Staff all claim that Verizon’s surrebuttal testimony is either irrelevant or should have been filed with Verizon’s initial testimony. In the sections that follow, we explain why their claims are wrong and why their motions should be denied. In this section, we summarize all the testimony that has been filed by the parties. This summary underscores the relevance and appropriateness of Verizon’s surrebuttal testimony:

1. AT&T and Staff filed their direct testimony on September 30, 2002. AT&T filed one piece of testimony – Lee Selwyn – that argued (a) Verizon’s access charges exceed the long run incremental cost (LRIC) of access and thus created a “price squeeze,” and (b) Verizon’s toll rates fail the Commission’s imputation test. To support its latter claim, AT&T argued that Verizon’s billing and collection (B&C) costs were \$0.0346 per minute, based on a Commission order in a different docket, and that Verizon’s retailing/marketing cost was \$0.03 per minute, based on an affidavit filed in a Minnesota proceeding.

2. Staff filed two pieces of direct testimony in September 2002 – Mr. Zawislak and Dr. Blackmon. Mr. Zawislak, Staff’s imputation expert, did not even address the fundamental issue in this case, i.e., whether Verizon’s current toll rates pass the imputation test based on Verizon’s current access charges. In fact, his entire testimony on this point consists of one sentence, where he concludes that Verizon’s toll rates “are already very close to passing or failing depending upon the inputs used.”<sup>1</sup> The rest of his testimony sets forth what he thinks Verizon’s access charges should be.

3. Dr. Blackmon’s direct testimony is only eleven pages (including his credentials), and most of it discusses why he disagrees with the Commission’s access charge rule, of which he was the principal architect. Specifically, he claims that Verizon’s “high” access charges are bad for competition, although he fails to mention that the Commission approved Verizon’s access charges and that Verizon’s current charges reflect the Commission’s access charge rule.

4. Verizon filed its responsive testimony on December 3, 2002. There, Verizon explained why Dr. Selwyn’s imputation test was wrong, and Verizon responded as best it could to what little testimony Staff filed. Verizon also filed its own imputation study. Moreover,

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<sup>1</sup> Zawislak Direct at page 8, lines 5-6.

Verizon filed testimony addressing Verizon's overall earnings, and explaining that if its access charges are reduced, its rates for basic residential service must be increased on a revenue-neutral basis.

5. AT&T filed the rebuttal testimony of Dr. Selwyn on January 31, 2003, which includes almost 60 pages of testimony and more than 15 pages of exhibits, one of which is selected excerpts from a 1997 property audit that spans several hundred pages. In its rebuttal, AT&T argued – for the first time – that Verizon's imputation analysis was wrong because Verizon should not have imputed the cost of direct trunk transport. AT&T also argued that Verizon's retailing/marketing costs were too high based on a December 2002 affidavit filed in an FCC docket and a January 2003 newspaper article. And, of course, AT&T criticized Verizon's earnings analysis, arguing, among other things, that Verizon's intrastate costs should be slashed based on an unproven audit conducted of other companies in 1994.

6. Staff filed its rebuttal testimony on February 7, 2003. In contrast to Staff's direct testimony, which totaled 22 pages, Staff's rebuttal totaled about 50 pages of testimony plus dozens of pages of exhibits. Staff proposed, among other things, one adjustment to Verizon's imputation analysis and several adjustments to Verizon's earnings analysis.

7. Verizon filed its surrebuttal on February 24. As discussed below and in the attachments to this Response, Verizon's surrebuttal responds point-by-point to the arguments made in Staff's and AT&T's most recent testimony. Verizon's testimony is relevant and properly responds to Staff and AT&T;<sup>2</sup> therefore, it should be allowed into the record.

### **Public Counsel's Motion**

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<sup>2</sup> The Commission has several motions before it that seek to exclude certain testimony. Depending on the Commission's ruling, some of Verizon's evidence – as well as the evidence of other parties – might not be admissible.

Public Counsel seeks to strike portions of the surrebuttal testimony of Verizon witnesses Dye and Danner because this testimony compares the total service long run incremental cost (TSLRIC) of basic residential service with the price of such service. Public Counsel claims that this is “a knowing and intentional attempt to introduce evidence into the record which has already been stricken by the Commission.”<sup>3</sup>

Public Counsel is wrong. The Commission’s *Fifth Supplemental Order* held that Verizon’s proposed remedy of *rate rebalancing* – i.e., increasing retail rates if access charges are reduced – is outside the scope of this phase of the proceeding.<sup>4</sup> Verizon’s surrebuttal testimony does not propose rate rebalancing; rather, it explains that Verizon’s access charges afford Verizon an opportunity to recover its *costs* of providing service in Washington, which include costs not presently recovered by residential service rates.

Furthermore, Public Counsel’s argument, carried to its illogical extreme, would preclude Verizon (and this Commission) from examining why Verizon’s carrier common line (CCL) charge – a component of Verizon’s originating access charges – is just and reasonable. This particular charge does not have a direct cost of access related to it, but it permits Verizon to recover *other* costs. The CCL charge is, of course, a charge approved by this Commission years ago for this specific purpose, and the costs it is intended to recover are indeed relevant.

Finally, as Verizon explained in its “Motion for Clarification of the Fifth Supplemental Order,” Verizon’s testimony is not offered in this phase as a basis for increasing basic residential rates, and therefore Verizon is not “intentionally attempting” to do that which the *Fifth Supplemental Order* prohibits, as Public Counsel alleges.

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<sup>3</sup> Public Counsel Motion to Strike Surrebuttal Testimony at 2.

<sup>4</sup> *Fifth Supplemental Order* at ¶ 35.

Attachment A to this Response shows that each portion of testimony Public Counsel moves to strike – as set forth in Table 1 of Public Counsel’s motion – is relevant.

### **AT&T’s Motion**

AT&T seeks to strike the surrebuttal testimony of Verizon witnesses Danner, Dye and Tucek, claiming that this testimony does not respond to arguments AT&T and Staff raised in their rebuttal testimony.<sup>5</sup> AT&T’s claim is demonstrably false.

Attachment B to this Response is a chart that shows – page-by-page – the connections between Dr. Danner’s surrebuttal testimony and AT&T’s and Staff’s rebuttal testimonies. For example, Dr. Selwyn’s direct testimony states that access charges subsidize basic service, but his rebuttal testimony states that basic service is “fully compensatory” when one examines the revenues from “all rate elements associated with basic service,” including access charge revenues.<sup>6</sup> Dr. Danner’s surrebuttal testimony points out this inconsistency and explains its ramifications.<sup>7</sup>

As to Mr. Dye’s surrebuttal, AT&T accuses Verizon of “procedural gamesmanship” because Mr. Dye criticizes AT&T’s assessment of Verizon’s costs for, among other things, tandem switched/dedicated transport.<sup>8</sup> According to AT&T, Dr. Selwyn “first made these assessments in his Direct Testimony,” and therefore Verizon should have responded earlier.<sup>9</sup>

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<sup>5</sup> AT&T Motion to Strike at 2.

<sup>6</sup> Compare Selwyn Direct at 9-10 with Selwyn Rebuttal at 47-50.

<sup>7</sup> Danner Surrebuttal at 3, 28-30.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

AT&T is the one playing games, not Verizon. Mr. Dye's surrebuttal testimony explains that Dr. Selwyn's direct testimony conflicts with Dr. Selwyn's rebuttal testimony on the proper costs for tandem switched/dedicated transport. As Mr. Dye points out, Dr. Selwyn's direct testimony argues that Verizon *should* impute the costs IXCs would incur for transport, which is precisely what Verizon did in its study. But Dr. Selwyn contradicts himself in his rebuttal testimony, arguing that Verizon should *not* impute the transport costs that IXCs incur. Mr. Dye's surrebuttal testimony points out this inconsistency. According to AT&T, Mr. Dye should have raised this point in his direct testimony, i.e., Mr. Dye should have foreseen that Dr. Selwyn would change his position on this issue. This is, of course, nonsensical. Also, Verizon pointed out Dr. Selwyn's inconsistency on this very issue in its "Second Motion to Strike," and AT&T responded by saying that Verizon "is entitled to cross-examine or otherwise explore any inconsistencies it believes exist in Dr. Selwyn's testimony."<sup>10</sup> Now, when Verizon attempts to "explore" this inconsistency in surrebuttal, AT&T files a motion to strike.

Furthermore, Dr. Selwyn spends more than six pages of his rebuttal testimony attacking the billing and collection and retailing/marketing costs Mr. Dye included in his imputation analysis (this analysis was attached to Mr. Dye's December 2002 testimony). As a part of his attack, Dr. Selwyn references – for the first time – a December 2002 affidavit filed in an FCC proceeding and a January 2003 newspaper article. Mr. Dye devotes five pages of his surrebuttal testimony to explaining why Dr. Selwyn's criticisms of Mr. Dye's analysis are wrong. This is entirely appropriate.

Finally, AT&T complains that Verizon witness Tucek filed "new costs" in his surrebuttal. As Mr. Tucek explained, all the data for these costs was included in the cost studies he filed with

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<sup>10</sup> AT&T Response to Verizon's Second Motion to Strike at 3.

his initial testimony – he needed to “map” this data to produce a handful of costs.<sup>11</sup> AT&T certainly can cross-examine Mr. Tucek on the validity of the underlying data.

### **Commission Staff’s Motion**

Staff, like AT&T, argues that all of Verizon’s surrebuttal testimony should be stricken because it “should have been filed as responsive testimony in December 2002.”<sup>12</sup> The simple answer to this argument is that Verizon’s surrebuttal testimony addresses arguments that Staff and AT&T make in their *rebuttal* testimony. Their rebuttal testimony was filed in 2003, and therefore Verizon’s testimony filed in 2002 could not respond to it.

For example, Staff claims that the surrebuttal testimony of Verizon witness Terry 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.”<sup>13</sup> Staff should re-read its direct testimony. The direct testimony of Staff’s principal imputation witness, Tim Zawislak, contains one sentence on whether Verizon’s current toll rates pass the imputation test based on Verizon’s current access charges. Specifically, Mr. Zawislak concludes that Verizon’s toll rates “are already very close to passing or failing depending upon the inputs used.”<sup>14</sup> In his rebuttal testimony, Mr. Zawislak presents one adjustment to Verizon’s imputation study (he proposes to change a conversion factor).<sup>15</sup> Verizon witness Dye responds to this adjustment in his surrebuttal testimony.

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<sup>11</sup> The Fifth Supplemental Order defines as an issue for this place an examination of all of Verizon’s access costs. Mr. Tacek’s testimony is necessary to fully inform the Commission on this issue.

<sup>12</sup> Staff’s Motion to Strike at ¶ 3.

<sup>13</sup> *Id.* at ¶ 14.

<sup>14</sup> Zawislak Direct at page 8, lines 5-6.

<sup>15</sup> Zawislak Surrebuttal at page 8.

According to Staff, however, Verizon should have responded to Mr. Zawislak's adjustment *before* he proposed it.

Similarly, Staff criticizes Verizon for responding to Staff's and AT&T's proposed adjustments to Verizon's overall earnings. According to Staff, Verizon "chose to make its earnings an issue in this case" and, therefore, Verizon should not have the right to respond to the parties on this issue. This is a bizarre position, because earlier this week Staff filed for interlocutory review of the Commission's *Fifth Supplemental Order* arguing, correctly, that the Commission should consider Verizon's overall revenues in deciding the reasonableness of its access charges.<sup>16</sup> Thus, Staff seeks to strike the very evidence that Staff admits is relevant.

Furthermore, Staff's motion to strike is self-contradictory. Staff asserts that "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"<sup>17</sup> and that the party having the burden on an issue should "have the 'last word.'"<sup>18</sup> Yet Staff opposes Verizon filing surrebuttal on such earnings issues. If Staff really means that it and AT&T have the burden of proof that Verizon would be earning its authorized rate of return even if access charges were reduced by the tens of millions of dollars they propose, then Verizon's "First Motion to Strike and for Summary Determination" should be granted, as those parties have plainly failed to carry that burden in their prefiled testimony.

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<sup>16</sup> Staff's Petition for Interlocutory Review at ¶ 9.

<sup>17</sup> Staff Motion to Strike at ¶ 4.

<sup>18</sup> *Id.* at ¶ 5.



In a related claim, Staff argues that “Yellow Page imputation” is a complex issue and that Verizon “paid short-shrift to it in its first round of testimony.”<sup>19</sup> Staff appears to think that Verizon has the burden of proof on this issue. Staff is wrong. Staff is proposing an *adjustment* to Verizon’s books, and therefore Staff bears the burden of proof. Verizon’s books reflect the actual amounts Verizon receives from its publishing affiliate, and Staff did not challenge this amount. Rather, Staff wishes to adjust it to “impute” revenue Verizon has not received (and will never receive). Staff carries the burden on this adjustment, not Verizon.

Finally, Staff argues that Verizon “has no one to blame but itself” for its concerns about the procedural course of this docket. Although such statements are not relevant, Verizon feels compelled to respond. First and foremost, Verizon has always explained that AT&T’s complaint was nothing more than an impermissible request for single-issue ratemaking. In response, Staff argued that Verizon could introduce evidence of its overall earnings and the need to increase other rates if access charges are reduced. Verizon introduced such evidence, and various parties sought to strike it. Not surprisingly, Verizon asked the Commission to clarify the scope of this proceeding, believing that the Commission should resolve the issues now rather than have the parties proceed to hearing not knowing (or not agreeing) on the scope of the case. Given the Commission’s *Fifth Supplemental Order* and the additional pleadings it has spawned, Verizon’s belief has proved to be correct: the parties clearly do not agree on the scope of this proceeding, including what issues will be addressed, and when. Staff unfairly criticizes Verizon for trying to clarify these issues.

In sum, as Staff itself explained to this Commission in a pleading it filed in this docket last year, “access charges are implicated in virtually every significant policy issue relating to

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<sup>19</sup> Id. at ¶ 18.

telecommunications.”<sup>20</sup> Verizon’s testimony shows why Staff’s statement is correct, and Staff’s and AT&T’s attempts to strike this testimony must be rejected.

Respectfully submitted,

Verizon Northwest Inc.

By \_\_\_\_\_

Judith A. Endejan  
Graham & Dunn PC  
1420 Fifth Avenue, 33<sup>rd</sup> Floor  
Seattle, WA 98101  
206-340-9694  
Fax: 206-340-9599

By \_\_\_\_\_

Charles H. Carrathers, III  
Vice President and General Counsel  
Verizon Northwest Inc.  
P.O. Box 152092  
HQE02H20  
Irving, TX 75015-2092  
972-718-2415  
Fax: 972-718-3926

Dated this 28<sup>th</sup> day of February 2003.

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<sup>20</sup> Staff’s Answer in Opposition to Verizon’s Motion to Dismiss at 2 (filed May 17, 2002).

**POINT-BY-POINT DISCUSSION OF  
PUBLIC COUNSEL'S MOTION TO STRIKE**

<b>Witness</b>	<b>Verizon Testimony that Should be Stricken per Table 1 of Public Counsel's Motion</b>	<b>Verizon Comments</b>
Terry R. Dye (TRD-4TC)	p. 16, l. 16-20  p. 17, l. 1-8	This one question and answer is not directed to the issue of increasing local service rates to offset possible reductions in access rates. Instead, it quantifies how the contribution made by access charges (pursuant to existing Commission policies and prior orders) helps cover Verizon's costs, including the "negative contribution" from local services.
Carl Danner (CRD-3T)	p. 2, l. 8-11, 18-22	This passage simply explains that Dr. Danner's surrebuttal is intended to comply with the 5 <sup>th</sup> Supplemental Order and points out that a policy decision to reduce the amount of contribution received from switched access services cannot be made in a vacuum, ignoring possible effects on other rates.
	p. 12, l. 7-9	This portion of a sentence is part of a discussion of the costs currently recovered by access charges, not a rate rebalancing proposal.
	p. 15, l. 11-12, 14-19	These lines are part of a discussion of the costs currently recovered by access charges, not a rate rebalancing proposal.
	p. 16, l. 6-12	These lines are part of a discussion of the costs currently recovered by access charges, not a rate rebalancing proposal.
	p. 34, l. 12-22	Discussing Staff's rebuttal testimony, these lines are part of a discussion of the costs currently recovered by access charges, not a rate rebalancing proposal.
	p. 39, l. 17-22  p. 40, l. 1-2	This portion of Dr. Danner's answer to "Please summarize your testimony" simply points out the obvious implications for other services should the amount of contribution currently born by switched access services be reduced; i.e., the policy decision before the Commission cannot be made in a vacuum.

**PAGE-BY-PAGE ANALYSIS OF DR. DANNER'S SURREBUTTAL**

<b>Dr. Danner's Surrebuttal</b>	<b>AT&amp;T and Staff Rebuttal Addressed by Dr. Danner's Surrebuttal</b>
AT&T is inconsistent; AT&T's new argument supports Verizon's position that access should not be reduced [at 3-4; 28-30]	Selwyn Rebuttal at 47-50
Staff is inconsistent in its position on how access rates should recover costs of the loops Staff says the service uses [at 3-4]	Blackmon Rebuttal at 11, 15
In evaluating AT&T's allegations that Verizon's toll rates fail to pass the Commission's imputation test, the Commission should consider the fact that Staff's and AT&T's rebuttal testimonies provide no market evidence of any harm [at 4-9]	[The point is the <i>absence of rebuttal testimony</i> corroborating the imputation test failure claim.]
Staff and AT&T are inconsistent and incorrect as to the costs of access service and the costs currently recovered by access charges [at 9-12]	Selwyn Rebuttal at 9, 10, 46-56 Blackmon Rebuttal at 12-13
Possible more efficient ways to recover costs currently covered by access charges [at 12-17]	Selwyn Rebuttal at 6, 10,
Response to Selwyn's claim that Dr. Danner and Mr. Fulp contradict each other as to whether Verizon's current access charges are just and reasonable [at 17-18]	Selwyn Rebuttal at 6, 10-11
Response to Selwyn's claim that things have changed since the Commission's 1999 order resetting Verizon's rate structure [at 18-20]	Selwyn Rebuttal at 7
Response to Selwyn's claims about access charges vs. local interconnection rates [at 20]	Selwyn Rebuttal at 10
Response to Selwyn's claims about the use of direct trunk transport in the imputation test, including how Selwyn's rebuttal contradicts his direct testimony [at 20-21]	Selwyn Rebuttal at 18
Response to Selwyn's claims about billing and collection costs in the imputation test [at 22-24]	Selwyn Rebuttal at 19-20
Response to Selwyn's claims about retailing/marketing costs in the imputation test. [at 24-26]	Selwyn Rebuttal at 23
Response to Selwyn's claim that Verizon Long Distance payments should be imputed to Verizon Northwest [at 26-27]	Selwyn Rebuttal at 32
Response to Selwyn's claims that Yellow Page revenues should be imputed to Verizon [at 27]	Selwyn Rebuttal at 29-31, 52
Response to Selwyn's claim that the WUTC should consider "inter-temporal financial flows" [at 27-28]	Selwyn Rebuttal at 42
Response to Selwyn's claims about the relationship between residential service costs and the costs recovered by current access rates [at 28-31]	Selwyn Rebuttal at 46, 49, 56
Response to Blackmon's claim about Verizon's position on terminating access rates [at 31]	Blackmon Rebuttal at 2

<b>Dr. Danner's Surrebuttal</b>	<b>AT&amp;T and Staff Rebuttal Addressed by Dr. Danner's Surrebuttal</b>
Response to Blackmon's observations about Verizon and Qwest costs [at 31-32]	Blackmon Rebuttal at 5
Response to Blackmon's claims about procedural effects of Verizon's position [at 32-33]	Blackmon Rebuttal at 8-9
Discussion of confusion in Staff testimony about contribution recovered by current access charges [at 33-35]	Blackmon Rebuttal at 10
Response to Blackmon's position on the relation between access charges and the costs they are recovering [at 36]	Blackmon Rebuttal at 12
Response to Blackmon's claims related to common costs recovered by access charges [at 37-38]	Blackmon Rebuttal at 14
Response to Blackmon's claims about contribution and rate design and the contradictory nature of Blackmon's and Selwyn's testimonies [at 38-39]	Blackmon Rebuttal at 15-16
Summary of his surrebuttal [at 39-40]	