

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**AT&T Communications of the Pacific
Northwest, Inc.**

v.

Verizon Northwest, Inc.

DOCKET NO. UT-020406

**OPPOSITION TO SETTLEMENT;
MOTIONS TO STRIKE; OBJECTION
TO HEARING**

I. INTRODUCTION

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) opposes the Settlement Stipulation filed herein on March 6, 2003. While Public Counsel would have no objection, as a general matter, to resolution of the access charge issue alone by settlement, as more fully discussed below, the Settlement Stipulation, by seeking to raise Verizon rates for a range of residential and business services by nearly \$28 million per year, disregards the clear order of the Commission limiting the scope of the proceeding to the access charge issues raised in the AT&T complaint. Fifth Supplemental Order, ¶ 35.

In support of the settlement, the settling parties appear to be seeking to reintroduce rate-rebalancing testimony stricken by the Fifth Supplemental Order. The settling parties also offer new exhibits, attached to the stipulation, which address rate rebalancing. This pleading moves to have this material stricken.

II. OPPOSITION TO SETTLEMENT

Public Counsel set forth its objections to the inclusion of rate rebalancing issues in this hearing in its Motion to Strike Testimony and In Limine to Limit Hearings, February 5, 2003. Public Counsel incorporates here by reference the policy and legal arguments contained in that motion and memorandum and they will not be repeated at length. In summary, it is Public

Counsel's position that consideration of a general rate increase in the manner proposed in this proceeding by Staff and the companies violates the statutes and rules governing ratemaking procedure, the due process rights of ratepayers, and the doctrine against single issue ratemaking.

Less than two weeks ago, the Commission granted Public Counsel's motions on this issue in full, striking testimony regarding rate increases, and limiting the hearing to the access charge issued by the complaint. The Commission stated at that time:

The Commission has determined that the only questions before the Commission at this stage of the proceeding are cost questions: (1) are Verizon's access charges higher than Verizon's costs, and if yes, by how much, and (2) are the amounts Verizon charges itself and its affiliates for access lower than the imputation floor for this cost. No rate issues are presented, and none will be addressed. Applying this standard to the motions before us, the Commission grants Public Counsel's Motion to Strike Testimony and In Limine to Limit Hearings. The evidence regarding rate rebalancing issues to which Public Counsel objects are not within the scope of this hearing.(emphasis added).

Fifth Supplemental Order, ¶ 35.

Public Counsel is strongly opposed to Commission approval of the rate increases contained in the Settlement Stipulation. The submission of a settlement on rate increases appears to completely disregard the decision of the Commission in the Fifth Supplemental Order. The fact that some of the parties to this case have reached an agreement to increase customer rates on the eve of the hearing does not change the import of the Commission order. Up until late last week, the hearing scheduled to start Monday was to be about access charges. Now, in a stipulation filed less than 48 hours before Friday's hearing date, the settling parties seek to reintroduce the very matter which the Commission ruled should not and would not be addressed.

Not only does this proposed rate increase violate the Fifth Supplemental Order, this approach highlights the fundamental flaws in this approach to Verizon rate issues. Verizon has filed no proposed tariffs. There has been no notice whatever to its customers or to interested

stakeholders that a \$28 million rate increase is on the table – 15 percent for residential customers. Verizon has not made the broad informational filings required by the Commission rules to support a general rate increase. There has been no fair opportunity for interested persons to receive notice that a general rate increase is proposed and to intervene, conduct discovery, present testimony, cross-examine company and staff witnesses, and present alternative proposals to the Commission. As we have noted before, parties who ordinarily take great interest in rate proceedings before this Commission are absent from this case because it was initiated as an access charge case only. Verizon’s general rates have not been reviewed for many years in a full rate proceeding. It is patently unreasonable for the settling parties to suggest that this hearing presents an adequate opportunity for that review to occur. The limited after-the-fact process which Verizon has agreed to in the settlement does not remedy this defect.

If Verizon believes it requires rate relief once the access charge issues have been addressed, it is free to file a general rate case. As the Commission itself noted in the Fifth Supplemental Order:

If Verizon wants to obtain the earliest possible resolution of any “rate leveling” issues, it may file a general rate increase request at any time. Such a filing would provide due process notice to persons effected [sic] by rate changes, and would allow Verizon’s rate tariffs to be modified if justified by the evidence.

Fifth Supplemental Order, ¶ 24.

While the Fifth Supplemental Order suggests that “Verizon may seek to negotiate an implementation plan with the parties,” that is to occur as “necessitated by the outcome of the complaint” an event which has not yet occurred. *Id.*, ¶ 24. Read together with the entire order and the Commission’s clear rulings on the scope of the proceeding, this language does not authorize a “rate leveling” hearing or settlement at this stage, but at most suggests that Verizon might seek that course after completion of the complaint proceeding, and through a settlement

with all interested stakeholders who would be expected to participate in a rate case, and after observance of procedural requirements. Nothing in the order authorizes parties to present a contested partial settlement increasing customer rates as part of this hearing.

As noted, the settlement contains an agreement by Verizon to certain procedures apparently designed to allow public notice of and comment on the settlement. These procedures do not satisfy the process requirements of law, set out in Public Counsel's prior motion. As we commented then, allowing customers an opportunity to comment on a matter already decided by the Commission is a sham. The procedures mentioned in the stipulation fall well short of being an adequate substitute for the procedural protections afforded ratepayers in a general rate filing and rate case proceeding.

III. MOTIONS TO STRIKE TESTIMONY AND EXHIBITS

1. Public Counsel objects to the introduction of and moves to strike portions of the testimony of witnesses set forth in Exhibit A previously stricken by the Commission's Fifth Supplemental Order.

It appears from a review of Exhibit A that the settling parties have resubmitted testimony stricken by the Fifth Supplemental Order. Testimony of the following witnesses contains such stricken material:

Staff: Glenn Blackmon, Tim Zawislak

Verizon: Orville Fulp, David Tucek, Terry Dye, Carl Danner

The following table, Attachment A to the prior Motion to Strike, specifies the specific portions of the above witnesses testimony that were stricken.

Witness:	Testimony relating to rate re-balancing
Glenn Blackmon GB-T-1 GB-T-1	p. 8, l. 19-23 p. 9, l. 1-9
Timothy Zawislak TWZ-T-1	p. 10, l. 7-11

Witness:	Testimony relating to rate re-balancing
Orville D. Fulp ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-1T ODF-2C	p. 2, l. 13-15 p. 3, l. 4-12, 20-22 p. 4, l. 9-11 p. 7, l. 1-9, 19-22 p. 8, l. 1, 4-5 p. 10, l. 6-15 p. 16, l. 21-23 p. 17, l. 1-2 p. 20, l. 14-20 p. 21, l. 1-5, 7-26 p. 22, l. 5-15 all
James H. Vander Weide, Ph.D. JVV-1T	all
Carl R. Danner CRD-1T CRD-1T CRD-1T	p. 2-5 p. 11-18 p. 19, l. 1-2
Terry R. Dye TRD-1T TRD-1T TRD-1T	p. 3, l. 7-10 p. 8, l. 18-22 p. 9-10
David G. Tucek DGT-1T DGT-2 DGT-3 DGT-4	all all all all

2. Public Counsel moves to strike the portions of Exhibits B and C not relating to access charges.

The “rate rebalancing” portions of these exhibits go beyond the scope of the proceeding established by the Fifth Supplemental Order and should not be allowed into the record.

3. Public Counsel moves to strike the testimony of Verizon witness Nancy Heuring (NWH-1T) and her exhibits 2-4.

Verizon witness Nancy Heuring appears to be submitting results of operations and revenue requirement testimony and exhibits that go beyond the scope of the hearing established by the Fifth Supplemental Order. While Public Counsel did not move to strike this testimony in its prior Motion To Strike because we had focused on specific testimonial discussion of rebalancing, the Motion in Limine sought to preclude any testimony regarding rate issues. The Commission granted the motion and limited the hearing as requested. The only purpose of Ms. Heuring’s testimony appears to be to address Verizon’s intrastate return by providing results of operations and revenue requirement information. Presumably this was and is intended to provide record support for Verizon’s requested rate increases. This is directly at odds with the ruling on the Motion in Limine in the Fifth Supplemental Order. The testimony and exhibits should not be allowed.

IV. OBJECTION TO HEARING ON GENERAL RATE ISSUES ON LESS THAN REQUIRED NOTICE

The Commission's Fifth Supplemental Order in this case limited the noticed hearing in this case to matters set forth in the AT&T complaint. No notice has been issued setting rate matters for hearing. The March 5 order allowing a continuance and setting the settlement for a Friday hearing does not address the content of the settlement, which was not filed until today, nor does that notice modify the scope of the hearing.

As set forth in our prior Motion to Strike, the statutory procedural and notice requirements for consideration of general rate issues in this proceeding have not been met. Accordingly, those issues may not properly be considered at Friday's hearing, whether as fully contested matters, or pursuant to a contested partial settlement.

A hearing on these issues also violates the notice requirements of the Administrative Procedures Act, RCW 34.05.434 and the Commission's rules.

IV. CONCLUSION

For the foregoing reasons Public Counsel requests that the Commission:

1. Limit the scope of the settlement hearing to the issues raised by AT&T's complaint, as set forth in the Fifth Supplemental Order and decline to conduct a hearing on rate increase issues.
2. Reject the Settlement Stipulation as proposed by the settling parties.

3. Strike the rate rebalancing and rate increase testimony and exhibits as set forth in the body of this pleading.

DATED this 6th day of March, 2003.

CHRISTINE O. GREGOIRE
Attorney General

Simon J. ffitc
Assistant Attorney General
Public Counsel