

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

AT&T COMMUNICATIONS OF	)	
THE PACIFIC NORTHWEST,	)	DOCKET NO. UT-020406
INC.,	)	
	)	SIXTH SUPPLEMENTAL ORDER;
Complainant,	)	ORDER DETERMINING TO REVIEW
v.	)	SETTLEMENT
	)	
VERIZON NORTHWEST, INC.,	)	
	)	
Respondent.	)	
.....	)	

1 **Synopsis:** *The Commission will proceed with review of a settlement proposed by some but not all parties. The Commission denies Public Counsel’s objections to proceeding. The Commission establishes procedures for notification about the proposed Settlement and for further process in review of the proposal.*

2 **PROCEEDINGS:** On April 3, 2002, AT&T Communications of the Pacific Northwest, Inc. (AT&T) filed with the Commission a complaint against Verizon Northwest, Inc. (Verizon). The complaint alleges that Verizon’s switched access charges exceed Verizon’s costs, that Verizon’s toll plans are priced below their imputation costs, and that AT&T suffers a “price squeeze” in competition with Verizon in Washington State.

3 **PARTIES:** Gregory J. Kopta, attorney, Seattle, and Letty Friesen, attorney, Denver, Colorado represent AT&T; Judith Endejan, attorney, Seattle, and Charles Carrathers, Vice President and General Counsel, Irving, Texas, represent Verizon; Michel Singer Nelson, attorney, Denver, Colorado, represents WorldCom and its regulated subsidiaries (WorldCom); Shannon Smith, assistant attorney general, Olympia, represents the staff of the Washington Utilities and Transportation Commission (Commission Staff); Simon ffitich and Robert W. Cromwell, Jr., assistant attorneys general, Seattle, appear as Public Counsel.

## I. MEMORANDUM

### A. PROCEDURAL HISTORY

- 4 AT&T filed this complaint against Verizon on April 3, 2002. Hearings in this matter were scheduled for March 3—7, 10 and 11, 2003. On February 28, 2003, Commission Staff filed with the Commission a request on behalf of all parties to continue the hearing schedule in order to allow parties to pursue a settlement. As part of the request, the parties indicated that if they were unable to reach settlement, hearings in this matter would begin on the morning of Wednesday, March 5, 2003. The Commission granted the request.
- 5 On March 4, 2003, AT&T, Verizon and Commission Staff advised the Commission that they planned to file a proposed settlement on March 5, 2003. The Commission further continued the hearing in this matter until Friday, March 7, 2003.
- 6 On March 5, 2003, AT&T, WorldCom, Verizon and Commission Staff (Participating Parties) jointly filed a proposed settlement in this matter. The proposed Settlement Stipulation (Stipulation) consists of a seven-page document, with three exhibits attached. The Stipulation is accompanied by a list of proposed exhibits in the docket that the Participating Parties contend is appropriate to support it. The Stipulation would resolve all disputes between the Participating Parties. The proposal would reduce access charges but increase certain rates and charges for business and residential customers.
- 7 On March 6, 2003, Public Counsel filed its Opposition to Settlement, Motion to Strike, and Objection to Hearing. Public Counsel asked the Commission to limit the scope of the settlement hearing and decline to conduct a hearing on rate increase issues, to reject the Stipulation, and to strike proffered testimony and exhibits relating to rate rebalancing and rate increases.

8 On March 7, 2003, the Commission heard testimony describing the settlement proposal from witnesses for three of the Participating Parties: Dr. Lee Selwyn on behalf of AT&T; Dr. Carl Danner on behalf of Verizon; and Dr. Glenn Blackmon on behalf of Commission Staff. The Stipulation was identified as Exhibit No. 300, and was offered by the Participating Parties. The Commission also heard argument on Public Counsel's opposition to the Stipulation.

## **B. DISCUSSION AND DECISION**

### **1. Terms of the Stipulation**

9 The Stipulation proposes to reduce switched access charge rates to a level that will decrease Verizon's Washington intrastate annual revenues for these services by \$35.5 million. The reductions would be made in two ways: 1) reducing the interim universal service rate element of access charges; and 2) reducing the originating access charges to the level of Qwest Corporation's intrastate switched access charges. *Stipulation, page 3.*

10 The Stipulation proposes to allow Verizon to increase other rates by \$27.9 million annually. Verizon would: 1) establish a late payment charge of 1.5%; 2) reduce the current number of free directory assistance calls by one for residential and business customers; 3) increase the directory assistance billed rate to \$1.25; 4) increase residential flat and package rates by \$2.00 per month; 5) increase business B1 rates by \$2.50 per month; and 6) increase the private line 2-wire rate to \$29.15, increase the private line 4-wire rate to \$45.47, increase the digital data service rate to \$105.25, and increase special number transport for the above items to \$5.12. *Stipulation, pages 3—4.*

11 The Participating Parties agree that Verizon would not seek any rate increase for one year from the approval of the agreement, nor would any other Participating Party request the initiation of any rate review proceeding for Verizon during that year.

- 12 The Participating Parties also have suggested their preferred procedural alternatives for review of the settlement, as allowed by WAC 480-09-466(2)(d).
- 13 The Stipulation provides for filing a “settlement” tariff or tariffs to implement the changes outlined in paragraph 10, above.<sup>1</sup> It also calls for 30 days' notice to Verizon’s customers of the proposed rate increases and a public hearing in Verizon’s service territory, prior to any Commission action to approve or disapprove the Stipulation. The Participating Parties ask that any new rates become effective within ten days of an order approving the increases.
- 14 Each Participating Party states that the Stipulation is in the public interest. Within the context of the Stipulation, the Participating Parties state that the Stipulation will result in rates that are just, fair, reasonable and sufficient, and not unreasonably discriminatory nor preferential. *Stipulation pages 1—2.*

## **2. Issues Presented**

- 15 The Commission must first determine whether it has the authority to review, and potentially grant, the settlement proposal. If the authority exists, then the Commission must exercise its discretion and decide whether to review the settlement proposal.

**a. May the Commission Consider a Settlement Proposal that Contains Provisions Beyond the Scope of the Current Phase of the Litigation, and Is Supported by Evidence Previously Ruled Inadmissible in the Pending Phase of the Litigation?**

- 16 Public Counsel argues that the Commission’s February 21, 2003, *Fifth Supplemental Order* narrowed the scope of the proceeding to exclude rate

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<sup>1</sup> The “settlement” tariffs represent the tariff changes that would implement the settlement agreement. They would be implemented only if the Commission decides to approve the settlement proposal.

rebalancing or general ratemaking as issues. He argues that the Stipulation seeks to provide Verizon rate increases that will offset the reduction in revenues resulting from the decrease in its access-charge rates, in direct contravention of the *Fifth Supplemental Order*. For this reason, he recommends that the Commission reject those portions of the Stipulation that exceed the scope of the *Fifth Supplemental Order*.

- 17 Commission rules expressly encourage parties' efforts to resolve disputes without the need for litigation, WAC 480-09-465, and expressly permit parties to submit "the evidentiary proof that they believe appropriate to support it." WAC 480-09-466(c). Settlements represent the participants' compromise on the contested issues, and these compromises may, generally speaking, be different from the parties' previously stated positions.
- 18 Litigation should not be confused with settlement. The Commission's prior ruling in this case to strike portions of the prefiled testimony and to narrow the scope of the pending phase of the litigation was intended to govern a hearing on the merits that contemplated an eventual procedural opportunity, if necessary, to resolve any rate issues flowing from the resolution of the complaint. In reaching a proposed settlement, the parties are not limited to their prior positions, their prefiled testimony, or their theories of the case. Here, the parties propose a settlement that addresses both the immediate hearing phase and the resulting consequences. They are free to make the proposal. The rulings to strike evidence from consideration and to narrow the scope of the pending phase do not preclude the parties from reaching a proposed settlement of a broader scope that relies upon testimony of a broader scope for its support.
- 19 The Commission has discretion to consider a proposed settlement that is inconsistent with the defined scope of a particular stage of the litigation. That is one of the fundamental benefits of settlement—it allows the global resolution of disputes in a way that may be much more protracted in litigation. The Commission may consider the settlement proposal even though it contains

provisions that exceed the previously determined scope of the current phase of litigation, and is supported by testimony previously ruled inadmissible as beyond the scope of the current phase of the litigation.

**b. May the Commission Consider the Proposed Rate Increase Contained in the Proposed Settlement?**

20 Public Counsel asserts that the proposed rate increase is fundamentally flawed because Verizon has not filed proposed tariffs, Verizon has not filed the information required by Commission rules to support an original filing for a general rate increase, and there has been no notice to potentially affected customers or interested parties. Public Counsel contends it is unreasonable for the Participating Parties to expect that the limited review of Verizon's rates in a settlement of this complaint is sufficient, in view of the fact that Verizon's general rates have not been subject to full review for many years.

**i. Verizon Has Not Filed Proposed Tariffs**

21 In this case, there has been no tariff filing. At this point there is only a settlement proposal that would resolve contested issues among four of the five parties to the litigation. The next steps proposed in the Stipulation are presenting tariffs that implement the settlement terms, giving customers 30 days' notice of the filing, and providing a public hearing in Verizon's service territory. The tariff filings will be made pursuant to the Stipulation, in an adjudicative proceeding in which discovery has been afforded to all parties and evidence has been filed for admission.

22 Verizon has not yet filed revised tariff pages that would implement the proposed rate reductions and increases, nor have the Participating Parties submitted for public review the evidentiary support on which they seek to rely.<sup>2</sup> Verizon has not yet notified customers of proposed rate increases or of their opportunity to

appear at a public hearing to state their positions on the increases. Neither has the Commission yet provided notice of the Stipulation to allow their participation.

23 It is clear, however, that the Stipulation proposes such a process. Verizon responds to Public Counsel's contention that a hearing on the proposal would be a "sham" by saying:

The Settling Parties, however, are not asking the Commission to approve the Settlement Stipulation until *after* customer notice and Commission hearing. (*emphasis in original*) *Response, page 4.*

24 The fact that Verizon has not yet presented the tariffs that implement the settlement terms does not bar us from considering the settlement proposal because Verizon will present "settlement" tariffs. *See, Paragraph 13 of this order, and footnote one.*

## ii. Broad Informational Filings

25 The proposed residential and business rate increases appear to exceed the 3% threshold established in the Commission's rule governing general rate case filing requirements. *WAC 480-09-310(b)*. Public Counsel argues that because this is the case, the filing may not be made in this litigation and must be accompanied by certain requisite information.

26 However, the proposal contemplated by the Stipulation is not the tariff filing under RCW 80.36.110 and RCW 80.04.130 that is addressed in the filing requirement rule. WAC 480-09-300 states that the purpose of the rule is to standardize presentations, clarify issues, and speed and simplify the processing of rate filings that are made outside of pending litigation. The information provided in accordance with WAC 480-09-330 provides a basis for the

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<sup>2</sup> Public Counsel possesses the documents cited in the stipulation as support for the proposal.

Commission's consideration in a 30-day period of whether or not to suspend a significant and complex filing.

- 27 In a settlement proposal, however, the Commission is not faced with a decision to suspend, and the proposed rates will not take effect automatically if the Commission fails to act. These are a different kind of data, for a different purpose. Instead, the tariffs are a mere proposal that will have no effect if the Commission does not approve them. The Commission will consider the proposed evidentiary support for the rates when it reviews the proposal, and will determine then whether it supports the proposal.
- 28 The parties to the adjudication have already had the opportunity to discover, study, and review the underlying information that supports the 22 exhibits attached to the Stipulation. Although each of the 22 exhibits has been prefiled and marked for identification in the adjudication, their purpose in supporting the Stipulation is to provide a factual foundation from which the Commission can evaluate the Stipulation, and whether it is in the public interest. The parties have provided in the Stipulation:

By executing this Settlement Stipulation, no Participating Party shall be deemed to have accepted or consented to the facts, principles, methods, or theories employed in arriving at the Settlement Stipulation, or in any of the pre-filed testimony of the Participating Parties. *Stipulation, page 6.*

- 29 The purpose of the data supporting the Stipulation is to provide a basis for understanding the proposal, and evaluating its value to the public.<sup>3</sup> The Commission will determine whether the provided basis is sufficient to support the proposed rate increases.

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<sup>3</sup> The Commission's filing rules also recognize a limitation on the precedential value of settlement: Acceptance of a settlement does not constitute acceptance of underlying methodology unless the order accepting the settlement does so specifically. *WAC 480-09-330(2)(b).*



**iii. Notice to potentially affected customers**

30 Public Counsel objects to the Stipulation's provisions for public notice and  
comment on the proposal because, he argues, they are insufficient to satisfy due  
process requirements. Public Counsel asserts that allowing public comment on a  
Stipulation the Commission has already decided to adopt is a sham. He argues  
that the procedural protections contained in the Stipulation fall far short of those  
that should be afforded ratepayers in what constitutes a general rate proceeding.

31 First, the Commission emphasizes that it has not approved the Stipulation. In  
this Order, the Commission merely determines that there are no procedural  
flaws that prevent the Commission from considering the proposal in an open  
process with opportunity for participation by persons affected.

32 Telecommunications companies may increase rates upon 30 days' notice to the  
Commission and to customers. *RCW 80.36.110*. The Commission has the  
discretion to suspend and set for hearing any public service company's request  
for a rate increase, but is not required to do so. *RCW 80.04.130*. The Commission  
provides weekly notice of the openings and closings filings in a weekly report  
that is sent to subscribers, and posted on the Commission's web site. The  
Commission may, in its discretion, suspend proposed rates, but nothing in the  
statutes or the Commission's rules requires the Commission to suspend a  
proposal and set it for hearing.<sup>4</sup> Under these statutory provisions, a rate increase  
request may become effective without any formal adjudicative notice or hearing.<sup>5</sup>  
After providing the notice proposed in the Stipulation, Verizon will have  
provided 30 days' notice to its customers and the Commission. The Commission  
is convening a prehearing conference to consider any other procedural matters

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<sup>4</sup> *RCW 80.36.110*.

<sup>5</sup> The company seeking the rate increase would be required to give 30 days' notice to the  
Commission and to publish the proposed changes for thirty days, unless the Commission, for  
good cause, allowed changes without requiring the thirty day's notice and publication. *RCW*  
*80.36.100*.

that may be raised. In these circumstances, the Commission clearly has the discretion to consider and to allow or reject the Stipulation and the proposed rate increase that it contains.

33 Basic fairness requires that parties and potential parties have notice of the proposed expansion of the issues to matters that may affect them, and the opportunity to address those issues. The notice provided by the complaint was sufficient to identify the issues raised in the complaint and determine necessary parties to the complaint, as posed. The notice of hearing describes the complaint:

The complaint alleges that Verizon's switched access charges far exceed Verizon's cost of providing that access. The complaint further alleges that Verizon is using revenues generated by excessive switched access rates to fund a "price squeeze" designed to force competitors from toll markets in Washington. *May 23, 2002, Notice of Prehearing Conference, page one.*

34 The answering pleadings, and other communications of record in the docket, were sufficient to notify the parties to the case, including Public Counsel, that rate rebalancing was a potential issue. However, that same notice may not have been sufficient to allow persons not party to the proceeding an opportunity to address the issues raised. The Commission believes in this instance that it is important to provide public notice (i.e. to non-parties) in order to allow public participation.

35 Accordingly, the Commission has determined that although additional notice beyond that proposed in the Stipulation may not be necessary, particularly to the parties, it is appropriate to provide notice to interested persons who may have chosen not to become parties, based on the issues raised by the complaint.

36 The Commission has determined that it may consider the settlement proposal, even though it contains provisions that exceed the previously determined scope of this phase of the docket. The Commission may consider the proposed rate

increase contained in the proposed settlement. None of the issues raised by Public Counsel bar the Commission from evaluating the proposal.

**c. Should the Commission Grant Public Counsel’s Motion to Strike Testimony and Evidence Relied on by the Participating Parties to Support the Settlement Stipulation?**

37 Public Counsel objects to the proposal of testimony for consideration in evaluating the settlement that the Commission previously ruled inadmissible in the pending phase of the litigation. Public Counsel also objects to the rate rebalancing portions of Exhibits B and C to the Stipulation because they contain “rate rebalancing” evidence and thus are beyond the scope of the proceeding established in the *Fifth Supplemental Order*.<sup>6</sup> Finally, Public Counsel moves to strike the testimony of Nancy Heuring and her exhibits 2-4. The basis for this part of the motion is that Ms. Heuring’s evidence goes beyond the scope of the hearing established in the *Fifth Supplemental Order*, because her testimony addresses Verizon’s intrastate return by providing results of operation and revenue requirement, presumably in support of the proposed rate increases contained in the Stipulation.

38 The Commission denies Public Counsel’s motion to strike. The *Fifth Supplemental Order* set the scope of the hearing beginning March 3, 2003, and indicated that there might be additional phases to the proceeding. The “rate rebalancing” issues are clearly within the Commission’s jurisdiction to address.<sup>7</sup> As discussed above, the Commission distinguishes between full litigation and a proposed settlement of a case. The *Fifth Supplemental Order* established the scope of the initial hearing phase, to facilitate the orderly litigation of the issues. This docket does contain all of the issues addressed in the Stipulation. Public Counsel was

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<sup>6</sup> Exhibit B to the Stipulation illustrates the net revenue impact of the settlement. Exhibit C outlines the various rate reductions and rate increases proposed in the Stipulation.

<sup>7</sup> RCW 80.01.040, Chapter 80.36 RCW, RCW 80.36.80, 100, 110.

aware throughout the time when the parties prefiled testimony that other parties regarded rate rebalancing as an issue. In considering a settlement, which is a compromise of all matters in the docket, the parties may rely on testimony and evidence to support the settlement that includes information that was excluded for the initial phase of the litigation.<sup>8</sup> The Participating Parties have presented their Stipulation to the Commission for consideration. Public Counsel's objections are denied.

**d. Did Public Counsel Have Sufficient Notice of the March 7, 2003 Hearing Session at Which the Settlement Stipulation Was Presented to the Commission?**

39 Public Counsel complains that the March 5, 2003, order allowing a continuance of the hearing and setting the Stipulation for hearing on March 7 did not address the content of the settlement and did not modify the scope of the hearing. Public Counsel alleges that notice of the March 7 hearing session did not meet statutory and procedural requirements for notice of a general rate proceeding, and also violated RCW 34.05.434 and the Commission's rules.

40 The Commission disagrees that there was insufficient notice of the March 7, 2003, hearing under RCW 34.05.434.<sup>9</sup> This statutory notice provision is intended to give parties and potential parties notice of the commencement of a hearing. It does not pertain to the situation in this case, in which all parties had notice of the hearing dates that had been previously scheduled by agreement of the parties. Public Counsel was aware that the hearing in this docket was scheduled for March 3-7 and 10-11.

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<sup>8</sup> The Commission acknowledges the short time frame in which the stipulation was developed and will afford the participating parties until the time proposed tariffs are filed to supplement the supporting information that is identified in the Stipulation.

<sup>9</sup> RCW 34.05.434 requires an agency to set the time and place for hearing on not less than seven days advance written notice to all parties.

41 The beginning of the hearing was delayed from March 3 upon written request, granted in writing, to allow parties to engage in settlement discussions. On March 7, the Participating Parties presented the Settlement Stipulation to the Commission pursuant to a written notice. March 7 was one of the days initially scheduled for hearing. Nothing in the notice of the March 7 hearing indicated that the Commission would foreclose further hearings on the Stipulation. The Commission did not act on the Settlement Stipulation as a result of the March 7 hearing session, other than to consider Public Counsel objections and to consider what further procedures are required to address the stipulation, as determined in this order.

42 The Commission further disagrees that the notice of the March 7 hearing should have indicated that the Commission had modified the scope of hearing. The Settlement Stipulation may address issues that would not be addressed during the March hearing dates. No modification of the scope of the hearing was required in order to allow parties merely to present their proposed Settlement Stipulation to the Commission on March 7.

43 The Commission properly afforded the Participating Parties an opportunity to present a proposal to the Commission and to the other party, Public Counsel. Objections to that step are denied.

**e. Should the Commission Review the Settlement Proposal?**

44 Having determined that it has authority to review the settlement proposal, the Commission determines that it should do so because the global resolution presented by the parties may resolve disputes in a way that proves to be in the public interest. The Commission will consider the Settlement on its merits.

**II. ORDER**

THE COMMISSION ORDERS that:

- 45 (1) Public Counsel's March 7, 2003, Motions to Strike and Objection to  
Hearing are denied. Public Counsel's Opposition to Settlement is noted  
and taken under advisement.
- 46 (2) Verizon must file, no later than March 24, 2003, proposed tariff pages  
implementing the rates proposed in the Stipulation to notify ratepayers of  
the proposed changes in rates and charges.
- 47 (3) The Participating Parties may file, no later than March 27, 2003, additional  
support for the Stipulation, if they have any. The Stipulation and 22  
supporting exhibits are filed with the Commission. Verizon must notify  
the public that the Stipulation and exhibits are available for review at the  
Commission's office in Olympia. Verizon must file an original and 14  
copies of its proposed tariffs and evidence as a package, and provide a  
digital copy of the proposal, the tariffs proposed to implement it, and the  
evidence in support of it, on an original CD-ROM with one copy, at the  
time the tariffs and any supplemental supporting evidence are filed with  
the Commission.
- 48 (4) Verizon must provide actual notice to its customers of the proposed  
increases and decreases, and of the date upon which a public hearing will  
be held in which customers may present their statements about the  
settlement proposal and their requests for any further process they believe  
is due before the Commission decides whether to approve the proposed  
rate increases.
- 49 (5) A further prehearing conference shall be convened on April 3, 2003, to  
address procedural aspects of reviewing the settlement proposal.

DATED at Olympia, Washington, and effective this \_\_\_\_\_ day of March, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner