

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

AT&T COMMUNICATIONS OF	)	DOCKET NO. UT-020406
THE PACIFIC NORTHWEST,	)	
INC.,	)	
	)	EIGHTH SUPPLEMENTAL ORDER;
Complainant,	)	PREHEARING CONFERENCE
v.	)	ORDER; NOTICE OF PREHEARING
	)	CONFERENCE
VERIZON NORTHWEST, INC.,	)	(May 1, 2003);
	)	NOTICE OF EVIDENTIARY
Respondent.	)	HEARING
.....	)	(May 7, 2003)

- 1 **Proceeding:** Docket No. UT-020406 is a complaint filed by AT&T Communications of the Pacific Northwest, Inc. (AT&T) against Verizon Northwest, Inc. (Verizon).
  
- 2 **Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on April 3, 2003, before Administrative Law Judge Marjorie R. Schaer. The purpose of the conference was to consider procedural issues in the docket arising from the submission of a multiparty settlement proposal by Verizon, AT&T, WorldCom, and Commission Staff. The Commission gave broad service of the prehearing conference notice, advising potential parties of the nature of the settlement and of the opportunity to participate.
  
- 3 **Appearances; Petitions for Intervention.** AT&T, Verizon, WorldCom and Commission Staff appeared by counsel of record in this docket. In addition, John O'Rourke, attorney, Spokane, petitioned for intervention on behalf of The Citizens Utility Alliance Of Washington, Spokane Neighborhood Action Programs (Alliance); and Arthur A. Butler, attorney, Seattle, petitioned for intervention on behalf of the Washington Electronic Business and Telecommunications Coalition (WeBTEC). While some parties stated concerns

about the petitions for intervention, no party objected to either of the petitions, and they were granted.<sup>1</sup>

4 Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

5 **Protective order.** A protective order has been entered in this docket. *First Supplemental Order—Protective Order, June 28, 2002.* Intervenors' counsel and experts may gain access to materials designated as confidential by filing affidavits indicating that they will comply with terms of the order.

6 **Settlement Agreement.** On March 5, 2003, AT&T, WorldCom, Verizon and Commission filed a proposed multi-party settlement agreement<sup>2</sup> seeking to resolve this docket. Public Counsel opposed the settlement, because it proposed increases to rates and charges for business and residential service not previously at issue.

7 In the *Sixth Supplemental Order* the Commission decided that it would review the partial settlement. ¶ 44, p. 13. The Commission did not agree to limit the review process to that suggested in the settlement proposal. It scheduled the April 3 prehearing conference after extensive notice to persons not parties, to allow their participation, and contemplated a full review of the participating parties' proposed evidence as well as the opportunity for others' presentations, as noted in the administrative law judge's letter of March 20, 2003. The administrative law judge rejected efforts by Commission Staff at the prehearing conference to limit or foreclose Public Counsel's participation in an evidentiary hearing.

8 Discussion of the topics of discovery and prefilings of testimony were clearly contemplated and discussed at the conference. The two new intervenors were informed that the Commission's discovery rule has been triggered in this case. *WAC 480-09-480.* The parties discussed when certain types of discovery might be appropriate: WeBTEC indicated that it might not pursue discovery unless rate

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<sup>1</sup> The Alliance and WeBTEC both indicated that their interests were not in the determination of access charge rates, but in retail rates for business and residential consumers. They stated that if the settlement were to fail, they would participate little, if at all, in hearings related to the determination of access charges.

<sup>2</sup> See, *WAC 480-09-466(2)(c).*

rebalancing becomes an issue. In building a hearing schedule for a “settlement” track, the parties were encouraged to plan a schedule including prefiled testimony, testimony zones and rebuttal. *TR 323—327*. Verizon addressed these issues in its scheduling letter. AT&T, WorldCom, and Commission Staff indicate that Verizon and Commission Staff are unable to resolve their differences on implementation of the Settlement Agreement between Staff, Verizon, AT&T, and WorldCom. Their scheduling letter addresses the issues surrounding scheduling the evidentiary hearings for the access charge complaint proceeding. As a part of the Commission-ordered review, Verizon was required to file “tariff pages implementing the rates proposed in the Stipulation . . .” See *Sixth Supplemental Order*, ¶ 46. Verizon was also ordered:

To 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...

*Id.*, Ordering paragraph 4, ¶ 48, p. 14.

- 9 Three customer notice items were included on the agenda for the April 3, 2003, prehearing conference. *WAC 480-120-197*. First, whether a notice of hearing consistent with the rate increases proposed in the partial settlement needed to be prepared. Second, whether a notice of hearing consistent with the rate increase requests described in the “settlement tariffs” needed to be prepared. Third, when the language of the customer notice was resolved, a date or dates for the public hearing needed to be selected, then actual notice of the public hearing needed to be delivered. *WAC 480-09-197*. One would expect the text of the notice to meet the requirements of criteria one and two. If A equals B, and B equals C, then A must equal C. A dispute arose because while Verizon and Commission Staff agreed that the draft notice of hearing they filed was consistent with the settlement, Verizon and Staff do not agree whether the rate increases proposed in the informational settlement tariffs are consistent with the settlement. This issue needed to be resolved before a notice of public hearing could be approved.

**Motion to compel compliance with Settlement Agreement.**

- 10 Verizon filed its “Settlement Tariffs” on March 24, 2003. Commission Staff filed a Proposed Customer Notice on behalf of Verizon, AT&T, WorldCom and Commission Staff on March 27, 2003. On April 1, 2003, Commission Staff filed an Objection to the Verizon Compliance Filing challenging the illustrative or settlement tariffs filed by Verizon, and asking the Commission to require Verizon to comply with the Sixth Supplemental Order and to compel Verizon to file tariffs consistent with Commission Staff’s interpretation of the settlement. Commission Staff contends that the “settlement” tariffs filed by Verizon on March 24, 2003, contain rate increases that were not set forth in the settlement stipulation (including, Staff alleges, an 120% increase in originating per minutes of use on tandem switching.) An attachment to Commission Staff’s April 1, 2003, filing highlights rate increases that Staff alleges are included in the tariffs but are not included in the settlement agreement. Commission Staff argues that the public notice needs to state all of the rates that are being increased, and that the proposed customer notice does not include the access rates that are increased in Verizon’s “settlement” tariffs.
- 11 Verizon contends that its settlement tariffs are consistent with the partial settlement reached. The remaining parties to the settlement took no position on the dispute. Verizon and Commission Staff agreed that it made little sense to pursue resolution of the public notice issues until the threshold issues presented in Commission Staff’s objection were resolved.
- 12 The administrative law judge expressed concerns in two major areas: 1) was there still a settlement between the participating parties,<sup>3</sup> and 2) does the bench have the authority to enforce provisions of a partial settlement that has not been approved by the Commission, or should such disputes be resolved between the parties participating in the partial settlement.
- 13 When asked whether the participating parties agree on what the settlement they filed entails, Verizon indicated “no”. *TR 311*. Commission Staff indicated its belief that Verizon’s tariff filing does not comport with the settlement, and again asked the Commission to require Verizon to file tariffs that do comply. AT&T

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<sup>3</sup> WAC 480-09-466 (2) Settlements. A settlement is an agreement among two or more parties to a proceeding to resolve one or more issues.

indicated its continued support of the document as filed, without taking a position regarding whether Verizon's illustrative tariff filing implements the settlement agreement.

- 14 The participating parties were given until 1:00 p.m. Friday, April 4, 2003, to present a settlement tariff with which they all agreed and that met the requirements of the Sixth Supplemental Order, or to inform the Commission that they could not reach a common understanding. Since either considering settlement or pursuing litigation would require additional hearings, the parties were also asked to provide scheduling recommendations for going forward.
- 15 **Status of Proposed Settlement Agreement:** On Friday, April 4, 2003, the Commission received joint statements from AT&T, WorldCom, and Commission Staff, and from Verizon that the settlement did not have continuing viability. These parties also supplied availability dates for hearings. Public Counsel, WeBTEC, and the Alliance indicated that they continue to object to the proposed settlement of this case. If the proposed settlement is no longer in effect, they concur with the *Joint Comments On Procedural Issues of AT&T, WorldCom and Commission Staff* regarding the scheduling of an access charge only hearing in this docket, reserving the right to object to scheduling conflicts previously shared during the prehearing conference. Because the partial settlement was withdrawn, the bench did not rule on Commission Staff's Objection.
- 16 **Schedule.** This prehearing conference order will provide a schedule for accomplishing the remaining tasks in the litigation of the original complaint. These include the time and tasks for a pre-hearing conference, and the dates for a hearing and post-hearing processes. The Commission has entered the Seventh Supplemental Order resolving pending motions, and will defer a discussion of post-hearing processes until nearer the time of the hearing.
- 17 No schedule is set for filing of additional exhibits as all proposed exhibits were filed and identified prior to submission of the proposed settlement agreement, and intervenors at the April 3 prehearing conference indicated no interest in the access charge litigation. Because procedural orders grant motions to strike all or portions of certain identified exhibits, parties must supply the Commission and each other with revised exhibit, as necessary, to reflect the rulings, and revised exhibit lists no later than April 28, 2003. At the same time, parties should supply time estimates for their cross-examination of each witness. If WeBTEC or the

Alliance wish to receive copies of the identified testimony and exhibits, or to proffer cross-examination exhibits, they should seek copies of the exhibits immediately from the parties, distribute their exhibit lists and cross-examination time estimates no later than April 28, 2003, and attend the May 1, 2003 prehearing conference, bringing with them sufficient copies of their exhibits.

- 18 The original evidentiary hearings in this matter were scheduled for March 3 through 11, 2003. Filing of the proposed settlement agreement held up those hearings. At the April 3, 2003, prehearing conference, possible five-day blocks of time were identified: two in July and four in August. On the afternoon of April 3, 2003, counsel for AT&T sought to identify shorter blocks of time before July when hearings could be held. May seventh and eighth were identified as possible dates.
- 19 On April 4, 2003, AT&T, WorldCom, and Commission Staff (the Commenting Parties) filed scheduling recommendations, based on their understanding that Public Counsel, the Alliance and WeBTEC would not be participating in the access charge hearing. Noting that the estimates for cross-examination at the March 3 round of hearings were three to four days of hearings, and that the total amount of time that they now estimate is substantially less, the Commenting Parties asked the Commission to schedule evidentiary hearings on May seventh and eighth. To the extent that more hearing time is necessary, the Commenting Parties request either longer hours on those dates or an additional nonconsecutive day to complete the hearings.
- 20 The Commenting Parties also offer to make whatever reasonable accommodations are necessary in order to conduct the evidentiary hearings within the next four to six weeks. The Commenting Parties are willing to schedule witnesses, particularly those with legitimate conflicts, on a date certain to avoid the need to have a witness make multiple trips. Hearings in July, on the other hand, would require AT&T to bring in other counsel for those hearings because AT&T's current counsel is unavailable.
- 21 Verizon's April 4, 2003, filing asks the Commission to schedule evidentiary hearings for the week of July 7, 2003. Verizon notes that AT&T had asked whether they would agree to hearings on May seventh and eighth and that Verizon had responded that it could not agree to those dates. Verizon explains that several of Verizon's witnesses are not available on those dates, Ms. Endejan

(Verizon counsel) has an evidentiary hearing on May 9 in an unrelated case in U.S. District Court for which she must prepare, and that it believes it is unlikely that two days will be sufficient and, therefore, the parties and Commission would have to reconvene at a later date to complete the hearing. Verizon expressed concern that conducting the hearings in a piecemeal way will significantly increase its expenses.

22 The Commission believes that this proceeding should not be delayed beyond the available May hearing dates. While Verizon indicated that witnesses might be unavailable for hearing sessions on May 7 and 8, it did not specify the nature of any conflict, and other parties offered to work with Verizon to minimize scheduling difficulties. And while one of Verizon's counsel has a federal court matter scheduled for May 9, the company is represented by capable co-counsel who has demonstrated his skill. We do not believe that holding to those dates will prejudice Verizon. This matter was filed a year ago, and it is not acceptable to the Commission to extend litigation of the issues framed by the complaint beyond those dates. The Commission will work with the parties to facilitate a smooth hearing. The following schedule will govern the access charge evidentiary hearings.

<b>Event</b>	<b>Date</b>
Prehearing conference for last-minute Prehearing issues (may be cancelled if not necessary)	May 1, 2003
First hearing block begins (2-1/2 days available)	May 7, 2003
Second hearing block begins (if needed, one day available)	May 15, 2003
Hearing(s) for members of the public	Unnecessary for Access charge issues

The scheduling of closing argument or briefs will be determined at a later time.

- 23 **Notice of Prehearing Conference.** The Commission hereby gives notice of a prehearing conference in this matter, to address procedural matters relevant to conduct of the hearing. The conference will be held in the Commission's Hearing Room, Room 206, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, on **May 1, 2003, at 9:00 a.m.**
- 24 **Notice of evidentiary hearing.** The Commission hereby gives notice that a hearing for the purpose of receiving evidence and the testimony of witnesses will begin on May 7, 2003, at 9:30 a.m. The hearing will be held in the Commission's Hearing Room, Room 206, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.
- 25 **Errata.** There are two scrivener's errors in the Commission's Seventh Supplemental Order. In paragraph two, line one, the date at the beginning of the second sentence should be April 11, 2002, not April 11, 2003. On page ten, in heading nine, the name Dr. Danner should replace the name Mr. Dye.
- 26 **Document preparation and process issues.** Parties must review each document filed with the Commission as a potential exhibit for compliance with Appendix B, attached to this Order. Appendix B states relevant Commission rules and other directions for the preparation and submission of evidence and for other process in this docket. Parties must comply with these provisions.

Dated at Olympia, Washington, and effective this \_\_\_\_th day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARJORIE R. SCHAER  
Administrative Law Judge

**NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

## APPENDIX A

## PARTIES' REPRESENTATIVES

DOCKET NO. UT-020406

updated 4/9/2003

COMPANY	REPRESENTATIVE and ADDRESS	PHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS
AT&T Communications of the Pacific Northwest, Inc.	Gregory J. Kopta Davis, Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	(206) 628-7692	(206) 628-7699	gregkopta@dwt.com
Verizon Northwest, Inc.	Judith Endejan Graham and Dunn 1420 Fifth Avenue Seattle, WA 98101-2390  Charles H. Carrathers Vice President & General Counsel Verizon Northwest, Inc. 600 Hidden Ridge Irving, TX 73015	(206) 340-9694  (972) 718-2415	(206) 340-9599  (972) 718-0936	jendejan@grahamdunn.com  chuck.carrathers@verizon.com
WorldCom, Inc. (and its regulated subsidiaries)	Michel Singer Nelson Senior Attorney 707 17 <sup>th</sup> Street Suite 4200 Denver, CO 80202	(303) 390-6106	(303) 390-6333	michel.singer_nelson@wcom.com
Washington Electronic Business and Telecommunications Coalition (WeBTEC)	Arthur A. Butler Attorney at Law Ater Wynne LLP 601 Union Street, Suite 5450 Seattle, WA 98101	(206) 623-4711	(206) 467-8406	aab@aterwynne.com
The Citizens Utility Alliance of Washington, Spokane Neighborhood Action Programs	John O'Rourke Attorney at Law 212 West Second Avenue Spokane, WA 99201	(509) 744-3370	(509) 744-3374	orourke@snapwa.org
Commission Staff	Shannon Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia, WA 98504-0128	(360) 664-1192	(360) 586-5522	ssmith@wutc.wa.gov
Public Counsel	Robert Cromwell Office of the Attorney General 900 Fourth Avenue Suite 2000 Seattle, WA 98164	(206) 464-6595	(206) 389-2058	robertc1@atg.wa.gov

## APPENDIX B

### I. Requirements for ALL paper copies of testimony, exhibits, and briefs

The following requirements are restated from and clarify the Commission's rules relating to adjudications.

A. All paper copies of briefs, prefiled testimony, and original text in exhibits must be

- On 8-1/2x11 paper, punched for insertion in a 3-ring binder,
- Punched with **OVERSIZED HOLES** to allow easy handling.
- Double-spaced
- 12-point or larger text and footnotes, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- **SEQUENTIALLY NUMBERED** (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- **DATED ON THE FIRST PAGE OF EACH ITEM** and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (REVISED), with the same title, and with the date it is filed clearly shown. Electronic files must be designated R for

revision, when applicable, with an ordinal number showing the revision number.

## **II. Identifying exhibit numbers; Exhibits on cross examination.**

A. **Identifying exhibits.** It is essential to mark documents so you, opposing counsel, and the Commission can find them. We ask you to comply with this clarification of prior practice, based on recent experience:

- **Use the witness's initials and add an ordinal number for each exhibit.** Identify testimony with a T and confidential exhibits with a C. Example: Witness Jane Quintessentia Public. Her original testimony would be JQP-1T or JQP-1TC, her first attached exhibit would be JQP-2, etc. NEVER identify the attachments merely with a single ordinal number, as that will provide the maximum confusion to everyone, including your witness.

B. Prepare a list of your exhibits with their title and (JQP) designation in digital form and in a format specified by the Commission. Send it to the presiding officer before the appropriate prehearing conference. That will simplify identification and ease administrative burdens.

**NOTE: Be prepared to submit all of your possible exhibits on cross examination several days prior to the hearing.** We will attempt to schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefiling.