

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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|--------------------------------------------------------|---|------------------------------------------------------------------------------------------------------------------------|
| AT&T COMMUNICATIONS OF THE<br>PACIFIC NORTHWEST, INC., | ) | Docket No. UT-020406                                                                                                   |
|                                                        | ) |                                                                                                                        |
| Complainant,                                           | ) | <b>VERIZON’S MOTION FOR<br/>CLARIFICATION OF THE SEVENTH<br/>SUPPLEMENTAL ORDER AND<br/>MOTION FOR RECONSIDERATION</b> |
| vs.                                                    | ) |                                                                                                                        |
|                                                        | ) |                                                                                                                        |
| VERIZON NORTHWEST INC.,                                | ) |                                                                                                                        |
|                                                        | ) |                                                                                                                        |
| Respondent.                                            | ) |                                                                                                                        |
|                                                        |   | )                                                                                                                      |

1 The Seventh Supplemental Order grants, in part, the motions to strike Verizon’s surrebuttal testimony. The order, however, discusses only three pieces of Verizon’s surrebuttal testimony, whereas Verizon filed the surrebuttal testimony of seven witnesses. Verizon seeks clarification on whether the Commission intended to strike the testimony of the other four witnesses; if so, Verizon seeks reconsideration. Verizon also seeks reconsideration of the Commission’s decision to strike Verizon’s surrebuttal testimony that addresses Staff’s “conversion factor” adjustment.

2 Verizon filed the surrebuttal testimony of seven witnesses: Orville D. Fulp, Carl R. Danner, Terry R. Dye, David G. Tucek, Nancy Heuring, Dennis B. Trimble, and Duane K. Simmons. Staff, AT&T, and Public Counsel moved to strike this testimony arguing that it was repetitive or should have been filed in Verizon’s direct case.

3 In deciding this issue, the Commission explained that, “In a complaint hearing, the last word procedurally should be with the complainant, except in rare circumstances. When surrebuttal is allowed, it should be directed toward specific rebuttal testimony that has

demonstrably raised new matter in the hearing.”<sup>1</sup> The Commission then applied this standard to the surrebuttal testimony of Messrs. Danner, Dye, and Tucek, and expressly permitted those portions of Danner’s and Dye’s testimonies that respond to new information raised in Dr. Blackmon’s and Dr. Selwyn’s rebuttal.<sup>2</sup> The Commission’s order, however, does not analyze the surrebuttal testimony of Fulp, Heuring, Trimble and Simmons that similarly responds to new information in this rebuttal testimony. Verizon seeks clarification on whether this testimony was stricken.

4 If the Commission intended to strike this testimony, Verizon seeks reconsideration. First, the surrebuttal testimony of Heuring, Trimble, and Simmons all address the issue of Verizon’s earnings, which the Commission held is relevant because “[e]arnings testimony may be related to the costs for providing access (access charges may include a contribution to earnings).”<sup>3</sup> Second, all this testimony addresses matters that were raised for the first time in the rebuttal testimony of Staff and AT&T. Indeed, Staff’s and AT&T’s direct testimony fails to address earnings. Verizon raised the earnings issue in its direct testimony, and Staff and AT&T responded to it in their rebuttal; therefore, Verizon should have the opportunity to respond in surrebuttal.

5 Furthermore, Staff claims that Verizon has the burden of proof on the earnings issue; specifically, 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>4</sup> and

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<sup>1</sup> Seventh Supplemental Order at para. 43.

<sup>2</sup> *Id.* at para. 50.

<sup>3</sup> *Id.* at para. 27.

<sup>4</sup> Staff Motion to Strike at para.4.

that the party having the burden on an issue should "have the 'last word.'"<sup>5</sup> Verizon disagrees with Staff, but the point here is that if Verizon has the burden of proof, then it should be allowed to file surrebuttal, i.e., it should have “the last word.”<sup>6</sup>

6 Turning to Mr. Fulp’s surrebuttal testimony, Verizon acknowledges that portions of this testimony relate to the testimony of Danner, Dye and Tucek that have expressly been stricken. Although Verizon does not agree with the Commission’s ruling, it will not re-argue its position here. However, Mr. Fulp’s testimony also addresses three issues that were not raised in AT&T’s and Staff’s direct testimony: (1) AT&T’s misstatements of the relationships between Verizon and its affiliates, including Verizon Long Distance; (2) AT&T’s discussion of the FCC’s Continuing Property Audit (CPR) issue, which goes to Verizon’s earnings; and (3) Staff’s criticisms of Verizon’s earnings. These portions of Fulp’s surrebuttal should be permitted for the same reasons that the surrebuttal testimony of Heuring, Trimble, and Simmons should be permitted. (The specific Fulp surrebuttal testimony that should be permitted is at page 4, line 12, through and including page 10, line 2.)

7 Finally, Verizon seeks reconsideration of the Commission’s decision to strike that portion of Mr. Dye’s surrebuttal testimony that responds to Staff witness Zawislak’s “conversion factor” adjustment (Dye Surrebuttal, page 2, lines 5-9, page 3, line 6, through and including page 8, line 13). This adjustment goes to Verizon’s imputation analysis. Mr. Zawislak did not raise this

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<sup>5</sup> *Id.* at para. 5.

<sup>6</sup> 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” (Staff Motion to Strike at para. 18). 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, and therefore Verizon’s surrebuttal testimony on this issue should be allowed.

adjustment in his direct testimony; in fact, his entire direct testimony on imputation 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>7</sup> Mr. Zawislak presented his conversion factor adjustment for the first time in his rebuttal testimony,<sup>8</sup> and Verizon witness Dye’s surrebuttal testimony simply responds to it. Accordingly, this portion of Dye’s surrebuttal should be allowed.

8 In addition, other portions of Mr. Dye’s surrebuttal (p. 14, line 14-P.16, line 2) corrects AT&T’s price floor calculation based upon current usage data provided to the parties. While technically this does not respond to new rebuttal testimony, the record should be allowed to reflect the more current data relating to the central issue of price floor and imputation here.

9 In summary, Verizon requests that the Commission permit the following surrebuttal testimony:

| <b>Witness</b>  | <b>Ex. #</b>               | <b>Surrebuttal Pages</b>                                                                 |
|-----------------|----------------------------|------------------------------------------------------------------------------------------|
| Nancy Heuring   | T-264                      | All                                                                                      |
| Dennis Trimble  | T-252                      | All                                                                                      |
| Duane Simmons   | T-255                      | All                                                                                      |
| Orville D. Fulp | T-202C                     | p. 4, line 12 – p.10, line 2                                                             |
| Terry Dye       | T-233; T-234C;<br><br>235C | p. 2, lines 5-9; p. 3, line 6 – p. 8, line 13; p. 14, line 14 – p. 16, line 2<br><br>All |

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<sup>7</sup> Zawislak Direct at page 8, lines 5-6.

<sup>8</sup> Zawislak Rebuttal at page 8.

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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  
P.O. Box 152092  
HQE02H20  
Irving, TX 75015-2092  
972-718-2415  
Fax: 972-718-3926

Dated this \_\_\_ day of April 2003.