BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainant, v. VERIZON NORTHWEST, INC., Respondent.	DOCKET NO. UT-020406 COMMISSION STAFF'S ANSWER IN OPPOSITION TO VERIZON'S MOTION FOR RECONSIDERATION OF THE SEVENTH SUPPLEMENTAL ORDER

1 The Commission Staff (Staff) opposes Verizon Northwest Inc.'s (Verizon) Motion for Clarification of the Seventh Supplemental Order.

2 In its motion, Verizon requests both clarification and reconsideration of the Commission's Seventh Supplemental Order. Verizon's Mot. at 1-2. Verizon seeks clarification regarding the scope of the surrebuttal testimony stricken by the Order, *id.* at 1; and if the Order strikes the testimony, Verizon seeks reconsideration of that determination. *Id.* at 2. As an initial matter, Staff does not believe there is anything unclear about the Commission's intent to strike all of Verizon's surrebuttal testimony, except for the limited portions identified in the Order. Seventh Supplemental Order, ¶ 46 ("[T]he Commission grants the motions to strike Verizon's Surrebuttal testimony *except for the limited portions of testimony indicated below.*"); *see also id.* ¶¶ 46-56

(identifying the specific portions of testimony that remain in the record). For the following reasons, the Commission should deny Verizon's motion for reconsideration.[1]

A. The Seventh Supplemental Order Properly Struck the Surrebuttal Testimony of Nancy Heuring

3 The Commission properly struck the whole of Nancy Heuring's surrebuttal testimony. Verizon first states that the testimony should be saved because it relates to earnings and the Commission had ruled that earnings testimony is relevant because it "may be related to the cost for providing access (access charges may include a contribution to earnings)." Verizon's Mot., ¶ 4 (quoting the Seventh Supplemental Order, ¶ 27). However, Heuring's surrebuttal testimony does not explain how earnings are related to cost—it simply discusses Verizon's overall earnings, with no discussion of how earnings relate to the cost of access (or anything else).

4 Verizon argues that Heuring offered surrebuttal testimony to rebut issues that were raised for the first time by Staff witness Betty A. Erdahl and AT&T Communications of the Pacific Northwest, Inc.'s (AT&T) witness Lee Selwyn. Verizon's Mot., ¶ 4. Verizon continues to ignore the fact that Verizon raised the earnings issue in its direct case, which was filed in December 2002. Witnesses Erdahl and Selwyn

[1] Verizon seeks reconsideration of the order striking the surrebuttal testimony of Nancy Heuring, Dennis B. Trimble, and Duane K. Simmons, Verizon's Mot., ¶¶ 4-5, the portions of Orville Fulp's testimony that relate to "issues that were not raised in AT&T's and Staff's direct testimony," specifically page 4, l. 12 through page 10, l. 2), *id.* ¶6, the portions of Terry Dye's testimony that respond to the conversion factor applied by Staff witness Timothy W. Zawislak, specifically page 2, ll. 5-9, page 6, l. 6 through page 8, l. 13. *Id.* ¶ 7.

properly rebutted that testimony, by refuting its credibility—which is the very purpose for rebuttal testimony.

5 In her rebuttal testimony, Erdahl highlighted the blatant weaknesses and insufficiencies in Heuring's December 2002 earnings analysis. In essence, Heuring's surrebuttal testimony is nothing more than an admission that her December testimony was seriously flawed. By again arguing that Heuring must have the opportunity to "rebut" Erdahl's rebuttal testimony, Verizon tries for the second time to take a second bite of the apple. One bite is enough—the Commission should refuse this request and affirm its decision striking Heuring's surrebuttal testimony.

6 As this argument shows, Verizon stubbornly refuses to acknowledge the fact that the complaining party gets the last word. Verizon's Mot., ¶ 4. Verizon had its opportunity to prove it was underearning when it filed its testimony in December 2002. In their rebuttal testimony, Staff and AT&T showed that Verizon didn't even come close to proving its contention. Verizon once again tries to convince the Commission that because it has the burden of proving that it is underearning, it therefore must get the "last word" on the earnings issue. Verizon's Mot., ¶ 5. In fact, Verizon should have made its earnings case last December—it didn't. The complaining parties fairly took the opportunity to use their "last word" to rebut Verizon's case. There is nothing so remarkable about Staff's and ATT's rebuttal as to justify a need for surrebuttal. *See*

Seventh Supplemental Order, ¶ 43 ("The Commission does not lightly grant the opportunity for surrebuttal. In a complaint case, the last word procedurally should be with the complainant, except in rare cases.").

B. The Commission Should Not Reconsider Its Decision to Strike the Surrebuttal Testimony of Dennis B. Trimble

7 As Staff argued in its motion to strike Dennis B. Trimble's surrebuttal testimony, that testimony should have been filed in December 2002. *See* Commission Staff's Motion to Strike Verizon's Surrebuttal Testimony, ¶¶ 17-18. In his surrebuttal testimony, Trimble addresses Staff's and AT&T's position that Verizon should impute to its regulated earnings the revenue generated by its directory publishing business. Exhibit 252-T (DBT-1T) (stricken). Verizon makes the same argument regarding this testimony as it did regarding Heuring's surrebuttal—that this testimony should be allowed because it is earnings testimony raised for the first time in the rebuttal testimony of Staff and AT&T. The Commission should affirm its decision for many of the same reasons it should affirm its decision to strike Heuring's testimony.

8 The Commission properly struck Trimble's surrebuttal testimony. Verizon briefly raised the issue of Yellow Pages imputation in Heuring's direct testimony. Exhibit T-242, at 6. Staff and AT&T properly rebutted this testimony. Verizon had the opportunity to fully discuss imputation in its December 2002 testimony. It is not proper

for Verizon to do so on the eve of hearings. *See* Commission Staff's Motion to Strike Verizon's Surrebuttal Testimony, ¶¶ 17-18.

C. Duane K. Simmons' Surrebuttal Was Properly Stricken

9 In granting Staff's motion to strike Duane K. Simmons' surrebuttal testimony, the Commission implicitly agreed that his testimony is argument, which should be briefed. *See id.*, ¶ 19. In its motion for reconsideration, Verizon does not address this point, rather it lumps this testimony into the argument it made regarding Heuring's and Trimble's surrebuttal testimony. Verizon's Mot., ¶¶ 4-5. The testimony was properly stricken as argument.

D. The Commission's Decision to Strike Portions of Orville Fulp's Surrebuttal Testimony Was Proper

10 Verizon asks the Commission to reconsider its decision to strike portions of Orville Fulp's surrebuttal testimony. Verizon's Mot., ¶ 6. Verizon's justification of its request is its claim that some of Fulp's testimony goes to earnings, and "should be permitted for the same reasons that the surrebuttal testimony of Heuring, Trimble and Simmons should be permitted." However, Verizon's arguments on this point are unpersuasive and the identified portions of Fulp's surrebuttal testimony should remain stricken for the same reasons that the surrebuttal testimony of Heuring, Trimble and Simmons should be stricken. Once again, Verizon had the opportunity to file earnings testimony in December. The Commission should not allow Verizon to "sand bag"

AT&T, Staff, and WorldCom with "evidence that should have been included in the direct case." *See* Seventh Supplemental Order, ¶ 45 & n.1.

E. The Commission Properly Struck Terry Dye's Testimony Regarding the Conversion Factor and Price Floor

11 Verizon requests the Commission to reconsider striking portions of Terry Dye's surrebuttal testimony. Verizon's Mot., ¶ ¶7-8. The Commission should deny that request.

12 Verizon argues that it should have the opportunity to rebut the "conversion factor" adjustment set forth in Timothy Zawislak's rebuttal testimony, because it was not raised in Zawislak's direct testimony. Verizon's Mot., ¶ 7; *see also* Exhibit T-105, at 9-10. However, Zawislak proposed a conversion factor to rebut the conversion factor submitted by Verizon in its December 2002 testimony. Zawislak did not raise a *new* issue in his rebuttal—he simply rebutted an existing one. *See* Exhibit 231C (TRD-2)(Zawislak's conversion factor testimony was in response to this exhibit, which Verizon described in cursory fashion, "Q: What does the imputation study show? A: The study shows that every Verizon toll plan satisfies the Commission's imputation test." Exhibit T-230, at p. 4, ll.16-17.) Therefore, Dye's surrebuttal testimony regarding the conversion factor does not meet the narrow test for surrebuttal testimony, which allows surrebuttal that is "directed toward specific rebuttal testimony that has demonstrably raised new matter in the hearing." Seventh Supplemental Order, ¶ 43.

13 The same can be said of Verizon's argument regarding the need to rebut the rebuttal testimony of Selwyn regarding AT&T's price floor calculation. Verizon's Mot., ¶ 8. Verizon concedes that the identified portions of Dye's surrebuttal do not respond to new issues raised in the rebuttal, but bring correct data into the record. The information Verizon seeks to bring in on surrebuttal is more properly brought into the record on cross-examination. *See* Exhibit T-233, p. 14 , l. 14 through p. 16, l. 2. Verizon retains that opportunity.

CONCLUSION

14 For the foregoing reasons, the Commission should deny Verizon's motion for reconsideration.

Dated: April 21, 2003.

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