

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF)	
THE PACIFIC NORTHWEST,)	DOCKET NO. UT-020406
INC.,)	
)	NINTH SUPPLEMENTAL ORDER
)	
Complainant,)	ORDER DENYING VERIZON'S
v.)	MOTIONS FOR CLARIFICATION
)	OF THE SEVENTH
VERIZON NORTHWEST, INC.,)	SUPPLEMENTAL ORDER AND FOR
)	RECONSIDERATION
Respondent.)	
.....)	

Synopsis: *The Commission denies Verizon's Motions for Clarification and reconsideration of the Seventh Supplemental Order.*

- 1 **NATURE OF 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 far exceed Verizon's cost of providing that access. The Complaint further asserts that Verizon's toll plans are priced below their appropriate imputation costs, and are therefore priced below Verizon's price floor for this competitively classified service. AT&T claims that the gap between Verizon's excessive intrastate switched access rates and predatory pricing of toll services produces a "price squeeze" on Verizon's competitors in toll markets in Washington.

- 2 The parties contested the scope of the proceeding, disagreeing on whether the proceeding should include evidence about the effect of AT&T's complaint, if granted in full, on Verizon's earnings. In the *Fifth Supplemental Order*, the Commission ruled that such evidence was beyond the scope of the complaint. Parties filed six motions relating to the order, seeking clarification, which the Commission resolved in the *Seventh Supplemental Order*.

3 On April 12, 2003, Verizon filed motions for clarification and a motion for reconsideration challenging the *Seventh Supplemental Order*. Verizon seeks to clarify whether the Commission intended to strike the testimony of 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. Parties answered, pursuant to leave from the Commission, on April 21, 2003.

4 **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); Robert W. Cromwell, Jr., assistant attorney general, Seattle, appears as Public Counsel. John O'Rourke, attorney, Spokane, represents The Citizens Utility Alliance Of Washington, Spokane Neighborhood Action Programs (Alliance); and Arthur A. Butler, attorney, Seattle, represents the Washington Electronic Business and Telecommunications Coalition (WeBTEC).

I. MEMORANDUM

A. BACKGROUND

5 The Commission's *Fifth Supplemental Order* of February 21, 2003, determined the scope of this proceeding and ruled on motions to strike and *in limine*. The order also denied Verizon's motions for summary determination, AT&T's petition for interlocutory review, Verizon's motion to file additional testimony and Verizon's motion to continue hearings.

6 On February 25, 2003, Verizon prefiled 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.

7 After the Commission entered its *Fifth Supplemental Order*, the parties filed six pleadings asking clarification of the Order or to strike surrebuttal testimony. The Commission resolved these disputes in the *Seventh Supplemental Order*.

8 On April 12, 2003, Verizon filed motions seeking clarification and reconsideration of the *Seventh Supplemental Order*. On April 21, 2003, the Commission Staff and AT&T answered the motions.

B. ISSUES RAISED

9 Verizon seeks clarification of the scope of provisions of the *Seventh Supplemental Order* striking portions of Verizon's surrebuttal testimony, and asks reconsideration of the order to the extent that it does strike testimony. Verizon also seeks reconsideration of the Commission's decision to strike Verizon's surrebuttal testimony that addresses Staff's "conversion factor" adjustment. Commission Staff opposes the motions.

1) Did the *Seventh Supplemental Order* strike testimony of Nancy Heuring, Dennis B. Trimble and Duane K. Simmons?

10 Verizon states that the order specifically addresses only the prefiled testimony of three witnesses, and states that it does not address the prefiled testimony of Nancy Heuring, Dennis B. Trimble and Duane K. Simmons. Verizon asks clarification of the order. Commission Staff responds that the order is clear.

11 The Commission finds the order to be clear. It stated (at paragraph 46, emphasis added):

[T]he Commission grants the motions to strike Verizon's Surrebuttal testimony *except for the limited portions of testimony indicated below.*"

In addition, the order in paragraphs 46-56 identified the specific portions of testimony that would remain in the record.

12 The Motion for Clarification of the *Seventh Supplemental Order* is denied.

2) Did the *Seventh Supplemental Order* properly strike surrebuttal testimony of Nancy Heuring, Dennis B. Trimble and Duane K. Simmons?

13 Verizon moves for reconsideration, arguing that if the order did strike the testimony, it erred in doing so. Verizon argues that the surrebuttal testimony of witnesses Ms. Heuring, Mr. Trimble, and Mr. Simmons all address the issue of Verizon's earnings, which the Commission has found to be relevant because "[e]arnings testimony may be related to the costs for providing access (access charges may include a contribution to earnings)."¹ Verizon also argues that the testimony addresses matters that were raised for the first time in the rebuttal testimony of Staff and AT&T.

14 **Decision:** The Commission denies the motion. The Commission addressed the basis for excluding the testimony in the *Seventh Supplemental Order*. As Commission Staff points out, Ms. Heuring's surrebuttal testimony merely addresses earnings and does not address how earnings might be related to costs. In addition, Verizon's motion merely mentions Mr. Trimble's testimony and Mr. Simmon's testimony as related to costs, and their testimony is properly excluded. Other matters are adequately addressed in the *Seventh Supplemental Order*.

15 The Commission denies the motion.

3) Did the *Seventh Supplemental Order* Properly Strike Portions of the Surrebuttal Testimony of Orville Fulp?

16 The Commission ruled that portions of Mr. Fulp's prefiled surrebuttal testimony should not be rejected. Verizon argues other portions of his testimony should also be allowed. It contends that the proffered testimony addresses issues that were not raised in AT&T's and Commission Staff's direct testimony.

17 **Decision:** Other parties' rebuttal of limited earnings testimony included in Verizon's direct case is appropriate, is not new material, and does not justify surrebuttal. The *Seventh Supplemental Order* needs no clarification and the Commission will not reconsider its decision. We again reject the identified portions of Mr. Fulp's proposed testimony, for the reasons that are stated in the *Seventh Supplemental Order*.

¹ *Id.* at para. 27.

4) Did the *Seventh Supplemental Order* Properly Strike Portions of the Surrebuttal Testimony of Terry Dye?

18 Verizon seeks reconsideration of the Commission’s decision to strike a portion of Mr. Dye’s surrebuttal testimony that responds to Mr. Zawislak’s “conversion factor” adjustment testimony on behalf of Commission Staff.² This adjustment addresses Verizon’s imputation analysis. Verizon argues that Mr. Zawislak did not raise this adjustment in his direct testimony; and that Mr. Zawislak presented his conversion factor adjustment for the first time in his rebuttal testimony.³ Verizon claims that Mr. Dye’s surrebuttal testimony simply responds to Mr. Zawislak’ rebuttal. In addition, Verizon claims that other portions of Mr. Dye’s surrebuttal (p. 14, line 14-P.16, line 2) correct AT&T’s price floor calculation based upon current usage data provided to the parties.

19 **Decision:** The Commission will not clarify or reconsider the decisions made in its *Seventh Supplemental Order* regarding Mr. Dye’s proposed evidence. Mr. Zawislak did not raise a *new* issue in his rebuttal—he simply responded to the conversion factor that Verizon submitted in its December 2002 testimony.

20 If Verizon’s new data correct an existing proposed Verizon exhibit, then they should be distributed, as soon as available, to other parties and the Commission in a corrected exhibit. *See, WAC 489-09-736 (6)(b), (10)*. If more than correction is proposed, then Verizon may explore whether the information should be included in the record on cross-examination.

II. ORDER

THE COMMISSION ORDERS That:

21 Verizon’s motions for clarification and reconsideration of the *Seventh Supplemental Order* are denied.

² Mr. Dye’s Surrebuttal, page 2, lines 5-9, page 3, line 6, through and including page 8, line 13.

³ Mr. Zawislak’s Rebuttal at page 8.

DATED at Olympia, Washington, and effective this ____th day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner