

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.	)	
	)	
Complainant,	)	Docket No. UT-020406
	)	
v.	)	AT&T SECOND MOTION TO
	)	COMPEL VERIZON TO
VERIZON NORTHWEST INC.,	)	RESPOND TO DATA REQUESTS
	)	AND FOR SANCTIONS
Respondent.	)	
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Pursuant to WAC 480-09-480(7), AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) moves the Commission (1) to compel Verizon Northwest, Inc. (“Verizon”) to respond to data requests and (2) to sanction Verizon for making false statements to the Commission and refusing to comply with Commission requirements.

**MOTION**

1. AT&T propounded its fifth set of data requests on Verizon in this proceeding on February 26, 2003, shortly after Verizon filed its surrebuttal testimony, and requested responses prior to the evidentiary hearings. Verizon did not respond to those data requests. On March 4, 2003, AT&T and Verizon, along with Commission Staff and WorldCom, executed an agreement settling AT&T’s claims, and accordingly all litigation activities – including the obligation to respond to outstanding data requests – were suspended pending Commission review of the settlement agreement. Following additional proceedings, the Parties filed comments with the Commission on April 4, 2003, stating that they had not settled their disputes and requesting hearing dates on the allegations in AT&T’s Complaint. On April 11,

2003, the Commission issued its Eighth Supplemental Order establishing a new procedural schedule.

2. Verizon, however, did not provide responses to AT&T's fifth set of data requests. On April 15, 2003, counsel for AT&T requested such responses, and clarified that in light of the Commission's decision to strike portions of Verizon's surrebuttal testimony, AT&T requested responses to only two of the outstanding requests in its fifth set of data requests. Counsel for Verizon responded that she would investigate.

3. Having received no additional response from Verizon, on April 22, 2003, counsel for AT&T requested an update on the status of Verizon's responses to AT&T's outstanding data requests. After continuing to receive no response, counsel for AT&T again requested information from counsel for Verizon on April 24, 2003. Counsel for Verizon then responded that Verizon would not be providing responses to AT&T's fifth set of data requests. A copy of the electronic mail correspondence on this issue is attached.

4. Verizon refuses to respond to AT&T's data requests because they reference portions of the Surrebuttal Testimony of Orville D. Fulp that the Commission has stricken.

Specifically, those data requests provide:

Data Request No. 70: Reference the Surrebuttal Testimony of Orville D. Fulp at page 5, lines 1, footnote 1, and 15-16: Please identify all marketing and joint marketing services that Verizon Northwest Inc. provided to Verizon Long Distance or any other Verizon affiliate in Washington for calendar year 2002 and identify the amount that Verizon Long Distance or the Verizon affiliate paid to Verizon Northwest Inc. for each service. Please include all contracts, invoices, or other documents quantifying, verifying, or otherwise substantiating those services and the amounts paid.

Data Request No. 71: Reference the Surrebuttal Testimony of Orville D. Fulp at page 6, lines 1-5: Please identify each intraLATA toll service that Verizon Northwest Inc. resold to Verizon Long Distance or any other Verizon affiliate in Washington in calendar year 2002. For each such service, please provide (1) the rate(s) that Verizon Long Distance or Verizon affiliate paid for that service, including all volume, term, or other discounts; and (2) the total number of minutes and amounts that Verizon Long Distance or the Verizon affiliate paid to Verizon Northwest Inc. for that service in calendar year 2002. Please provide copies of all documents that support your response.

5. These data requests specifically reference portions of Verizon's surrebuttal testimony, but the requests actually follow up on Verizon's obligation to provide a response to a prior AT&T data request. AT&T requested the same information requested in Data Requests Nos. 70 and 71 as part of Data Request No. 34, which AT&T propounded to Verizon on September 12, 2002. That data request provides:

Data Request No. 34. Reference Verizon's response to AT&T Data Requests Nos. 14 and 15: Please provide the following information:

a. All services and facilities that Verizon Long Distance, Verizon Enterprise Solutions and Verizon Select Services, Inc., obtain on a resale basis and use to provide toll service to their end-user customers;

b. The rates that Verizon Long Distance, Verizon Enterprise Solutions and Verizon Select Services, Inc., pay for those services and facilities and any terms or conditions that affect those rates (e.g., volume or term discounts);

c. Whether the company(ies) from whom Verizon Long Distance, Verizon Enterprise Solutions and Verizon Select Services, Inc., obtain those services and facilities is(are) affiliated with Verizon;

d. All services and facilities provided, or functions performed, or shared by Verizon Northwest, Inc., to/for/with Verizon Long Distance, Verizon Enterprise Solutions and Verizon Select Services, Inc., related to their provisioning of toll services, including but not limited to operating, installation, and maintenance (“OI&M”), administrative, finance, human resources, legal, and accounting services; and

e. The rates that Verizon Long Distance, Verizon Enterprise Solutions and Verizon Select Services, Inc., pay for each of the services, facilities and functions identified in response to subsection d above, as well as any terms or conditions that affect those rates (e.g., volume or term discounts).

6. Verizon objected to AT&T Data Request No. 34 on the grounds that it was not relevant and that Verizon “could not, and would not, respond to data requests to parties that are not parties to this proceeding, over which Verizon Northwest Inc. has no control.” A copy of Verizon’s response to AT&T Data Request No. 34 is attached to this Motion.

7. AT&T included Data Request No. 34 in its first Motion to Compel filed on December 5, 2002. At the December 19, 2002, hearing on AT&T’s motion, counsel for AT&T expressly addressed the need for the information requested in Data Request No. 34, explaining that AT&T sought information on the services and facilities that Verizon provides to its affiliates that offer intrastate toll services in Washington:

At this point, the data requests that probably most squarely presents or has the most information requested about affiliates is No. 34, in which we’ve asked for the rates, terms, and conditions under which its affiliates provide long distance services since Verizon in response to an earlier data request had stated that its affiliates provide toll service on a resold basis as opposed to a facilities basis, and at this point, *our primary interest is whether the affiliates in the provision of those services are receiving any services from Verizon* or from another affiliate of Verizon from which Verizon also receives

comparable services just to see or compare the extent to which those affiliates are able to obtain services at rates, terms, and conditions that other companies can't.

12/19/02 Tr. at 102, lines 6-21 (emphasis added).

8. Verizon responded that AT&T's requests concerning Verizon's affiliates "are asking for information about separate companies that we do not own or control." *Id.* at 117, lines 5-6. Specifically with respect to Data Request No. 34, counsel for Verizon stated, "Subparts A, B, C, and E all called for the type of affiliate information that we do not possess and we don't control and we should not have to provide." *Id.* at 120, lines 22-25.

9. With respect to the information requested about Verizon's affiliates, Judge Schaer subsequently asked counsel for Verizon, "has your client checked and have you verified that none of these documents are in the possession of Verizon Northwest?" *Id.* at 122, lines 20-22. Counsel for Verizon responded, "If it calls for information about the affiliates, that is correct." *Id.* at 123, lines 16-17. Judge Schaer ruled that Data Request No. 34 and the other data requests to which AT&T sought to compel Verizon to respond are "are relevant for the purposes of discovery" and required "Verizon to provide to AT&T all of the data described in these questions which is within its possession, custody, and control," including confidential documents on file with the Commission. *Id.* at 138, lines 12-13 and 138, line 19, through 139, line 12.

10. Verizon never provided a supplemental response to Data Request No. 34. The prefiled Surrebuttal Testimony of Orville D. Fulp, however, refers to Verizon's provision of joint marketing services to its affiliate Verizon Long Distance ("VLD"):

Services, provided under a Marketing and Sales Agreement

dated 7/31/99 with amendments thereafter, include Sales, Ordering and Customer Inquiry. Examples of services include sales, negotiations, service orders, sales order status inquiry, sales quality control observations and certain post sales product support.

Fulp Surrebuttal at 5, n.1; *see id.* at 5, lines 15-16 (“in Washington, for calendar year 2002, VLD paid Verizon millions of dollars for such marketing services”). In addition, the testimony provided additional information about the rates, terms and conditions under which VLD obtains resold long distance services from Verizon, as well as unaffiliated providers:

When Verizon provides toll services to VLD, VLD pays the same tariffed charges as any other reseller for intraLATA toll. VLD purchases toll from Verizon out of the Verizon intraLATA toll tariff. VLD also resales [*sic*] the interexchange services of unaffiliated facilities-based carriers for its provision of interLATA and intraLATA out-of-franchise toll.

*Id.* at 6.

11. This testimony provides precisely the information that AT&T requested in Data Request No. 34 but which Verizon claimed it did not possess, could not acquire, and thus refused to provide. Verizon, therefore, falsely represented to the Commission that it did not possess, and could not practically obtain, information about the rates, terms, and conditions under which VLD obtains resold toll and other services that enable it to provide intrastate long distance services in Washington. Verizon compounded this misconduct by subsequently refusing to comply with Judge Schaer’s request that Verizon provide such information to AT&T.

12. Rather than make an issue of Verizon’s flouting of the Commission’s discovery rules and requirements, AT&T propounded Data Requests Nos. 70 and 71, which request

further information related to the revelations in Mr. Fulp's surrebuttal testimony. The fact that the Commission struck that portion of the testimony is irrelevant and provides no legitimate basis for refusing to respond to those requests. The critical fact is that Mr. Fulp's surrebuttal testimony represents a public disclosure that Verizon possesses information that AT&T previously requested and that the Commission required Verizon to provide, but which Verizon has represented that it does not possess and has refused to provide. AT&T is entitled to that information, both as a response to Data Request No. 34 and as responses to Data Requests Nos. 70 and 71, regardless of the fact that the referenced portion of Mr. Fulp's surrebuttal testimony cannot be introduced into the evidentiary record.

13. The Commission, moreover, should not condone Verizon's misrepresentations and deliberate attempts to evade AT&T's discovery requests and Judge Schaer's requirement that Verizon provide the requested information. Accordingly, the Commission should sanction Verizon for its misconduct to the maximum extent authorized under RCW 80.04.380.

### **RELIEF REQUESTED**

WHEREFORE, AT&T requests the following relief:

- A. An order from the Commission compelling Verizon to provide responses to AT&T Data Requests numbers 34, 70 and 71;
- B. Sanctions against Verizon for its false representations to the Commission and refusal to comply with Judge Schaer's ruling in the amount of \$1,000 per day beginning on December 19, 2002, through the date on which Verizon corrects its misrepresentations and complies with Judge Schaer's ruling, or in such other amount as the Commission finds appropriate; and

C. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 25th day of April, 2003.

DAVIS WRIGHT TREMAINE LLP  
Attorneys for AT&T Communications of the  
Pacific Northwest, Inc.

By \_\_\_\_\_  
Gregory J. Kopta  
WSBA No. 20519