

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.,)	Docket No. UT-020406
)	
Complainant,)	RESPONSE OF VERIZON NORTHWEST INC. TO AT&T'S SECOND MOTION TO COMPEL VERIZON TO RESPOND TO DATA REQUESTS AND FOR SANCTIONS
vs.)	
)	
VERIZON NORTHWEST INC.,)	
)	
Respondent.)	

Verizon Northwest, Inc. (“Verizon”) opposes the AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) Motion to Compel Verizon to Respond to Data Requests and for Sanctions for several reasons, as stated below.

1. AT&T never communicated with Verizon on DR 34 as agreed at the December 19, 2002 hearing.

AT&T paints a distorted, erroneous picture of what transpired at the December 19, 2002 hearing on its first Motion to Compel. At that hearing, counsel for Verizon explained to ALJ Schaer that much of what was requested related to non-party, affiliated companies other than the respondent in this case, Verizon Northwest, Inc. At the December 19, 2002 hearing, counsel for Verizon and AT&T had a substantial discussion off the record about how Verizon might work out a response to AT&T’s requests. Counsel for Verizon explained that the way Data Request 34 (“DR”) was phrased was problematic because sub-parts (a)(b)(c) and (e) seemed to call for

the production of information from affiliates, with no seeming connection to Verizon Northwest, Inc. Counsel for AT&T agreed to re-phrase the question and Verizon agreed it would then provide the information it could provide and AT&T would subpoena information from affiliates, if necessary. Indeed, after the hearing, Verizon went back, conducted further investigation and did provide information about its affiliates in response to AT&T Data Requests 6, 16, 17, 18, 20, 21 and 23. The only outstanding request was DR 34. Verizon did not respond to DR 34 because counsel for AT&T never rephrased that question or indicated in any way that its current Data Request Nos. 70 and 71 related to AT&T DR 34. The transcript discloses that counsel for Verizon and AT&T agreed to work out issues associated with particular questions such as DR 34. Mr. Kopta stated:

I think that you've accurately summarized our discussions off the record and I think the results of those discussions as well. Based on the general decision that you have just made, the parties have discussed each of the individual outstanding data requests and I believe have come to an understanding at this point of the type of information that either will be provided or at least will be investigated to the extent that that is possible to determine whether Verizon has or practically can obtain the information that's requested, and so at this time, there is no need for you to make any ruling on a specific outstanding data request.

Given the lack of follow-through on DR 34 from AT&T, it is completely disingenuous for AT&T to claim that Verizon has refused to provide a response to DR 34, when Verizon was operating with the understanding that it would not have to respond until it heard from AT&T.

This is consistent with the ultimate resolution at the December 19, 2002 hearing at which time the ALJ did not make a specific ruling compelling any specific response to any data request. Verizon's subsequent supplementation of responses to DR's 6, 16, 17, 18, 20, 21 and 23 shows that it was working in good faith to provide affiliate information to AT&T.

At no time did counsel for AT&T advise Verizon that DR's 70 and 71 were related to DR 34. (See Attachment A) Indeed, these DR's relate to stricken testimony and it was on that basis that Verizon objected. In sum, there is no basis upon which to find Verizon to be noncompliant with any Commission rule or order. Certainly Verizon's conduct does not constitute a "flouting of Commission's discovery rules and requirements" as AT&T alleges in its motion (p. 7).

2. Verizon has made no false representations to the Commission.

At the hearing Counsel for Verizon was operating upon the understanding that Verizon Northwest Inc. did not have actual possession of affiliate documents at its Northwest headquarters. However, a review of the transcript of the December 19, 2002 hearing demonstrates that counsel for Verizon agreed to further inquire whether the requested information could be obtained on behalf of Verizon Northwest Inc. from affiliated sources located elsewhere. (TR 130, ll. 10-14) (TR 133, ll. 14-17)

Verizon made no false representations to the Commission and, in fact, supplemented its discovery responses upon further inquiry and investigation, as promised at the hearing. Given AT&T's failure to rephrase DR34, as agreed to, Verizon cannot be accused of misrepresentation in connection with a supplemental response to DR34, which it was not asked to make. Clearly given Verizon's supplementation of its discovery responses on affiliates, further inquiries were made outside of Verizon Northwest, Inc. In addition, counsel for Verizon was candid when asked about the existence of affiliate agreements on file with the Commission, stating, "I don't know" (TR 0126, ll. 24-25).

3. AT&T had within its possession some discovery information it claims Verizon withheld.

AT&T claims Verizon has withheld information about Verizon's joint marketing arrangements. In fact, as demonstrated by Attachment B, Dr. Selwyn obtained Verizon's affiliate Sales and Marketing Agreement, including rates, from publicly available sources. The Marketing and Sales Agreement referred to by Mr. Fulp in his stricken surrebuttal testimony has been provided fully to AT&T, in response to DR No. 70 and Verizon has advised AT&T that it will provide a response to DR No. 71 this week. AT&T phrased its data requests by tying them to specific testimony that was stricken. Initially, Verizon objected because their data requests related to stricken testimony. Verizon was only advised of the alleged "linkage" with DR34 in AT&T's second motion to compel.

Having agreed to provide the information Verizon was asked to provide, this motion

should have been dropped. Nonetheless, AT&T pushes its groundless hyperbolic claim for sanctions when it has not come before this Commission without some responsibility for its own failure to communicate.

In sum, there is no basis for any order compelling responses to DR 70 and 71, or DR 34, which is satisfied by Verizon's responses to DR's 70 and 71, or for any sanctions.

DATED this _____ day of April, 2003.

GRAHAM & DUNN PC

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