

[Service Date May 6, 2003]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

AT&T COMMUNICATIONS OF)	
THE PACIFIC NORTHWEST,)	DOCKET NO. UT-020406
INC.,)	
)	TENTH SUPPLEMENTAL ORDER
Complainant,)	
v.)	ORDER DENYING MOTION FOR
)	RECONSIDERATION; DEFERRING
VERIZON NORTHWEST, INC.,)	MOTION TO DISMISS
)	
Respondent.)	
.....)	

1 This matter was brought on upon a complaint by AT&T of the Pacific Northwest, Inc., against Verizon Northwest, Inc., alleging that Verizon’s access charges are improper. A history of process to date is set out in the nine prior orders in this docket. The hearing on the merits of the complaint is set to begin shortly, on Wednesday, May 7, 2003. This order addresses Verizon’s motion for reconsideration of the Ninth Supplemental Order filed on April 25, 2003, and Verizon’s motion to dismiss the complaint, filed on April 29, 2003.

Motion for Reconsideration.

2 The Fifth, Seventh, and Ninth supplemental orders in this docket dealt with the scope and content of surrebuttal. The Commission ordered in the Seventh Order and confirmed in the Ninth Order—on review of Verizon’s motion to clarify or reconsider the Seventh Order—that in the posture of this proceeding, surrebuttal must be confined strictly to responses to new material arising in rebuttal. Verizon seeks reconsideration of that order in a motion filed April 28, 2003. AT&T responds that there is no error or lack of clarity when the Seventh and Ninth orders are read together, and that in light of the two consistent orders the motion should be denied.

3 First, we note that Commission rules permit reconsideration only of final orders.
The Ninth order is not a final order, and we reject the motion to reconsider it.

4 Nonetheless, to ensure that there is no patent error of law or fact expressed in the
order and that no inadvertent manifest injustice results from the Ninth Order, we
examine the contentions of the petition on our own motion. On examination, we
find that there is no error of law or fact in the Ninth Order and, as AT&T
suggests, that the result is clear and without error. The Commission makes no
change to its Ninth Supplemental Order.

Motion to Dismiss.

5 Verizon moved on April 29, 2003, to dismiss all of AT&T's and Staff's claims that
"above-cost" access charges are unlawful, unreasonable, or anti-competitive, and
asks the Commission to refine the scope of the case so that the *only* issue is
whether Verizon's toll rates pass imputation. It observes that the complaint is
predicated upon the existence of improper rate levels for access charges, that is,
the fee that Verizon charges interexchange or "long distance" carriers to
transport its customers' traffic between their homes or businesses and the
interexchange carrier's switch. Verizon calls attention to the decision of the
Supreme Court of the State of Washington on March 6, 2003, in *Wash. Indep. Tel.*
Ass'n v. Wash. Util. & Transp. Comm'n, ___ *Wa.2d* ___, 64 *P.3d* 606, 2003 *Wash.*
LEXIS 147 (Wash. 2003). There, the Court reversed the Court of Appeals, and
reinstated a Superior Court that upheld Commission rule WAC 480-120-540.
Verizon contends that its access rates fall within the range permitted by the rule,
and that with the reinstatement of the rule there is no basis to find its rates
improper.

6 This matter was discussed at a prehearing conference held May 1, 2003. Other
parties called attention to the short notice, to the efforts parties are expending to
prepare for the hearing on the merits, set to begin on May 7, and to their
concerns that the scope of the motion requires a careful and studied response.
They asked the Commission to allow the parties to brief the matter with their
briefs on the merits, and that it defer a ruling on the motion until the
Commission's ruling on the merits.

7 The Commission will defer a ruling on the motion to dismiss. Arguments on the motion may be informed by evidence received during the hearing, and the Commission should have the benefit of any pertinent record when it makes its decision. There is no severe prejudice caused by a delay; no options are foreclosed thereby. Finally, even if the Commission finds that Verizon's contention is true and the access charge rates are within permissible parameters of the rule that does not resolve all of the contentions in the complaint.

8 For these reasons, the Commission will defer a ruling on Verizon's motion until the time of the decision on the merits. Parties may address this matter in conjunction with post-hearing process on the merits.

Conclusion.

9 The Commission rejects the motion for reconsideration of the Ninth Supplemental Order, and it defers a ruling on Verizon's motion to dismiss the complaint.

DATED at Olympia, Washington, and effective this 6th day of May 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner