

BEFORE THE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET UT-090073
Complainant,)	
)	
v.)	ANSWER
)	
VERIZON NORTHWEST INC.,)	
)	
Respondent.)	
_____)	

Verizon Northwest Inc. ("Verizon") provides the following Answer to the Commission's Complaint ("Complaint") in the above-referenced docket.

ANSWER

1. Verizon neither admits nor denies the statement in paragraph 1 of the Complaint.
2. As to the statement in paragraph 2, Verizon admits that the Commission Staff (or "Staff") has conducted investigations into the business practices of Verizon, but lacks sufficient personal knowledge to admit or deny how many investigations were undertaken since October 2005.
3. In response to paragraph 3, Verizon lacks sufficient personal knowledge to admit or deny what Staff reviewed in its preliminary investigation. Staff's report summarizing its investigation findings speaks for itself, but Verizon denies allegations that it violated Commission rules or intentionally provided customers with "misleading" information. Verizon admits that the Staff notified Verizon about what Staff perceived to

be rule violations, and that the Staff and Verizon met to discuss Staff's perceived findings in the preliminary investigation.

4. Verizon admits that the Washington Telephone Assistance Program ("WTAP") is designed to help low-income households afford access to local telephone service, and is administered by the Washington Department of Social and Health Services. The statutes and rules cited in paragraph 4 speak for themselves. Verizon admits that WTAP rates are set forth in a tariff on file with the Commission.

5. Verizon admits that Staff conducted an investigation in 2007, and that Verizon and Staff agreed to what was described as a "compliance plan" covering the time period November 2007 through May 2008. Verizon also admits that Verizon provided monthly reports of certain performance measure statistics to Staff. Staff's report summarizing its investigation findings speaks for itself, but Verizon denies allegations that Verizon failed to comply with Commission rules, and denies the remaining allegations in paragraph 5.

6. Verizon admits that Staff reviewed and documented the results of the "compliance plan" after its time period was completed. Staff's report summarizing its investigation findings speaks for itself, but Verizon denies allegations that Verizon failed to comply with Commission rules and state statutes, failed to substantially improve its customer service and that the Commission received "numerous" customer complaints related to WTAP service. Verizon denies the remaining allegations in paragraph 6.

7. In response to paragraph 7, Verizon admits that Staff shared its perceived findings with Verizon representatives at a meeting in June 2008. Verizon further admits

that it informed Staff that it intended to continue to make efforts to provide quality customer service.

8. Verizon lacks sufficient personal knowledge to admit or deny when Staff opened the investigation referred to in paragraph 8, what the Staff intended to determine in the investigation or what the Staff reviewed.

9. Staff's report summarizing its investigation findings speaks for itself, but Verizon denies allegations that "many customers" alleged that Verizon failed to properly process WTAP applications and/or were not properly billed. Verizon further denies that Verizon failed to comply with Commission rules and state statutes, and denies the remaining allegations set forth in paragraph 9.

10. Verizon admits that in certain cases, it billed the taxes of cities to particular customers Verizon reasonably and in good faith believed resided in those cities and remitted the proceeds to the cities. Verizon further admits that when it determined (either through discussions with the customer, Commission Staff or both, or through follow-up regarding accounts of other customers after having such discussions) that city taxes were not applicable to a very small number of customers who did not live within the city limits, it corrected those billings and issued refunds to the customers. Verizon denies the remaining allegations in paragraph 10.

11. In response to paragraph 11, Verizon lacks sufficient personal knowledge to admit or deny when Staff completed its investigation. The staff investigation report speaks for itself.

12. The statute cited in paragraph 12 speaks for itself, and Verizon denies any allegations in paragraph 12 that are inconsistent with that statute.

13. Verizon admits the allegations in paragraph 13.
14. Verizon admits the allegations in paragraph 14.
15. The statutes cited in paragraph 15 speak for themselves. As to the reference to WAC 480-120, Verizon denies that a Commission rule can confer jurisdiction.
16. Verizon realleges its answers contained in paragraphs 2 through 15 above.
17. The statute cited in paragraph 17 speaks for itself, and Verizon denies any allegations in paragraph 17 that are inconsistent with that statute.
18. Verizon's tariff provisions addressing WTAP speak for themselves, and Verizon denies any allegations in paragraph 18 that are inconsistent with those provisions.
19. Verizon denies the allegations in paragraph 19.
20. Verizon's tariff provisions addressing municipal tax rates speak for themselves, and Verizon denies any allegations in paragraph 20 that are inconsistent with those provisions.
21. Verizon denies the allegations in paragraph 21.
22. The statute cited in paragraph 22 speaks for itself, and Verizon denies any allegations in paragraph 22 that are inconsistent with that statute.
23. Verizon denies that the Commission should make the findings alleged in paragraph 23.
24. Verizon denies that any monetary penalties should be imposed on Verizon as alleged in paragraph 24.

25. Verizon denies the allegation in paragraph 25 that any other or further relief is appropriate under the circumstances.

26. The Commission's finding that probable cause exists to issue the Complaint is an issue of law and thus is not subject to admission or denial.

27. The remaining paragraphs in the Complaint provide notice of a prehearing conference and other information that are not allegations subject to admission or denial.

AFFIRMATIVE DEFENSES

28. Failure to State a Claim: No "compensation" under RCW 80.36.130. The Complaint alleges violations of RCW 80.36.130, which specifies that "no telecommunications company shall charge, demand, collect or receive different *compensation for any service rendered* or to be rendered than the charge applicable to such service" (emphasis added). The charges at issue, however, do not amount to *compensation* to Verizon for services rendered: (i) the tax charges applied are passed through directly to the relevant city, and are not retained by Verizon and (ii) the foregone revenue related to the WTAP program (i.e., the difference between local service exchange rates and WTAP rates/credits for a customer subscribing to stand-alone local service) is reimbursed to Verizon through the WTAP system. Thus, the rates and charges at issue in the complaint do not reflect "compensation" to Verizon for services rendered, and the Complaint fails to state a claim under RCW 80.36.130 for which relief may be granted.

29. Failure to State a Claim: No "services rendered" under RCW 80.36.130. With regard to the city tax allegations, there also was no "*service rendered*" as that

phrase is used in RCW 80.36.130: the relevant charges were taxes imposed on behalf of – and passed through to – cities. They do not constitute “compensation for *services rendered*” under RCW 80.36.130 (emphasis added), as no service was rendered by Verizon in exchange for the payment of the fee.

30. Failure to State a Claim: Customers Were Billed Applicable Tariff Charges. In addition, the Complaint fails to state a claim for which relief may be granted under RCW 80.36.130 because through establishment of refunds and credits, applicable tariffed WTAP and city tax rates were ultimately billed to the customers referred to in the Complaint. There is a specific remedy for customers not charged an applicable tariff rate, which is to seek a refund under RCW 80.04.230. That remedy is not at issue or appropriate here, as the customers referred to in the complaint were – through credits and refunds – billed applicable tariff rates.

31. Failure to State a Claim: Appropriate Charges for Service Were Actually Provided. RCW 80.36.130 is designed to ensure that tariffed rates are applied to tariffed services. As to allegations in the Complaint regarding WTAP complaints, Verizon in all cases billed tariffed rates for the services Verizon provided: local exchange services. In certain cases, Verizon may have provided the incorrect service (local exchange service rather than WTAP service), but it always applied the tariffed rate applicable to the service it provided. Once Verizon understood that certain customers should instead be provided with a different service (WTAP service), the customers were charged the WTAP service rates and credited as though they had received that service back to the appropriate date. Thus, no claim for billing non-tariffed rates under RCW 80.36.130 was stated such that relief could be given.

32. Time-Barred. A number of the alleged violations, including those related to city tax billings from more than two years ago, are time barred. That is so whether the applicable statute of limitations is RCW 4.16.100(2) or RCW 80.04.240, both of which apply a two-year limit.

33. Lack of Due Process/Excessive Fine: Constitution. Imposition of monetary penalties that are not reasonably proportional to an overcharge as Staff has proposed would be a violation of due process under the Fourteenth Amendment to the United States Constitution and an excessive fine prohibited under Article I, Section 14 of the Constitution of the State of Washington.

34. Excessive Fine: Commission Precedent. Imposition of monetary penalties of the type recommended by Staff would violate Commission precedent, as the Commission orders much lighter penalties when, as here, the “carrier did not profit” from the alleged conduct. *See, e.g., Yakima Valley Disposal*, Order M.V.G. NO. 1360, Hearing NO. H-4975 (October 12, 1988) at *7 (reducing a fine recommended by an administrative law judge by 50%, and rejecting an intervenor’s argument that customer refunds be issued, when a company passed on increases in dumping fees to its customers). The Commission found that a penalty should not be “so large as to impose a crushing penalty for an unintentional violation.” *Id.*¹ That is similar to the case here, where any alleged misconduct by Verizon was unintentional and did not profit Verizon. Moreover, here – as opposed to the case in *Yakima Valley Disposal* – Verizon refunded

¹ *See also* MCImetro Access Transmission Services, Inc. v. US West Communications, Inc., Docket No. UT-971063 (February 1999) at 35 (citing whether “the offending conduct was knowing or intentional” or “gross or malicious” as two of a number of criteria to be considered in whether penalties should be assessed).

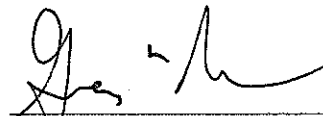
and credited any customer that was incorrectly assessed an inapplicable tax rate or charged for the wrong service.

WHEREFORE, Verizon respectfully requests that the Commission find that Verizon is not liable for any monetary penalties, sanction, or other relief under the circumstances presented and that the Commission dismiss the Complaint.

Dated this 7th day of April, 2009

VERIZON NORTHWEST INC.

By:



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