BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainant, v. VERIZON NORTHWEST, INC., Respondents.	DOCKET NO. UT-020406 COMMISSION STAFF'S ANSWER IN OPPOSITION TO VERIZON NORTHWEST'S MOTION TO DISMISS

On April 25, 2002, Verizon filed a motion to dismiss AT&T's complaint in this docket. Commission Staff opposes this motion for the reasons set forth below.

A. The Complaint Should Not Be Dismissed as "Single-Issue Ratemaking"

Verizon contends that the complaint must be rejected because it constitutes single-issue ratemaking. Although the Commission did dismiss a previous complaint brought by MCI against GTE (Verizon's predecessor) on this basis, Staff urges the Commission not to do so here. First, the Commission's statement cited by Verizon is that it "*generally* will not engage in single issue or 'piecemeal' ratemaking." (Verizon Motion to Dismiss, at 3, citing *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, Docket No. UT-970653, Second

Supplemental Order Dismissing Complaint., October 22, 1997, at 7.) (Emphasis Added.) While the level of Verizon's access charges might be considered a "single issue,"--depending on the evidence relied upon to justify them--it would be a very large and significant "single issue." Access charges are implicated in virtually every significant policy issue relating to telecommunications, including universal service, local competition, toll charges, and local calling areas.

Verizon suggests that AT&T must offer offsetting increases in toll charges or other rates to avoid having its complaint fall into a "single-issue" trap. Staff disagrees that the complainant has such an obligation, but Verizon's argument demonstrates that the question of whether this case will be "single-issue ratemaking" may depend on what evidence and arguments are presented by the parties. Verizon's case could include not just a stand-alone justification of its access charges but also an explanation of why it believes that any decrease in access charges must be offset by increases elsewhere. This defense might well include evidence of Verizon's overall profit levels on Washington intrastate investment and services, if Verizon believes that offsets are necessary to preserve its opportunity to earn a reasonable return.

Second, Staff does not agree with Verizon's assertion that "[t]he MCI case is directly on point." Verizon Motion to Dismiss at 4. The Commission there pointed out that "MCI does not allege that GTE's access rates violate any statute or Commission order. MCI does not contend that GTE's access rates are unfair, unjust, or unreasonable under the current Commission-approved structure for intrastate rates." Second Supp. Order at 6. Here, by contrast, AT&T alleges that Verizon's access charges violate RCW 80.36.186 (unreasonable prejudice or

competitive disadvantage), RCW 80.36.180 (undue discrimination), the Commission's imputation requirements set forth in prior orders, and federal statutes. This makes the present case quite different from the "single-issue ratemaking" case the Commission considered in *MCI v. GTE*.

Furthermore, it is ironic that Verizon would cite dismissal of *MCI v. GTE* case as precedent for dismissal of AT&T's complaint, because the reality is that *MCI*, and the events that followed, strongly support the proposition that this complaint should be heard. MCI complained against the access charges of GTE Northwest (Verizon's predecessor) on April 15, 1997. On August 8, 1997, AT&T petitioned the Commission to investigate universal service and access charges of all local exchange companies (Docket No. UT-970325). The Commission chose to pursue access charge issues in the broad rulemaking setting provided by the AT&T petition, rather than address access charges on a company-by-company basis as represented by the MCI complaint:

> An appropriate forum for addressing the issues raised by MCI in this filing would be Docket No. UT-970325. That docket was commenced by an AT&T petition for a Commission investigation into universal service preservation and access charge reform. On October 8, 1997, the Commission directed the Commission Secretary to commence a Commission investigation, via the rulemaking process, to address universal service and access charge reform at the Washington intrastate level. MCI will have the opportunity to participate in that proceeding. (Second Supplemental Order Dismissing Complaint, Docket No. UT-970653, Oct. 22, 1997, at 6-7)

The Commission then proceeded to adopt a comprehensive access charge reform rule that reconciled the competing objectives of competition and universal service. The rule, WAC 480-120-540, allowed incumbent local companies such as Verizon to avoid mandated access charge

reductions of the type advocated by MCI and AT&T, but it limited the permissible charges on terminating access service to the actual cost of the service plus authorized universal service amounts.

The irony is that Verizon, which now argues against the company-by-company approach, successfully challenged the Commission's broad, industry-wide, policy-oriented approach in the Court of Appeals. *WITA v. WUTC,* 110 Wn. App. 147 (Feb. 1, 2002). (The Commission is currently seeking State Supreme Court review of the case.) Verizon's challenge to the rule was based on the proposition that access charges could be set only by complaint, yet when the complaint surfaces, Verizon argues that a complaint is not the right vehicle. It is unclear from Verizon's motion what sort of procedural approach, if any, is acceptable when one believes that access charges are excessive and anti-competitive.

For these reasons, Staff believes that Verizon's plea to dismiss the AT&T complaint as "single-issue ratemaking" is not well taken.

B. AT&T May Complain Against Verizon Under RCW 80.04.110(1)

Verizon contends that AT&T's complaint "fails to state a claim under state law." This contention, in Staff's view, is based on an unduly cramped and incorrect reading of RCW 80.04.110. According to Verizon, that statute permits one public service company to complain only as to the *rates* of another company "with or in respect to which the complainant is in competition." But this is not what the statute says. It provides in relevant part:

> PROVIDED, FURTHER, That when two or more public service corporations . . . are engaged in competition in any locality or localities in the state, either may make complaint *against the other or others* that the rates, charges, rules, regulations or practices *of such other or others with or in respect to which the*

> *complainant is in competition*, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly . . . [.]

(Emphasis added.) RCW 80.04.110 permits one company (AT&T) to complain against another company with which it is in competition (Verizon), as to the latter company's rates or charges. That is what AT&T has done here.

Furthermore, it is unclear exactly what policy objectives would be served by Verizon's unnecessarily restrictive reading of the statute. Access charges—which, as Staff has previously pointed out, are implicated in virtually every significant policy issue relating to telecommunications—would be immune to challenge from the very companies they directly affect. Nothing suggests that the Legislature, in crafting RCW 80.04.110, intended such an unlikely result. The Commission should, therefore, reject Verizon's reading of the statute.

C. The GTE/Bell Atlantic *Merger Order* Does Not Protect Verizon From a Complaint Against Excessive Rates

Verizon also claims that the Commission's order approving the merger of GTE and Bell Atlantic bars a complaint against Verizon's access rates. Verizon notes that the merger order also resolved an investigation of its earnings level and a Commission complaint against its access charges. The merger order required Verizon to reduce its access charges, and the Commission concluded that the resulting rates would be fair, just and reasonable.

Verizon reads far too much into the Commission's determination that Verizon's rates were fair, just, and reasonable. Verizon apparently interprets this conclusion as being valid forever, but it plainly is not. The Commission concluded that the rate changes would result in fair, just, and reasonable rates, but that was not a forward-looking conclusion. The terms of the merger

settlement among Staff, Public Counsel, and the merging companies do preclude rate decreases for a period of time, but that limitation expires on July 1, 2002. AT&T's complaint therefore is not an attack on the terms of the merger order but is instead entirely consistent with the premise that the reasonableness of Verizon's rates could and should be reviewed as early as mid-2002.

D. The Commission Should Hear AT&T's Arguments With Respect to Federal Law

Verizon contends that AT&T is incorrect in claiming that Verizon's access charges violate federal law. AT&T claims that Verizon violates sections 251(c)(2)(D), 252(d)(2) of the federal telecommunications act by charging more than cost for access services. AT&T further contends that Verizon's rates result in a price squeeze in violation of section 253(a) of the Act. Verizon counters that the FCC has concluded that access charges are not required to equal local interconnection rates. While Staff is skeptical of AT&T's arguments on these points, Staff does not believe the arguments should be summarily dismissed. The Commission should consider them on the merits. More significantly, Verizon has not even addressed AT&T's other federal law claim, which is that Verizon is violating section 254(f) by recovering universal service costs in a way that is not equitable and nondiscriminatory from all telecommunications carriers. It remains to be seen whether this claim is valid, but it should be considered by the Commission.

E. The Commission Should Evaluate AT&T's Imputation Claim Based on the Evidence

Verizon claims that AT&T's imputation analysis is flawed, but the complaint cannot be dismissed on this basis. Both AT&T and Verizon make factual allegations supporting their opposing positions. The Commission should wait to hear the evidence and make its decision based on that evidence. AT&T's complaint should not be granted based on the mere assertion of

a price squeeze, but it should not be dismissed based on an equally unsupported assertion by Verizon to the contrary.

F. AT&T Does Not Have to Be Priced Out of the Long-Distance Business for Verizon's Access Rates to be Found Unjust

Verizon asks the Commission to dismiss AT&T's complaint based on the fact that AT&T is still offering long-distance service. This is an unreasonable standard and should be rejected. If Verizon's access rates are unjust and unreasonable, then AT&T and other toll providers are harmed, because they are captive customers being charged excessive rates.

G. The Verizon Long Distance Issues are Irrelevant to a Motion to Dismiss

Verizon contends that AT&T's complaint makes allegations against Verizon Long Distance and that these allegations must be ignored. While this response may well be appropriate in Verizon's answer, it is irrelevant to the motion to dismiss. The complaint does not mention Verizon Long Distance by name, and Verizon does not dispute that the complaint makes allegations against the respondent, Verizon Northwest, Inc. Verizon claims that the long-distance company is separate, but it does not claim that the two companies operate independently. These issues should be developed and resolved in the complaint proceeding.

DATED this 17th day of May, 2002.

CHRISTINE O. GREGOIRE
Attorney General

_____

GREGORY J. TRAUTMAN
Assistant Attorney General