[Service Date June 28, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MCI TELECOMMUNICATIONS CORPORATION AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,	)	DOCKET NO. UT-970658
Complainants,	)	EIGHTH SUPPLEMENTAL ORDER DIRECTING GTE NORTHWEST, INC., TO MAKE REFUNDS
v.	)	
US WEST COMMUNICATIONS, INC., GTE NORTHWEST, INC., AND UNITED TELEPHONE COMPANY OF THE NORTHWEST,	)	
Respondents.	)	
. . . . .	)	

1 ***SYNOPSIS:*** *The Commission approves a refund amount of $3,154,971, as of March 15, 2002, and the methodology described for calculating additional interest provided in the parties' Stipulation. The Commission will not require Verizon to make additional refunds based on the period beginning July 1, 2001, nor will the Commission require Verizon to reduce its intrastate access charges on a going-forward basis.*

2 **NATURE OF PROCEEDING:** On March 23, 1999, the Commission entered its Fifth Supplemental Order in this proceeding resolving issues of compliance by GTE Northwest, Inc. (now "Verizon") and U S WEST Communications, Inc. (now "Qwest") with requirements of the Telecommunications Act of 1996 (the Act) relating to charges for payphone operations. That order requires Verizon to submit a compliance filing to the Commission to remove subsidies from the Company's regulated operations, and to reduce certain rates retroactively to April 15, 1997. The Fifth Supplemental Order was appealed to the Superior Court and, subsequently, to the Court of Appeals, Division I. The parties agreed to stay the effectiveness of the Fifth Supplemental Order in both the Superior Court and Court

of Appeals, until decisions were received from those courts. At each level, the Commission's decision was affirmed. The Court of Appeals issued its mandate returning the case to the Commission on January 4, 2002.

3 On February 6, 2002, Qwest made a filing to comply with the Fifth Supplemental Order (with a March 8, 2002, effective date). That filing was rejected in the Sixth Supplemental Order because the filing did not make clear that it met all terms of the Fifth Supplemental Order. The parties were able to negotiate an agreed order with US WEST (Qwest), and its refunds and tariff reduction filing were approved by the 7th Supplemental Order in this matter, entered on May 1, 2002.

4 Also on February 6, 2002, Verizon filed with the Commission a letter "to explain" Verizon's Compliance with the Fifth Supplemental Order. The letter indicated that the Fifth Supplemental Order required GTE to file tariffs reflecting a reduction in its terminating intrastate CCL Rate Element by $564,076. Verizon claimed full compliance with the order because it had reduced its terminating CCL to zero effective December 21, 1998, by advice No. 862. Verizon also told the Commission that it had refunded $1,554,396 to 49 purchasers of terminating CCL based on the billed amount as of April 1997 through December 31, 1998. Those refunds were made by November 15, 2001. The letter went on to say that Verizon would make an additional refund of $1,600,575 to purchasers of originating CCL based on their bill amounts between December 31, 1998 and July 1, 2001, including interest at 12%. The letter asked the Commission to enter a compliance order approving the arrangements described in its letter.

5 On February 13, 2002, the Commission Secretary asked for comments on the Verizon letter. On February 26, 2002, MCI and AT&T filed comments opposing the resolution sought in the letter. MCI and AT&T argued:

- Verizon's letter is not a compliance filing in form or substance.
- Verizon tried its case and lost four times.
- The Verizon letter asserts two alternative claims to have previously complied with the Order based on other, unrelated dockets while it was still appealing the Order, but Verizon did not serve Advice Nos. 862, 918 and 990 on the parties in this docket.
- Verizon's prior filings were not compliance filings in substance because 1) they were not limited to accomplishing the requirements of the Fifth

Supplemental Order and 2) they did not in fact comply with the Fifth Supplemental Order.

- Verizon's assertion that Advice Nos. 918 and 990 resolved this case is tantamount to asserting that AT&T and MCI are bound by a merger settlement agreement, even though they were not parties to that agreement and had no notice that the settlement in the dockets listed in the Merger Settlement Agreement would have a binding effect on them in this Docket.
- The Commission should direct Verizon to file tariff revisions bearing an effective date of April 15, 1997, and to make and serve the filing, with all work papers, in strict accordance with WAC 480-09-340.
- The Commission should find that Verizon's failure to comply with the Fifth Supplemental Order was willful and based on a frivolous excuse, and levy fines under RCW480-04-380 for willful failure to comply with the Fifth Supplemental Order at the rate of $1,000 per day, per access customer affected, for each day from February 4, 2002, until Verizon makes the tariff filing they seek.

6 On February 26, 2002, the Commission Staff filed comments on the Verizon filing. Staff argued:

- Due to the stay of the Fifth Supplemental Order during the court review process and the imposition of interest on the outstanding rate reductions (resulting in refunds), as well as the passage of so much time in which the company's tariffs have not remained static, the calculation of the appropriate amount of the refund has become rather complex.
- Verizon has made several rate reductions to its terminating switched access charges over the past three years.
- Verizon did reduce its terminating intrastate CCL rate element to zero on December 21, 1998, but it shifted the revenues formerly collected through that rate element to its newly created "Interim Terminating Access Charge" (ITAC) rate element, which resulted in no actual decrease.
- On April 1, 1999, Verizon shifted some of the ITAC over to originating intrastate CCL rate elements, still on a revenue neutral basis.
- If Verizon attempts to reinstate the terminating CCL rate pursuant to the merger agreement, then the reduction ordered in the Fifth Supplemental Order should be taken out of the reinstated terminating CCL rate.

- If Verizon does not reinstate that rate, Verizon's proposal, as outlined in its letter of February 6, 2002, is a reasonable way to resolve the issue of compliance.
- It wasn't until July 1, 2001, that Verizon actually reduced its CCL rate elements without any offsetting switched access increases. This reduction was made pursuant to the Merger Settlement Agreement and the Commission's Order approving that agreement.
- The reduction resulted in a reduction in Verizon's access charge revenues in the approximate amount of $7 million.
- The Commission concluded in the merger docket that the rates, charges and revenues produced under the terms of the Settlement Agreement are just, reasonable, and sufficient, citing RCW 80.28.020.
- Verizon's rates continued to subsidize its payphones until the rate reductions took effect on July 1, 2001.
- In certain negotiations with Verizon, Verizon agreed to extend refunds to July 1, 2001, and the Commission should accept this resolution, rather than requiring a specific tariff filing.
- By July 1, 2001, all of the Merger docket revenue decreases were complete, and the payphone subsidy removed.
- The Commission should accept Verizon's total refund offer of approximately $3.15 million, subject to checking its work papers on how the refund is allocated to customers.

7 A prehearing conference was held on April 2, 2002, for the purpose of determining the feasibility of a settlement, or formulating the issues in the proceeding and determining other matters to aid in its disposition. WAC 480-09-460. At the hearing Verizon restated the points in its February 6, 2002, letter giving the reasons it believes it is in compliance with the Fifth Supplemental Order. Verizon indicated:

- Refunds of $1.554 million were accomplished by November 15, 2001.
- An additional $1,600,575 will be refunded if the Commission issues an order approving or entering a finding that Verizon is in compliance and concluding this docket.
- Verizon will not enter into any agreement to make any further access charge reductions.

- The Commission would have to reopen the Fifth Supplemental Order to make a reduction in a rate element other than the terminating CCL.

8 AT&T and MCI restated the points made in their February 26, 2002, comments. Commission Staff also restated the comments it had previously provided.

9 At the conclusion of the hearing, the parties agreed to hold discussions regarding objective facts about the calculation of refunds and tariff reductions, and to hold a meeting of technical staff to meet that objective. The parties agreed to file the outcome of the discussions on May 10, and to brief impasse issues. Reply briefs were to be filed on May 17th.

10 A stipulation filed May 10, 2002, indicates that the parties have agreed on the total refund to be paid by Verizon prior to July 1, 2001, and the allocation of the refund. The total amount of that refund is $3,154,971 as of March 15, 2002. A copy of that stipulation is attached to this Eighth Supplemental Order as Appendix A, and is incorporated by this reference.

11 The parties could not agree: 1) whether Verizon must make additional refunds for the period beginning July 1, 2001; or 2) whether Verizon must reduce its intrastate access charges on a going-forward basis.

12 Also on May 10, 2002, Verizon filed its "Position of Verizon Northwest Inc. on Compliance," addressing the question of whether Verizon has complied with the Fifth Supplemental Order in this docket. Verizon repeated the arguments summarized in Paragraphs 4 and 7 above. Its position is summed-up by the statement: "Verizon's compliance lies in the fact of the substantial access charge reduction which eliminated the payphone subsidy." P. 3, ll. 20—22.

13 Verizon argues that it reduced its terminating CCL to zero by its Advice No. 862 and further reduced other access charges by more than $7 million per year through Advice Nos. 918 and 990. The Company, therefore, argues that no further subsidy is possible.

14 On May 10, 2002, MCI and AT&T filed their "Comments of MCI and AT&T on Verizon's Failure to Comply with Fifth Supplemental Order." Appended to these comments is MCI and AT&T's February 26, 2002, "Comments on MCI and AT&T

on Verizon filing." These arguments are summarized in Paragraph 5 above. At page 4 of these comments, Complainants point out that the December 1998 filing of Verizon, Advice No. 862, was a revenue neutral filing and, thus, did not remove any subsidy from rates.

15 The problem and the question we face regarding the question of Version's compliance with the Fifth Supplemental Order in this docket is whether the referenced filings, Advice Nos. 918 and 990, include rates that were derived by excluding the subsidy at issue in this proceeding. The rate reduction of $564,076 ordered in the Fifth Supplemental Order was not intended as a penalty to be assessed upon the Company. It was intended to remove a subsidy. If the Company has, indeed, reduced its access charges in a manner that excludes the costs deemed to be a subsidy in this proceeding, then the Company has complied with the intent of the Commission's Fifth Supplemental Order.

16 Regarding Version's Advice No. 862, a revenue-neutral filing would not comply with the clear intent of the Fifth Supplemental Order to remove a subsidy; it would simply shift the subsidy from the terminating CCL charge to other access rates. The Commission rejects this argument made by the Company.

17 The Commission, however, finds the argument that the rate reductions made in Advice Nos. 918 and 990, in the Verizon earnings review and merger dockets, appear to have removed any payphone subsidy from access charges, consistent with its understanding of the decision it made in those dockets. The Commission Staff and Verizon argue persuasively that the rate review and rate reductions made in those dockets were sufficient to ensure that no payphone subsidies that were present in rates in April, 1997, continue to be a part of Verizon's rates. MCI and AT&T have received a substantial benefit from the refunds already made by Verizon. AT&T and MCI will receive additional substantial benefits from the additional refunds negotiated by the Commission Staff, and acknowledged by all parties to be an accurate reflection of the refunds due up to April 1, 2001, from Verizon. The rate reductions effective July 1, 2001, appear to have removed any remaining payphone subsidy from Verizon's rates and, thus, no refunds should be made for the period from July 1, 2001, to the present, nor should any forward-looking reductions be made in Verizon's rates for the purpose of removing payphone subsidies.

18 The rates that were the subject of the complaint in this proceeding no longer exist. They have been replaced with new rates that are substantially lower than the rates that were at issue in this docket. These new rates were found to be just, fair and reasonable by the Commission.

19 Based on the record provided and discussed above, we find that the proposed refunds described in the parties' Stipulation, which is attached to this Eighth Supplemental Order and incorporated by this reference, comply with our Fifth Supplemental Order.

ORDER

THE COMMISSION ORDERS That:

20 Verizon must make refunds using the methodology set out in Appendix A. Verizon must file with the Commission a compliance filing indicating the total refund to be made, by a specified date, including interest to that date, and appropriate work papers, not later than July 15, 2002. The Commission Staff must, and the other parties may, comment of the filing within ten days. The specified date must be 20 days after the date of the compliance filing, in order to allow the Commission to review the comments, and enter an appropriate order.

21 Verizon will not be required to make additional refunds for the period beginning July 2, 2001, nor will Verizon be ordered to reduce its intrastate access charges on a going-forward basis.

22 THE COMMISSION ORDERS FURTHER that it retains jurisdiction over the subject matter and the parties to effectuate the provisions of this and prior orders in this proceeding.

DATED at Olympia, Washington, and effective this_____day of June, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner