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July 2, 2004

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**VIA U.S. MAIL**

Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
Olympia, WA 98504-7250

**Re: *Glick v. Verizon Northwest***  
***WUTC Docket No. UT-040535***

Dear Ms. Washburn:

Enclosed for filing in the above-referenced docket is an original and eight copies of Verizon's Motion for Summary Determination.

Sincerely,

A handwritten signature in cursive script that reads "Veronica Moore".

Veronica Moore  
Secretary for Timothy J. O'Connell

Enclosures

cc: Jeffrey D. Glick (w/encls.)

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GLICK,  
  
Complainant,  
  
v.  
  
VERIZON NORTHWEST INC.  
  
Respondent.

DOCKET NO. UT-040535  
  
VERIZON'S MOTION FOR SUMMARY  
DETERMINATION

**I. INTRODUCTION**

Verizon Northwest Inc. ("Verizon") respectfully requests that the Commission grant summary determination on all claims stated in the Complaint in this matter. Mr. Glick brings claims that are barred by relevant statutes of limitations and/or lack merit.

First, Mr. Glick has no legal right to a refund of nearly two years of phone service where his claim was filed two years after the limitations period ran, and Verizon has already refunded the disputed charges. Second, Mr. Glick cannot seek penalties for Verizon's allegedly improper customer service response to his refund request where again, the limitations period has run and Verizon's actions were reasonable. Third, Mr. Glick's claim that Verizon cannot bar him from making oral complaints accrued at the time he was barred and is now stale, and Verizon's decision was more than reasonable in light of Mr. Glick's hostile communications.

VERIZON'S MOTION FOR  
SUMMARY DETERMINATION - 1

**ORIGINAL**

1 Finally, Mr. Glick's claim regarding itemized billing of local usage is entitled to  
2 judgment as a matter of law. This claim is barred for the same reasons that Commission staff  
3 already considered in rejecting this claim.

## 4 II. FACTS

5 The facts presented here are taken entirely from Mr. Glick's Complaint. Verizon accepts  
6 these facts as true<sup>1</sup> for purposes of summary determination only.

7  
8 Prior to the fall of 1994, Mr. Glick was a member of the Washington State Bar  
9 Association, and considered himself "a would-be champion of the underdog (especially  
10 consumers)." (Plaintiff's Complaint ("Pl. Comp.") ¶ 1.) In 1994, he opened a Seattle-based  
11 errand/pet sitting service called "Consider It Done," and apparently ended his legal career.  
12 (Pl. Comp. ¶¶ 1, 4.) On numerous occasions, Mr. Glick obtained WUTC assistance with  
13 informal complaints about his US West/Qwest phone service in Seattle. (Pl. Comp. ¶ 52.)

14  
15 In November of 1999, Mr. Glick moved to Bellevue, Washington and began utilizing the  
16 phone services of Verizon (then GTE) for both his personal use and for "Consider It Done." (Pl.  
17 Comp. ¶ 4.) He ordered a residential line, a business line, and an 800 number which he used in  
18 advertisements for his business. (Pl. Comp. ¶ 5.) With the 800 number, he requested and  
19 received call-forwarding to Arch Wireless, a voice-mail service. (Pl. Comp. ¶ 9.) Mr. Glick's  
20 claim for a refund is based on his expectation that this service allowed more than one call to be  
21 forwarded to Arch Wireless at any given time, though such a capability was never discussed.  
22 (Pl. Comp. ¶¶ 12, 14.)

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26 <sup>1</sup> At the prehearing conference in this matter, Mr. Glick confirmed that his complaint  
should be considered equivalent to sworn testimony.

1 In September of 2001, Mr. Glick realized that his call-forwarding service only  
2 accommodated one call at a time and began a month of repeated requests for a substantial refund  
3 of his payments for both of his business lines since service inception in November, 1999.  
4 (Pl. Comp. ¶¶ 10, 12, 14, 19, 22, 25.) While it appears that calls to Mr. Glick's 800 number were  
5 properly forwarded, though not more than one at a time, Verizon refunded the \$1.50 per month  
6 call-forwarding charge for the full twenty-two month period. (Pl. Comp. ¶¶ 9, 14, 35.) Mr.  
7 Glick asserts that this refund is insufficient and requests greater compensation. (Pl. Comp. ¶¶ 14,  
8 16, 19; Glick Complaint Prayer for Relief at Pl. Comp. p. 14 ("PFR") ¶ I.)

9  
10 In addition to his refund claim, Mr. Glick seeks administrative penalties related to  
11 Verizon's customer service response to his refund requests. (Pl. Comp. PFR ¶¶ I, III.) His cites  
12 customer complaint provisions in WAC 480-120-165(2), though that regulation's predecessor  
13 (WAC 480-120-101) was applicable with essentially the same terms in 2001. The Complaint  
14 cites three provisions of 165(2) that were allegedly not met. (Pl. Comp. ¶ 32.) First, he alleges a  
15 violation of 165(2)(a) which requires that company personnel provide their names when  
16 contacted by a customer, though the Complaint recites the names of all substantial contacts.  
17 (Pl. Comp. ¶¶ 4, 6, 12, 19, 23, 25, 32.) Second, he alleges a violation of 165(2)(b) which  
18 requires prompt investigation of complaints, though he acknowledges orally receiving the call-  
19 forwarding refund offer within one week and receiving a letter within three weeks stating the  
20 reason for denial of further refunds. (Pl. Comp. ¶¶ 10, 14; Pl. Comp. Exhibit ("Exh.") 3.)  
21 Finally, Mr. Glick cites 165(2)(e) which requires that customers be informed that decisions may  
22 be appealed to a supervisor, though he acknowledges that he did speak with Customer Relations  
23 Manager Marion Gallentine and received a letter from her. (Pl. Comp. ¶¶ 19, 41; Exh. 3.)  
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1 After Mr. Glick was told that only a refund of the call-forwarding billing would be  
2 forthcoming, he repeatedly called Verizon to argue for a greater refund. (Pl. Comp. ¶¶ 12, 14,  
3 19, 22, 25.) He admits in his Complaint that in the course of his phone calls he became angry  
4 and on at least one occasion shouted an obscenity at Verizon personnel. (Pl. Comp. ¶ 26.)  
5 Having reviewed the issue and referred Mr. Glick to the Commission for any further inquiry,  
6 Verizon informed Mr. Glick that it would institute a civil lawsuit for harassment unless he  
7 limited his communication to written contact; calls for repair service were explicitly allowed.  
8 (Pl. Comp. Exh. 3, 5.) In his Complaint, Mr. Glick requests that the Commission order Verizon  
9 to accept his phone calls and desist from any threat of lawsuit or criminal prosecution for  
10 harassment. (Pl. Comp. PFR ¶ 2.)  
11

12 The Complaint was filed in March of 2004, two and a half years after all of the events  
13 discussed above. Mr. Glick attributes the delay in part to admitted “laziness” and in part to  
14 “misinformation” from Commission analyst Lori Kanz. (Pl. Comp. ¶ 25; Pl. Comp. attached  
15 letter, pp. 1, 3.) He alleges that Ms. Kanz told him that the Commission did not have jurisdiction  
16 over his refund claim. (Id. at 3.) Mr. Glick admits that Verizon referred him to the Commission  
17 to voice his concerns about Verizon’s decision. (Pl. Comp. ¶¶ 25, 27.)  
18

19 Mr. Glick’s final claim relates to a request for itemized bills in 2003. (Pl. Comp. PFR  
20 ¶ 3-4.) In October of 2001, Mr. Glick cancelled his 800 number and added “Enhanced Call  
21 Forwarding” to his remaining business line, to accommodate multiple calls at any given time.  
22 (Pl. Comp. ¶ 34.) Starting in mid-2003, billing for this feature included a per minute local usage  
23 fee. (Pl. Comp. ¶ 45.) Mr. Glick requests further unspecified itemized billing of local calls  
24 related to this feature, claiming a right to itemized billing under WAC 480-120-161(7)(b) and  
25  
26

1 Verizon tariff WN U-17, Section 4, 1st Revised Sheet 4(B). (Pl. Comp. ¶¶ 45-50.) Commission  
2 staff determined that further itemized billing on request was not required in the context of a local  
3 usage fee for a call-forwarding service, when the per-minute charge (and, minutes of use) were  
4 already provided. (Pl. Comp. ¶ 46.) Mr. Glick seeks administrative penalties for the denial of  
5 further unspecified itemized billing and an order that further itemized billing be provided. (Pl.  
6 Comp. PFR ¶ 3-4.)

### 8 III. ARGUMENT

9 For the purposes of this summary determination motion only, Verizon accepts the facts as  
10 presented in the Complaint, and asks for judgment as a matter of law on all four claims.

#### 11 A. Standard for Summary Determination

12 Summary determination should be granted if “there is no genuine issue as to any material  
13 fact and the moving party is entitled to judgment as a matter of law.” WAC 480-07-380(2)(a).  
14 In considering a summary determination motion, the Commission is to “consider the standards  
15 applicable to a motion made under CR 56 of the Washington superior court’s civil rules.” *Id.*  
16 The WAC language on summary determination is drawn virtually verbatim from state and  
17 federal summary judgment rules. CR 56(c); Fed. R. Civ. P. 56(c). A defending party may move  
18 for summary judgment with or without supporting affidavits. CR 56(b). In this case, the motion  
19 for summary determination is being made on the basis of the Complaint alone, with Verizon  
20 accepting the facts as stated in the Complaint for purposes of this motion only.  
21

22 No facts are in dispute for purposes of this motion, so summary determination can be  
23 entered. “Only disputes over facts that might affect the outcome of the suit under the governing  
24 law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*,  
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1 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Summary judgment must be  
2 entered against the non-moving party who fails to make a showing sufficient to establish the  
3 existence of an element, which is essential to his case and upon which he will bear the burden of  
4 proof at trial. *Celotex v Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

5  
6 To withstand a motion for summary judgment, the opposing party must set forth specific  
7 evidence showing that there is a genuine issue of material fact in dispute. CR 56(e); Fed R. Civ.  
8 P. 56(e). The opposing party cannot respond with only his conclusions and allegations, but must  
9 establish the existence of a fact (“an event, an occurrence, or something that exists in reality”)  
10 that would raise a genuine issue for trial. *Grimwood v Univ. of Puget Sound, Inc.*, 110 Wn.2d  
11 355, 359, 753 P.2d 517 (1988). If the defendant is the moving party, and the plaintiff fails to  
12 establish the existence of a fact that would raise a genuine issue at trial, then the defendant’s  
13 motion should be granted. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d  
14 182 (1989).

15  
16 **B. Plaintiff’s First Three Claims are Untimely and Should be Dismissed.**

17 Mr. Glick submitted his Complaint in March of 2004, two and a half years after reporting  
18 his dissatisfaction with his call-forwarding service. That delay makes his challenge of the  
19 reasonableness of his billing two years too late; RCW 80.04.240 establishes a six month statute  
20 of limitations for such claims. His claim based on WAC 480-120-165(2) regarding Verizon’s  
21 customer service is subject to a two year statute of limitations, based on either RCW 4.16.100(2)  
22 for “action upon a penalty to the state,” or RCW 4.16.130 for “actions not otherwise provided  
23 for.” Finally, Mr. Glick’s claim that Verizon must accept his oral complaints is similarly subject  
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1 to the two year statute of limitations in RCW 4.16.130 and is now stale; this claim accrued two  
2 and a half years ago, when Verizon's decided to accept only written complaints from Mr. Glick.

3 Mr. Glick appears to be generally cognizant of a statute of limitations issue, because he  
4 contrives an excuse for his delay, purporting that he has been told that Commission staff said that  
5 the Commission did not have jurisdiction. (Pl. Comp. ¶ 37.) For purposes of this motion,  
6 Verizon only accepts as true that Mr. Glick somehow understood Commission staff to have made  
7 such a statement. However, waiver of the statute of limitations regulations is inappropriate  
8 given Mr. Glick's admitted familiarity with relevant law and his acknowledgment that his delay  
9 was also due to his own "laziness." (Pl. Comp. ¶¶ 1, 52; Pl. Comp. attached letter, p. 1.)

11 **1. Plaintiff's reasonableness-of-billing claim had to be filed within six months.**

12 Mr. Glick requests "lump-sum compensation" of an amount "not to exceed the total cost  
13 of [both business lines] plus all taxes and fees." (Pl. Comp. PFR ¶ I.) He is asking for  
14 repayment of his phone bills, and only two avenues exist to make such a request. The claim  
15 must be brought before the Commission either on the basis of RCW 80.04.220, which allows  
16 reparations for unreasonable billings, or on the basis of RCW 80.04.230, which allows refunds  
17 for billings in excess of lawful tariff rates. *See Eschelon Telecom of Wash., Inc. v. Qwest Corp,*  
18 *2004 Wash. UTC LEXIS 75, at \*13 (WUTC, Feb. 6, 2004, Docket No. UT-033039; Order No.*  
19 *04) (distinguishing the two types of claims). The statute of limitations for both types of claims is*  
20 *established in the last sentence of RCW 80.04.240:*

21  
22  
23 All complaints concerning overcharges resulting from collecting  
24 unreasonable rates and charges or from collecting amounts in  
25 excess of lawful rates shall be filed with the commission within six  
26 months in cases involving the collection of unreasonable rates and  
two years in cases involving the collection of unlawful rates from  
the time the cause of action accrues.



1 RCW 80.04.240. Mr. Glick does not claim that the rate he was charged exceeds the lawful tariff  
2 rate, so his claim must be considered a challenge of the reasonableness of his billings. Mr. Glick  
3 filed his Complaint with the Commission in March of 2004, two and a half years after the  
4 incident in question, so his claim for reparations should be dismissed.

5  
6 A reparations claim under any other guise is still simply a reparations claim. RCW  
7 80.04.240 (procedure is "exclusive"). In the case of a customer seeking repayment of billings  
8 under a Consumer Protection Act claim, the court called the attempt to distinguish deceptive  
9 billing from overcharges "pure fiction." *D.J. Hopkins, Inc. v. GTE Northwest, Inc.*, 89 Wn.  
10 App.1, 6, 947 P.2d 1220 (1997) (finding that the Commission has original jurisdiction over  
11 phone billing reparation and refund claims). In the present case, Mr. Glick cites a UCC Article 2  
12 (Sales of Goods) statute, claiming that Verizon's phone service "failed of its essential purpose"  
13 under RCW 62A.2-315. In the first place, this statute only applies to the sale of tangible goods,  
14 so it is inapplicable and should not be permitted to go forward. In a more general sense, treating  
15 this claim as anything other a reparations claim is "pure fiction," so the applicable statute of  
16 limitations has been exceeded by two years.

17  
18 **2. Plaintiff's customer service claims had to be filed within two years.**

19 Mr. Glick's claim that Verizon violated WAC 480-120-165(2) had to be brought within  
20 two years based on either RCW 4.16.100(2) for "action upon a penalty to the state," or RCW  
21 4.16.130 for "actions not otherwise provided for." All other possible categorizations with longer  
22 periods have been explicitly precluded.

23  
24 The three longer statute of limitations categories of claims that Mr. Glick might  
25 erroneously assert are: (1) actions on a written contract, RCW 4.16.040, (2) actions on an oral  
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1 contract, RCW 4.16.080(3), and (3) actions for injury to the rights of another RCW 4.16.080(2).  
2 The first and second options are precluded because the cause of action arose under the  
3 regulation, not a contract. *Urban Constr. Co. v. Seattle Urban League*, 12 Wn. App 935, 938,  
4 533 P.2d 392 (1975) (finding claim for unpaid wages not an action on a contract, but rather an  
5 action on a statute and thus subject to the two year statute of limitations set by catch-all RCW  
6 4.16.130). At most, Mr. Glick's claim is based on the applicable tariff, but a tariff is not a  
7 contract. *See Prosser and Keeton, Torts* § 92, at 663 (5th ed. 1984) ("In light of this regulatory  
8 process, the civil liability is neither tortious nor contractual but is rather *sui generis*."). Tariffs  
9 enacted pursuant to WUTC regulation have the force of state law. *General Tel. Co. of*  
10 *Northwest, Inc. v. Bothell*, 105 Wn.2d 579, 583, 716 P.2d 879 (1986) Therefore, an action on a  
11 tariff is akin to an action on a law. *See, e.g., MCI Telecommunications Corp. v. Graham*, 7 F.3d  
12 477, 479 (6th Cir. 1993) (action to enforce tariff arises under law, not "mere contract"). In the  
13 present case, Mr. Glick's claim arises purely on the basis of the statute or the tariff so longer  
14 statute of limitations for claims arising under a contract are inapplicable.

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16  
17 The "injury to the rights of another" statute of limitations, RCW 4.16.080(2), may not  
18 encompass Mr. Glick's customer service claim, because that category has been explicitly limited  
19 to tort-like claims. *Seattle Prof'l Eng'g Emples. Ass'n v. Boeing Co.*, 139 Wn.2d 824, 837, 991  
20 P.2d 1126 (2000). The *SPEEA* court found that treating a claim for violation of a right created  
21 by statute as a tort-like claim "essentially eviscerates RCW 4.16.130 ['actions not otherwise  
22 provided for']". Any action in court upholds a right of some sort." *Id.* While that court still  
23 applied a three year statute of limitations under a theory of unjust enrichment under an implied  
24 contract (under RCW 4.16.080(3)), it denied any broad interpretation to the "personal rights"  
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1 language of RCW 4.16.080(2). *Id.* at 838. In the present case, Verizon has not been unjustly  
2 enriched in any fashion, so there is no possible application of RCW 4.16.080 and its three year  
3 statute of limitations.

4 Violation of the customer service provisions of WAC 480-120-165 would be punishable  
5 by administrative penalties to the state under WAC 480-120-019, and Mr. Glick expressly seeks  
6 such penalties. His claim is thus a claim under RCW 4.16.100(2) for “action upon a penalty to  
7 the state.” *See, e.g., U. S. Oil & Refining Co. v. State, Dep’t of Ecology*, 96 Wn.2d 85, 90, 633  
8 P.2d 1329 (1981)(finding the statute applicable in case of civil penalties against oil company).  
9 Mr. Glick’s customer service claim must be dismissed because it was filed six months after his  
10 time to file elapsed.

11  
12 **3. Plaintiff’s claim that he is entitled to complain orally had to be filed within**  
13 **two years of Verizon’s decision to require only written complaints.**

14 Mr. Glick’s third claim is only vaguely stated as a “restraint upon my right to  
15 communicate with the Company in violation of the constitutions of the United States and the  
16 State of Washington, with the assistance of the Everett Police Department.” (Pl. Comp. ¶ 32.) It  
17 appears that he is claiming that freedom of speech includes the right to make unlimited angry  
18 calls to the phone company when a baseless demand for a full refund is denied. The merits of  
19 such a claim are discussed in part C below, but it is not necessary to reach the merits because the  
20 claim was filed after the appropriate statute of limitations had passed.

21  
22 A two year statute of limitations is appropriate for Mr. Glick’s claim that he has an  
23 virtually inextinguishable right to complain to Verizon orally. RCW 4.16.130 (“actions not  
24 otherwise provided for.”) None of the standard statute of limitations categories discussed in the  
25  
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1 previous section are applicable, implying that Mr. Glick's claim falls under the catch-all rubric of  
2 RCW 4.16.130.

3 Mr. Glick's cause of action accrued when Verizon's ban on oral complaints was first  
4 imposed. He does not have an on-going right to challenge the ban simply because the ban is  
5 on-going; he had to make such a challenge within the statutory period and he failed to do so. As  
6 a general rule, a party's cause of action accrues - and the statute of limitations begins to run -  
7 when the party first has a right to apply for relief. *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d  
8 200 (1992). "The action accrues when the plaintiff knows or should know the relevant facts,  
9 whether or not the plaintiff also knows that these facts are enough to establish a legal cause of  
10 action." *Id.* For Mr. Glick, the statute of limitations accrued when Verizon notified him of the  
11 ban in September of 2001. Mr. Glick filed his Complaint six months after any claim based on a  
12 right to oral communication had run according to the two-year statute of limitations in RCW  
13 4.16.130.  
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16 **4. There is no equitable reason to extend the relevant Statutes of Limitations.**

17 As a former attorney and "would-be champion of the underdog (especially consumers),"  
18 Mr. Glick has no equitable right to an extension of the relevant limitations on his right to bring a  
19 consumer complaints on his own behalf. (quote from Pl. Comp. ¶ 1.) For purposes of this  
20 motion only, Verizon accepts as true the assertion that Commission analyst Lori Kanz told  
21 Mr. Glick that the Commission did not have jurisdiction over his claims. (Pl. Comp. ¶ 25.) Yet,  
22 what Ms. Kanz said is irrelevant; Mr. Glick could easily have figured out the appropriate  
23 jurisdiction and statute of limitations.  
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1 As a former attorney, Mr. Glick should have known that his claims would be subject to  
2 some statute of limitations. The “complaints and disputes” regulation applicable to telephone  
3 companies in 2001 clearly provided that customers could bring a formal complaint before the  
4 Commission. WAC 480-120-101(4). Mr. Glick acknowledges familiarity with Commission  
5 regulations through numerous informal complaints leveled against US West/Qwest prior to  
6 moving to Bellevue in 1999. (Pl. Comp. ¶ 52.) Equitable tolling of a statute of limitations is  
7 inappropriate where a plaintiff has not exercised due diligence in pursuing his or her rights.  
8 *Douchette v. Bethel Sch. Dist.* 403, 117 Wn.2d 805, 811, 818 P.2d 1362 (1991). It appears that  
9 the more substantive reason for Mr. Glick’s delay was his own laziness. (Pl. Comp. attached  
10 letter, p. 1.) (admitting that the delay was “as much out of a distaste for reopening an unpleasant  
11 subject as out of my own laziness.”)  
12

13  
14 **C. Plaintiff’s Three Stale Claims Also Fail as a Matter of Law on Their Merits.**

15 Summary determination in favor of Verizon on Mr. Glick’s first three claims can be  
16 based on the lack of merit in those claims, as an alternative to the statute of limitations arguments  
17 previously recited. The refund claim is based completely on Mr. Glick’s perception of what his  
18 call-forwarding service should have included; even if he were correct, he would be entitled to no  
19 more than the full refund of the call-forwarding charges that Verizon has already granted. The  
20 customer service claim is groundless; the facts as stated in the Complaint show that Verizon  
21 acted in accordance with the relevant regulation. Finally, the claim that Mr. Glick has a right to  
22 call Verizon to complain is unsupportable, and Verizon’s right to suggest the possibility of a  
23 harassment suit against Mr. Glick is entirely appropriate.  
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1           **1. Plaintiff's phone service operated as promised, and he has already been**  
2           **granted the maximum refund he may seek.**

3           Mr. Glick ordered two business lines that operated as promised, but he is basing his claim  
4 for a refund on his assumption that his call-forwarding service should have been able to forward  
5 more than one call at a time. (Pl. Comp. ¶¶ 5, 9.) Such a capability was never discussed. (Pl.  
6 Comp. ¶ 12.) Even though his call-forwarding did forward calls, Verizon granted Mr. Glick a  
7 full refund for the call-forwarding service for the entire 22 months since service began. (Pl.  
8 Comp. ¶ 12.)

9           Even if the call-forwarding feature was required to do something more than it did -- a  
10 claim the Company rejects -- Mr. Glick is entitled to no further remedy. This is because the  
11 Company's tariff limits Verizon's liability for such an alleged failure to "an amount equivalent to  
12 the proportionate charge to the customer for the period of service" during which such alleged  
13 failure occurs. Tariff WN U-17, Section 2, Second Revised Sheet 29 (attached). *See also Allen*  
14 *v. General Tel. Co.* 20 Wn. App. 144, 578 P.2d 1333 (1978) (upholding tariff limitation;  
15 awarding only proportionate damages of \$2.05 per month yellow page listing fee for defendant's  
16 failure to list plaintiff in yellow pages). Mr. Glick has already received such a refund; as a  
17 lawfully approved tariff, this limitation binds Mr. Glick as a matter of law. Given the facts as  
18 stated in the Complaint, Mr. Glick is not entitled to a refund beyond the amount already granted  
19 by Verizon.

22           **2. Plaintiff admits that Verizon's customer service acted appropriately.**

23           Mr. Glick asserts that Verizon violated certain customer service rules, but his Complaint  
24 admits that Verizon fully complied with the rules that he cites. The applicable customer service  
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1 regulation at the time was WAC 480-120-101, though Mr. Glick cites its current counterpart,  
2 WAC 480-120-165. He asserts three violations, all of which lack merit.

3 First, Mr. Glick claims a violation of WAC 480-120-165(2)(a) regarding telephone  
4 company representatives' duty state their names when contacted by a customer. Mr. Glick does  
5 not cite any instance when that information was not forthcoming, and he is able to name all of  
6 his significant Verizon contacts. (Pl. Comp. ¶¶ 4, 6, 12, 19, 23, 25, 32.) Even if Verizon  
7 personnel had failed to identify themselves, there would not be a basis for a claim. The customer  
8 service regulation in force in 2001 did not have a counterpart to WAC 480-120-165(2)(a); there  
9 was no requirement that customer service representatives identify themselves. WAC 480-120-  
10 101.  
11

12 Second, Mr. Glick claims a violation of WAC 480-120-165(2)(b) which requires prompt  
13 investigation of complaints. Yet, he acknowledges orally receiving the call-forwarding refund  
14 offer within one week and receiving a letter within three weeks stating the reason for denial of  
15 further refunds. (Pl. Comp. ¶¶ 10, 14; Complaint Exh. 3.) As a matter of law, the Commission  
16 can determine that the promptness of this response was reasonable.  
17

18 Finally, Mr. Glick cites WAC 480-120-165(2)(e), requiring that customers be informed  
19 that decisions may be appealed to a supervisor. Again, his claim is at odds with the facts he  
20 admits. He acknowledges that he did speak with Customer Relations Manager Marion  
21 Gallentine and received a letter from her. (Pl. Comp. ¶¶ 19, 41; Pl. Comp. Exh. 3.) Mr. Glick is  
22 upset that Ms. Gallentine did not, in turn, provide an appeal to a higher supervisor. (Pl. Comp.  
23 ¶ 19.) The regulation only requires an appeal to "a supervisor," not to ever higher-level  
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1 supervisors. WAC 480-120-165(2)(e). Verizon complied with the regulation, so Mr. Glick's  
2 claim is without merit and can be decided in Verizon's favor as a matter of law.

3 **3. Plaintiff has no basis for his claim that Verizon must receive his calls.**

4 Mr. Glick asserts that Verizon has to accept his calls, though he admits in his Complaint  
5 that in the course of his phone calls he became angry and on at least one occasion shouted an  
6 obscenity at Verizon personnel. (Pl. Comp. ¶ 26.) Were this case to be tried on the merits, the  
7 degree of Mr. Glick's anger on many occasions would certainly be argued, but for purposes of  
8 this motion, Verizon relies on Mr. Glick's one admission of anger.

9  
10 The question on the merits is whether Verizon has a right to insist that an angry customer  
11 contact customer service in writing only. The applicable regulation does not require oral  
12 communication. WAC 480-120-101 (now reorganized in WAC 480-120-165). While oral  
13 communication is standard for the convenience of both customers and telephone companies,  
14 there is no reason to require customer service personnel to endure repeated complaints after a  
15 matter has been addressed and resolved. Verizon can assume that having made its final decision,  
16 it can attribute Mr. Glick's repeated calls to telephone harassment under RCW 9.61.230(2).

17  
18 Mr. Glick says that he lacks the necessary "intent to harass" because he is making  
19 "legitimate" complaints when he calls customer service. (Pl. Comp. ¶ 30.) Verizon made it clear  
20 that it has reached a final decision and considered any further calls from Mr. Glick to be  
21 harassment. (Pl. Comp. Exh. 3.) Limitations on constitutional free speech rights in the context  
22 of speech over the telephone may be enforced by the State if the limitations are reasonable in  
23 light of the forum and are viewpoint neutral. *Seattle v. Huff*, 111 Wn.2d 923, 927, 767 P.2d 572  
24 (1989). Given Mr. Glick's anger and the alternative customer service approach of written  
25  
26



1 communication, Verizon should not be forced to take Mr. Glick's calls. As a matter of law, the  
2 Commission should find that Verizon reasonably exercised its discretion in determining the way  
3 to communicate with Mr. Glick.

4 **D. Plaintiff's Only Other Claim Should be Rejected.**

5 Commission staff rejected an informal complaint from Mr. Glick regarding customer  
6 rights to itemized bills for local usage. (Pl. Comp. ¶ 46.) Commission staff was right to do so,  
7 and his formal complaint should be rejected as well.

8 After Mr. Glick's dispute with Verizon in 2001, he ordered an "Enhanced Call  
9 Forwarding" service that includes a per minute local usage fee. (Pl. Comp. ¶¶ 34, 45.) In 2003,  
10 Verizon began assessing the local usage fee for the service, and Mr. Glick filed an informal  
11 complaint with the Commission. (Pl. Comp. ¶ 45.) He asserts that he is entitled to itemized  
12 billing of local calls under WAC 480-120-161(7)(b) and Verizon's tariff WN U-17, Section 4,  
13 1st Revised Sheet 4(B). (Pl. Comp. ¶ 47.) -- but he does not identify what further detail he  
14 believes he should receive.

15 The Commission should deny Mr. Glick's assertion that he is entitled to further local call  
16 detail. Itemized billing of local calls only entails a listing of the per minute charge and the total  
17 number of minutes. While the Commission's regulation speaks to "calculations of time and  
18 distance charges," WAC 480-120-161(7)(b), the plain language of the regulation only calls for  
19 there to be an itemization when there has been a "charge." Because local usage is charged only  
20 on a per minute basis, with no distance component, no such additional detail is recorded, or  
21 appropriate.

1 Itemized billing of local usage is not required by the WAC regulation or the applicable  
2 tariff because all local usage can be regarded as a single "item." Verizon has fulfilled the  
3 itemization request by providing the total minutes of local usage per month and the applicable  
4 fee per minute. The detail required is not call-by-call detail; it is more appropriately viewed as  
5 requiring detail at the level of a given local usage rate. As a matter of law, the Commission  
6 should find that Mr. Glick's itemized billing claim is without merit.  
7

### 8 V. CONCLUSION

9 Mr. Glick filed his Complaint after the relevant statutes of limitations had run for three of  
10 his four claims, and those claims were devoid of merit in the first instance. His fourth claim has  
11 already been appropriately rejected by Commission staff.

12 Based on the foregoing, Verizon respectfully requests that the Commission grant  
13 Verizon's motion for summary determination on all of Plaintiff's claims as stated in his  
14 Complaint.  
15

16 DATED: July 2, 2004.

17 STOEL RIVES LLP

18 


19 Timothy J. O'Connell, WSBA #15372  
20 Attorneys for Respondent

1 **CERTIFICATE OF SERVICE**

2 I certify that on July 2, 2004, I caused a copy of the foregoing document to be served via

3 U.S. Mail to:

4 Jeffrey D. Glick  
5 10760 NE 29<sup>th</sup> Street  
6 #187  
7 Bellevue, WA 98004



8 Veronica Moore, Legal Secretary  
9 Place: Seattle, Washington  
10 Date: July 2, 2004