Before the Washington Utilities and Transportation Commission

In the Matter of the Complaint of	)	
	)	DOCKET NO. UT-040535
	)	
Jeffrey D. Glick	)	COMPLAINANT'S MEMORANDUM
	)	IN OPPOSITION TO
v	)	MOTION FOR SUMMARY
	)	DETERMINATION
Verizon Northwest	)	
	)	

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I. RESPONDENT MISREPRESENTS FACTS IN THE RECORD, AS WELL AS CONTROLLING LAW.

While purporting to accept as true all facts stated in my Complaint, Respondent, in its Motion, has mischaracterized those facts in several instances:

I did not base my objections to GTE/Verizon – or any aspect of my Complaint— upon a mere "expectation that [the call-forwarding] service allowed more than one call to be forwarded. . . at any given time. . . ." ("Motion for Summary Determination", hereinafter "Motion", p. 2, lines 21-22.) My objections arose from the discovery that: (**i**) GTE failed to disclose, and discuss with me, the concept of "pathways" for call-forwarding; (**ii**) GTE had available not one, but *two* alternative features (Enhanced Call Forwarding, and GTE's own Voice Mail service) -- neither of which was disclosed to me as a possible option -- that would have provided more than the single pathway I was sold; and (**iii**) GTE failed to disclose another critical fact about the forwarding feature I was sold: namely, that while one incoming call is being forwarded, and is thereby "occupying" the line (my term), any subsequent incoming call results in endless ringing – rather than what any reasonable customer would expect (and *want*) when his line was in use: namely, a *busy signal* heard by the caller.

I have alleged violation of WAC 480-120-165(2); Respondent asserts that subsection (a) of that provision requires that company personnel who speak to a customer provide "their names" (and that all Company staff did so). To the contrary, the subsection requires that staff provide a "contact" name; in the context of this provision, it is clear that this means a contact who can entertain the customer's appeal.

Unbeknownst to me, the above-noted provision, recently called to my attention by staff in the Commission's Consumer Division, took effect just one year ago. I have no reason to question Respondent's contention that the provision's immediate predecessor was WAC 480-120-101 – and, that that version was the one in effect at the time of the events here at issue. If anything, the prior version more fully supports my position than did 165(2).

Like its successor (at Sec. (2)(c)), subsection (1) of 101 required a prompt "investigation". Nothing in the record reflects that the Company "investigated"

my initial complaint, as that term is understood in common usage. Ms. Gallentine, through her intermediary Ms. Cooper, instantly offered me the token pittance of $36 as compensation. No "investigation" preceded the offer. I immediately made it clear to Ms. Cooper that it didn't come close to adequately compensating me for the company's oversight. I told this to Ms. Cooper, and expressed my clear intention to make my case to Ms. Gallentine's superior(s), whomever that might be. (Complaint at ¶ 14.) It was Gallentine, not Cooper, who made the initial determination that I wished to challenge; Ms. Cooper simply relayed the message.

That takes us to subsection (2) of 101 (whose counterpart was found in (2)(a) and (e). As is even clearer in 101 than in 165, the "name" to be provided the customer is not that of whomever happens to be the customer's initial contact; rather, it is the name of *a supervisor to whom an appeal can be directed*. (Unlike 165, which expressly uses the word "appeal", 101 mandates the right to have one's "dissatisf[action]" "considered" and "acted upon by supervisory personnel".) It is the name of *that* person which is to be furnished to the customer. Unaware though I was with the existence of this provision, I could not have been more explicit in expressing my desire for precisely that information, and those actions, which the Company was legally obligated to come forth with.

It was Ms. Gallentine's decision, and hers alone, to offer me only $36 in refund; she took no time whatsoever to *investigate* the matter. How *could* she have investigated? Neither she, nor any of her colleagues or subordinates, afforded me the opportunity to *present* my position. (As stated in my Complaint, Ms. Cooper initially professed her agreement with me -- that absence of a busy signal, and endless ringing, were unacceptable when they occurred during normal business hours. However, when I then expressed my dissatisfaction with the $36, and asked two questions – to whom did Ms. Gallentine report, and did the Company have a "claims" or "appeals" division – Ms. Cooper told me, "We're not going to have this discussion.")

Furthermore, Respondent now implies two rather incredible things: (**1**) That my knowing Ms. Gallentine's name satisfied the "name" requirement of 101; and (**2**) That my subsequent communications to *Ms. Gallentine* – at least two of which were ignored completely – satisfied the appeal or "[re]consideration"requirement of 101. In other words, Respondent argues that Ms. Gallentine was empowered to conduct the requisite review of her *own* decision. This is utter nonsense, and is plainly not what was intended by the drafters of WAC 480-120-101.

Nor may Respondent now argue that subsequent communications between myself and Stan Tate satisfied the "contact" and "reconsideration" requirements of 101. I was urged to deal with Mr. Tate for purposes of submitting any and all account and billing questions, problems or desired service changes. I did so. Mr. Tate's eventual written reply to my *renewed* objections to the no-call restriction (1/23/03) was prompted by my own initiative (Exhibit 5). Interestingly, Mr. Tate asked if I wanted my objections handled as an "Executive Complaint." As I've indicated previously, there is no evidence that Mr. Tate or anyone else did any "investigating" in the course of producing his rapid, cursory reply; the semantic

ploy strongly suggests an effort to contrive the appearance of compliance with regulatory requirements. (Complaint, at ¶51.)

Once the Company finally made it clear, via the police, that it sought to prevent and/or punish further calls from me, I did resort to written, faxed communications, and ceased my "complaint" calls. (See further, *infra*, at p. 6, l. 23-29.) The Company then *ignored* all but one of my subsequent faxed letters to Gallentine (four in all, I believe) – even though I reiterated my continued desire for answers to the two fundamental questions that 101 required them to answer. In those several letters, I attempted to articulate my position with regard to: the inadequacy of the refund offered, the adverse impact of the no-busy-signal events, and the inappropriateness of refusing to permit my legitimate attempts to escalate my complaint (not to mention intimidating me with the help of the police). In completely ignoring at least two of my faxes to her, Ms. Gallentine and the Company *also* violated subsection (6) of 101: "All written complaints made to a utility shall be acknowledged." My letters were not fungible, identical or interchangeable. Each one that followed the first was a renewed attempt to break through the wall of obstinance I'd encountered; each made different points.

To the extent that she acknowledged my communications at all, Gallentine primarily focused upon my desire for a larger refund – stating categorically that the $36 satisfied Section 2 of tariff WN U-17, 2nd Revised Sheet 29, at C (7) (e). (Exhibit 3 at p. 2.) However, she asserted this position without any supporting authority or reasoning. Worse, when I tried to counter with my own reasoned position that the tariff section, by its plain language, does *not* confine the parties solely to refunds for "features" – in this case, my "Busy/Don't Answer" forwarding feature, at $1.50/month – I was ignored. (Exhibit 2 at p. 8):

> "[This] Section. . . does **not** specify or mandate that the basis of computation of refund/compensation/adjustment or credit be the narrowest one possible (in this case the mere $1.50/month forwarding feature). The more appropriate basis in this case would be the monthly [average] charge for the line – i.e., for my business exchange service. Quite awhile ago, I proposed a figure to [Ms. Cooper], equal to one-half that total since 11/99. . . as a

sensible compromise and starting point for discussion."

There was no acknowledgment of my position – a position I reaffirm here -- much less any "investigation" or requisite reconsideration.

II. THE COMPANY'S TARIFF PROVIDES THE BASIS FOR THE BILL ADJUSTMENT REQUESTED.

Although the Commission lacks jurisdiction to order compensation for "lost business," it is clear that tariff WN U-17, 2nd Revised Sheet 29, at C (7) (e), provides a substantial customer remedy – quite regardless of whether such losses have (or have not) been documented:

> The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, or errors, or defects in transmission

> occurring in the course of furnishing a service and not caused by the negligence of the customer, shall, in no event, exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake [or]
> omission. . . occurs.

Clearly, liability and damages can and do arise in the absence of evidence of harm to the customer's business. The failure of Company sales staff to inform me of the concept of call "pathways" – and to inform me of features that could afford me more than the single pathway of Busy/Don't Answer call forwarding – was both an error and an omission.

Respondent states that the UCC is inapplicable to this matter, but it was entirely proper for me to propose its applicability *by analogy*. To say that my business telephone service, during the 22 months in dispute, significantly "failed of its essential purpose," is an apt description of the likelihood that significant numbers of callers heard only endless ringing when phoning my company during regular business hours. I have already elucidated the average volume of business and frequency of calls during the period in question (Complaint, at ¶16); I will not repeat that information here. Lest Respondent argue that the occurrence of overlapping or simultaneous calls is only speculative, the frequency and reality of such occurrences, in every small business (and residential) setting with only one phone line, is anything but speculative; that fact is made obvious by: (**a**) The very existence and universal use of *busy signals*; (**b**) The Company's offering Enhanced Call Forwarding, which offers not one, but three call pathways for just such a contingency; and (**c**) The Company's offering it own voice mail service, likewise with three pathways.

The very real and likely inability of numerous first-time callers, over a 22 month period, to hear even a busy signal (or to reach my voice mail and hence establish contact), also amounts to a "defect in transmission" per the terms of the tariff provision cited.

It is reasonable for me to seek some portion of the total network exchange service charges (i.e., the monthly recurring charges) – both for my (425) exchange business number, *and* the "800" number "attached" to it – because the two services were inseparable. Only my "800" number was advertised and publicized during the period in question; however, as it functioned only as an adjunct to my (425) area code number (822-5144), both numbers were essential, and the service failure reduced the value and efficacy of both items.

III. THE COMPANY'S THREATENED LEGAL RETALIATION IS AN UNCONSTITUTIONAL ABRIDGEMENT OF PROTECTED SPEECH.

The dismissive, results-oriented Supreme Court majority in Bowers v. Hardwick (1986) flippantly and misleadingly attributed to petitioner an agenda that trivialized the case: the assertion of "a constitutional right to fornicate." Similarly, Respondent in this matter further misrepresents the facts, and my positions, by attributing to me a belief that I've asserted a constitutional "right to make unlimited angry calls to the phone company." (Motion, at p.10, l. 18-19.)

(Nor did I ever insist upon "a full refund", as Respondent asserts in the same sentence. I made it clear, in writing, that I was willing to compromise; see, e.g., *supra* at p.4, l. 20-27. Nor were my requests, and questions about chain of command and appeal recourse, "baseless". (Motion, *Ibid*.) Those questions were, as explained *supra* at pp. 1-4, my categorical right under WAC 180-120-101.) Similarly, I've never claimed anything as simplistic as "a right to call Verizon to complain." (Motion, at p. 12, l. 23.)

Moreover, the Company did not merely state "the possibility" of a civil suit. (Motion, *Ibid*.) That threat was stated categorically. Significantly, *several* calls had transpired in my attempt to have my questions addressed, without *any* Company personnel stating a warning, or threatening a penalty, should I phone again. However, once such notice *was* conveyed to me (and the "circling of the wagons" became eminently clear) – via an unexpected, threatening call from the Everett Police Department – I did *not* phone the Company back.

In said call, an officer asked me for "my version" of things, but refused to tell me what had been alleged (hence trying to force me to incriminate myself). The same officer stated categorically that I'd be arrested if I "called the Company" at all.

Respondent now relies upon Seattle v. Huff, 111 Wn. 2d 923, 767 P. 2d 572 (1989), for the proposition that the Company's no-contact directive was a proper, viewpoint-neutral limitation that is reasonable in light of the [non-public] forum (the telephone). Like most opinions on Free Speech, the majority opinion in Huff is a virtual primer on First Amendment jurisprudence. The Court expounded upon "overbreadth", among other topics. Addressing the constitutionality of a law, the Huff court stated that a provision is overbroad if it restricts "a substantial amount of constitutionally protected conduct." My own attempts to conclude a conversation with Company staff, without being hung up on, were solely aimed at determining how, and to whom, to direct my appeal for proper compensation. Even absent the express guarantees of WAC 180-120-101, such questions would be deemed utterly protected speech. Moreover, the Company's resort to the police as its voice – which supplied the requisite state action to implicate the constitutional issues – resulted in said mouthpiece issuing a bar on my communication that was clearly overbroad. Verizon Northwest, in its local exchange telephone services, operates as a virtual monopoly in its service territories – one that operates in this state, not by right, but by the grace of the state and its citizens (provided it operates lawfully and satisfies a variety of service criteria). All customers have the right, and the occasional need, to contact said company about a variety of service needs: e.g., questions about a bill; challenges to a charge; changes to service; questions about features; etc. Other than its Everett offices, the Company has several call centers, in several states, to which any given customer's call might be routed. A command not to call "the company" -- even if later modified by Company staff to allow for Repair questions – excludes a huge variety of situations that could not legitimately be excluded under the circumstances.

In point of fact, the prohibition at issue is not, as Repondent claims, "viewpoint neutral." The Company told me, "We're not going to have this discussion", and

commenced a series of hang-ups, long before I grew angry enough to, eventually, utter an oath. The Company was not enforcing a legitimate, evenhanded bar against all "angry people," but rather barred its doors, as it were, against *my* unwanted message. This is the essence of a prior restraint – the form of speech restriction which, when examined in the jurisprudence, faces the greatest hurdle, and the strongest presumptions against legitimacy. See, e.g., Bantam Books v. Sullivan, 372 U.S. 58, 70 (1963). Where, as Respondent has done, the censor "denies access to a speaker *solely to suppress the point of view he espouses on an otherwise includible subject*," it has violated the First Amendment. Huff; emphasis added.

Although Huff addressed a case of alleged telephone harassment; it is eminently inapposite to the matter at hand. The opinion elucidated the purpose and intent of harassment statutes – traditionally aimed at anonymous and *threatening* calls; threats of violence were the express focus in Huff. I never made or hinted at threats of any kind, nor has anyone so alleged.

IV. RESPONDENT IS ALL WET REGARDING BILL ITEMIZATION.

Respondent asserts that "itemized billing" is equivalent to "a listing of the per minute charge and the total number of minutes." (Motion, at p. 16, l. 18-19.) Similarly, Respondent states that "all local usage can be regarded as a single item." (Motion, at p. 17, l. 2.)

These ambitious propositions are offered without any supporting authority, and are ridiculous on their face. The billing for *every* service and feature contains a line stating their charge or price. To say that a summary of the *aggregate* charge for all incoming/forwarded calls in a given month suffices as an "itemization" misses the point entirely. WAC 480-120-161 requires "an itemized statement" of all charges, when requested by a customer, including "calculations of time. . . charges for calls." Synonyms for "itemize" include *list, enumerate* and *detail*. (I submit that the Presiding Officer can take judicial notice of this fact.) A mere one-line summary of aggregate charges is not, by any stretch of imagination, a list or detailing; nor does it reflect any "calculations". What does meet the requirements is the very sort of line-by-line, call-by-call itemization that composes, e.g., the long-distance, or pay-per-use, sections of any typical phone bill. (Contrary to Respondent's implication, I do not need, and have never asked for, "distance" calculations. They play no part in the feature in question.)

Likewise, the Company's tariff WN U-17, Section 4, 1st Revised Sheet 4 (Network Access Services) at B ("Measured Usage Rates") provides that "Local Usage Billing Detail is available for customers who request a breakdown of measured calls at the rates shown in this Section of this tariff." No mere one-line statement of price, and aggregate of all charges, reasonably serves as a "breakdown."

I have already argued in detail why this tariff section applies to the service here at issue (and why the Consumer Division's informal finding was therefore erroneous. (Complaint, at ¶¶ 46-50.) I will not repeat that discussion.

Commencing several months ago, I began to withhold that portion of my business phone bill consisting of the Measured Usage charges, plus related taxes and fees. (Said charges have diminished steadily each month, because I took the following steps: Requested all regular clients to phone my voice mail directly; changed my new Yellow Pages ad to contain my voice mail number, not my Verizon business number, and closed my business account, effective c. two weeks ago.) Should the Commission agree that the denial of my request for call details was improper, the appropriate Company response would be waiver of those disputed charges, and a credit in said amount (plus a refund of those Measured Usage charges already paid).

As mentioned in my Complaint, I eventually obtained, from a very uncooperative Everett Police Department, a copy of the report reflecting the Company's complaint. After reading the statement of one "witness"-- who alleged that I had periodically called the Company (over the course of my time as their customer) as if out of the blue and on some crazy whim -- I compiled a list of the Company's various errors (*other* than those alleged in this Complaint), for possible use in refuting that slanderous mischaracterization of my calls. However, the errors are also relevant to this discussion about call detail, because they evince the fact that it would be unreasonable to expect any Verizon customer to simply trust – without any means whatsoever of checking or verifying– the Measured Usage charges issued by this slipshod, error-prone organization. From the time I commenced Verizon service in early November, 1999 (both business and residential), all of the following errors occurred (all acknowledged by the Company):

- Improper publication of my "Nonpublished" residential number over the Internet, in violation of tariff Section 9, 3rd Revised Sheet 15 (Directory Listings), at B (17);
- Frequent, erroneous Pay-Per-Use charges;
- Failure to carry over, from my first Bellevue service address, to my second (current) one -- with the same service and phone nos. -- the "Flash-key" block that had been instituted to remedy the erroneous charges;
- **Three** ineffectual "corrections" of the above-noted omission (beginning with Stan Tate's, on 1/23/04 -- Order No. C6255345 -- and finally remedied late June by a manager in the Repair division);
- Wrong forwarding feature added to business line;
- Deleted services/features still appearing on bill;
- Substantial credit not posted as promised;
- Non-recurring "Service Order" charge not spread over 3 months as promised;
- Erroneous charges.

V. ANY "LIMITATIONS" BAR SHOULD BE WAIVED ON EQUITABLE GROUNDS.

I have no information by which to dispute Respondent's contention that one or more of the claims in this Complaint may be stale. However, neither have I found any evidence that limitations provisions addressing court actions apply automatically to a customer's complaint to his state regulatory agency. In any event, there are ample equitable grounds for the Commission to admit all claims. Never, as Respondent now asserts, did I "admit[] familiarity with relevant law." (Motion at p. 7, l. 9.) I stated in my Complaint that I'd had some prior experience with the Commission's informal complaint procedures. In those contexts, I relied upon the presumed expertise of Consumer Division staff – reliance which, on several occasions, turned out to be misplaced. (At various times, staff had incorrectly told me: (**1**) that there was no Qwest tariff provision governing compensation for directory errors and omissions; (**2**) that Nonpublished residential phone numbers may properly be publicized via the Web; and (**3**) [without first investigating or reviewing Verizon's tariff], that said tariff provisions governing Measured Local Use were "too numerous" to be located or provided to me. The latter arose in the context of an informal complaint, wherein the Commission's normal practice is to provide excerpts of tariffs upon request. I had already attempted my own Web search of the tariff, but found that no "key word" searches are possible.)

Although I haven't practiced law in over ten years (and never had experience with trial practice or consumer protection), Respondent *attributes* knowledge and experience to me, in an effort to demonstrate that I "should have known" or could easily have determined, that the Commission had jurisdiction over the matters herein at issue. Quite to the contrary; I have alluded to my law background (and my original motivations for going to law school) primarily to illustrate why I was less inclined than the average consumer to passively accept Verizon's egregious conduct. I only learned of the Commission's existence c. 1991 -- and sought its assistance like any other consumer -- after a neighbor (a Qwest employee) urged me to do so.

When I referred, in my Complaint, to my "laziness", I misspoke (taking self-effacement a bit too far); no one who knows me well would call me lazy. (Nor does one earn three AmJur Awards, or graduate in the top 10% of his law school class, by being lazy.) I put off the drafting of this Complaint primarily because of the stress caused me by the situation, because of two deaths in my family, and – as detailed in the Complaint – because of the [now obviously-wrong] assertion by Ms. Kanz that the Commission lacks jurisdiction. I did not, as Respondent suggests, "somehow understand" her to have made such a statement. (Motion, at p. 7, l. 7-8.) Ms. Kanz categorically asserted such lack of jurisdiction, in reference both to Verizon's attempted "gagging" of me, and its failure to reply to my questions about chain of command and how to appeal a decision. (September 20, 2001; Complaint at ¶37.) (The two matters are virtually inextricable, both part and parcel of the violation of WAC 480-120-101.)

It should be noted that I have retained all of my contemporaneous notes detailing all my interactions with the Company and the Commission.

In retrospect, it was a classic no-win situation I found myself in: Commission staff such as Vicki Elliot might opine that I've been too harsh in my

criticisms of her division. On the other hand, Respondent would now penalize me because I was *not skeptical enough* of Ms. Kanz' assertion (regarding a *fundamental* matter that, one would hope, all UTC staff are knowledgable about.) Moreover, my acceptance of Ms. Kanz' statement was fostered by my knowledge that, in general, there *are* some specific telecommunications matters that the state lacks jurisdiction over (e.g., wireless paging services).

Perhaps, in the context of statutes of limitation, this scenario is unique and new. It would be ironic, to say the least, if the Commission bars the bulk of this Complaint because one of its staff misinformed me about jurisdiction 2-1/2 years ago.

UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON, I DECLARE THE FOREGOING TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.
Signed this 14th day of July, 2004, in Bellevue, WA.

Jeffrey D. Glick,
Complainant

I hereby certify that I have this day served this document upon Respondent in this proceeding, by First Class U.S. Mail, postage prepaid.

Dated at Bellevue, WA this 14th day of July, 2004.

Jeffrey D. Glick,
Complainant