

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
PETITION FOR
INTERLOCUTORY REVIEW OF
THE FIFTH SUPPLEMENTAL
ORDER; AND ALTERNATIVE
MOTION FOR SUMMARY
DETERMINATION

1 Pursuant to WAC 480-09-760, the Commission Staff (Staff) requests interlocutory review of the Fifth Supplemental Order Setting Scope of Proceeding; Ruling on Motions (Order), issued by the Washington Utilities and Transportation Commission (Commission) on February 21, 2002.

A. Petition for Interlocutory Review of Decision Setting the Scope of the Proceeding, and in the Alternative, Motion for Summary Determination on the Issue that Verizon's Access Charges Exceed Cost

2 In the Order, the Commission determined that the scope of the proceeding is limited to the following two issues: (1) whether Verizon Northwest, Inc.'s (Verizon) access charges higher are than its costs and, if yes, by how much; and (2) whether the amounts Verizon charges itself and its affiliates for access lower than the imputation floor for this cost. See Order, ¶ 25. This limitation is striking given this Commission's prior decisions regarding access charges and general regulatory principles. The Order

would, without any apparent basis, establish these two claims as the sole bases for evaluating whether Verizon's access charges are just and reasonable. The Commission previously has not held that an access charge is illegal simply because it exceeds cost; indeed, it expressly has rejected this theory. The Commission should not do so now without first considering the evidence that the parties have spent months developing only to be stricken a week before the hearing.

3 In its complaint, AT&T alleged, among other things, that Verizon's access charges are considerably above cost. Complaint, ¶ 24. While this is an important issue for the Commission to consider in this docket, it is not the only one. The ultimate issue is whether Verizon's access charges are unduly prejudicial or unduly discriminatory. See RCW 80.36.186, RCW 80.36.180 *quoted in* AT&T's Complaint, ¶¶ 22 & 27. If it were established that Verizon's access charges were below cost, it would not necessarily follow that the charges were prejudicial or discriminatory (though below-cost may violate other provisions of Title 80 RCW). Moreover, to establish that Verizon's access charges are above cost is not sufficient to demonstrate that they are prejudicial or discriminatory. Whether Verizon's access charges exceed cost is one part of the larger issue.¹

¹ The need to consider more than the cost of access service is discussed in Glenn Blackmon's testimony:

4 This Commission has never held that a rate is unreasonable or discriminatory solely because it exceeds its costs. One of the principles of setting telecommunications rates is that regulated companies offer many services or elements and incur costs that are not specific to any individual service or element. If each service must be priced at its cost, as the Commission suggests in the Fifth Supplemental Order, then there is no way a company can recover the costs that are shared among services or elements. By not fully recovering costs, the resulting rate may not be sufficient.

5 The Commission stated this principle in the last major US West Rate Case, where the Commission noted that “it is not a matter of dispute that access charges greatly exceed the incremental cost of access.” *Washington Utilities and Transportation Commission v. US West Communications, Inc.*, Docket No. UT-950200, Fourteenth Supplemental Order, Commission Decision and Order Rejection Tariff Revisions; Requiring Refiling, at 110 (April 11, 1996). The Commission further noted that the incremental cost of access does not include shared costs. *Id.* at n.56. By limiting this

Staff has concluded that Verizon’s access charges are above the level that can be considered to be fair, just, and reasonable. Verizon’s access charges are excessive, and the Commission should order a reduction. . . . Verizon’s access charges are high based on virtually any reasonable comparison. They are high relative to the actual cost of providing the service. This will not be news to the Commission, as it has long been known that access charges are at multiples of the long-run incremental cost of the service. More significantly, they are higher than the rates Verizon itself is charging for the same service when used to connect interstate calls, and they are higher than the rates that Qwest, the state’s largest local exchange company, charges for intrastate access service.

Ex. T-___ at 3 (GB-T-1).

proceeding to whether, and to what degree, Verizon's access charges are above cost, the Commission would ignore this important point.

6 By focusing only on whether access charges exceed cost, the Commission would turn a blind eye to other important issues. For example, in this docket the Commission should consider whether Verizon's access charges discriminate against other carriers, in both the local and toll markets, which is a consideration that goes beyond the simple analysis of whether the charges exceed cost. See Ex. T-___ at 3-7 (GB-T-1). As Dr. Blackmon explains in his direct testimony, if Verizon successfully can export costs to Qwest's toll customers through excessive access charges, Verizon can charge lower rates for its local exchange service, which is an undue preference to itself in violation of RCW 80.36.186. Dr. Blackmon also explains how Verizon's high access charges affect competition in the long-distance market. See *id.* at 5-7. By considering Verizon's access charges in relation to cost, the Commission would sweep aside these important competitive issues.

7 If the Commission does not grant Staff's motion for interlocutory review on this issue, and limits this case "to determining Verizon's costs for providing access service and the price floor above which Verizon must price access service to itself and its affiliates," Order, ¶ 27, then the Staff moves for summary determination on the question

of whether Verizon's access charges exceed cost. No party has contested that Verizon's access charges are priced above cost.

8 In granting this motion, the Commission need not look beyond the testimony and exhibits of Verizon witness David G. Tucek. In his Exhibit DGT-4C, Mr. Tucek provides evidence that Verizon's access charges greatly exceed cost. See Ex. ___C (DGT-4C) (relevant attached).

9 In addition, the Commission Staff believes it is important to consider evidence explaining how Verizon's access charges affect its overall earnings. Access charges are important beyond their effect on those carriers that must pay access charges in order to provide their services. Access charges are an important component of Verizon's overall revenues. By considering only the impact of Verizon's access charges on AT&T (and other interexchange carriers) the Commission looks at only part of the whole picture. Staff is not suggesting that that this is a rate case, or that Verizon's evidence is sufficient on its merits, however, we do recommend that the Commission consider Verizon's overall revenues in deciding the reasonableness of its access charges.

B. Petition for Interlocutory Review of the Imputation Test

10 Staff also respectfully requests that the Commission restate its characterization of the imputation that Verizon must pass. In its Order, the Commission misstated the imputation test. The Commission defined the imputation test as whether "the amounts

Verizon charges itself and its affiliates for access are lower than the imputation floor for this cost.” Order, ¶¶ 23, 25, 35. No party in this docket has alleged that Verizon’s access rates are too low, or below any price floor.

11 The proper imputation test is whether Verizon’s toll rates are lower than a floor equal to the sum of its direct costs and its access rates. *See, e.g.*, Ex. T- ____ at 3 (TRD-1T); EX. T- ____ at 5-6 (TLZ-RT); Ex. T- ____ at 30 (Lee Selwyn, Direct).² The Commission’s Order may preclude the parties from following a proper imputation analysis.³

C. Petition for Interlocutory Review or Clarification of the Decision to Allow Verizon to File Surrebuttal

12 Staff respectfully requests that the Commission review or clarify the basis on which it permits Verizon to file surrebuttal testimony. In its Order, the Commission grants Verizon leave to file surrebuttal. Order, ¶¶ 58-59. However, the Commission

² *See also* WAC 480-80-204(6), which provides:

The rates, charges, and prices of services classified as competitive under RCW 80.36.330 must cover the cost of providing the service. Costs must be determined using a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method.

³ While imputation tests usually are applied to the rates of the service that requires the bottleneck service (toll service, in this instance), one could construct a mathematically equivalent test of the rates for the bottleneck service itself (access service, in this instance). In the traditional formulation, the floor for the toll service is equal to the sum of (a) the direct costs of the toll service and (b) the rates charged for the bottleneck access service. In the alternative formulation, the limit for access charges would be the difference between (a) the rate charged for toll service and (b) the direct costs of the toll service. However, the access charge limit produced by this calculation is a *ceiling* and not a *floor* as stated in the order.

does not explain why Verizon should be allowed to file such testimony, other than to say that Verizon “should” have this opportunity.

13 In the Order, the Commission notes that Verizon should have that opportunity and that the schedule included a reference that Verizon may wish to file surrebuttal. *Id.* at ¶ 58. This alone cannot be the basis for granting Verizon’s request, because it anticipates a request from Verizon and nothing more. Simply because the parties acknowledged that Verizon may wish to file surrebuttal does not mean that the parties agreed that Verizon would be able to do so without making a proper showing of need. As stated in Staff’s opposition to Verizon’s surrebuttal request, Verizon has not made that showing. *See* Commission Staff’s Answer in Opposition to Verizon’s Motions for Continuance, Definition of Scope, and Leave to File Surrebuttal Testimony, ¶¶ 9-15.

CONCLUSION

14 If the Commission does not reconsider its restriction of the issues in the case, Staff respectfully requests that the Commission clarify how the Commission’s two identified issues, cost and imputation, will be related to one another. The order does not say whether AT&T and Staff must demonstrate *both* that access charges are above cost *and* that Verizon’s access rates do not pass an imputation test or whether the access charges will be found to violate the law if they are *either* above cost *or* in violation of an imputation test. *See, e.g.,* Order, ¶ 23

The Commission Staff requests interlocutory review of the Order as detailed above. This is an important case and granting Staff's request for review will allow the Commission to consider those issues that are most important in considering the reasonableness of Verizon's access charges.

Dated: February 24, 2002

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