BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GLICK, Complainant, v. VERIZON NORTHWEST INC. Respondent.	DOCKET NO. UT-040535 VERIZON'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DETERMINATION

I. INTRODUCTION

1. Verizon Northwest Inc. ("Verizon") takes this opportunity to address new matters raised in Complainant's Memorandum in Opposition to Verizon's Motion for Summary Determination ("Compl. Resp."). Mr. Glick raises new matters regarding: waiver of the statute of limitations for his first three claims; status of his phone service on which he seeks itemization under his fourth claim; and interpretation of the substantive law underlying all four of his claims.

2. The propriety for summary determination on all of Complainant's claims is unchanged.[1] No material facts are in dispute; for purposes of this motion only, Verizon accepts as true the facts as presented in Mr. Glick's Complaint and his response to Verizon's motion.

[1] The rules for summary determination mirror Washington Court Rule 56 – motion for summary judgment. As an alternative to full summary determination, Verizon requests partial summary determination on any of Complainant's four claims in accordance with the procedure in Washington Court Rule 56(d).

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II. THE RELEVANT STATUTES OF LIMITATIONS SHOULD NOT BE WAIVED

3. Mr. Glick does not contest that his first three claims were brought after the relevant statutes of limitations had run, but rather questions the applicability of those statutes to complaints brought before the Commission and requests that the Commission ignore the statue of limitations on equitable grounds. Compl. Resp. p. 10, ln. 27-31. To the contrary, Mr. Glick's first three claims are stale and should be barred.

4. There is no reason to doubt that the relevant statutes of limitations are applicable to claims brought before the Commission. Mr. Glick does not dispute that first claim is based on RCW 80.04.220, regarding reparations for unreasonable billings, and the Commission has exclusive jurisdiction over such a claim under RCW 80.04.240. The statute of limitations for a claim under RCW 80.04.220 would be meaningless if it did not apply to the only adjudicative body with jurisdiction.

5. Mr. Glick's second and third claims are subject to generally applicable law, including RCW Chapter 4.16 – Limitations of Actions, and Mr. Glick provides no reason why statutes of limitations would not be applicable to claims brought before the Commission. He simply says that he has not found any evidence that the limitations would apply "automatically to a customer's complaint to his state regulatory agency." Mr. Glick's argument ignores the emphatic language of Washington's limitations statute, as well as the APA. The statutory applicability of the limitations is clear: "Except as otherwise provided in this chapter [4.16], and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can *only* be commenced within the periods provided in this chapter after the cause of action has accrued." RCW 4.16.005 (emphasis added). If there were any doubt about

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the matter, the APA lays them to rest. RCW 34.05.413(2) requires that an adjudicative proceeding be commenced only "upon the timely application of any person." Clearly administrative law requires timely initiation of the proceeding. Such did not occur here; like his first claim, Mr. Glick's second and third claims are also stale and time-barred.

6. Mr. Glick's request for equitable tolling of the relevant statutes of limitations should be denied. As noted in Verizon's motion, equitable tolling of a statute of limitations is inappropriate when a plaintiff has not exercised due diligence in pursuing his or her rights. *Douchette v. Bethel Sch. Dist. 403*, 117 Wn.2d 805, 811, 818 P.2d 1362 (1991). Mr. Glick makes no attempt to contest that he could have easily determined the jurisdiction and relevant statutes of limitations for his claims. He graduated in the top 10 percent of his law school class, received three AmJur awards, and practiced law (Compl. Resp., p. 11, ln. 9, 20); certainly, it is fair to say that he was capable of a modest research effort to determine where and when to bring his claims. Mr. Glick can hardly claim due diligence in pursuit of his rights when he did not even take this obvious first step, so equitable tolling of the relevant statutes of limitations should not be permitted.

7. The only excuse that Mr. Glick provides for not investigating the Commission's jurisdiction is based on Mr. Glick's alleged misunderstanding of comments made by Commission staff analyst Lori Kanz. In his Complaint, Mr. Glick says that Ms. Kanz "ignored my questions about the Company's refusal to either disclose its chain of command or tell me whether it has a 'claims' procedure or department. Instead, she maintained that WUTC lacks jurisdiction over

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those issues." Complaint, ¶ 37. By this account,[2] Ms. Kanz was entirely correct – there was no law at the time that required a telephone company to disclose its chain of command or whether it had a claims procedure or department. See WAC 480-120-101 (superceded). Moreover, Mr. Glick now seeks to retract his earlier admission, that he did not pursue this matter, at least in part, because of his own "laziness." See Compl. Resp., at 11. However, Mr. Glick specifically advised the ALJ that his initial pleadings should be treated as the equivalent of his sworn testimony, and Washington law is clear: a party may not defeat summary judgment by filing later pleadings contradicting the party's earlier testimony. Selvig v. Caryl, 97 Wn. App. 220, 225, 983 P.2d 1141, rev. den. 140 Wn.2d 1003 999 P.2d 1262 (1999).

III. COMPLAINANT'S ITEMIZATION CLAIM IS NOW MOOT

8. The fourth claim in the Complaint relates to itemized billing of local calls, and the claim is now moot. Mr. Glick discontinued his line with Measured Local Service in June of 2004. Compl. Resp., p. 9, line 21. Verizon will waive the total of $32.52 that Mr. Glick withheld from his bills for that service since October of 2003 (reflecting all charges for Measured Local Service). Declaration of Stanley P. Tate, ¶¶ 4, 5, 7, 8. Given that the service has been discontinued, Verizon is not able to accommodate Mr. Glick's request for call-by-call itemization going forward. Given that he will be refunded for the service, there is no remaining cause of action for itemization.

IV. VERIZON COMPLIED WITH ALL REGULATIONS

9. Regardless of the fact that three of Mr. Glick's claims are stale and the fourth is moot, there is no reasonable basis for any of his claims. Mr. Glick's response to Verizon's

[2] Verizon notes that Mr. Glick has changed his rendition of what Ms. Kanz allegedly told him. Compare Compl., ¶ 37 with Compl. Resp., p. 11, lines 26-28. This distinction, however, causes no difference in result.

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motion raises several new matters regarding his claim, but none of these new matters inhibit summary determination.

10. Regarding Mr. Glick's first claim for reparations, his only response is to claim that Verizon mischaracterized the facts in its motion. Again, Verizon makes it clear that for the purposes of its motion, it accepts Mr. Glick's statement of facts as if they were true. In particular, Verizon does not contest that Mr. Glick bases his reparations claim on various "failures to disclose" service options and features. Compl. Resp. p. 1, ln. 23-30. Mr. Glick cites no authority on which he finds that Verizon had a "duty to disclose" these options and features. In any event, it seems clear from the Complaint that Mr. Glick was provided extensive and timely information regarding his options. Complaint, ¶ 4 ("I posed numerous detailed questions to a GTE sales agent "); ¶ 6 ("On 10/28/99 [two days after placing the order], Ms. Paylor sent me the long awaited *correct and complete* summary of business services ordered" (emphasis in original)). Thus, no 'characterization' of the facts is necessary—any facts were relayed in 1999, at least four years before this formal complaint was filed, and this claim is untimely.

11. Most importantly, Mr. Glick continues to misinterpret the tariff language that limits relief to "an amount equivalent to the proportionate charge." Tariff WN U-17, 2nd Revised Sheet 29, at C(7)(e). He is only entitled to relief for his call-forwarding service, which has already been fully refunded. He attempts to claim that there has been a "defect in transmission" of the business line itself because of the limitations of his call-forwarding service, but these are two different services, as the Commission well knows since they are separately tariffed.

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12. Regarding Mr. Glick's second claim, based on purported violations of customer service regulations, Mr. Glick misinterprets several elements of WAC 480-120-101, which was in effect at the time of the events at issue. First, he says that Verizon did not "investigate" his complaint, per WAC 480-120-101(1). Compl. Resp., p. 2, ln. 12-13. However, Mr. Glick's Complaint is clear that he described his problem to Ms. Cooper initially, and requested compensation "several days" late. Complaint, ¶¶ 13-14. Mr. Glick's complaint was not difficult to understand, and the appropriate response was clear, so he got an immediate resolution after describing his situation. Second, he insists that since his complaint was immediately addressed by a supervisor, Ms. Gallentine, he had a right to appeal her decision to another supervisor. That is not what WAC 480-120-101(2) says; a customer only has a right to have a complaint reviewed by "a" supervisor, a position Ms. Gallentine unquestionably held. Complaint, ¶ 13. Ms. Gallentine's review was explained in a thorough and thoughtful three page letter. Complaint, Exhibit 3. Mr. Glick may not like the results of that review, but under the facts as he presents them he may not say that no review occurred. Finally, Mr. Glick again recites the "contact name" requirement from WAC 480-120-165(2), which was not even in existence at the time of the events at issue. Compl. Resp., p. 1, ln. 33.

13. Mr. Glick's third claim is likewise unsupportable. Mr. Glick's actions are quintessentially harassing in nature: he "phoned right back each time *in a continued attempt to be heard*" after Verizon personnel had disconnected their call with him. Compl., ¶ 19 (emphasis in original). Mr. Glick cites no authority for the contention that a private company is not able to restrict the time, place, and manner of calls that it is willing to receive, and Mr. Glick's reliance on authority applying constitutional protections for free speech is wholly misplaced. State v.

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Noah, 103 Wn. App. 29, 48, 9 P.3d 858 870 (2000)("The Constitution does not prohibit a private person's infringement of another's First Amendment rights: 'It forbids only such infringements which may properly be attributable to the State'") *quoting* Stephanus v. Anderson, 26 Wn. App. 326, 335, 613 P.2d 533 (1980), *citing* Lloyd Corp. Ltd. V. Tanner, 407 U.S. 551, 92 S.Ct. 2219, 33 L.Ed.2d 131 (1972). Noah is instructive. There, the Court of Appeals rejected the attempt to claim that judicial enforcement of an agreement restricting a person's speech activities constituted state action sufficient to bring the private agreement within the prohibitions of the First Amendment.

14. Finally, Mr. Glick's fourth claim, regarding itemization of local calls, is addressed above.

V. CONCLUSION

15. Mr. Glick filed his Complaint after the relevant statutes of limitations had run for three of his four claims, and he has provided no equitable reason to extend the limitations. In any event, those claims were devoid of merit in the first instance. His fourth claim has already been appropriately rejected by Commission staff and is now moot.

16. Based on the foregoing, Verizon respectfully requests that the Commission grant Verizon's motion for summary determination on all of Mr. Glick's claims as stated in his Complaint.

DATED: July 23, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of July, 2004, served the true and correct original, along with the correct number of copies, of ***Verizon's Reply in Support of Its Motion For Summary Determination, Declaration of Stanley P. Tate,*** and ***Certificate of Service*** upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn, Executive Secretary	X	Hand Delivered
Washington Utilities & Transportation Commission	___	U.S. Mail (1st class, postage prepaid)
	___	Overnight Mail
1300 S. Evergreen Park Drive SW	___	Facsimile (360) 586-1150
Olympia, WA 98503-7250	X	Email (records@wutc.wa.gov)

I hereby certify that I have this 23rd day of July, 2004, served a true and correct copies of the foregoing documents upon parties noted below via E-Mail, Facsimile and U.S. Mail:

Jeffrey D. Glick, President
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I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 23rd day of July, 2004, at Seattle, Washington.

Anna Stewart

Anna Stewart, Legal Secretary