

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

	)	
JEFFREY D. GLICK, President,	)	DOCKET NO. UT-040535
CONSIDER IT DONE,	)	
	)	ORDER NO. 02
Complainant	)	
	)	INITIAL ORDER GRANTING,
v.	)	IN PART, VERIZON'S MOTION
	)	FOR SUMMARY
VERIZON NORTHWEST INC.,	)	DETERMINATION;
	)	CANCELING PROCEDURAL
Respondent.	)	SCHEDULE
.....	)	

1 **Synopsis.** *This Initial Order proposes to grant, in part, Verizon's Motion for Summary Determination, dismissing claims relating to compensation, violation of customer complaint rules, and for an Order to Show Cause. The Initial Order finds Verizon in violation of WAC 480-120-161(7)(b) and related tariff provisions, and approves the parties' resolution of the claim. As the Initial Order dismisses or resolves all claims made in the complaint, the Order cancels the remaining procedural schedule.*

2 **Nature Of Proceeding.** This proceeding involves a formal complaint alleging that Verizon Northwest Inc. (Verizon or the Company) violated WAC 480-120-165(2) relating to customer complaints and WAC 480-120-161(7)(b) concerning the form of bills, seeking an order assessing administrative penalties as appropriate under WAC 480-120-019, RCW 80.04.380, and RCW 80.04.405, and seeking compensation and relief under Verizon's tariff, WN U-17.

3 **Procedural History.** On March 22, 2004, Jeffrey D. Glick, President of Consider It Done, Ltd., (Mr. Glick or Complainant) filed with the Commission a formal complaint against Verizon, Complainant's Petition for Administrative Relief (Complaint). Verizon filed an answer to the Complaint on April 21, 2004.

- 4 The Commission convened a prehearing conference in this docket on May 25, 2004 before Administrative Law Judge Ann E. Rendahl. On May 27, 2004, the administrative law judge entered Order No. 01 in this proceeding, a prehearing conference order establishing a procedural schedule, including a schedule for filing dispositive motions and responses.
- 5 On July 2, 2004, Verizon filed with the Commission a Motion for Summary Determination (Verizon Motion). On July 16, 2004, Mr. Glick filed Complainant's Memorandum in Opposition to Motion for Summary Determination (Response). Verizon filed a Reply in Support of Its Motion for Summary Determination (Reply) and Declaration of Stanley P. Tate on July 23, 2004.
- 6 **Initial Order.** The presiding administrative law judge proposes to grant, in part, Verizon's Motion for Summary Determination, dismissing the claims relating to compensation, violation of customer complaint rules, and for an Order to Show Cause. The Initial Order finds Verizon in violation of WAC 480-120-161(7)(b) and related tariff provisions, and approves the parties' resolution of the claim. As the Initial Order dismisses or resolves all claims made in the complaint, the Order cancels the remaining procedural schedule.
- 7 **Appearances.** Jeffrey D. Glick, President, Consider It Done, Ltd., Bellevue, Washington, represents the Complainant. Timothy J. O'Connell, Stoel Rives LLP, Seattle, Washington, represents Verizon.

### MEMORANDUM

- 8 **The Complaint.** The Complaint seeks compensation for the total cost of the Complainant's local exchange business service for two business lines from November 4, 1999, through September 25, 2001. *Complaint at 14.* In addition, the Complaint alleges violations of rule and tariff by Verizon relating to customer complaints and a request for an itemized statement, and requests that the

Commission assess administrative penalties for these alleged violations. *Id.* The Complaint also requests that the Commission enter orders directing Verizon to comply with the Complainant's request for an itemized statement and to cease and desist from efforts to limit the means by which the Complainant may communicate with the Company. *Id.* Finally, the Complaint requests that the Commission order Verizon to reimburse the Complainant for the copying and mailing costs of the Complaint. *Id. at 15.*

9 The background and facts surrounding the allegations and requests for relief are set forth in the Complaint, two cover letters dated March 20, 2004, and Exhibits 1 through 6 attached to the Complaint.

10 **Verizon's Motion for Summary Determination.** Verizon asserts in its motion for summary determination that statutes of limitation bar the Complainant's claims or that Verizon is entitled to judgment as a matter of law. Under WAC 480-07-380(2)(a), summary determination is appropriate "if the pleadings ... together with any properly admissible evidentiary support ... show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Verizon asserts that it accepts the facts as stated in the Complaint for purposes of its motion, and that no facts are in dispute. *Verizon Motion at 5.*

11 As Verizon notes in its motion, the Commission will consider the standards applicable to a motion for summary judgment under Washington superior court Civil Rule 56 when evaluating motions for summary determination. *See WAC 480-07-380(2)(a). Verizon Motion at 5.* If the responding party does not show specific facts showing a genuine issue of material fact in dispute, summary determination, or determination as a matter of law, is appropriate. *See CR 56(e).*

12 This Order will address separately below each of the allegations and requests for relief set forth in the Complaint, considering the arguments made in the

Company's motion for summary determination, as well as the Complainant's response and the Company's reply.

- 13 **Claim for Compensation.** The Complaint states that Mr. Glick ordered a business phone number for his business, Consider It Done, an errand and pet-sitting business, and residential phone number from Verizon in late October 1999. *Complaint at 2-3; Ex. 4.* As a part of this service, Mr. Glick ordered a call-forwarding feature to allow unanswered calls to be forwarded to his existing voice-mail and pager service through Arch Wireless. *Id.* The Complaint asserts that in September 2001, Mr. Glick became aware that the call-forwarding feature allowed only one unanswered call to be forwarded to voice mail and that other simultaneous incoming calls were not forwarded, resulting in the caller hearing "endless rings." *Complaint at 3.*
- 14 Mr. Glick sought compensation or credit from Verizon for what he asserted was an undisclosed limitation on the call-forwarding feature, as well as the potential lost business due to calls not forwarded to voice-mail. *Id. at 3-5.* Verizon offered Mr. Glick a credit for the call-forwarding feature of \$1.50 per month for the 22-month period (November 1999 through September 2001), for a total credit of \$36, reflecting the cost of the feature. *Id. at 4.* Mr. Glick asserts that Verizon's tariff, WN U-17, Section 2, 2<sup>nd</sup> Revised Sheet 29, does not limit compensation or refunds for features only, but allows refunds for all or part of the exchange service charges. *Id. at 5.* Verizon has provided Mr. Glick a credit only for the cost of the call-forwarding feature, despite Mr. Glick's numerous efforts to obtain a refund or credit for all or part of the exchange service charges. *Id. at 4-7, 9; Exs. 1, 2.* Mr. Glick now requests that the Commission order compensation to Consider It Done, Ltd., for the total cost of its "local exchange business service, plus all taxes and fees, ... during the period November 4, 1999 through September 25, 2001." *Id. at 14.*

15 Verizon asserts that Mr. Glick's claim for compensation is not timely and should be dismissed. Verizon asserts in its motion that Mr. Glick must bring a claim for a refund of his telephone bills either on the basis of RCW 80.04.220, which allows reparations for unreasonable billings, or under RCW 80.04.230, which allows refunds for billing in excess of a lawful tariff rate. *Verizon Motion at 7*. Verizon asserts that the statute of limitations for both types of claims is set forth in RCW 80.04.240, which requires complaints as to unreasonable rates to be filed with the Commission within six months, and complaints relating to collection of unlawful rates within two years of the time the cause of action accrues. *Id.*<sup>1</sup> Verizon argues that Mr. Glick's claim must be considered one for unreasonable charges under RCW 80.04.220, and that the claim is made two and a half years after the incident occurred. *Id. at 8*. Verizon also addresses Mr. Glick's argument under the Uniform Commercial Code (UCC), RCW 62.2-315, that Verizon's service "failed of its essential purpose," asserting that a reparations claim under RCW 80.04.240 is the exclusive procedure for such claims. *Id.*

16 The Complainant responds that statutes of limitation addressing court actions should not apply to a customer's complaint to a state regulatory agency. *Response at 10*. The Complainant requests that the Commission bar the effect of any statutes of limitation based on equitable grounds, asserting, in part, reliance on the statement of Commission Consumer Affairs Staff that the Commission lacked jurisdiction over such a claim. *Id. at 10-11*.

17 In reply, Verizon asserts that the Commission should deny Mr. Glick's request for equitable tolling of statutes of limitation. Verizon asserts that equitable tolling is inappropriate when the plaintiff has not exercised due diligence in pursuing his or her rights. *Reply at 3, citing Douchette v. Bethel Sch. Dist. 403, 117 Wn.2d 805, 811, 818 P.2d 1362 (1991)*. Verizon argues that Mr. Glick could have

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<sup>1</sup> Verizon also asserts that statutes of limitation in chapter 4.16 RCW also apply to Mr. Glick's claim for compensation. Because RCW 80.04.220 - .240 clearly apply in this situation, other statutes of limitation do not apply. *See RCW 4.16.005*.

easily determined the jurisdiction and relevant statutes of limitation for his claim, given his placement in law school and that he practiced law. *Reply at 3.* Verizon also asserts that Mr. Glick misunderstood Commission Staff's statement of lack of jurisdiction, and did not pursue the claim due to "laziness," as stated in one of his cover letters to the Complaint. *Id. at 4.*

18 ***Discussion and Decision.*** Claims filed under the statutes governing reparations for alleged unreasonable rates and overcharges, RCW 80.04.220 and RCW 80.04.230, must be filed with the Commission within six months or two years, respectively, of the cause of action accruing. *See RCW 80.04.240.* The procedure under RCW 80.04.240 is the exclusive process for obtaining refunds under the two statutes.

19 The Complaint appears to seek a refund for unreasonable charges under RCW 80.04.220, and is subject to a six-month statute of limitations under RCW 80.04.240. Unless there is a justifiable reason for equitable tolling of the statute of limitations, the Complainant's claim for compensation under Verizon's Tariff WN U-17 is barred as untimely filed.

20 Mr. Glick's assertion in his response that he did not pursue a timely claim due to Commission Staff's assertion of a lack of Commission jurisdiction is not credible. The Complaint notes that a Commission staff member asserted that the Commission lacked jurisdiction to address Mr. Glick's *consumer complaint issues*, and the second cover letter attached to the Complaint indicates that Commission Staff apparently informed Mr. Glick in September 2001 that the Commission had no jurisdiction *over Verizon's refusal to escalate his complaint*. *Complaint at 10; March 20, 2004, letter at 3.* Neither of these statements address the Complainant's request for a refund. Further, the Complaint states, "I am aware that WUTC lacks jurisdiction to order compensation for 'lost business'," and that "I knew from experience that WUTC has only limited jurisdiction to order compensation." *Complaint at 5, 7.* In addition, as Verizon notes, the fact that Mr.

Glick attended law school and practiced law lends credence to his ability to research Commission statutes and rules.

21 The facts concerning the Complainant's claim for refunds are not in dispute, and summary determination on this claim is appropriate. The Complainant's claim for a refund under Verizon's Tariff WN U-17, Section 2, 2<sup>nd</sup> Revised Sheet 29 was not timely filed and is dismissed. Because the claim is dismissed as untimely, the Commission need not reach the merits of the interpretation of the tariff provision.

22 **Alleged Violations of WAC 480-120-165(2).** The Complaint details the Complainant's efforts to contact Verizon to request a refund arising from the performance of the call-forwarding feature, as well as the Complainant's efforts to escalate his concerns to a supervisor. The Complaint asserts that Verizon violated WAC 480-120-165(2) by "failing to provide chain of command information, refusing to acknowledge the existence of a department, or a procedure, for entertaining Complainant's desire to submit a claim for appropriate compensation, and failing to notify Complainant of the opportunity to appeal the Company's initial decision." *Complaint at 14.*

23 Mr. Glick called Verizon in early September 2001, after learning of the problem with the call-forwarding feature. Mr. Glick spoke with Ms. Darcie Cooper of Verizon's Customer Relations Department about other options for call-forwarding and requested a credit or compensation for the call-forwarding problem. *Id. at 3-4.* Ms. Cooper placed Mr. Glick on hold, consulted with Ms. Marion Gallentine, a supervisor, and then offered Mr. Glick a refund for the cost of the call-forwarding feature for the 22-month period, totaling \$36. *Id.* After asking for the name of Ms. Gallentine's supervisor and how to reach Verizon's claim department, the Complaint states that Ms. Cooper stated "We're not going to have this discussion," and after Mr. Glick insisted, Ms. Cooper apparently hung up. *Id.*

- 24 On September 7, 2001, Mr. Glick called Ms. Gallentine to express his “dissatisfaction, and desire for compensation.” *Id. at 6.* According to the Complaint, Ms. Gallentine refused to consider an additional refund, and would not tell Mr. Glick how to pursue a claim or to identify her superior(s), but hung up the phone. *Id.* Mr. Glick called Ms. Gallentine back, and at one point was connected to Ms. Gallentine’s voice mail, which provided a direct telephone number. When calling that number, Mr. Glick’s call was answered by “Bonnie” who indicated that she was the manager of Customer Relations. *Id. at 7.* Bonnie hung up on Mr. Glick after he angrily stated his dissatisfaction with Verizon’s “approach to business.” *Id.* Mr. Glick then called Verizon again, and reached “Stan,” who directed Mr. Glick to contact the Commission. After Mr. Glick expressed his concerns, Stan also hung up on Mr. Glick. *Id.* The Complaint states that Mr. Glick yelled profanity at Stan just as Stan was hanging up the phone. *Id.*
- 25 Later on September 7, 2001, an Everett police officer called Mr. Glick asking for Mr. Glick’s side of the story involving Verizon. *Id. at 8.* The officer asked Mr. Glick not to call the Company, or to face criminal charges or a civil suit for harassment. *Id.* The Complaint indicates that sometime later, Ms. Gallentine directed Mr. Glick orally and in writing, not to call the Company, or he would face charges for harassment. *Id.*
- 26 After pursuing an informal complaint with the Commission, Commission Staff directed Mr. Glick to call Verizon’s Claims Department. *Id. at 10.* After calling the number provided by Commission staff, Mr. Glick reached “Ann,” who transferred her to Ms. Gallentine. *Id.* Ms. Gallentine apparently directed Mr. Glick not to call the Company, and hung up the phone. *Id.* Mr. Glick faxed letters to Verizon on September 20 and 24, 2001, and received responses from Ms. Gallentine to these letters on September 21 and 25, 2001. *Id.; see also Exs. 3, 6.*



- 27 Mr. Glick notes that he has continued to call Verizon over the last two and a half years to address minor repair and billing questions, but that in mid-June 2003, Mr. Glick called Stan Tate with Verizon's Consumer Relations Department to make a last formal request for a formal complaint to the Executive Office. *Id. at 13.* Mr. Tate asked Mr. Glick if he wished to make an Executive Complaint, to which Mr. Glick said yes. *Id.* Soon after, Mr. Glick received a letter dated June 20, 2003, from Mr. Tate rejecting the request for an Executive Complaint and reiterating the Company's request that any communications with the Company, except for requests for repair, must be in writing. *Id.; Ex. 5.*
- 28 As with the claim for compensation, Verizon asserts that the Complainant's claim based on WAC 480-120-165(2) is subject to a two-year statute of limitation, either under RCW 4.16.100(2) for an "action upon a penalty to the state," or RCW 4.16.130 for "actions not otherwise provided for." *Verizon Motion at 6.* Verizon argues that other possible statutes of limitation, RCW 4.16.080(3) and RCW 4.16.080(2), are not applicable. *Id. at 8-10.* As with the compensation claim, Verizon argues that equitable tolling of these statutes is not appropriate. *Id. at 11-12.*
- 29 On the merits, Verizon asserts that the facts stated in the Complaint demonstrate full compliance with the applicable customer service regulations. *Id. at 13-14.* Although Mr. Glick asserts violations of WAC 480-120-165(2), Verizon notes that WAC 480-120-101 was the rule applicable at the time. *Id. at 14.*
- 30 Concerning the first allegation relating to the failure to provide contact information under WAC 480-120-165(2)(a), Verizon notes that there was no requirement under WAC 480-120-101 to provide such information. *Id.* However, Verizon notes that the facts stated in the Complaint indicate that Mr. Glick was provided that information during each call. *Id.*

- 31 Verizon notes that WAC 480-120-165(2)(b) requires prompt investigation of complaints. Verizon asserts that the facts in the Complaint indicate an oral response to Mr. Glick's requests concerning call-forwarding concerns and the receipt of a letter three weeks later stating the reason for denying further refunds. *Id.*
- 32 Verizon also asserts that Verizon complied with WAC 480-120-165(e), which requires that customers be informed that decisions may be appealed to a supervisor. *Id.* Verizon states that the facts in the Complaint indicate that Mr. Glick spoke with a Customer Relations manager, Ms. Gallentine, on several occasions, and that the rule does not require appeal to a higher supervisor, merely to "a supervisor." *Id.*
- 33 In response, the Complainant asserts that the statutes of limitation applicable to court actions should not apply to his complaint to a state regulatory agency. *Response at 10.* As above, the Complainant asserts that the Commission Staff's statements of lack of jurisdiction should allow equitable tolling of the statutes of limitation. *Id. at 11-12.*
- 34 On the merits of the claim, the Complainant asserts that the prior rule, WAC 480-120-101 also supports the allegations of violation, noting that WAC 480-120-101(2) required that that the Company provide a name or department of supervisory personnel and a telephone number by which they may be reached. *Id. at 2.* The Complainant asserts that Ms. Gallentine, although a supervisor herself, did not provide the name of a supervisor or answer Mr. Glick's question as to the department or procedure for seeking appeal. *Id. at 2-4.* The Complainant asserts that both rules require prompt investigation, and denies that the immediate response by Ms. Cooper and Ms. Gallentine satisfy that requirement. *Id.* The Complainant asserts that, although he was urged to address his issues to Mr. Tate, the communications with Mr. Tate did not satisfy

the requirement for a contact at the Company or consideration of the decision of Company personnel under WAC 480-120-101(2).

35 In reply, Verizon asserts that statutes of limitation in chapter 4.16 RCW apply to the Complainant's claims of rule violations, asserting that RCW 34.05.413(2) requires the "timely application of any person" for adjudication. *Reply at 3.* Verizon also argues against equitable tolling of such statutes of limitation. *Id.* Verizon asserts that the Company satisfied the requirements of WAC 480-120-101(1) to promptly investigate Mr. Glick's claim. *Id. at 6.* Verizon notes that Mr. Glick received an immediate response from Ms. Cooper, and that given that the "complaint was not difficult to understand, and the appropriate response was clear, ... he got an immediate resolution." *Id.* Further, Verizon indicates that a supervisor, Ms. Gallentine, immediately addressed Mr. Glick's complaint and that he had no right to appeal her decision to another supervisor. *Id.* Finally, Verizon asserts that the contact name requirement in WAC 480-120-165(2) did not exist at the time the events occurred. *Id.*

36 ***Discussion and Decision.*** The Complainant alleges violations of WAC 480-120-165(2), asserting that Verizon failed to comply with rules governing customer complaints. The allegations arise from events occurring over two years ago, prompting a concern that the Complainant has asserted his concerns too late. Unlike the compensation claim discussed above, there is no provision in Title 80 RCW limiting the time for complaining of violations of Commission rule. If consumers or others were barred from questioning a Company's compliance with statute and rule under statutes of limitation governing court actions generally, presumably the Commission itself would be barred from filing a complaint against a regulated Company for past violations of statute and rule. For these reasons, the statutes of limitation in chapter 4.16 RCW do not apply to questions of violation of Commission statutes and rule.

37 On the merits of the allegations, Verizon has satisfied the requirements of the applicable rules. Although the Complaint alleges violations of WAC 480-120-165(2), that rule became effective on July 1, 2003, almost two years after the alleged violations occurred, and cannot be applied retroactively. The rule in force at the time the events occurred, WAC 480-120-101, requires:

(1) Each complaint or dispute received by a telecommunications Company *shall be investigated promptly as required by the particular case, and the result reported to the applicant or subscriber.* When circumstances indicate the need for corrective action, such action shall be taken as soon as possible.

(2) Each telecommunications Company shall ensure that personnel engaged in initial contact with a dissatisfied or complaining applicant or subscriber shall inform the applicant or subscriber that if dissatisfied with the decision or the explanation that is provided, the applicant or subscriber *has the right to have that problem considered and acted upon by supervisory personnel. The applicant or subscriber shall be provided with the name or department of such supervisory personnel and a telephone number by which they may be reached.*

*(Emphasis added.)*

38 As Verizon notes, WAC 480-120-101 does not require that Company personnel provide the name of the Company's contact, as required by WAC 480-120-165(2)(a), except for the name of a supervisor. It appears based on the facts presented in the Complaint that, on every call Mr. Glick made to the Company, that the person answering the call provided their name. It appears that Ms. Gallentine was named as the supervisor in the call Mr. Glick made to Ms. Cooper, and that as Mr. Glick subsequently called Ms. Gallentine, that he was provided with her telephone number. It appears Ms. Cooper and Ms. Gallentine complied with the requirement in WAC 480-120-101(2) to provide access to a

name or department, as well as a telephone number, for seeking consideration of an earlier decision.

39 Although the full text of each conversation is not presented in the Complaint, it is clear that Mr. Glick sought a refund or compensation for the call-forwarding problem, resolution of the problem, and recourse to a supervisor. Although he was dissatisfied with the supervisor's resolution, the rules do not provide recourse to ever-higher levels of management. Providing contacts and telephone numbers at higher levels of management may be good customer relations, but WAC 480-120-101 does not require such action. The rule does provide for recourse to the Commission for review of consumer complaints, which recourse Mr. Glick availed himself. It appears from the facts in the Complaint that at different times emotions were high and both Mr. Glick and Verizon Customer Relations staff could have behaved in a more civil manner to one another. It does not appear, however, that any rule violations occurred.

40 The facts presented in the Complaint are not in dispute, and the allegations of violation of WAC 480-120-165(2), or WAC 480-120-101, the rule in effect at the time, are appropriate for summary determination as a matter of law. The Complaint does not support a finding of violations of WAC 480-120-101. Complainant's request for administrative penalties under WAC 480-120-019, RCW 80.04.380, and RCW 80.04.405 are denied.

41 **Request for Order to Show Cause.** The Complaint seeks an "Order to Show Cause why the Company should not cease and desist from its threat of criminal prosecution of, and civil lawsuit against, Complainant, and why the Company should not cease and desist from its attempts to limit the means by which Complainant may communicate with the Company." *Complaint at 14*. The Complainant argues that Verizon, through the assistance of the Everett police department has attempted to establish an unconstitutional prior restraint on his First Amendment rights. *Id. at 8, 9*. The Complainant apparently objects to the

conditions Verizon has placed on his communication with the Company, namely written communication, except for when repair services are required. *See Ex. 5.*

42 Verizon argues that a two-year statute of limitations, RCW 4.16.130, applies to the claim concerning the Company's request for written communication and that equitable tolling of the claim is not appropriate. *Verizon Motion at 10-11.* On the merits, Verizon argues that there is no basis to the claim that the Company must accept Mr. Glick's telephone calls, especially considering that Mr. Glick has become angry and shouted an obscenity at Verizon personnel. *Id. at 15.* Verizon notes that Commission rules (WAC 480-120-101 or WAC 480-120-165(2)) do not require oral communication, but allow written or oral communication. *Id.*

43 Although Verizon notes that "oral communications is standard for the convenience of both customers and telephone companies," Verizon asserts that its customer relations personnel should not be required to endure repeated complaints after the Company has reached a decision. *Id.* Verizon argues that Mr. Glick's repeated calls to the Company constitute harassment under RCW 9.61.230(2). *Id.* Finally, Verizon asserts that limitations of constitutional free speech over the telephone are enforceable by the state if the limitations are reasonable in light of the forum and are viewpoint neutral. *Id., citing Seattle v. Huff, 111 Wn.2d 923, 927, 767 P.2d 572 (1989).*

44 In response, the Complainant asserts that Verizon's threat of a civil suit or criminal action is an unconstitutional abridgment of his right to free speech. *Response at 7.* The Complainant argues that his phone calls to seek redress with Verizon were "protected speech," as discussed in *Huff*. *Id.* The Complainant asserts that Verizon's prohibition on his calls is not viewpoint neutral, as the Company has not banned calls from all angry people, but just from him. *Id. at 8.* The Complainant asserts that this is a prior restraint against his speech, which he asserts violates the First Amendment. *Id., citing Bantam Books v. Sullivan, 372 U.S. 58, 70 (1963).* The Complainant also argues that *Huff*, citing by Verizon, does not

apply to the facts in this case, as that case involved telephone harassment under harassment statutes, and denies that he made threats of any kind to Verizon personnel. *Complaint at 8.*

45 Verizon argues that the Complainant's reliance on constitutional protection of free speech is not appropriate, asserting that the Constitution only forbids infringement of First Amendment rights attributable to the State, not to those of a private person. *Reply at 6-7, citing State v. Noah, 103 Wn. App. 29, 48, 9 P.3d 858, 870 (2000).* Verizon asserts that the Complainant's calls were "quintessentially harassing in nature." *Id. at 6.* Verizon asserts that private companies may restrict the time, place, and manner of calls they are willing to receive. *Id.*

46 ***Discussion and Decision.*** While the Commission has authority to determine how a utility communicates with its customers, the Commission does not require customers or utilities to communicate with each other in a specific form, *i.e.*, requiring oral communication. The Commission's rules allow for oral *or* written communication between customers and telecommunications companies, and do not require direct oral communication. *See WAC 480-120-165(2); see also WAC 480-120-101.* An Order to Show Cause is not justified under these circumstances.

47 The Complainant objects to Verizon's restriction requiring him to communicate with the Company in writing except for certain circumstances involving repairs. *See Ex. 5.* Such a limitation does not impose a prior restraint on the Complainant's First Amendment rights, as Verizon is not a government agency, but a private Company. Verizon's actions do not rise to the level of state action, nor does this Commission's consideration of the claim constitute state action through judicial enforcement. *See State v. Noah, 103 Wn. App. at 48-49.*

48 While the Commission can properly determine whether Verizon may limit the Complainant's form of communication, the proper forum for the Complainant's allegations of infringement of First Amendment rights and that improper threats

of civil suit or criminal action is not before the Commission, but in superior court.

49 **Alleged Violations of WAC 480-120-167(b) and Company Tariff.** After Mr. Glick determined that the call-forwarding feature was not performing as he had anticipated, he ordered a different call-forwarding feature, Enhanced Call Forwarding (ECF), in late September 2001. *Complaint at 9.* In June or July 2003, Mr. Glick received a bill from Verizon assessing a recurring, per-minute local usage fee for the ECF feature. *Id. at 11.* After complaining to the Company, Mr. Glick learned that the feature has always included the local usage fee, although the Company had sold the feature to Mr. Glick and billed him for 22 months with only a fixed monthly charge. *Id.*

50 Mr. Glick filed an informal complaint with the Commission's Consumer Affairs Section, and learned that the charges were permissible on a prospective basis. *Id.* Mr. Glick asserts that he also asked Commission Staff about a requirement in Verizon's tariff to provide line-by-line local call detail on its bills, but does not believe Staff properly addressed this part of his informal complaint. *Id. at 12.*

51 The Complaint alleges that Verizon violated WAC 480-120-161(7)(b) and its Tariff WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B), by refusing to provide local call detail for Measured Usage charges for the ECF feature. *Id. at 14.* The Complaint argues that WAC 480-120-161(7)(b) requires the Company to provide "an itemized statement of all charges when requested by a customer, including, but not limited to, the following: ... Calculations of time and distance charges for calls." *Id. at 12.*

52 The Complaint asserts that the Tariff provides that "Local Usage Billing Detail is available to customers who request a breakdown of measured calls at the rates shown in this Section of this tariff." *Id., citing WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B).* The Complaint further asserts that the tariff expressly applies the



requirements for Local Usage Billing Detail to the ECF feature: “The ECF customer is responsible for any applicable ... charges, including applicable local measure usage charges when calls to the ECF number are redirected. Local measured usage rates can be found in Section 4 of this tariff.” *Id.*, citing *WN U-17, Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3*. Based upon this reading of the rules and tariff, Mr. Glick requested local call detail on his bills, which request Verizon denied. *Id.*

53 Verizon argues that the itemized billing claim in the Complaint is without merit. *Verizon Motion at 17*. Verizon asserts that Commission Staff has rejected Mr. Glick’s informal complaint on this issue, and that call-by-call detail is not required. *Id. at 16-17*.

54 Verizon asserts that the Complaint does not identify what further detail the Complainant believes he is entitled to. *Id. at 16*. Verizon asserts that the Commission’s rule requires calculations of time and distance charges, but asserts that the plain language of the rule only calls for itemization when there has been a charge. *Id.* Verizon asserts that because local usage is charged on a per minute basis, with no distance component, no additional detail is recorded. *Id.* Verizon further argues that itemized billing of local usage is not required by the rules or tariff because all local usage can be seen as a single item, and that Verizon provides the total minutes of local usage per month as well as the per minute fee. *Id. at 17*.

55 The Complainant asserts that a summary of aggregate charges for incoming/forwarded calls per month is not “itemization” as required by the Commission rules or Verizon’s tariff. *Response at 8*. The Complainant argues that WAC 480-120-161(7)(b) requires an itemized statement of all charges, including “Calculations of time ... charges for calls.” *Id.* The Complainant argues that a line-by-line, call-by-call itemization listing the date, time, and length of each incoming/forwarded call is required under the rule. *Id. at 9*. The

Complainant argues that the Company's tariff requires a "breakdown of measured calls at the rates shown in this Section of this tariff." *Id.*, citing *WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B)*.

56 In his Response, Mr. Glick states that, beginning several months ago, he withheld the portion of his business phone bill relating to Measured Usage charges, plus taxes and fees. *Id.* at 9. Subsequently, Mr. Glick changed his Yellow Pages advertisement to his voice-mail number, directed clients to call his voice mail directly, and closed his business account. *Id.* Mr. Glick asserts that an appropriate remedy for Verizon's denial of the request for call detail would be the waiver of the disputed charges, a credit in that amount, and a refund of Measure Usage charges already paid. *Id.*

57 Verizon argues that the claim relating to itemized billing is now moot, as the Complainant has discontinued his business line with Measure Local Service. *Reply at 4*. Through the Declaration of Stanley P. Tate, attached to Verizon's Reply, Verizon states that Mr. Glick discontinued service in June 2004, and that Verizon will agree to waive the total of \$32.52 that Mr. Glick withheld from his bills beginning in October 2003. *Id.*, *Tate Declaration*, ¶¶ 4, 5, 7, 8.

58 ***Discussion and Decision.*** The Commission's rules and Verizon's tariff require the itemization of charges. WAC 480-120-161(7)(b) requires telecommunications companies to "provide an itemized statement of all charges, when requested by a customer, including, but not limited to ... (b) Calculations of time and distance charges." Verizon's tariff applies measured usage to call forwarding services, and allows for a breakdown of measured calls, referred to as Local Usage Billing Detail. *WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B); Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3.*

59 Verizon asserts that that call-by-call detail is not required, and that itemized billing of local usage is not required by the rules or tariff because all local usage

can be seen as a single item. Verizon also argues that Commission Staff has rejected Mr. Glick's informal complaint on this issue. As neither party has provided as an exhibit a copy of a letter or document advising Mr. Glick of the Staff's analysis, the Commission cannot consider Staff's decision on this issue. Even if the parties had provided Staff's analysis, Staff decisions on informal complaints are not binding on the Commission.

60 When a customer requests an itemized statement of charges, no matter how small the total charges on the bill may be, the customer is entitled to know the detail of the calls for which the customer is being billed. Verizon does not state that it cannot provide an itemized statement, or that it does not keep records of the date, time, or duration of the calls in question, but that it is not required to do so. The Commission's rules and the Company's tariff allow customers to request call detail for Measured Usage, including charges for call forwarding, and the Company must comply with those rules and tariff sections. Based on the facts presented in the Complaint and a review of WAC 480-120-161(7)(b) and the Company's tariff, it appears that Verizon violated the rule and tariff provisions by refusing to provide the call detail Mr. Glick requested.

61 The parties have provided a solution for the appropriate penalty for Verizon's violation of Commission rule and tariff: Mr. Glick proposes that a waiver of the Measured Usage charges owed to Verizon, a credit in that amount to his account, and a refund of all Measured Usage charges paid to Verizon represents an appropriate remedy. Verizon has agreed to waive the charges owed, providing a refund for the charges owed, and forgiving the final bill owed by Mr. Glick. *Tate Declaration*, ¶ 8. Verizon has not agreed to refund all Measured Usage charges paid to Verizon.

62 Given that Verizon is entitled under its tariff to charge for Measure Usage, and that Verizon reasonably relied on Staff's interpretation of the rule requiring itemized statements and Verizon's tariff, it is not necessary for Verizon to refund

Mr. Glick for all Measured Usage charges paid to Verizon. However, Verizon must waive the outstanding Measured Usage charges owed by Mr. Glick and forgive the final bill, as it has agreed to do. Verizon must also provide itemized statements for Measured Usage if requested by its customers on a forgoing basis.

63 **Request for Order to Comply with Request for Itemized Statement.** In connection with the allegation in the Complaint that Verizon violated Commission rules and the Company's tariff by refusing to provide itemized billing, the Complaint also requests that the Commission Order Verizon to provide an itemized statement, including "call detail prospectively on all bills for service" to his business number. *Complaint at 14.* Verizon asserts that this claim is now moot, as Mr. Glick has discontinued his business line.

64 **Discussion and Decision.** The Complainant's request for an order requiring prospective call detail is now moot: Mr. Glick has discontinued the business line for which he requested an itemized statement.

65 **Request for Order Directing Reimbursement.** The Complaint seeks an order directing the Company to reimburse the Complainant for the copying and mailing costs of filing the Complaint. Neither Verizon nor the Complainant addresses this claim in the dispositive pleadings.

66 **Discussion and Decision.** Given that the bulk of the Complainant's claims are dismissed in this Initial Order as time barred or lacking merit, the Complainant's request for costs is denied.

**FINDINGS OF FACT**

67 Having discussed above in detail the documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse among the parties and the reasons and bases for those findings and conclusions, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

68 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state of Washington.

69 (2) Verizon Northwest Inc. is a public service Company providing local exchange telecommunications service to the public for compensation within the state of Washington.

70 (3) On March 22, 2004, Mr. Glick, President of Consider It Done, Ltd., a customer of Verizon Northwest Inc., filed a formal complaint with the Commission against Verizon Northwest, Inc.

71 (4) Verizon Northwest Inc. accepts as true the facts stated in the Complaint for purposes of consideration of its Motion for Summary Determination.

**CONCLUSIONS OF LAW**

72 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed

discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 73 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding. *RCW 80.01.040; RCW 80.04.220, RCW 80.04.240.*
- 74 (2) Summary determination is appropriate “if the pleadings together with any properly admissible evidentiary support ... show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *WAC 480-07-380(2)(a).*
- 75 (3) Claims for refunds filed under *RCW 80.04.220* and *RCW 80.04.230* must be filed with the Commission within six months or two years, respectively, of the cause of action accruing. *See RCW 80.04.240.* The procedure under *RCW 80.04.240* is the exclusive process for obtaining refunds under the two statutes.
- 76 (4) Complainant’s claim for compensation under Verizon’s Tariff WN U-17 is barred as untimely filed under *RCW 80.04.240.*
- 77 (5) Statutes of limitation in chapter 4.16 *RCW* do not apply to questions of violation of Commission statutes and rule.
- 78 (6) *WAC 480-120-165(2)* became effective on July 1, 2003, almost two years after the alleged violations occurred, and cannot be applied retroactively.
- 79 (7) As the facts presented in the Complaint are not in dispute, and do not support a finding of violations of *WAC 480-120-101*, summary determination on the claim for violation is appropriate as a matter of law.

- 80 (8) The Commission's rules allow for oral *or* written communication between customers and telecommunications companies, and do not require direct oral communication. *See WAC 480-120-165(2); see also WAC 480-120-101.*
- 81 (9) Verizon Northwest Inc.'s actions to limit the form of the Complainant's communication do not rise to the level of state action, nor does this Commission's consideration of the claim constitute state action through judicial enforcement. *See State v. Noah, 103 Wn. App. 29, 48-49, 9 P.3d 858, 870 (2000).*
- 82 (10) WAC 480-120-161(7)(b) and Verizon Northwest Inc.'s tariff WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B); Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3., require the itemization of charges for measured usage.
- 83 (11) Verizon Northwest Inc. violated WAC 480-120-161(7)(b) and Verizon Northwest Inc.'s tariff WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B); Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3., by refusing to provide the call detail Mr. Glick requested.
- 84 (12) The Complainant's request for an order requiring prospective call detail is moot, as the Complainant has discontinued service for the business line for which he requested an itemized statement.

**ORDER**

- 85 (1) Verizon Northwest Inc.'s Motion for Summary Determination is granted as to the Complainant's claim for compensation, violation of WAC 480-120-165(2), and for an Order to Show Cause.
- 86 (2) Verizon Northwest Inc.'s Motion for Summary Determination is denied as to the claim in the Complaint for violation of WAC 480-120-161(7)(b) and

the tariff WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B), and Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3.

- 87 (3) The settlement proposed by the parties for determining the appropriate remedy for violations of WAC 480-120-161(7)(b) and the tariff WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B), and Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3., is approved and adopted, requiring Verizon Northwest Inc. to waive the outstanding Measured Usage charges owed to the Company.
- 88 (4) Verizon Northwest Inc. must provide itemized statements for Measured Usage under WAC 480-120-161(7)(b) and tariff WN U-17, Section 4, 1<sup>st</sup> Revised Sheet 4(B), and Section 6, 4<sup>th</sup> Revised Sheet 3.5, Subsection D.3., if requested by its customers on a forgoing basis.
- 89 (5) The Complainant's request for reimbursement for the copying and mailing costs of filing the Complaint is denied.
- 90 (6) The remaining procedural schedule, set forth in Order No. 01 in this proceeding, is canceled.

Dated at Olympia, Washington, and effective this 6th day of August, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL  
Administrative Law Judge



### NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any *Answer* to any Petition for review may be filed by any party within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a *Motion to Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No *Answer to a Motion to Reopen* will be accepted for filing absent express notice by the Commission calling for such answer.

One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-07-150(8) and (9). An Original and four copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia Washington 98504-7250