[Service Date June 7, 2006]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

THE LUMMI NATION,	)	
	)	DOCKET UT-060147
Complainant,	)	
	)	
v.	)	ORDER 02
	)	
VERIZON NORTHWEST INC.,	)	
AND QWEST CORPORATION,	)	GRANTING MOTIONS FOR
	)	SUMMARY DETERMINATION
Respondent.	)	
. . . . .	)	

Synopsis: The Commission finds the complaint in this proceeding is one for recovery of excessive charges under RCW 80.04.220. Actions seeking reparations under RCW 80.04.220 are subject to the exclusive procedures and the six-month limitations period provided under RCW 80.04.240. The Lummi Nation's complaint is time-barred because the facts giving rise to its claims occurred more than six months before it brought its complaint.

1 **PROCEEDINGS.** On January 23, 2006, the Lummi Nation (Lummi) filed a complaint against Verizon Northwest Inc. (Verizon) and Qwest Corporation (Qwest). The complaint alleges that Verizon and/or Qwest are liable for payments the Lummi made to Verizon for Foreign Exchange (FX) Service after the service was disconnected or because the service was never provided. On February 14, 2006, Verizon and Qwest answered the complaint. Verizon and Qwest dispute the allegations and plead affirmative defenses. The Commission conducted a prehearing conference before Administrative Law Judge Dennis J. Moss on March 23, 2006.

2 Verizon and Qwest filed their respective Motions for Summary Determination on April 6, 2006. Lummi responded on April 21, 2006. Verizon and Qwest filed replies on May 5, 2006. The Commission, in this order, finds Lummi's complaint time-barred, grants the two motions, and dismisses the complaint.

3 **PARTY REPRESENTATIVES.** Margaret M. Schaff, Boulder, Colorado, and David M. Neubeck, Office of the Reservation Attorney, Bellingham, Washington, appeared for

Lummi. Judith K. Bush, Office of the Reservation Attorney, is on the pleadings for Lummi. Timothy J. O'Connell and John H. Ridge, Stoel Rives LLP, Seattle, Washington, represent Verizon. Lisa Anderl, Qwest Corporation, Seattle, Washington, represents Qwest. Neither the Public Counsel Section of the Washington Office of Attorney General nor Commission regulatory staff appeared for their respective clients.

MEMORANDUM

I. Background

4 Lummi filed its complaint against Verizon and Qwest on January 23, 2006. The principal issue is whether Verizon and/or Qwest owe Lummi compensation because Verizon billed Lummi for Foreign Exchange (FX) Service allegedly not provided. FX Service is the provision of local service to a customer in an exchange where the customer has no physical presence. Calls to the FX Service customer placed from a specific foreign exchange for which the service is established do not incur long distance toll charges. In this case, for example, a caller located in Qwest's service territory in one area code could call a foreign exchange number provisioned to the Lummi by Verizon in a different area code without incurring long distance toll charges.[1]

5 Although the complaint refers to several different billing periods, the maximum period for which complainant seeks recovery is from January 1995 through September 19, 2004. Lummi attached to its complaint a summary of charges based on bills it retained for the period March 19, 1998 through September 19, 2004, showing charges for FX Service in the amount of $67,715.18. Lummi estimates it "likely paid" another $35,139.60 for periods prior to March 19, 1998, back to an unspecified date in 1995.

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[1] The typical use of FX service is predominantly or exclusively as a one-way service. For example, a retail or service company with a presence in only one location (*e.g.*, in area code 360) subscribes to FX service so that it can receive calls from customers located in another exchange territory (*e.g.*, in area code 206) without those customers incurring long distance charges. Since the FX number in this example would be assigned to equipment physically located in area code 360 but would be assigned a 206 area code for purposes of its functionality, the calling customer does not need to dial an area code and the call seems like a local call to the calling customer. It is possible, however, to call out on an FX line as well. Thus, a call made from the FX unit physically located in area code 360 in this example, to a number in area code 206, would not incur long distance charges.

6 The complaint includes no allegations that Qwest billed Lummi for any service during the relevant time period. Lummi asserts Qwest may be liable to complainant for all or some part of the amounts Verizon billed Lummi for service allegedly not provided because if the questioned FX service had in fact existed, Qwest would have provided switching service for which it would have billed Verizon. Complainant asserts that Qwest may have disconnected the service at its switches sometime before 1995 and failed in its asserted duty to notify Verizon of that disconnection.

7 Lummi also suggests that Verizon and/or Qwest are subject to penalties under RCW 80.04.380. The complaint, however, does not include in its prayer for relief any request that the Commission impose penalties in connection with the facts alleged. Lummi asks the Commission to conduct a formal hearing and to order Verizon and Qwest to refund all the charges paid by Lummi for non-existent service, plus interest from the dates of payment, attorneys fees and such other relief as the Commission may find just and equitable.

8 Lummi grounds its complaint in RCW 80.04.440 and WAC 480-120-161 insofar as it seeks recovery of amounts it paid to Verizon during the relevant period.[2] WAC 480-120-161 requires Verizon to provide bills to customers that only include charges for services requested by the customer and provided by the company. WAC 480-120-161 further requires that the bill include a brief, clear, not misleading, plain language description of each service. Lummi asserts Verizon's bills did not include a clear, plain language description of the services for which the Lummi was billed and included charges for services not provided. Thus, complainant argues, Verizon has acted unlawfully and is liable to the Lummi as provided under RCW 80.04.440.[3]

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[2] The statement of rules and statutes at issue included in the complaint also refers to RCW 80.01.040, RCW 80.04.140, WAC 480-120-167 and WAC 480-120-171.

[3] RCW 80.04.440 Companies liable for damages. In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was willful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation.

9 The complaint does not include any reference to RCW 80.04.220 or .230, which provide for reparations or refunds of overcharges by public service companies. In its subsequent pleading, discussed below, complainant argues adamantly that these provisions do not apply under the facts pled.

10 Verizon stated during the prehearing conference held on March 23, 2006, its intention to file a motion for summary determination based on its assertion that Lummi's complaint is time-barred under either a six-month or a two-year statute of limitations, whichever may be found to apply. Qwest stated it would consider joining Verizon's motion or filing its own motion that might include additional reasons that the complaint should be dismissed as to Qwest. Lummi said it would oppose any such motions.

11 The Commission established dates for the suggested motions for summary determination, a response by Lummi, and replies. This threshold issue has now been briefed by the parties in these several filings and is ready for determination.

II. Discussion.

12 Motions for summary determination are governed by WAC 480-07-380(2) and Court Rule 56(c). WAC 480-07-380(2) provides that considering the pleadings filed and any properly admissible evidentiary support, the Commission may grant a motion for summary determination if there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

a. Verizon Motion for Summary Determination.

13 Verizon argues that Lummi's complaint, to the extent it has any merit whatsoever, must be considered under RCW 80.04.220, which allows "reparations" for unreasonable billings that are "excessive or exorbitant" in amount, or under RCW 80.04.230, which allows for "refunds" if a company is found to have charged a customer more than a "lawful rate in force at the time the charge was made." Verizon argues that these statutes

provide the exclusive avenues of relief for claims such as those asserted by Lummi.[4] The statute of limitations for both types of claims is established in RCW 80.04.240:

> All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within six months in cases involving the collection of unreasonable rates and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues.

14 Considered in the context of these alternative limitation periods, the only relevant fact asserted by Lummi, which Verizon does not dispute, is that Verizon discontinued billing the Lummi for the subject FX services on or before October 4, 2004.[5] Lummi filed its complaint on January 23, 2006. It follows that if the six-month limitations period applies the complaint is barred by the statute and should be dismissed. If the two-year limitations period applies the complaint is timely at least as to the period between January 23, 2004 through March 29, 2004, and arguably as far back as March 29, 2002.[6]

15 Verizon continued to offer a refund to Lummi of two years of charges as of the time Verizon filed its reply on May 5, 2006. Verizon argues that because Lummi is barred from recovering anything more than the two years worth of FX service charges that Verizon is unilaterally willing to refund, the Commission should dismiss the complaint because Verizon's unilateral offer to make the complainant whole means that no further claim is available to Lummi.[7]

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[4] Verizon Motion at ¶12 (citing *Hopkins v. GTE Northwest, Inc.*, 89 Wn.App. 1, 5-6 (1997).

[5] The Complaint is unclear in its assertions as to when Verizon actually discontinued billing. Paragraph 3.15 states that Verizon billed for these services until September 2004. Paragraph 3.36 states the Verizon billed for these services until October 2004. Attachment 1 shows that Verizon billed for these services through August 2004. Verizon refunded Lummi for FX Service billed from March 29, 2004, through September 19, 2004. Thus, Verizon's bills effectively ended as of March 29, 2004.

[6] Whether Lummi might recover 2 months or 2 years of FX charges, assuming it could prove the services were not in fact provided, would depend on whether the Commission concluded the statute of limitations was tolled when the Lummi first brought this matter to Verizon's attention. This is a question we need not, and do not resolve here. However, under WAC 480-120-163, the maximum period for which the Lummi might recover for overcharges meeting the standards of RCW 80.04.230 is two years without regard to any limitation on the recovery period under the applicable statute of limitations.

[7] Verizon Motion for Summary Determination at ¶22. In support of this argument, Verizon cites to ¶¶ 59 -60 of the Commission's final order in *Glick v. Verizon Northwest, Inc.*, 2005 WL 484651, (WUTC, Jan. 28, 2005, Docket No. UT-040535; Order No. 03) using the qualifying signal "*see.*" According to the 15th edition of the Blue Book—A

16 Turning to the subjects of attorney's fees, Verizon argues that attorney's fees may be awarded under RCW 80.04.440, if it otherwise applies, only if the Commission finds Verizon "willfully" overcharged Lummi for FX service. Verizon states there is no factual evidence in the record that Verizon willfully overcharged Lummi.

17 Verizon next argues that the Lummi's request for penalties should be rejected. Verizon states that "as soon as reasonably possible after it was made aware of the overcharges, Verizon refunded the Lummi the full amount dating back to the time it was notified of the overcharges" and offered additional refunds equal to Verizon's assessment of the maximum amount to which the Lummi would be entitled under the law. Verizon asserts it has acted in good faith and gone beyond what it is lawfully required to do. Accordingly, Verizon argues, the Commission should not assess penalties.

b. Qwest Motion for Summary Determination.

18 Qwest adopts Verizon's arguments by reference and adds one argument exclusive to Qwest. The basis for Lummi's claim against Qwest is that if Qwest disconnected the subject FX service at Qwest's switches, Qwest had an obligation to notify Verizon (then

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Uniform System of Citation, use of the signal "see" means the author is asserting that the "cited authority *clearly supports* the proposition" stated. (Emphasis in original). Verizon emphasizes parenthetically the proposition for which it cites to *Glick* as follows: "when company's unilateral action makes complainant whole, no further claim is available." Verizon's representation that *Glick* stands for the proposition asserted is materially misleading. What Verizon represents in its motion as a determination by the Commission is actually nothing more than a recital of Verizon's own argument in *Glick*. What the Commission actually said in ¶¶ 59 -60 (footnote omitted) is:

> *59* The initial order proposes to accept in part the parties' resolution of issues: Verizon has agreed to waive the charges owed, and to forgive the final bill owed by Mr. Glick. The order also ruled that Verizon must provide itemized statements for Measured Usage if requested by its customers on a going-forward basis. The order proposed a ruling that Mr. Glick's request for an order requiring prospective call detail is moot, as he has discontinued the business line for which he requested an itemized statement.
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> *60* **Issue on review.** Neither party contests the result of the initial order on this issue, with one exception. Mr. Glick argues that upon finding a violation, the Commission must assess penalties. Verizon responds that Mr. Glick is rendered whole by the result of the order, and nothing further is required.

The Commission declined to assess penalties in *Glick* but it is perfectly clear from the Commission's order that its reasons had absolutely nothing to do with Mr. Glick having been "rendered whole."

GTE) of the disconnection and failed to do so. The complaint dates the possible disconnection by Qwest to "sometime before 1995."

19 Qwest takes these allegations as true for purposes of its motion, but points out the complaint establishes by its terms that any failure of duty by Qwest occurred more than ten years ago, in 1995. It follows, Qwest argues, that Lummi's action is time-barred as to Qwest, whatever the applicable limitations period.

c. Response by Lummi.

20 Lummi vigorously insists that its complaint is not a claim for reparations under RCW 80.04.220 or a claim for recovery of overcharges under RCW 80.04.230. Lummi contends these statutes do not apply to the facts of this case because "both explicitly require that a **service was provided** to complainant by the companies."[8] Complainant argues repeatedly in its response that it cannot lawfully bring its claims under these statutes because its complaint depends on the fact that service was not provided during the periods for which it seeks refunds. Lummi insists that there are other avenues under the law for bringing its claims. Those avenues, Lummi asserts, are subject to a six year statute of limitations. Specifically, complainant argues:

> 5. . . . We have chosen to bring our claim under RCW 80.04.440 and WAC 480-120-161 (See Complaint ¶¶ 2.1-2.8) which *do not* require that a service has been provided to the Complainant by the companies. These code sections clearly provide, under their own language, a basis for a claim against a regulated company. The six year statute of limitations contained in RCW 4.16.040 is the only applicable statute of limitation to our claim.
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> 6. Whether the claim can be brought as is plead in the Complaint and as [sic] is subject to a six year statute of limitations, depends on the question whether Foreign Exchange (FX) Service was ever provided to Lummi by Verizon and by Qwest, or whether the service was provided at the time of the billings. This material fact remains in question.

[8] Response at ¶4 (emphasis in original).

21 In addition to arguing its claim is one for damages under RCW 80.04.440 and WAC 480-120-161, in light of Verizon's billing practices, Lummi argues in its response that this is an action upon an account receivable for which RCW 4.16.040 expressly establishes a six-year limitations period. The complaint, however, includes no such allegation.

22 Complainant argues finally that regardless of the applicability of any limitations period the Commission should consider Lummi's claims as a matter of policy because "there is no evidence in this claim whether other entities being billed for FX Service are experiencing the same problem with their bills as is Lummi." The Lummi urges the Commission to "consider this matter and order appropriate changes to the way FX Service is billed."

23 Complainant addresses Qwest's motion in a single paragraph, but does not respond to Qwest's argument that the complaint alleges no facts as to Qwest the occurrence of which fall within any potentially applicable limitations period, even the six-year limitations period Lummi argues should apply.

24 Lummi argues as to Qwest: "As long as there is a pending cause of action, and it is unknown whether Qwest contributed to the problem, 'RCW 80.04.140 Order requiring joint action' requires Qwest to remain a party to this proceeding." The response, however, offers no explanation of how that statute might apply in the context of this case.

d. Replies by Verizon and Qwest.

25 Verizon argues in its reply that Lummi's claims "are purely claims for 'overcharges' and are subject to the statute of limitations in RCW 80.04.240, which sets forth the 'exclusive' procedure for bringing such claims."[9] Verizon provides a detailed discussion of *Hopkins*, which it describes as being "very similar in key respects to the facts at issue in this matter."

[9] Verizon Reply at ¶3 (citing *D.J. Hopkins, Inc. v. GTE Northwest, Inc.*, 89 Wn. App. 1, 3-7 (Div. 1 1997).

26 As related by Verizon, D.J. Hopkins, Inc., was a GTE (now Verizon) customer billed for a telephone lease for nine years when it in fact did not lease a phone from GTE. Hopkins brought the improper charge to GTE's attention and GTE offered a partial refund of the fees charged. Hopkins demanded a full refund. Hopkins, like Lummi here, characterized its complaint as one not seeking to recover overcharges, but seeking damages based upon GTE's allegedly deceptive billing practices. Hopkins asserted the language of GTE's bills did not disclose to Hopkins that it was being charged for a leased telephone. Hopkins stated its claims were brought pursuant to WAC 480-120-106, the precursor to WAC 480-120-161, which currently regulates the forms of bills, and upon which the Lummi asserts its claims are based. Verizon quotes the salient passages from the Court's opinion in *Hopkins* as follows:

> Hopkins attempts to claim that its suit is *not* one to recover "overcharges" but one to seek damages and the curbing of GTE's deceptive and illicit billing practices. Hopkins' attempt to distinguish its claim as damages for deceptive billing as opposed to seeking recovery of "overcharges" is purely fictional. The complaint is premised on the claim that it was not leasing a telephone from GTE but GTE applied a lease charge appearing to be part of its "regulated" telephone service charge. Here, even though the complaint is couched in the terms of deceptive practices, what actually is presented is a claim for overcharges, or an unreasonable charge for something not received. . . .
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> Hopkins' other damage claims amount to little more than a demand for overpayments of unreasonable charges for the lease of a phone which did not exist. No matter how vehemently Hopkins argues that it is seeking damages for GTE's failure to disclose, and that it is not seeking to be compensated for overcharges, the prayer for relief belies this claim.

27 Verizon argues Lummi is attempting to do exactly what the Court in *Hopkins* said it cannot do: avoid the applicable statute of limitations by characterizing its claims for refunds of overcharges as claims based upon the form of Verizon's bills.

28 Verizon argues that even if Lummi could bring its claim under RCW 80.04.440 and WAC 480-120-161, as pled, the two-year statute of limitations nevertheless would apply. Verizon relies on *Glick*, in which the Commission determined that administrative actions

asserting violations of WAC provisions for which there is no specific statutory limitation period are subject to the two-year limitation provided under RCW 4.16.130. Verizon points out that there is no specific statutory limitation period governing actions under either RCW 80.04.440 or WAC 480-120-161 and argues that the two-year limitation period therefore applies.

29 Verizon characterizes the Lummi's argument that this is an action on an account receivable as "disingenuous and inaccurate." Verizon first makes the point, mentioned above, that the Lummi did not plead this matter as one on an account receivable, but rather one under a Commission rule concerning the form of bills and a specific statute that allows private parties to seek recovery if damaged by a public service company's violation of a Commission rule. Verizon also argues that even if Lummi had pled this action as one on an account, it would be a claim concerning an account paid by Lummi, not an account receivable on which Lummi might seek recovery.

30 Turning to the subject of penalties, Verizon relies on the Commission's determination in *Glick* that private parties may not seek penalties on behalf of the state. Verizon argues this same determination applies to Lummi's argument that the Commission should allow this matter to be pursued without regard to any applicable statute of limitations as a matter of public policy. Verizon states: "there is no legal basis for the Lummi to prosecute a case on behalf of the state, especially when it admits that there is no evidence that other entities are experiencing similar alleged billing problems."

31 Verizon contends that Lummi, in its response, "seeks to invent issues of fact" and that, in any event, none of the issues raised in the response are material. In reply to Lummi's assertion that there is a dispute as to when its cause ripened Verizon argues that under Washington law a cause of action accrues when a party has a right to apply for relief. Insofar as Lummi's complaint depends on assertions concerning unclear bills, Verizon points out that Mr. Michael R. James's affidavit, attached to Lummi's response, states that the complainant first found Verizon's bills confusing in 2001. Thus, Verizon argues, there is no material dispute concerning when any cause of action based on the form of Verizon's bills accrued.

32 If, on the other hand, the complaint is considered as one for recovery of overcharges, Verizon points to Mr. Doughty's affidavit, attached to the complaint, which says Lummi first discovered alleged overpayments in February 2004 and first contacted Verizon in March 2004. Again, the latest arguable time at which Lummi's claims matured is not a disputed fact.

33 Finally, Verizon argues Lummi's assertions that there are disputed facts, including facts concerning whether the statute of limitations was tolled, are not material to the outcome of this proceeding because under WAC 480-120-163, "Lummi cannot receive anything more than Verizon is currently offering . . .."

34 Qwest filed a brief reply reiterating that the allegations in the complaint establish that "any relevant action Qwest did or did not take, or should or should not have taken, occurred at least 10 years ago, in 1995 or earlier." Qwest points out that Lummi's response is silent on this point, which Qwest raised in its motion for summary determination.

35 Qwest also argues in its reply that regardless of what limitations period may apply under RCW 80.04.440, Lummi does not have a right to bring a complaint before the Commission under that statute. Qwest relies on the plain language of the statute, which says in relevant part that "[a]n action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation."[10] Qwest argues further that the Commission "has acknowledged that it does not have the right to award damages, further confirming the inapplicability of this statute."[11]

III. Determinations.

36 There are no disputed issues of material fact insofar as the arguments we consider here are concerned. Indeed, there are only a few facts that are at all relevant to our determinations on the pending motions and these are facts asserted by Lummi that are not contested by Verizon or Qwest for purposes of our review. Our discussion, therefore,

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[10] *See supra* fn. 3 for the full statute. Verizon notes this point in its reply as well.

[11] Qwest Reply ¶4 (citing *AT&T v. Verizon, Docket No. UT-020406, 11th Supp. Order, ¶ 34,* citing *Hopkins v. GTE Northwest, Inc., 89 Wn. App. 1, 947 P.2d 1220 (1997))*

focuses principally upon the law that governs the matter Lummi has put before us. We discuss below our reasons for determining that Lummi's complaint against Verizon and Qwest must be considered one for reparations under RCW 80.04.220. Lummi's complaint therefore is barred by the six-month limitations period established under RCW 80.04.240.

37 The facts in *Hopkins* are closely analogous to those plead by complainant here. Hopkins claim, like that of Lummi, rested on the assertion that Hopkins was billed and paid for a service he did not receive. Hopkins was billed each month for more than nine years for a GTE phone when, in fact, Hopkins did not lease a GTE phone. Hopkins owned his own phone during the entire period. The Court rejected Hopkins's attempt to characterize his complaint as one for recovery of damages caused by GTE's billing practices, thus seeking to avoid the exclusive remedies provided for his claim under RCW 80.04.220 and .230, and the applicable limitations periods.

38 We similarly reject Lummi's attempt to cast its complaint as one for damages under RCW 80.04.440 and WAC 480-120-161. Lummi should have brought its complaint under RCW 80.04.240 which establishes by its terms the "exclusive" procedures by which customers can pursue refunds for unreasonable charges levied by a public service company or charges in excess of lawful rates.

39 Not only is it clear from the plain language of RCW 80.04.220, .230 and .240 that Lummi must bring its claim under those statutes, as discussed in *Hopkins*, it is also clear that RCW 80.04.440 establishes a cause of action that can be prosecuted, if at all, only in a court of competent jurisdiction. In addition, there is no support for Lummi's assertion that the six-year statute of limitations applies to actions under RCW 80.04.440 and WAC 480-120-161. Indeed, since there is no limitations period explicitly defined for actions under RCW 80.04.440, it appears the default two-year limitation period under RCW 4.16.040 applies.

40 We still must determine whether Lummi's claim is one for reparations under RCW 80.04.220, to which a six-month limitations period applies, or one for refunds under RCW 80.04.230, which has a longer, two-year limitations period. We conclude RCW 80.04.220 applies to the facts pled by Lummi. Lummi alleges that Verizon charged and

collected from Lummi excessive amounts during some periods because its bills to Lummi included charges for FX Service that was not, in fact, provided. This is a claim for unreasonable charges levied for service not received. Such a claim may be properly brought before the Commission under RCW 80.04.220, subject to a six-month limitations period as provided by RCW 80.04.240.

41 Lummi does not allege that Verizon charged Lummi at levels in excess of the lawful rates in force for FX Service at the time. There is no evidence that any of Verizon's bills to Lummi included charges calculated on the basis of rates that exceeded the lawful rates then in effect. Thus, there are no facts pled that would bring Lummi's complaint under the longer limitations period provided for such claims under RCW 80.04.240.

42 Lummi's belated claim its action is one brought upon an account receivable is completely untenable under the facts pled. It is contrary to common sense, which informs us that an account receivable is one held by an entity that is owed money for services or goods provided. Lummi does not hold an account receivable. Nor, for that matter, does Verizon under the facts as pled by Lummi. In addition, the account in question does meet the definition of an "open account" as that term is used in *Tingey v. Haisch*, 129 Wn. App. 109, 117 P.3d 1189 (2005), the authority upon which Lummi relies. By the time complainant brought its action here the account in question was closed insofar as the FX service at issue is concerned. The limitation period established for accounts receivable under RCW 4.16.040(2) applies to actions by creditors who hold an account receivable against those who have not timely paid their account. Such facts simply are not present here.

43 The uncontested facts pled by Lummi show that its cause of action against Verizon matured at the latest on October 4, 2004, when Verizon stopped billing for the questioned services and refunded what it had charged Lummi back to March 2004. The date of Lummi's complaint, January 23, 2006, is well beyond the applicable six-month limitations period. We conclude on this basis that we should grant Verizon's Motion for Summary Determination and dismiss Lummi's complaint against Verizon.

44 The uncontested facts pled by Lummi show that any failure by Qwest to give notice of the termination of its participation in FX Service provided to Lummi by Verizon occurred

more than ten years ago, sometime in 1995 or before. Any arguable complaint against Qwest thus matured well outside the six-month, two-year, or even the six-year limitations periods that apply or that the Lummi contends apply. We conclude on this basis that we should grant Qwest's Motion for Summary Determination and dismiss Lummi's complaint against Qwest.

ORDER

THE COMMISSION ORDERS that Verizon's Motion for Summary Determination is granted and the complaint in this docket is dismissed as to Verizon.

THE COMMISSION ORDERS FURTHER that Qwest's Motion for Summary Determination is granted and the complaint in this docket is dismissed as to Qwest.

DATED at Olympia, Washington, and effective June 7, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO 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 fine 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 party may file an *Answer* to a petition for review 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 *Petition 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 Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

On 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 seven (7) copies of any Petition or Answer must be filed by mail delivery to:

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