

[Service Date July 16, 2002]
 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION

AT&T COMMUNICATIONS OF THE)	
PACIFIC NORTHWEST, INC.,)	DOCKET NO. UT-020406
)	
Complainant,)	SECOND SUPPLEMENTAL
)	ORDER
v.)	
)	ORDER DENYING MOTION TO
VERIZON NORTHWEST, INC.,)	DISMISS
)	
Respondent.)	
.....)	

- 1 *Synopsis: The Commission will hear AT&T's complaint that Verizon's switched access charges are greater than cost and therefore prevent AT&T from competing with Verizon in Washington toll markets.*

- 2 **Nature of the Proceeding:** On April 3, 2002, AT&T Communications of the Pacific Northwest, Inc. (AT&T) filed with the Commission a complaint against Verizon Northwest, Inc. (Verizon). The complaint alleges that Verizon's switched access charges far exceed Verizon's cost of providing that access. The complaint further alleges that Verizon is using revenues generated by excessive switched access rates to fund a "price squeeze" designed to force competitors from toll markets in Washington.

- 3 On April 11, 2002, Verizon filed with the Commission its answer to the complaint, and a motion to dismiss the complaint. Answers opposing the motion to dismiss were filed by AT&T on May 13, 2002, and by the Staff of the Commission (Staff) on May 17, 2002. Verizon was permitted to file a reply to the answers, and filed it on May 24, 2002.

- 4 The Commission held a prehearing conference on June 12, 2002. The purposes of the conference were to allow intervenors to join the proceeding, and to discuss the issues framed by AT&T's complaint. WorldCom, Inc. (WorldCom) intervened at the conference. On June 19, 2002, WorldCom filed an answer to Verizon's motion to dismiss. The parties agreed at the prehearing conference to file issue statements. On June 24, 2002, Verizon and AT&T/WorldCom filed issues lists.

5 **Complaint:** AT&T brought this complaint against Verizon claiming:

- Verizon's entry into the intrastate, interLATA market, in conjunction with its status as a primary interLATA toll carrier for its local exchange customers, has resulted in an extension of Verizon's local exchange monopoly into Washington intrastate toll markets.
- Verizon has been able to dominate the provision of intrastate toll services to its local exchange customers primarily because Verizon's switched access charges far exceed Verizon's costs of providing that access and, therefore, Verizon is using revenues generated by its excessive switched access rates to fund a "price squeeze."
- The affidavit of Dr. Lee L. Selwyn analyzes Verizon's price squeeze and determines that, absent Commission action, competition will continue to disintegrate in formerly competitive intrastate long distance markets and will not develop in the local exchange market currently controlled by Verizon.
- The Commission should reduce to cost the rates that Verizon charges for intrastate-switched access services. Only cost-based pricing of bottleneck services will enable the Commission to realize its, the legislature's and Congress' goal of developing and maintaining effectively competitive telecommunications markets in Washington.
- AT&T must pay Verizon switched access charges of \$0.0736 per conversation for a call that originates and terminates to Verizon local exchange customers. Verizon offers these same elements as UNEs at rates established by the Commission of \$0.0014151 per MOU for Local Central Office Switching and \$0.0002012 per MOU for Common/Shared transport (for a total of \$0.0016163). In order to compete with Verizon, competitors must offer intrastate toll service at rate levels that guarantee a revenue shortfall and a zero or negative profit margin.
- Verizon is granting an undue preference to itself and subjecting AT&T and other nonaffiliated IXC's to undue prejudice or competitive disadvantage in violation of RCW 80.36.186.

- Verizon provides the same functionality to CLECs and CMRS providers in the form of UNEs and reciprocal compensation for local termination as Verizon provides to unaffiliated IXCs in the form of switched access services; this violates RCW 80.36.180.
- Verizon is violating the Commission's imputation requirements.
- Verizon is violating 47 U.S.C. section 251 (C)(2)(D) because its rates are not based on cost and do not provide access to, and interconnection with, its network on rates, terms and conditions that are just, reasonable, and nondiscriminatory
- Verizon's "interim universal service" rate element bears no demonstrable relationship to the costs Verizon incurs to provide universal service and is imposed solely on AT&T and other IXCs.

6 AT&T seeks an order from the Commission requiring Verizon to reduce its switched access service rates (including all rate elements) to the sum of cost-based prices that the Commission has established for the UNEs that comprise that service and tying any future change in switched access rates to those UNE prices.

7 **Statutory Foundation:** AT&T relies on the following statutes:

RCW 80.36.180 Rate discrimination prohibited. No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions. The Commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive

or to contracts for services classified as competitive under RCW 80.36.320 or 80.36.330.

RCW 80.36.186 Pricing of or access to noncompetitive services--

Unreasonable preference or advantage prohibited. Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The Commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section.

RCW 80.04.110 Complaints--Hearings--Water systems not meeting board of health standards--Drinking water standards--Nonmunicipal water systems audits.

(1) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative,

discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

8 All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

9 **Motion to Dismiss:** Verizon moves to dismiss AT&T's complaint, claiming that:

- The Complaint seeks to reduce Verizon's intrastate access charges by more than \$50 million per year. The complaint is an improper request for "single-issue ratemaking," citing the Commission's order in *MCI Telecommunications Corporation v. GTE Northwest, Inc.*, Docket No. UT-970653, *Second Supplemental Order* (October 22, 1997) (the 1997 case).
- The Complaint fails to state a claim under state law. RCW 80.04.110(1) gives AT&T standing to complain about Verizon's toll rates, not Verizon's access charges. Verizon admits that AT&T has standing to bring a complaint against Verizon's toll rates because AT&T competes with Verizon for toll services. Verizon argues that if AT&T's complaint is successful, the proper remedy is to require Verizon to increase its toll rates, and that AT&T attempts to rewrite

RCW 80.04.110(1) to allow it to bring a complaint against a service with which it does not compete.

- The Complaint conflicts with, is preempted by, and is a collateral attack on, the Commission's 1999 order approving the settlement in the Bell Atlantic-GTE merger. In the Matter of the Application of GTE Corp. and Bell Atlantic Corp., Docket Nos. UT-981367, UT-990672, UT-991164, *Fourth Supplemental Order at 26* (Dec. 16, 1999) (Merger Order).
- The argument that switched access charges must equal local interconnection rates under the Telecommunications Act of 1996 is wrong. The FCC explained in its *Local Competition First Report and Order*, 11 FCC Rcd 15499 (1996) that access and local interconnection are legally distinct services. The federal Telecommunications Act of 1996 does not require access charges to be cost based. Section 251(g) of the Act does not require reductions in access charges. If the Act does not require access reductions, then a company's existing charges do not violate any provision of the Act, including Section 254.
- The Complaint's imputation analysis compares artificially inflated access costs to artificially reduced toll revenues, and ignores the fact that the Commission has already reviewed Verizon's toll rates to ensure they pass imputation. In its reply comments Verizon argues that AT&T's imputation test claims are "makeweights" because the remedy AT&T seeks is limited to access charges.
- AT&T does not demonstrate that it has suffered actual harm.
- AT&T's allegations concerning Verizon Long Distance (VLD) must be ignored because VLD is not a party to this case, nor is VLD subject to an imputation test.

10 **Answers to Motion to Dismiss:** AT&T, WorldCom, and Staff oppose Verizon's motion to dismiss. Complainants and Staff address each of the arguments made by Verizon with the following responses:

- The Complaint should not be dismissed on a claim of “single-issue ratemaking.” The 1997 case is not dispositive. The statement cited by Verizon is that the Commission “*generally* will not engage in single issue or ‘piecemeal’ ratemaking.” Access charges are implicated in every significant policy issue relating to telecommunications, including universal service, local competition, toll charges and local calling areas. Verizon’s argument that AT&T must offer offsetting increases in toll charges or other rates demonstrates that the question of whether this case will be “single-issue ratemaking” may depend on what evidence and arguments the parties present. The complaint in the 1997 case contained no allegations of a price squeeze. The only price squeeze complaint case that has been fully litigated before the Commission is *Northwest Payphone Association, et al. v. U S WEST Communications, Inc.*, Docket No. 920174, Order Granting Complaint In Part, (March 17, 1995). A price squeeze is fundamentally different from a rate case. The provisions of RCW 80.36.186 effectively prohibit a company with monopoly services, such as Verizon, from creating a price squeeze. That section gives the Commission primary jurisdiction to determine whether the section has been violated. If Verizon’s motion to dismiss is granted, the legislative purpose behind RCW 80.36.186 will be thwarted.
- AT&T is in competition with Verizon, not with Verizon’s rates, charges, regulations or practices. The statute expressly authorizes a complaint against a company with which AT&T competes. The Commission has broad authority to address competitive injury, regardless of whether the rates or practices resulting in that injury are directed against competitors or provided to end use customers.
- The Merger Order was based on the record before the Commission in that particular docket. The Merger Order’s conclusion that Verizon’s rates were fair, just, and reasonable does not mean that they will be so forever. The settlement agreement itself contemplates that the rates may not continue to be just, reasonable, and compensatory beyond July 1, 2002, by obliging the parties not to challenge or otherwise seek adjustment to those rates only until that date.
- Verizon’s disagreement with AT&T’s Imputation analysis raises issues of disputed fact requiring evidentiary hearings. The Commission should evaluate

AT&T's imputation claim based on the evidence. Both AT&T and Verizon make factual allegations supporting their opposing positions. The Commission should wait to hear the evidence, and make its decision based on that evidence.

- AT&T is not required to allege any specific harm to itself as a prerequisite to filing a complaint. Taking the allegations in the Complaint as true, Verizon is engaging in a price squeeze. RCW 80.04.110(2) specifically provides: "No complaint shall be dismissed because of the absence of direct damage to the complainant."
- Allegations with respect to Verizon's affiliate further support the need for Commission intervention.
- The Verizon Long-Distance issues are irrelevant to a motion to dismiss.

11 **Commission Discussion:** After reviewing the motion to dismiss, the answers, and the replies to the answers, the Commission determines that this matter should proceed to hearing. The issues framed are complex and material. There are factual disputes relevant to the legal issues. These factual disputes can only be determined after a full record is developed. The Commission has a responsibility to oversee the development of a competitive telecommunications market, and determines that it should review AT&T's allegations of a "price squeeze."

ORDER

THE COMMISSION ORDERS:

12 Verizon's motion to dismiss AT&T's complaint is denied.

DATED at Olympia, Washington, and effective this _____ day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner