Attachment C

April 29, 2003

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HAND DELIVERY

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

Re: AT&T Communications of the Northwest v. Verizon Northwest Inc.
Docket No. UT-020406

Dear Ms. Washburn:

Enclosed please find the original and 15 copies of Verizon's Motion to Dismiss in the above-referenced matter.

If you should have any questions, please contact me. Thank you.

Sincerely,

GRAHAM & DUNN PC

Nancy E. Dickerson
Assistant to Judith A. Endejan

Enclosures
cc: All Parties
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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. Complainant, v. VERIZON NORTHWEST INC. Respondent	)	Docket No. UT-020406 VERIZON'S MOTION TO DISMISS

VERIZON'S MOTION TO DISMISS

Verizon Northwest Inc. ("Verizon") files this motion pursuant to WAC 480-09-736(14), and requests that the Commission dismiss all of AT&T's and Staff's claims that "above-cost" access charges are unlawful, unreasonable, or anti-competitive because these access charges comply with the Commission's Access Charge Rule, which was re-established by the Washington Supreme Court on March 6, 2003. The claims of AT&T and Staff constitute an impermissible collateral attack on this recently-reinstated rule.

I. The Commission's Access Charge Rule

In 1998, the Commission adopted its Access Charge Rule, WAC 480-120-540. This rule requires all local exchange carriers to restructure their intrastate access charges, and has three principal components: first, terminating access charges must not exceed rates for local interconnection; second, originating access charges may be increased, on a revenue-neutral basis, to offset any reductions on terminating access; and third, an interim terminating access charge (ITAC) adder is created to recover universal service costs. On December 1, 1998, Verizon filed tariffs implementing the Access Charge Rule,

which the Commission accepted. Neither AT&T nor WorldCom challenged Verizon's filing.

Various parties appealed the rule, and in February 2002, the Superior Court of Thurston County struck it down, holding that the Commission exceeded its statutory authority in implementing it.[1] According to the court, the Commission attempted to set rates in a rulemaking rather than in a company-specific adjudicatory proceeding. But on March 6, 2003, the Washington Supreme Court reversed the lower court and reinstated the rule. On April 24, 2003, after discussing the effect of the reinstated rule with Staff, Verizon filed a tariff to reduce its terminating access charge rate effective May 24, 2003 (Docket UT-030569).

AT&T filed its complaint in April 2002, *after* the Access Charge Rule was struck down by the lower court. AT&T's complaint alleged, among other things, that above-cost access charges violate federal law and are anti-competitive.[2] In other words, as we discuss in detail below, most of AT&T's complaint is premised on AT&T's position that the Access Charge Rule is unlawful.[3] Given this, the majority of AT&T's complaint constitutes an impermissible collateral attack on the rule and must be dismissed.

II. AT&T's Complaint is a Collateral Attack on the Rule

Most of AT&T's complaint criticizes the Access Charge Rule and the access charges produced by it. For example, AT&T argues that –

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[1] *Washington Independent Telephone Ass'n v. WUTC*, Cause No. 25954-1-II, slip op (Feb. 2, 2002).
[2] AT&T Complaint at paras. 4, 5, 19, 24, 25, 28, 33-35 (filed Apr. 3, 2002).
[3] In fact, in opposing Verizon's first motion to dismiss, AT&T pointed out that the Access Charge Rule was struck down by the court, and therefore the only mechanism by which AT&T could challenge access rates was a company-specific complaint proceeding. *See* AT&T Opposition to Verizon's Motion to Dismiss at 4-5 (May 13, 2002). This logic, of course, is no longer valid.

• "only cost-based pricing of [access] will enable the Commission to realize its, the legislature's, and Congress' goal of developing and maintaining effectively competitive telecommunications markets in Washington" (para. 5)

• Verizon's access charges "far exceed the costs Verizon incurs to provide those services" (para. 15)

• "By pricing its switched access services at a level "many multiples above the costs to provide that service," Verizon is granting an "undue preference or advantage to itself" (para. 24)

• By charging IXCs "vastly higher rates" for the same service it provides CLECs and CMRS providers, Verizon violates Washington's rate discrimination laws (para. 28)

• Verizon's access rates – including the ITAC that is expressly permitted by the Access Charge Rule – violate federal law (paras. 32-35).

Each of these points is nothing more than an attack on the Access Charge Rule. In fact, when the Commission was considering its rule in Docket No. UT-970325, AT&T made the same arguments there that it makes here. For example, in its comments dated November 26, 1997, AT&T argued that federal law requires access charges to be cost-based, and AT&T set forth a litany of alleged harms to competition that would result if access charges were not cost-based.[4] These are exactly the same arguments AT&T makes (once again) in its complaint.[5] If AT&T disagreed with the Access Charge Rule, it

[4] According to AT&T's 1997 comments, "Cost-based access charges, are now even more important if the policy goals of the 1996 Telecommunications Act are to be achieved. Accordingly, the Act's mandate that the network be made available at cost-based rates means that equivalent access charges must also become cost-based." AT&T also argued that, "In a competitive environment, the only mechanism that will assure that all long distance competitors may use the local network on equal terms is to price access at its economic cost." The Commission, of course, rejected these arguments when it adopted its rule.

[5] Indeed, AT&T's principal argument is that access charges should not (and cannot) recover any loop costs, but the Access Charge Rule expressly allows "recovery of local loop costs through originating access

should have appealed it. It did not, and it cannot now attack it collaterally by filing a complaint against Verizon.

Also, most of AT&T's pre-filed testimony simply repeats the arguments AT&T made in the access charge rulemaking. For example, the direct and rebuttal testimony of AT&T witness Dr. Lee Selwyn discusses at great length the "fact" that Verizon's access charges "are set far above cost" and thus violate federal law.[6] Indeed, his rebuttal testimony concludes that "the Commission should continue its efforts regarding access reform by requiring Verizon to lower its switched access rates towards cost-based levels, as doing so will promote competition . . . ."[7] In other words, Dr. Selwyn wants to rewrite the Access Charge Rule.

Finally, Staff's testimony also asks the Commission to ignore the Access Charge Rule. For example, Staff witness Dr. Glenn Blackmon argues that Verizon's originating access charges should equal Qwest's, reasoning, in part, that the Commission's Access Charge Rule has not resulted in what he believes to be sufficient originating access reductions.[8] If Staff truly believes the rule is flawed, it should seek to amend it.

AT&T's (and some of Staff's) arguments also conflict with the Washington Supreme Court's decision upholding the Access Charge Rule, *WITA v. WUTC*, ___Wn.2d ___, 64 P.3d 606 (2003). There, the Court summarized the essential purpose of the rule, which is to promote competition by establishing a pro-competitive rule applicable to *all* carriers:

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charges." This rule reflects long-standing Commission policy to require companies to recover a portion of loop costs through access charges. *See, e.g.*, WUTC v. Pacific Northwest Bell, Cause No. U-85-23, *Seventeenth Supplemental Order* and *Eighteenth Supplemental Order*.

[6] *See, e.g.*, Selwyn Direct Testimony (Ex. T-1) at pages 4-5, 7-17, 27.

[7] Selwyn Rebuttal Testimony (Ex. T-4) at 58.

[8] Blackmon Rebuttal Testimony at 4-5.

> WAC 480-120-540 applies to both incumbent local exchange carriers and competitive local exchange carriers not used. The rule is designed to carry out state and federal policy to promote competition in the local telecommunications market by addressing one of several reforms sought under the federal 1996 Act, i.e., access charge reform.
>
> * * *
>
> In adopting WAC 480-120-540, the Commission said that its purpose is to "convert a pricing structure that retards competition to one designed to support emerging competition without favoring any class of participants. Ultimately this will enable greater customer choice throughout the state of Washington."
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> * * *
>
> Moreover, rule-making assures that generally applicable standards are applied uniformly.[9]

AT&T claims the rule results in charges that are anti-competitive, and AT&T's and Staff's proposals to ignore the rule when considering Verizon's access charges, conflict with the Court's opinion. Again, if they want to amend the rule, they should file a petition under WAC 480-09-220 ("Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule").

III. The Commission Should Dismiss AT&T's Claims Regarding the Legality of Verizon's Access Charges and Strike the Offending Testimony

Given that the Access Charge Rule has been reinstated, those portions of AT&T's complaint that attempt to rewrite (or strike down) the rule, should be dismissed and the Commission should strike the offending portions of AT&T's complaint and AT&T's and Staff's testimony – i.e., the portions that purport to ignore or rewrite the rule. These portions are listed in Attachment A.

[9] *WITA v. WUTC*, 64 P.3d at 609.

Furthermore, the Commission should refine the scope of the case so that the *only* issue is whether Verizon's toll rates pass imputation. This is the only claim of AT&T that, in theory, does not implicate the Access Charge Rule. The Commission also should make clear that if Verizon's toll rates do not pass imputation, the only remedy is to increase toll rates, not decrease access charges. Even AT&T admits that increasing toll rates will remedy any price squeeze.[10] By limiting the remedy, AT&T will not be able to do indirectly what it cannot do directly, i.e., rewrite the Access Charge Rule by reducing Verizon's access charges to alleged cost-based levels.

Respectfully submitted,

Verizon Northwest Inc.

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Dated this 29th day of April 2003.

[10] Selwyn Direct Testimony at page 5 ("the Commission could eliminate the price squeeze by requiring Verizon to raise retail toll rates").

ATTACHMENT A

Selwyn Direct Testimony Ex. T-1	p. 4, ll. 19-23 p.5, ll 1-2, 22-23 p.6, ll. 1-2 pp. 7-17 p. 24, ll. 11-13, 19-21 p. 25, ll. 1-10 p. 27 p. 28, ll. 1-14 p. 49, ll. 6-25 p. 50-52
Selwyn Rebuttal Testimony Ex. T-4 & T-4C	p. 2, ll. 15-21 p.3 pp. 6-13 p. 14, ll. 1-10 p. 54, l. 14 p.55, ll 1-13 p. 56, ll 16-20 p. 58, ll. 10-15 Exhibit LLS-7 Exhibit LLS-8 Exhibit LLS-12
Blackmon Direct Testimony Ex. T-130	p. 2, ll. 14-16 pp. 3-7 p. 8, ll. 1-2
Blackmon Rebuttal Testimony Ex. 132	p. 1, ll. 12-13 p. 3, ll. 8-19 p. 4

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainant, vs. VERIZON NORTHWEST INC., Respondent.	Docket No. UT-020406 CERTIFICATE OF SERVICE

Nancy E. Dickerson affirms and states:

That on this day, I caused to be served true and correct copies of the **Verizon's Motion to Dismiss**, by the method indicated below, and addressed to each of the following:

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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

Executed at Seattle, Washington this 29th day of April, 2003.

By Nancy E. Dickerson
Nancy E. Dickerson
Legal Secretary