BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.	)	Docket No. UT-020406
Complainant,	)	VERIZON'S REPLY BRIEF
vs.	)	
VERIZON NORTHWEST, INC.	)	

VERIZON'S REPLY BRIEF

AT&T's opening brief confirms that AT&T's complaint is an attack on prior Commission policies and existing Commission rules, and that AT&T's arguments are based on speculation, not evidence. Consider:

- Just months after a Washington State Supreme Court decision affirmed the Commission's rule mandating how access charges will be set, AT&T claims that rates set in compliance with that rule are unlawful, discriminatory and unreasonable. In essence, AT&T simply disagrees with the Commission's policy of allocating of loop costs to access services, a policy that was established in U-85-23.

- AT&T claims that an alleged price squeeze by Verizon is somehow destroying the long distance market in Washington while refusing to present any evidence of prices, market shares or any other relevant information about the market – including any evidence of harm to itself.

- AT&T, having proposed the current imputation rule to the Commission in a prior proceeding, now challenges it by explaining that "no party opposed that approach or explained its short-comings until AT&T filed this Complaint."

- AT&T calculates Verizon's price floor using estimates of AT&T's costs after representing to the Commission that AT&T's costs "bear no relationship whatsoever to whether Verizon's switched access rates are reasonable or whether Verizon's toll rates satisfy appropriate imputation standards."

Not only does AT&T attack prior Commission policies and existing rules, it wants this Commission to change these policies and rules only for Verizon and then to punish Verizon for "noncompliance" with these new rules by confiscating between $40-$60 million in Verizon's annual revenues. The Commission must reject AT&T's arguments not only on legal grounds, but for policy reasons as well.

Verizon's opening brief addressed most of the arguments raised by AT&T and the other parties in their briefs. The following sections discuss the handful of new issues they raise, and also point out several inconsistencies in their briefs.

1. *The parties' briefs confirm that AT&T's complaint is a collateral attack on the Commission's access charge and imputation rules.*

In the opening paragraph of its brief, AT&T explains that it "has been advocating for years" that access charges should equal local interconnection rates. AT&T ignores the fact that the Commission has been *rejecting* for years this very argument, most recently in its access charge rulemaking. Likewise, AT&T argues that Verizon's ITAC violates federal law because it is an unlawful "implicit subsidy." (AT&T Opening Brief at para. 48) This means that the Commission's access charge rule is unlawful, as are the access charges of every other carrier in Washington. AT&T, however, does not bother to mention this point when discussing the impact of the access charge rule upon this proceeding. In any event, AT&T and WorldCom made this same "implicit subsidy" argument in the access charge rulemaking, and the Commission rejected it.

Staff's opening brief also illustrates how Staff ignores the Commission's access charge policies and access charge rule. The introduction to Staff's brief correctly points out that the Commission enacted its access charge rule to reform access charges and to "promote fair competition in the market for intrastate long-distance service." (*Id.* at para. 2) Unfortunately,

the rest of Staff's brief ignores this point – Staff apparently no longer agrees with the rule, and therefore disregards it in this proceeding. For example, Staff criticizes Verizon's access charges because they are not the same as Qwest's, arguing that Verizon's higher charges allow it to "export costs" to Qwest's customers. (Staff Opening Brief at para. 10) Staff, however, ignores the fact that the Commission, in its access charge rulemaking, expressly acknowledged that different companies have different charges that recover different levels of revenue: "It is important to remember that . . . individual companies recover significantly different proportions of their total revenues from access charges."[1] Staff also ignores the Commission's fundamental policy decision it made in the access charge rulemaking: originating charges will not be reduced by fiat; instead, competition will set such charges, and, as the Commission expressly recognized, competition "may or may not" reduce such charges.[2] Furthermore, Staff's "exporting costs" argument is nothing more than an attack on the Commission's longstanding policy of requiring carriers to pay for loop costs through access charges.[3] Staff does not agree with the Commission, but Staff's remedy is to petition for a rule change, which would involve all Washington carriers, not just Verizon.

Staff further argues that Verizon's intrastate access charges are "contrary to the public interest" because they are higher than Verizon's interstate charges and thus "they discriminate against customers making intrastate long-distance calls versus those customers who make interstate long distance calls." (Staff Opening Brief at para. 8). Here too, Staff ignores the fact

---

[1] *General Order R-450* at 4.

[2] *Id.* at 18.

[3] Also, as explained in Verizon's opening brief, the Commission intentionally allocated fewer loop costs to Qwest's access services that it allocated to any other carrier, including Verizon, in U-85-23 Thus, Staff's "Qwest to Verizon" comparison either ignores or is an attack on the Commission's order in that docket.

that the Commission addressed this issue in the access charge rulemaking. There, various parties explained that intrastate access charges should be reduced to cost and should be the same as interstate charges.[4] The Commission rejected these arguments.

Finally, WorldCom's brief confirms Verizon's point that AT&T and WorldCom are collaterally attacking the Commission's imputation rule in this proceeding. Specifically, WorldCom criticizes the imputation rule because that rule does not reflect the "real cost" of access. (*Id.* at 7-9) Again, if WorldCom does not agree with the imputation rule, it should file an appropriate petition to change the rule.

2. *Staff's ITAC adjustment "double counts" Verizon's interstate revenues.*

Staff continues to assert that Verizon's ITAC should be reduced because of Verizon's interstate access support (IAS). As Verizon explained in its brief, Staff's adjustment "double counts" Verizon's IAS because this amount already is reflected in the current revenue benchmarks. *Staff's own brief proves this point.*

First, Staff admits that the revenue benchmarks ($31 for residential customers and $51 for business customers) were established before the FCC's *CALLS Order* and "include revenues from many different elements, including access charges." (Staff Opening Brief at para. 22) Second, Staff also admits that, "Until the CALLS order was implemented, the amount of federal support [in interstate access charges] was implicit," but "with the release of the CALLS order, which made federal interstate access support explicit, the Commission can now determine the exact amount of federal interstate access support each company will receive." (*Id.* at para. 23) Thus, Staff admits that the revenue benchmarks already reflect the IAS, i.e., the benchmarks reflect the *implicit* interstate access supports that were made *explicit* by the *CALLS Order*.

---

[4] *Id.* at 19-20.

Staff's adjustment double counts this support – Staff counts it once as "implicit support" that was used to create the $31 and $51 revenue benchmarks, and Staff counts it a second time as "explicit support." This is bad math.

Verizon illustrated this point in its opening brief, but an even simpler example can be developed from Staff's own brief. Staff claims that a company's ITAC equals the company's cost of providing service minus (1) the revenue benchmark and (2) federal interstate access support (IAS). (Staff Opening Brief at para. 22) Prior to the *CALLS Order*, there was no federal IAS – rather, this support was "implicit" in the company's interstate access charge revenues. Thus, prior to CALLS, Staff's calculation would look like this:

Company's cost (residential)	**$50**
Revenue benchmark	**($31)**
Federal IAS	**($0)**
ITAC recovers	**$19**

After CALLS, the company's interstate access charges were reduced and offset on a revenue-neutral basis with federal IAS; i.e., implicit support was replaced with explicit support. Assuming $7 in implicit support pre-CALLS, the post-CALLS calculation would look like this:

Company's cost (residential)	**$50**
Revenue benchmark	**($24) (reflects the reduced access charges)**
Federal IAS	**($7)**
ITAC recovers	**$19**

As illustrated, the ITAC should remain the same because the implicit support embedded in the pre-CALLS revenue benchmark were removed and made explicit – no *additional* support was created. Staff, however, double counts the IAS and thus improperly reduces Verizon's ITAC:

Company's cost (residential)	**$50**
Revenue benchmark	**($31)**
Federal IAS	**($7)**
ITAC recovers	**$12**

The error, of course, is that the previously established revenue benchmark of $31 already includes the "implicit" support of $7 that Staff counts again as federal IAS.

Finally, and even more simply, Staff has failed to answer the obvious question presented by its adjustment: if a company does not receive a *net increase* in federal revenues – regardless of whether these revenues are called implicit support or explicit support – how can the company's total support requirements *decrease*? As a matter of simple mathematics, they cannot.[5]

3. *AT&T's imputation "analysis" is flawed, and AT&T's "evidence" is irrelevant and not credible.*

It is difficult to keep up with AT&T's position on imputation. For example, in its direct testimony, AT&T acknowledged that "the Commission has repeatedly stated that since billing and collection are competitive services, it is appropriate to impute the long-run incremental cost (LRIC) that an ILEC incurs in providing this service," citing to the Commission's decisions in three separate dockets. (Ex. T-1 at 34) But in its brief, AT&T claims that the Commission "has never specified" how such costs are to be calculated, and rather than use Verizon's LRIC, AT&T proposes to use a stand alone cost estimate. (AT&T Opening Brief at paras. 12, 20)

AT&T had it right the first time: the Commission has repeatedly stated that a proper imputation test is based on the incumbent carrier's LRIC, not an unaffiliated IXC's stand-alone costs. Staff confirmed this fact in its testimony and at the hearing.[6] AT&T cannot escape the conclusion that all of its evidence is irrelevant because it is based on an imputation test that does not exist.[7]

---

[5] AT&T's brief also criticizes Verizon's ITAC and proposes its elimination. Thus, AT&T seeks to reduce Verizon's access revenues by approximately $60 million per year, not the $38 million AT&T claimed in its rebuttal testimony. (Ex. 6C shows that Verizon's ITAC generates $20.6 million per year.) As noted in Verizon's opening brief, AT&T waived its claim to eliminate the ITAC. Even if AT&T did not waive its claim, its proposed $60 million reduction is unlawful for the same reasons as its proposed $38 million reduction.

[6] *See, e.g.*, (Ex. T-105 at 18 (Mr. Zawislak explains the Commission's "LRIC-based" imputation test); Tr. 532-34 (Mr. Zawislak discusses the Commission's imputation test as approved for Verizon).

[7] AT&T also suggests that the Commission never established an imputation rule, arguing that the Commission

Not only is AT&T wrong about the existence of, and cost inputs to, an imputation test, it is wrong about the *purpose* of such a test. According to AT&T, "Imputation is one legal basis on which the Commission should determine that Verizon's current access charges are unlawful and unreasonable." (AT&T Opening Brief at para. 11) This statement is nonsensical. An imputation test has nothing to do with the reasonableness of access charges; rather, an imputation test ensures *toll rates* are reasonable by requiring the imputation of access charges in a toll price floor.

Furthermore, AT&T's proposed costs – setting aside the fact they are irrelevant – are speculative at best. For example, AT&T's calculations of billing and collection costs and retailing costs are based on a stock market analyst's estimate of AT&T's costs. (*Id.* at paras. 17, 23) The Commission will recall that AT&T appealed an ALJ ruling requiring AT&T to disclose its own B&C and marketing costs, arguing that such costs were not relevant to this proceeding. As AT&T represented to this Commission, "the costs that AT&T incurs to provide toll service bear no relationship whatsoever to whether Verizon's switched access rates are reasonable or whether Verizon's toll rates satisfy appropriate imputation standards."[8] The Commission agreed. Now, however, AT&T relies on a third-party estimate of AT&T's costs to develop Verizon's toll price floor. AT&T's alleged "evidence" simply is not credible.

In addition, AT&T proposes to add what it claims is a new cost – "intertandem transport costs" – to Verizon's toll price floor. AT&T raises this issue for the first time in its brief, stating that "no party include[d] these costs" in their imputation analysis. (*Id.* at para. 29) AT&T is

---

intended to do so in a "global consideration of switched access services" that "never occurred." (AT&T Opening Brief at para. 12). AT&T is wrong. The "global consideration" of switched access services did, in fact, occur – it took place in the Commission's access charge rulemaking, which AT&T ignores throughout its brief.

[8] AT&T Petition for Commission Review of Interlocutory Order at para. 8 (filed Feb. 7, 2003).

wrong – transport costs were included in the parties' analyses. As Verizon discussed in its Opening Brief (p. 21), Verizon developed its toll price floor by calculating the transport costs IXCs would incur in carrying Verizon's toll traffic. These costs include a mix of tandem switched and direct trunked transport, which is precisely what Dr. Selwyn advocated in his direct testimony. To include both the transport costs IXCs would incur in carrying the toll traffic *and* the transport costs Verizon would incur to carry the same traffic – as AT&T suggests – would "double count" the transport costs.

Finally, AT&T claims that the testimony of Verizon's cost study witness – Mr. David Tucek – is "triple hearsay" because someone other than Mr. Tucek collected the data he used in his study. (*Id.* at para. 19) This is a bizarre claim for AT&T to make. In fact, applying this standard, AT&T's complaint must be dismissed because *all* of AT&T's evidence is triple, quadruple, or quintuple hearsay. As discussed, AT&T relies on estimates of B&C and retailing costs that an analyst gathered from unnamed sources, and AT&T's sole witness admitted he never bothered to verify any of this data and did not even speak with the analyst. (Exs. 71-74, 85) In any event, Verizon's evidence is not the type of speculative third-party evidence AT&T offers. Mr. Tucek sponsored a cost study that Verizon prepared based on its own cost data, not a cost estimate some analyst gleaned from unnamed sources. As Mr. Tucek testified, Verizon has hundreds of employees who work on various cost studies, cost modeling tools, and cost inputs, and, contrary to AT&T's bald assertion that the Commission has rejected this type of evidence, neither this Commission nor any other regulator has required a company to put on hundreds (or even dozens) of witnesses to support a cost study. (Tr. 772) If it did, the hearings themselves would take months to complete.

In short, the Commission should disregard all of AT&T's testimony on imputation.[9]

4. *Staff's conversion factor adjustment is plainly wrong.*

As a threshold matter, Staff's claim that the "issues of imputation are of secondary importance in this proceeding" is astounding. (Staff Opening Brief at para. 33) The very essence of AT&T's complaint is that Verizon's toll rates do not pass the Commission's imputation test, and yet Staff did not conduct an imputation test. Indeed, Staff's entire testimony on this point spans just two and one-half pages. (Ex. T-105 at 6-8)

In any event, Staff proposes only one adjustment to Verizon's cost of access: it adjusts Verizon's "conversion factor," which is the factor that ensures the correct amount of access charges are imputed to the toll services Verizon actually provides. For example, suppose Verizon billed a customer for a five-minute toll call. If originating access charges are five cents per minute, how much in access charges should be imputed to that call? If an access minute were the same as a toll minute, then $0.25 would be imputed (5 minutes x $0.05 per minute). But, as Verizon discussed in its opening brief, an access minute is *not* the same as a toll minute. For example, toll calls are "rounded up" to the nearest minute but access charges are not. Thus, a five-minute billed toll call might incur only four minutes, 50 seconds in access charges, which means the imputed cost of access is a less than $0.25. A conversion factor ensures that the proper amount of access charges are imputed to the toll services Verizon actually provides.

[9] AT&T also argues that its and Staff's calculation of access-related costs "was unrebutted and essentially unchallenged." (AT&T Opening Brief at para. 15) This is false. As Verizon explains in its opening brief, the record evidence shows that AT&T's and Staff's calculations are incorrect. (Verizon's access-related costs are set forth in Ex. 111C, page 3 of 4. Line 36, column (B) shows the cost of originating access, and line 44, column (E), shows the composite cost of terminating access.)

Staff does not disagree with the need for a conversion factor, nor does Staff disagree with the numbers used to calculate the factor; instead, Staff disagrees with Verizon's mathematical formula that explains *how* a conversion factor should be calculated.

Perhaps the simplest way to illustrate Verizon's and Staff's disagreement on this issue is to use currency conversion as an example. Suppose you are traveling to Europe and want to convert $100 to Euros. If one Euro is worth $1.10, the factor for converting dollars to Euros is .9 (i.e., $1.00/1.10), and therefore you will receive 90 Euros for your $100 ($100 x .9 = 90). This makes sense; since one Euro is worth *more* than one dollar, you will always receive *fewer* Euros than the number of dollars you traded in. Staff, however, proposes to calculate the conversion factor in reverse. According to Staff, the conversion factor is 1.1 (i.e., 1.10/$1.00). Therefore, if you converted your $100 at Staff's kiosk, you would receive 110 Euros ($100 x 1.1 = 110). This may result in a windfall to you, but it is still bad math – you should not receive *more* Euros than dollars.

This currency conversion example captures precisely Staff's mistaken adjustment to Verizon's access-to-toll conversion factor. The only difference is that instead of converting dollars to Euros, the factor converts access minutes to toll minutes.

The evidence is undisputed that Verizon's average billed toll call is ***** **(Confidential)** minutes, and that Verizon's average billed originating access equivalent is ***** **(Confidential)** minutes. Given that the number of toll minutes is greater than the number of access minutes, the "access-to-toll" conversion factor must, as matter of simple arithmetic, be ********* **(Confidential)**. In fact, the factor is ***** (***********************************
********* **(Confidential)**. Staff, however, flips the calculation around: it believes the factor should be ***** (***) **(Confidential)**. Again,

Staff does not dispute the toll mou or access mou figures; rather, Staff simply reverses the numerator and denominator. (*See, e.g.,* Staff Opening Brief at para. 37)[10] Staff's erroneous equation overstates the number of access minutes imputed to Verizon and thus overstates Verizon's price floor. Once Staff's error is corrected, Staff's cost of access is equal to Verizon's calculation.

Moreover, Staff's brief suggests that Verizon's calculation of conversion factors is inconsistent with previous calculations the Commission approved. (*Id.* at para. 39) Here too, Staff is wrong. The previously approved factor was ***** **(Confidential)** (Ex. 108C, page 3 of 3), and this factor was created using the same mathematical formula Verizon used in creating the current conversion factor. Verizon merely updated usage levels (i.e., holding times used in the calculation), and "Staff does not oppose updates of this nature because they appear consistent with what the Commission ordered in Docket UT-970767." (Ex. T-105 at 11) Staff, however, changed the formula by flipping the numerator and denominator, and Staff fails to explain why it made this change.

Finally, Staff concludes that the Commission should not allow Verizon to use any factor of less than 1.00 "unless and until the company adequately supports such use." (Staff Opening Brief at para. 39) Staff ignores the fact that it has the burden of proof on this issue, not Verizon. As discussed, Staff did not object to any Verizon number used in the conversion factor formula, nor did Staff explain why it now wants to change the formula. Staff has failed to carry its burden, and therefore its proposed conversion factors must be rejected.

---

[10] Staff makes this same error in calculating the conversion factor for *terminating* access.

5. *AT&T's "analysis" of Verizon Long Distance's rates and costs is irrelevant and demonstrably wrong.*

AT&T's analysis of VLD is irrelevant because, as explained in Verizon's opening brief, VLD is not subject to the imputation test.[11] In any event, AT&T's analysis is wrong. AT&T claims that VLD's toll prices are below its price floor because VLD pays Verizon about ***** **(Confidential)** per minute to resell Verizon's intraLATA toll (and VLD incurs other costs as well), but VLD charges its customers between $0.085 and $0.10 per minute for toll services.[12] AT&T's comparison, however, assumes that VLD provides *only* intraLATA toll service. This assumption is wrong; VLD provides all types of toll services, including intraLATA toll, interLATA, intrastate toll, and interLATA, interstate toll. Thus, VLD's *total* cost of providing toll services is a mix of (a) the resale rate it pays Verizon (about **** **(Confidential)** per minute), (b) *interstate* access charges (about ***** **(Confidential)** per minute), and (c) other costs. VLD, like AT&T, is required to charge "averaged" rates for its toll services under Section 254 of the federal Act, and therefore VLD recovers its averaged costs through its averaged rates.[13] AT&T, however, has failed to make this comparison, and AT&T has failed to present any evidence that VLD's toll prices do not cover VLD's total LRICs. Finally, AT&T itself documents the overwhelming evidence that no price squeeze exists, noting that Verizon's toll revenues are now less than half what they were a few years ago. (AT&T Opening Brief, p. 12)

---

[11] Staff appears to accept this point. In Docket No. UT-030395, for example, Staff recommended that Verizon remove the toll portion of a proposed packaged service offering and have VLD offer it instead. Staff noted that Qwest had done so.

[12] VLD's lowest price is a business rate that requires a three-year term. AT&T's calculations in Appendix A of its opening brief improperly reduce this price (and other prices) by "blending" it using Verizon, not VLD, calling data.

[13] As noted in VLD's Price List for Washington, VLD charges a single $0.10 per minute rate for all intraLATA and interLATA calls. (First Revised Sheet 44, Section 3.6B)

If any company is at a competitive disadvantage, it is Verizon, not AT&T. By paying Qwest's lower access charges for a large portion of its traffic,[14] AT&T gains a significant cost advantage over Verizon's toll service – which must reflect Verizon's higher access charges to a much greater degree. Averaged prices free AT&T to charge prices below those that Verizon could match, given current access charges. AT&T's phony imputation argument in this proceeding is just a strategy to try to force those Verizon toll prices even higher.

6. *Staff's claim that Verizon's revenues are not relevant is contradicted by the testimony of Staff's own witness.*

Staff claims that "the Commission's orders striking testimony in this matter have removed most issues relating to earnings." (Staff Opening Brief at para. 42) Staff is wrong – the Commission expressly recognized that earnings are an issue as they relate to Verizon's overall costs. Staff cannot seriously question the relevance of such evidence; at the hearing, Staff witness Glenn Blackmon again acknowledged the link between access charges and a company's revenue requirement:

> Q. [I]n cross examining Mr. Zawislak, [Verizon's counsel] referenced an earlier Commission statement that access charges help a company recover a portion of its total operating costs. Do you disagree with that proposition?
>
> A. No, I don't. (Tr.548, lines 9-13)
>
> * * *
>
> Q. [I]f you reduce access because you think [access charges] are unreasonable but the company is not overearning, would you agree that the company should be allowed to offset those reductions through increases in other rates?
>
> A. That's a big if, but given that if, then the answer is yes. (Tr. 573, lines 4-10)

[14] This relationship also means that even if AT&T passed through 100% of any Verizon access charge reductions in AT&T's toll rates, customers located in Verizon's service area would see only a fraction of the benefit.

As discussed, the evidence conclusively shows that Verizon is not overearning; the point here, however, is that Staff's witness agrees that access charges cannot be reduced without considering a company's overall earnings and revenue requirement, and thus Staff's brief is wrong.

7. *Staff's earnings calculation uses 2001 rather than 2002 data, and Staff's so-called "Ratemaking 101" adjustments are unlawful.*

Staff's opening brief claims that Verizon's return with all of Staff's adjustments is 11.57%. (Staff Opening Brief at para. 46) Verizon's opening brief shows that Verizon's return with all of Staff's adjustments is 8.97. (Verizon Opening Brief at 43) The reason for this discrepancy is that Staff's starting point is Verizon's reported return for 2001, which was 5.50%, whereas Verizon's starting point is Verizon's reported return for 2002, which was 2.84%. At the hearing, Staff witness Erdahl acknowledged that she received the 2002 data, and when asked if she had "any other questions about it other than the five adjustments she made as discussed in her testimony," she replied, "Not at this time." (Tr. 579) She also agreed that the Commission should not ignore this more recent data so long as it looks at "the appropriate ratemaking adjustments" to it. (Tr. 583).

Notwithstanding Staff's use of 2001 data, Staff arrives at its 11.57% figure using what it calls "basic Ratemaking 101 adjustments." (Staff Opening Brief at para. 46) Staff adjustments, however, are anything but "basic." For example, as discussed in Verizon's opening brief, Staff's "interstate revenue growth" adjustment clearly is unlawful. Once this adjustment is eliminated, all of Staff's other adjustments produce a return of only ***** **(Confidential)** (11.57% minus ***** **(Confidential)**).

8. *Verizon's decision to file (or not to file) a rate case is irrelevant to this proceeding.*

AT&T wonders why Verizon did not file a rate case in response to AT&T's complaint, and appears to argue that Verizon should have filed one. (AT&T Opening Brief at para. 60) The other parties make similar arguments.

This "rate case" argument is a red herring. In fact, no party has attempted to explain how the filing of (or not filing) a rate case is relevant to whether Verizon's access charges and access revenues are "fair, just, reasonable, and sufficient." AT&T appears to argue that Verizon should have filed a rate case to rebalance its rates by reducing access and raising other rates, even though this Commission has previously ruled that the cost of a loop is a common cost that must be recovered in large part from access charges. In other words, AT&T criticizes *Verizon* for failing to challenge the *Commission's* prior policies by filing a rate case. The Commission must ignore such arguments. As Verizon explained in its opening brief, the Commission has not allowed competitors to initiate a full rate proceeding by filing an access charge complaint, holding that such an outcome "is not intended by the complaint statute."[15] The Commission must follow that same policy here.

9. *AT&T has not carried its burden of proof on any of the four claims in its complaint.*

AT&T's complaint includes four asserted causes of action.[16] Even if the complaint should not be dismissed as an unlawful collateral attack on prior Commission orders and rules, an impermissible attempt at single issue ratemaking, and a request for unconstitutional

---

[15] Docket No. UT-970653, *Second Supplemental Order* at 6.

[16] In its brief (pages 2-4) Staff again tries to amend AT&T's complaint, this time by adding a fifth claim, based on RCW 80.36.080. But even if such an amendment were permissible – which it is not – it would add nothing to AT&T's case. The essential point is that reasonableness of a company's access charges is tied to the company's other rates and total costs, and the policy decisions underlying a company's rates are made by the Commission in a general rate case or a proper revenue neutral rate rebalancing proceeding, not in a complaint case that proposes single-issue ratemaking.

confiscation of Verizon's revenues, the relief sought by AT&T must be denied because AT&T has failed to prove its claims. AT&T barely addressed its specific causes of action in its testimony in this case, and its opening brief practically ignores them.

AT&T's first claim is that Verizon's access charges violate RCW 80.36.186, which prohibits pricing that subjects another telecommunications company to "undue or unreasonable prejudice or competitive disadvantage." As Verizon has discussed in its testimony, its opening brief, and this reply brief, the determination of what pricing effects are "undue or unreasonable" is a policy question that the Commission generally decides in rate cases, after determining the company's total costs and weighing the interests of the various customer classes in allocating recovery of those costs through the setting of rates. The Commission's access charge rulemaking further defined what access charges would be just, reasonable and sufficient in Washington, and Verizon's rates comply with those rules. If the Commission is interested in changing those policies with regard to Verizon, the Commission must initiate a new rulemaking on access charges. It cannot make such changes in this complaint and then, as AT&T requests, confiscate the company's lawful revenue.

Moreover, the Commission has clearly held that its imputation test is the device that enforces this statute with regard to access charges paid by long distance competitors. Therefore, at most, the only colorable claim that AT&T can make under this section is that Verizon's toll rates are too low under the Commission's imputation test. As Verizon has demonstrated, AT&T has failed to prove that claim.

AT&T's second claim is that Verizon's access charges violate RCW 86.36.180, which prohibits companies from "unduly or unreasonably" charging different prices to different customers for a "like and contemporaneous service . . . under the same or substantially the same

circumstances and conditions." Again, what is "undue" or "unreasonable" is a policy question decided by regulators and, as Verizon has shown, the supposed difference between access charges, local interconnection rates and charges to CMRS providers has been held to be lawful. AT&T may not collaterally attack those holdings here, and the Commission may not ignore them.

AT&T's third specific claim is that Verizon's toll rates do not pass the Commission's imputation test. As Verizon has demonstrated, AT&T has failed to carry its burden of proof on the factual issues related to this claim and, moreover, AT&T has impermissibly attempted to have the Commission change its rule.

AT&T's fourth and last claim is that Verizon's Commission-approved access charges violate provisions of federal law. As Verizon has explained, AT&T is entirely mistaken.

Finally, even if AT&T's claims were not improper for all the reasons Verizon has discussed, and even if they were not erroneous as a matter of law, and even if AT&T had carried its burden of proof as to each -- or any -- claim, the relief requested by AT&T would be unlawful. First, as Verizon has discussed, even if AT&T proved that Verizon's toll rates failed the Commission's imputation test, the only appropriate and lawful remedy is to require Verizon to increase the rates so that they do pass the test. Obviously, if the Commission had detected the rates' insufficiency at the time Verizon filed them, the Commission would have rejected the filing and Verizon's only recourse would have been to refile the rates at a sufficiently higher level. The same rationale and remedy would apply to this case, if AT&T had proven its claim. In addition, AT&T's requested relief is that the Commission confiscate $60 million of Verizon's revenues. For the many reasons that Verizon has discussed, the Commission may not lawfully grant such relief in this case.

10. ***Miscellaneous points.***

There are a handful of miscellaneous arguments the parties make in their opening briefs that are addressed below:

• Staff claims that in the Bell Atlantic/GTE merger proceeding, the Commission "did not scrutinize Verizon's rates, instead it approved a settlement that disposed of many issues, including access charges." (Staff Opening Brief at para. 15) The *Merger Order* contradicts Staff's argument. There, the Commission expressly held that Verizon's "rates and charges for terminating access and other services" were "fair, just and compensatory," and that this conclusion was supported by, among other things, the parties' "detailed study and analysis."[17] In short, Staff's claim that the Commission did not fulfill its statutory obligation of ensuring lawful rates in the *Merger Order* is not supportable.

• WorldCom's brief contradicts itself on one essential issue: the need to increase other rates if access charges are reduced. On page 3 of its brief, WorldCom acknowledges that, "It has long been recognized that access charges were set at rates in excess of their cost [i.e., LRIC] to keep other rates low." But on page 10 of its brief, WorldCom ignores this principle, arguing that the Commission should reduce Verizon's access charges without considering the effect of such reductions on other rates (and revenues).

• Staff claims in its brief (page 3) that the lower level of Verizon's interstate switched access charges shows that Verizon's Commission-approved intrastate access charges are too high. But this argument ignores the fact that the FCC has reduced interstate charges by a series of rate rebalancings, e.g., raising the subscriber line charge and establishing the IAS. Staff also forgets that in Docket U-85-23 this Commission assigned exactly the same portion of the local

[17] Docket Nos. UT-981367, et at., *Fourth Supplemental Order* at 25 (Dec. 1999).

exchange companies' loop and other non-traffic sensitive costs to toll/access services as is assigned to the interstate jurisdiction - 25%.

• Staff persists in its erroneous contention that the ITAC accounts for nearly all of the cost differences between companies so that all companies' access charges should be essentially the same. (Staff Opening Brief at 4). As Verizon demonstrated -- and Staff failed to dispute with any factual evidence -- at best the ITAC equalizes the companies' costs for the eight percent of lines that are in exchanges whose costs exceed the benchmarks. In the remaining exchanges, Qwest's significantly higher densities mean that Qwest's costs are significantly lower than Verizon's. Thus, it is perfectly logical -- and, in fact, a mathematical necessity -- that Verizon's rates will be higher than Qwest's. Staff's theory is also demonstrably false, because it would require that the rates for all of the smaller local exchange companies in the state be the same as Qwest's. The fact that the Commission maintains special access charge pools and support mechanisms for those companies proves the falsity of Staff's position.

• Finally, A&T argues that if the Commission orders access reductions and offsetting increases in other rates, it should adopt Staff's proposal for a retail access charge. (AT&T Opening Brief at para. 61) Staff's proposal, however, was stricken – the Commission has made clear that it will not consider specific rate design proposals in this phase. Accordingly, the Commission must ignore AT&T's proposal.

Respectfully submitted,

Verizon Northwest Inc.

By /S/ Judith A. Endejan KAD
Judith A. Endejan
Graham & Dunn PC
1420 Fifth Avenue, 33rd Floor
Seattle, WA 98101
206-340-9694
Fax: 206-340-9599

By /S/ Charles H. Carrathers, III KAD
Charles H. Carrathers, III
Vice President and General Counsel
Verizon
P.O. Box 152092
HQE02H20
Irving, TX 75015-2092
972-718-2415
Fax: 972-718-3926

Dated this 17th day of June, 2003.