[Service Date August 12, 2003]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.,	)	DOCKET NO. UT-020406
Complainant,	)	ELEVENTH SUPPLEMENTAL ORDER
v.	)	
VERIZON NORTHWEST, INC.,	)	ORDER SUSTAINING COMPLAINT, DIRECTING FILING OF REVISED ACCESS CHARGE RATES
Respondent.	)	

Synopsis: *The Commission finds that a complaint by AT&T against Verizon Northwest, Inc., is valid, in part. The Commission notes that Verizon conceded on the record and on brief that its access charges need restructuring. The Commission directs Verizon to revise and reduce its access charges, consistent with the terms of this order, and to file revised tariff rates for those access charges to become effective on October 1, 2003. The Commission observes that Verizon has procedural options available to it if it desires to increase any of its other rates.*

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I. PROCEDURAL BACKGROUND

1 This docket came before the Commission for hearing on May 7 and 8, 2003, at Olympia, Washington, before Chairwoman Marilyn Showalter, Commissioners Richard Hemstad and Patrick Oshie, and Administrative Law Judge Marjorie Schaer.

2 **Parties:** Gregory J. Kopta, attorney, Seattle, and Letty Friesen, attorney, Denver Colorado represent AT&T Communications of the Pacific Northwest (AT&T); Judith Endejan, attorney, Seattle, and Charles Carrathers, Vice President and General Counsel, Irving, Texas, represent Verizon Northwest, Inc. (Verizon); Michel Singer-Nelson, attorney, Denver, Colorado, represents WorldCom and its regulated subsidiaries (WorldCom); Shannon Smith, assistant attorney general, Olympia, represents the staff of the Washington Utilities and Transportation Commission (Commission Staff); Robert W. Cromwell, Jr., and Simon ffitch, assistant attorneys general, Seattle, appear as Public Counsel. Arthur A. Butler, attorney, Seattle, appears on behalf of intervenor Washington Electronic Business and Telecommunications Coalition (WeBTEC); John O'Rourke, attorney, represents The Citizens Utility Alliance of Washington, Spokane Neighborhood Action Programs.

A. Procedural history

3 The procedural history of this docket is of interest, but is lengthy. We have set it out in Appendix A.

B. Witnesses

4 AT&T presented the testimony of Lee L. Selwyn, PhD, President, Economics and Technology, Inc. (ETI). Commission Staff witnesses were, Glenn Blackmon, Timothy W. Zawislak, and Betty A. Erdahl. Verizon witnesses were Orville D. Fulp, David G. Tucek, Terry R. Dye, Nancy Heuring, and Carl R. Danner.

II. COMMISSION DISCUSSION

5 Much of the contentiousness of this proceeding focused on process. In fact, it appears that all of the principal parties (excluding Public Counsel, WeBTEC, and Citizens Utility Alliance, who are concerned mainly about other issues and appear to be neutral on the matter) agree with the objective of the complaint—that Verizon's access charges need to be reduced. Verizon conceded on the record and on brief[1] that its access charge rates should be lowered. The Commission agrees, and sets rates in this order that move the Verizon rates toward economic efficiency while balancing the Company's need for revenue continuity and its customers' needs for rate stability and notice and opportunity to participate in any consequential restructuring of retail rates.

6 Verizon's objection to any proposed access charge restructure centered on its desire for "rebalancing," that is, offsetting increases in other of its intrastate retail rates. We deny its arguments on that matter, but note that procedures exist for it to maintain its level of rates, or to increase them above current levels if necessary.

7 In reviewing the issues that the parties present to us, we begin with Verizon's various contentions that it is entitled to summary relief. Then we determine

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[1] "As Verizon explained at the evidentiary hearing, Verizon believes its access charges should be restructured to be more economically efficient," Verizon opening brief, page 5.

whether AT&T has proved the elements of its complaint; what changes, if any, should be implemented in rates for access charge service; and remaining matters presented to the Commission for decision.

III. REQUESTS FOR SUMMARY DISPOSITION

8 Should the complaint be decided without a review of the merits? Verizon has raised a number of challenges to the complaint, contending that it is infirm as a matter of law. We acknowledged several of these challenges in the Second Supplemental Order, but ordered the proceeding to continue, deferring the issues for resolution until an evidentiary record provided context for a review. Now they are ripe for decision.

A. Asserted Violation of Prior Order

9 Verizon's principal challenge to the complaint is that it would constitute "single issue ratemaking," that is, that the Commission should not look only at one component of the Company's revenue out of context of its overall operations. It relies on a Commission order in a complaint proceeding involving predecessors of two of the parties to this docket, *MCI and GTE-NW*.[2] Verizon argues that the order holds that the Commission will not entertain a complaint against a regulated company if granting the complaint could require a full review of the company's rates.

10 Commission Staff cites language in the order that the Commission will "*generally* . . . not engage in single issue or 'piecemeal' ratemaking."[3] In addition, Staff argues that the MCI order is distinguishable. It cites the order, which says:

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[2] *MCI Telecommunications Corp. v. GTE Northwest, Docket No. UT-970653, Second Supplemental Order Dismissing Complaint (Oct. 22, 1997).*

[3] *Id.*, at 7 (emphasis added.)

> MCI does not allege that GTE's access rates violate any statute or Commission order. MCI does not contend that GTE's access rates are unfair, unjust, or unreasonable under the current Commission-approved structure for intrastate rates.[4]

In this case, AT&T specifically has alleged that Verizon's access charges violate RCW 80.36.186 and 80.36.180, the Commission's imputation test, and federal law. Commission Staff argues that this docket is therefore clearly distinguishable from the MCI proceeding.

11 We find that the *MCI v. GTE* order is not controlling, for the reasons Staff cites. First, the *MCI* holding by its terms applied only to a proceeding in which one company declared that it believed rates it paid to another company were too high, but did not allege a statutory violation or any other legal basis for its complaint. This complaint is clearly different, in that AT&T states several statutory bases for its complaint and alleged violations of statute, rule, and federal law. In the *MCI* proceeding, it appears that MCI was seeking to initiate a rate case for the review of GTE's rates, and we held—properly—that one company cannot in that manner force another to enter a general rate case.

12 Second, the holding was not a blanket statement that the Commission would never hear a complaint that could affect a company's achieved rate of return. The order itself recognized in stating a "general" rule, that even in its limited application to circumstances where a complaint does not allege a specific basis, the Commission might find it necessary or appropriate to deal with a complaint.

13 For these reasons, we reject Verizon's contention that the *MCI* order requires dismissal of the complaint.

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[4] *Id.*, at 6.

B. Rate "Rebalancing" Issues

14 Verizon contends that if the Commission finds merit in the complaint and proceeds to reduce revenues from access charges, Verizon is entitled to rate "rebalancing" that leaves its overall revenues unchanged. It says at page 16 of its opening brief:

> Verizon does not object to reducing its originating access charges; *provided, however*, that Verizon is permitted to increase other rates—notably, basic residential service rates—on a revenue-neutral basis, without a review of its earnings and overall rate structure.

15 AT&T's opening brief addresses this argument by stating that Verizon has felt no need to initiate rate rebalancing, citing testimony of Verizon witness Mr. Fulp. More telling, though, is the lack of any legal or policy argument from Verizon that supports its contention that it is entitled to rate rebalancing to effect a major shift in its revenue that involves a major increase in rates for local service. We find none in its presentation, and know of none.[5] A company is not entitled to a level of revenue. It is entitled to the opportunity to earn at a level allowing it to meet its reasonable expenses, including the cost of capital needed to support its operations. An appropriate means to demonstrate the need for a general increase in its rates and charges is a general rate increase proceeding. Verizon offers no objection to reducing access rates if it is entitled to increase other rates. The Commission rules that it may be so entitled, if it demonstrates the need for a rate increase of that magnitude through a general rate case, and if it provides the Commission with the opportunity to consider a spread of rates that is fair, just, and reasonable.

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[5] *See, In re the Petition of GTE Northwest, Docket No. UT-961632, Fourth Supplemental Order (Dec. 1997),* where the Commission ruled that there is no obligation on this Commission to ensure that a regulated company will fully recover its costs regardless of any changes in the economic, technological, or business environments.

16 A rate case is the appropriate forum for addressing Verizon's earnings issues. Verizon witnesses demonstrate that the Company has been concerned about its earnings and its reported intrastate regulatory rate of return for some time. We believe that Verizon's evidence underlying this concern, and the preparations for this proceeding, will enable it to file promptly for any rate relief that it believes is sufficient to address its concerns.

C. Holdings of prior orders

17 Verizon contends that the "Merger order"[6] and orders in Commission Docket No. U-85-23[7] bar the Commission from reviewing the Company's access charge rates. It contends that the orders declare the Company's rates are fair, just and reasonable, and they support the premise that access charges should contribute to a certain portion of the Company's overall costs, including costs of the loop. Verizon contends that the Commission cannot change access charge rates or alter the structure of such rates except by reopening those proceedings.

18 Verizon says of the Merger order,

> [T]he Commission re-affirmed the principle that "above-cost" access charges do not violate any law when it approved the Bell Atlantic/GTE merger (*Merger Order*). There, the Commission approved a settlement that reduced Verizon's intrastate switched access charges by more than $7,000,000 per year. The Commission found that the resulting access charges "are just, reasonable, and compensatory," and that "the agreed adjustments to

[6] The Commission approved the merger of GTE into Bell Atlantic to become Verizon in its fourth supplemental order in Docket No. UT-981367, served Dec. 16, 1999. For convenience, we refer to that order as "the Merger order."

[7] In Docket No. U-85-23, the Commission addressed early-apparent consequences of the opening of telecommunications to competition. Verizon cites specifically to the 17th and 18th supplemental orders in that docket, in which the Commission established a format for the initial appropriate level for access charges.

> [Verizon's] revenues produce fair, just, and compensatory rates and charges for terminating access and other services."[8]

Verizon also argues that the structure of access charges was established in Docket U-85-23, and should not be changed without reopening that docket.[9]

19 Verizon's argument is essentially that once a rate is found to be fair, just, and reasonable, or once a rate structure is determined in an adjudicative proceeding, the rates are lawful and cannot be changed without reopening the determining dockets. The Commission disagrees with this premise.

20 It is axiomatic in ratemaking that rates are determined on the basis of information available at the time the rates are set. Rates are based on a ratio between a company's revenues and its expenses. Any matter that affects a company's revenues, or its expenses, in a way that alters the ratio may require a recalculation of the company's rates. In times of rapidly rising costs due to inflation, the Commission heard rate proceedings for some companies on almost a yearly basis. Externalities—such as inflation or the evolving nature of competition—may operate to render inappropriate rates that only recently may have been found fair, just, and reasonable.

21 Even when companies were subject to "stay-out" provisions of settled or contested adjudicative proceedings, the Commission has acknowledged that when unforeseen circumstances arise the Commission has the responsibility as regulator to consider exceptional unanticipated circumstances that might render the regulated rates unjust.[9]

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[8] Footnotes omitted.

[9] *In re Petition of PacifiCorp, Docket No. UE-020417, Sixth Supplemental Order (2003). See also, In re Petition of Puget Sound Energy, UE-011163 and UG-011170, Sixth Supplemental Order Dismissing*

22 Commission Staff noted and Verizon itself acknowledged that rates, once set, are not invulnerable.[10] The issue appears to be under what circumstances a review is appropriate, and whether the review must be undertaken in the original docket addressing the rate or rate structure.

23 In this matter, the Commission determines that it need not reopen either the Merger docket or U-85-23 in order to address whether Verizon's access charge rates will meet the challenges in this complaint, or whether the rates must be altered. Verizon has cited no legal requirement that we do so, and we find none. The cited prior orders are not a bar to proceeding to consider the merits of the complaint.

D. Limitation of the complaint under RCW 80.04.110

24 Verizon challenges AT&T's complaint on the basis that RCW 80.04.110 limits AT&T, as a competitor of Verizon, to a challenge only of the toll rates with which AT&T competes. Verizon argues that because AT&T does not compete with it in the provision of access charges, the statute does not permit AT&T to complain in a challenge to toll rates about the appropriateness of the access charge components of toll rates.

Dockets, (2001). The Merger order precluded rate adjustments only until July 1, 2002. *Merger Order at 23.*

[10] Verizon states in Note 46, at page 34 of its opening brief, "At the hearing, the Commission asked several questions about whether the *Merger Order* is binding. To be clear, Verizon does not take the position that the access charges and revenue requirement established by the *Merger Order* remain 'fair, just, reasonable, and sufficient' forever and can never be changed or challenged; indeed, the Commission often changes access charges (and other rates) when evaluating a company's overall revenue requirement in a rate case. Rather, Verizon's point is that 'above cost' access charges are not *per se* unlawful under state law as AT&T asserts, and the Commission has affirmed this point—directly and indirectly—in previous proceedings, including the merger proceeding."

25 The Commission rejects Verizon's view as both unduly restrictive and as counter to the plain language of the statute, which says:

> [W]hen two or more public service 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*, ...

(*Emphasis added.)* In this docket, AT&T is complaining about the level of Verizon's toll rates, but is also alleging that the components – required elements because of imputation requirements – render Verizon's competition "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." AT&T is alleging specific flaws affecting the toll rates of both companies—intertwined as they are by imputation and the requirement to include Verizon elements in AT&T's averaged rates—whose net result, AT&T contends, is the invalidity of Verizon's rates.

26 The Commission rejects Verizon's contention. Here, as Staff notes in its answering brief, in order to address the competitive rate the Commission must address the access-charge components. In order to remedy the wrongful operation of the competitive rate, the Commission must address the access-charge components. As elements in or affecting both companies' competing rates, the access charges clearly are not exempt from challenge.

E. Unlawful collateral attack on WAC 480-120-540

27 Verizon argues that the complaint is an unlawful attack on a Commission rule, WAC 480-120-540. The rule, adopted in 1998, provides a structure for access charges and states that the Commission will approve an access charge tariff structured consistently with the rule when doing so is consistent with the public interest.[11]

28 Verizon's current access charges appear to comply with the rule. The rule requires terminating access charges to be no higher than local interconnection rates based on long-run incremental cost (plus an Interim Terminating Access Charge designed to recover costs of universal service), but allows reductions to be offset by revenue-neutral increases in originating charges. Verizon contends that once it establishes compliance with the rule, its rates are immune from all further challenge.

29 AT&T, WorldCom, and Commission Staff dispute this allegation. They point out the language of the rule requiring access charges to be in the public interest, and argue that a rate discovered to be discriminatory, anti-competitive, or otherwise

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[11] Insofar as here relevant, WAC 480-120-540 reads as follows: "(1) Except for any universal service rate allowed pursuant to subsection (3) of this section, the rates charged by a local exchange company for terminating access shall not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access shall not exceed the cost of the terminating access service being provided.
* * *

(3) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such costs as an additional, explicit universal service rate element applied to terminating access service.

* * *

(6) Any local exchange company that is required to lower its terminating access rates to comply with this rule may file tariffs or price lists (as appropriate) to increase or restructure its originating access charges. The commission will approve the revision as long as it is consistent with this rule, in the public interest and the net effect is not an increase in revenues.

infirm under state or federal law must be found inconsistent with the public interest.

30 The Commission rejects Verizon's arguments. Verizon contends that under its interpretation, the rule language supersedes other provisions of statute, rule, and case law. The Washington State Constitution grants to the Legislature and not to executive agencies the authority to enact or amend a statute,[12] and no provision in an agency rule can overcome that restriction on agency action.[13]

31 The Commission rejects Verizon's contention that hearing the complaint is inconsistent with the rule, or that the Commission must amend the rule in order to address the complaint.

F. Failure to prove damages

32 Verizon contends that AT&T's evidence is insufficient to sustain the complaint, arguing that the complainant's failure to prove that it suffered damages is fatal to its success.

33 No provision in the statutes makes the proof of damages a prerequisite for sustaining a complaint charging that a regulated company's rates are unduly discriminatory, preferential, stifling of competition, or other of the allegations made in the complaint. In fact, the opposite is true. RCW 80.04.110 provides, "No complaint shall be dismissed because of the absence of direct damage to the complainant."

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[12] Legislative authority is vested in the Legislature, subject to initiative and referendum. Wash. Const. art. II

[13] *H&H Partnership v. State, 115 Wn.App. 510 (2003); Armstrong v. State, 91 Wn. App. 530, 958 P.2d 1010 (1998); American Network, Inc., v. Wash. Util. & Transp. Comm'n. 113 Wn.2d 59, 776 P.2d 950 (1989)*

34 The Commission has no authority to grant an award of damages.[14] Neither is damage a prerequisite to a finding of economic discrimination, preference, adverse effect on competition, or similar violation of law, rule or order.[15]

35 It is unnecessary to find actual harm if the evidence supports a finding that a practice has the effect alleged. Many factors bear upon actual market success, some of which may individually or in concert with others overcome a discriminatory or anticompetitive practice. The statutes do not provide a remedy for actual damages, but for practices that can produce such damages. The Commission need not wait until damages have been proved to end a wrongful practice.

IV. ALLEGATIONS OF VIOLATION OF LAW, RULE, OR ORDER

36 AT&T, supported by WorldCom and Commission Staff, makes several specific allegations of violations of law, rule, or order.

37 Before addressing the specific allegations, we make clear that a finding of violation is neutral on the issue of whether a carrier intentionally engaged in the offending activity with a desire to impede competition or to discriminate. Historically, access charges have provided a substantial portion of local exchange company revenues and have assisted, along with averaging of rates across high-cost and low-cost locations, in keeping rates for local exchange service lower than might be otherwise necessary. All services were expected to contribute to the costs of providing telecommunications service. Intrastate and interstate long distance services were priced to provide a contribution to local service.

38 With the advent of competition, these longstanding arrangements were immediately jeopardized. Sharing of revenues for toll service gave way to the

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[14] *Hopkins, Inc. v. GTE Northwest, Inc., 89 Wn. App. 1, 947 P.2d 1220 (1997); RCW 80.04.440.*

[15] The existence of loss may help to demonstrate or quantify harm, but it is not a necessary element of proof of the existence of an improper or illegal practice.

creation of access charges, which in this state date back to Commission orders in Docket No. U-85-23,which set out the basic structure of intrastate access charges. As competition has developed, unexpected as well as expected events have occurred. Now, there is a competitive interexchange segment of the telecommunications industry, of which the complainant is a part. Wireless communications (over which the commission generally has no jurisdiction) have been initiated and have begun to thrive. The seeds of competition in local exchange services have been planted.

39 It is clear that competitive circumstances have changed radically since the Commission's orders in U-85-23. The level and the structure of access charges that were permissible and competitively neutral when first adopted are now impermissible. And the record is also clear that an activity countenanced in one rule may—inadvertently or not—act to stifle competition, and therefore violate another rule or law. When we find fault with Verizon's access charge rates we are not accusing it of wrongdoing, but are merely recognizing that we—and Verizon—must face the competitive realities of the 21st century and bring access charges more into line with current conditions.

40 In reviewing the allegations of the complaint, we must determine whether the evidence supports a finding that Verizon's access charges have the effect forbidden by provisions of law.

A. RCW 80.36.186, preferences or prejudices in pricing of and access to noncompetitive services

41 AT&T alleges that Verizon's pricing of its access charges violates RCW 80.36.186.[16] That statute forbids a carrier from giving any unreasonable

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[16] "**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

preference or advantage to itself or any other person, and forbids practices that subject any other telecommunications company to unreasonable prejudice or competitive disadvantage. The statute expressly gives the Commission primary jurisdiction to determine whether a violation has occurred.

42 AT&T alleges that by pricing at many times cost, Verizon gives advantage to itself and disadvantage to competitors. It argues that technology and the telecommunications market are pushing prices toward cost, at the level of total service long-run incremental costs, or TSLRIC. AT&T alleges that Verizon's use of an affiliate that does not observe imputed cost levels is a barrier to other competitors. AT&T argues that Verizon's access charges are excessive to such an extent that they can't be considered fair, just and reasonable, and that they are anticompetitive because they give Verizon a competitive advantage over other long-distance providers who must pay the high charges.

43 Verizon responds that AT&T has failed to refer to any state statute or rule that requires the Commission to set access charges equal to LRIC. It argues that AT&T merely repeats policy arguments that the Commission considered and rejected in prior dockets.

44 The Commission finds that the level of Verizon's access charges operates to the unreasonable competitive disadvantage of AT&T and other interexchange carriers. This is true in several respects.

45 First, it is true as Verizon points out, that there is no law requiring that access charges be set at the LRIC level (and we will not set the charges at the LRIC level

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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."

in this order). However, it is also true that RCW 80.36.186 requires that carriers offering noncompetitive services[17] provide rates and access that are not unduly discriminatory and are not preferential or causing competitive disadvantage. We find that Verizon's rates, at their current levels, are unduly discriminatory against competing interexchange carriers; are unduly preferential in favor of Verizon's financial ability to compete; and cause unreasonable competitive disadvantage to the competing carriers, on the following grounds.

46 First, Verizon's access charges at current levels are many times cost. While this provides a level of contribution to common costs that the Commission previously authorized, it operates in preference of Verizon's own interests and discriminatorily disadvantages its competitors. Verizon earns substantially more than its costs on all interexchange access traffic it carries. It imputes the charges in setting its own rates, and therefore it earns a substantial return on the traffic whether it carries the traffic or not. Verizon's price floor is its competitor's profit floor. Competing carriers earn no return unless they sell toll service for more than the access charges they must pay. By maintaining high access charge rates, Verizon provides a preference to itself and a disadvantage to its competitors in interexchange service within Verizon's territory.[18]

47 In addition, as AT&T points out in its answering brief, the state's current method of averaging costs for interexchange service and its requirement that competitive service be priced at or above costs, render competitive carriers such as AT&T at a disadvantage in other service territories when called on to meet lower costs of carriers who do not face the same cost floor.

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[17] No party disputes the proposition that Verizon's switches are the only way interexchange carriers can receive and deliver calls to its customers and their correspondents on Verizon's local exchange service. The service is thus noncompetitive.

[18] Verizon argues that it is losing market share to other carriers, but the supporting evidence of record relates to its relative market share with its affiliate, Verizon Long Distance or VLD. Because of the affiliation, we disregard the contention of lost market share and note that the record raises questions about the relationship and relative pricing that the record is not sufficient to answer. Those issues may be presented and resolved in a future proceeding.

48 The result is captured in the testimony of Commission Staff witness, Dr. Blackmon:[19]

> [T]he excess charges of Verizon allow it to export costs of the Verizon local network to the customers of Qwest and/or the interexchange companies that offer intrastate toll service. Verizon's pricing structure results in some combination of higher profits and lower rates for its local exchange services. It also can distort competition in the long-distance market to the disadvantage of any company that chooses to offer long-distance service to Verizon's local exchange customers, This is unjust, unfair, and unreasonable.

49 For these reasons, we find that Verizon's access charge rates give an undue and unreasonable preference or advantage to itself, and that the charges at their present level subject complainant and other interexchange carriers to undue and unreasonable prejudice or competitive disadvantage.

B. RCW 80.36.180, rate discrimination

50 AT&T alleges that Verizon's pricing of its access charges violates RCW 80.36.180.[20] That statute forbids a carrier from undue or unreasonable

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[19] Exhibit T-130, at page 4, lines 13-20.

[20] **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.

discrimination in rates, by any direct or indirect means, with respect to like and contemporaneous services that it offers under the same or substantially the same circumstances.

51 AT&T alleges that it suffers from undue or unreasonable discrimination because Verizon's authorized rates to interconnecting local exchange carriers and internet service providers are significantly lower than rates charged to AT&T for interexchange access, an equivalent service. AT&T argues that because interstate access charges are lower than the equivalent intrastate access charges, Verizon discriminates against competing carriers. In addition, AT&T points out that Verizon's interconnection charges for CMRS (commercial mobile radio service, also called wireless or cellular telephone service) carriers are lower than interexchange switched access charges. It states further that CMRS traffic actually includes traffic that would be interexchange traffic if presented by a wireline carrier because CMRS carriers provide local service within a major trade area, which is substantially larger than local exchange companies' local calling area.

52 The provision against discrimination is at the heart of economic regulation of utilities and is present in a number of statutes that the Commission enforces. *See, RCW 80.04.110, RCW 80.28.100, and analogous provisions of Title 81 RCW*. The Washington State Supreme Court said, in *Cole v. WUTC*:[21]

> A mere difference in rates does not, of itself, constitute an unlawful discrimination. . . . A comparison of rates may be persuasive and may be controlling, but only when it is shown that the conditions are comparable and that the rates for comparison are just, fair, reasonable, and sufficient.

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[21] Citations omitted. *Cole v. Wash. Util. & Transp. Comm'n, 79 Wn.2d 302, 485 P.2d 71 (1971),* quoting *State ex rel. Model Water & Light Co. v. Dept of Pub. Serv., 199 Wash. 24 at 36, 90 P.2d 243 (1939).*

53 In *Cole*, the court found lawful a rate for natural gas provided to builders of houses under construction that was lower, per unit consumed, than service to residents of other houses or to later residents of the same houses. In *Model v. Dept. of Public Service, supra, note 23* cited in the *Cole* decision, the court found that differing rates for electric service to neighboring water districts was not unlawful, considering differences in consumption, differences in services, and differences in historical circumstances.

54 AT&T finds fault with the rate differences between Verizon's access charge rates for interstate (lower) and intrastate (higher) access charges. AT&T alleges, and we find, that the mechanical or electronic tasks involved in the services are substantially similar.

55 It is clear that intrastate and interstate rates for comparable service may differ permissibly within a broad range. Each jurisdiction employs its own regulatory structure, under its own regulatory laws and rules, covering costs allowed for service in that jurisdiction. The Commission is bound to set rates pursuant to Washington State law.[22] *WUTC v. Olympic Pipe Line Company, Docket No. TO-011472, Eighth Supplemental Order (March 29, 2002); Twentieth Supplemental Order, ¶103-105 (Sept. 29, 2002).* The rates are different, based on legal and factual differences, and do not operate to discriminate unduly, because the traffic is legally different in character. Under the *Cole* analysis, AT&T has not demonstrated that the rates for comparison are fair, just, reasonable and sufficient for Washington intrastate traffic.

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[22] In part, the interstate access charge rates result from a decision to allocate universal service funds to lower them. *See, In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Low-Volume Long Distance Users Federal-State Joint Board on Universal Service.* CC Docket Nos. 96-262; 94-1; 99-249; 96-45. Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and order in CC Docket No. 99-249 Eleventh Report in CC Docket No. 96-45. Released: May 31, 2000 *("CALLS Order").*

56 Neither is there competition between carriers for the same service under different rates--traffic is legally defined as interstate or intrastate, and a call is carried as intrastate no matter who transports it, so there is no discrimination between the carriers of the same traffic. Under the *Cole* analysis, conditions are not comparable.

57 AT&T also alleges discrimination because the access charge (or equivalent) rates for interexchange service are higher than rates for interconnecting local exchange carriers (ILECS) of local traffic and for internet service providers (ISPs) with internet traffic. AT&T alleges, and we find, that the mechanical or electronic tasks involved in the services are substantially similar.

58 Here again, the charges for the compared services are dictated, at least within a narrow range, by federal law. Verizon's customers—interconnecting ILECs and ISPs-- belong to different "classes", or groups that use the service for different purposes., The Commission has historically assigned different revenue requirements to different customer groups despite similarities in the product or service provided. A minute of use of the telecommunications network may properly cost different amounts to a residential customer, a commercial customer, and a high-volume customer under contract. The character of the use is different, and the difference in price reflects the Commission's evaluation not only of the costs allocated to each class of service but the use of the service, the benefit of the service, the law applicable to the service, and the responsibility of the class for supporting a company's operations. The same principle applies here.[23] There is no demonstration of undue discrimination with regard to differences in price among Verizon's access-type services for interconnection, interexchange, and ISP traffic.[24]

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[23] Because local and interexchange services are distinct from one another, a difference between the rates for those services is not discriminatory. *In re Petition of Competitive Telecommunications Association, et al., 117 F.3d 1068, 1073 (1997).*

[24] *See*, CALLS order, ¶178, (2000)

59 AT&T's third contention under RCW 80.36.180 is that Verizon's difference in price between equivalent services for interexchange carriers and for CMRS carriers constitutes undue discrimination. Commission Staff supports this argument. The rates for Verizon's services to CMRS carriers are under the regulatory regime of the Federal Communications Commission and this Commission has no jurisdiction over those rates. Washington State law bars the Commission from regulating wireless carriers. We find that AT&T has not proved that the difference in price is a violation of RCW 80.04.180.

60 However, there is cause for concern in this situation. Wireline and wireless services have different attributes that may be seen as advantages and disadvantages for different customers. The services are not exactly alike. They are different. Yet it is also true that in the broadest sense, CMRS carriers compete directly for customers with both local exchange companies such as Verizon and interexchange carriers such as Verizon and the complainant. While the Legislature has forbidden the Commission from regulating wireless carriers, it has also stated its policy to promote diversity in the supply of telecommunications services and products.[25]

61 Verizon handles CMRS local traffic at the rates for interconnecting carriers. Some of that traffic would be interexchange traffic for the complainant. In such calls, Verizon would carry the CMRS traffic at a lower rate than the rate charged to an interexchange carrier for what is a very similar service—perfecting an electronic communications link between similar customers in similar locations.

62 Because questions relating to competition among wireline, wireless, and interexchange carriers permeate the issues, because those issues are complex, and because the record is limited in this docket on those issues, the Commission acknowledges that the issue may be brought again for possible consideration in a future proceeding.

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[25] *RCW 80.36.300.*

C. Price floor standard: actual forward-looking costs plus imputation of bottleneck charges for essential services

63 AT&T alleges that Verizon is pricing its own toll rates too low—at a level that interexchange carriers cannot meet without selling below their own costs—because Verizon improperly calculates the price floor for its toll services (which the Commission has found to be competitive) under WAC 480-120-204(6).[26]

64 AT&T argues that Verizon's price floor for its toll services should be higher than Verizon calculates, because Verizon's calculation of long-run incremental costs is flawed. AT&T offered the testimony of Dr. Lee Selwyn, who evaluated and suggested corrections to Verizon's price floor analysis under the rule. Verizon opposed the challenge and supported its calculations by the testimony of Terry R. Dye.

1. Cost study flaws

65 Dr. Selwyn argues that Verizon's cost study is dated and is flawed. He cites criticism of the cost study, and offers corrections based on his application of theory and his understanding of underlying costs. Verizon opposes Dr. Selwyn's presentation, contending that its own cost calculations are adequate for the purpose and that, in any event, Dr. Selwyn's calculations are based on information that is poorer in quality than the underlying information Verizon used. Commission Staff takes the position that Verizon's cost study is adequate.

66 The Commission finds that AT&T has not sustained its burden to demonstrate that Verizon's underlying cost study is too flawed to use for the current

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[26] WAC 480-120-204(6) reads as follows: (6) The rates, charges, and prices of services classified as competitive under RCW 80.36.330 must cover the cost of providing the service. Costs must be determined using a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method.

purposes. We find that the cost study is adequate for purposes of this proceeding. Part of our concern is, as Verizon points out, that Dr. Selwyn's proposed alternative analysis also suffers from some of the same flaws, and is less credible than Verizon's.

67 Commission Staff challenges Verizon's conversion factor to account for the difference between toll and access billings. Staff suggests that Verizon's conversion factor fails to recognize "non-conversation" minutes, that is, time when the network is used to establish a connection while the telephone is ringing, but the consumer is not billed for toll use.

81 Verizon responds that the Staff is incorrect with regard to the conversion factor. It states that it has already made the adjustment that Staff proposes, and that the Staff adjustment fails to consider an additional adjustment that Verizon had made to reflect the difference between toll-billed minutes and access-billed minutes. The latter adjustment recognizes that Verizon rounds up the charges for its toll usage to the next higher minute, while it charges for access usage based only on the time used.

82 The object of the price floor exercise is to assure that Verizon's prices include what it would charge others for necessary services. *WAC 480-120-204(6).* Because the access minutes are lower than billed toll minutes, Verizon's price floor should reflect the lower number of access minutes. Commission Staff urges that Verizon has not made a record to support its proposed additional adjustment. The Commission finds the company's explanation of its adjustment to be sufficient. Verizon's price floor should reflect the lower number as the imputed cost.

2. Use of Verizon LRIC for billing and collection services

83 AT&T's second challenge to Verizon's price floor analysis is to the use of Verizon's long-run incremental costs for billing and collection. AT&T alleges that Verizon benefits from economies of scale flowing from its local exchange business benefits that AT&T and other interexchange carriers do not enjoy. AT&T argues that therefore, the price floor analysis should incorporate Dr. Selwyn's analysis of the costs of a stand-alone interexchange carrier. In the alternative, AT&T argues that Verizon should use the charge for billing and collection that it demands of Verizon Long Distance (VLD), which is above Verizon's calculated LRIC, in its price floor analysis.

84 Verizon responds that WAC 480-120-204(6) requires it to use its own LRIC, which it has done, and that Dr. Selwyn's cost analysis is flawed. Commission Staff has no issue with Verizon's use of Verizon's own LRIC for purposes of the cost study.

85 The Commission rejects AT&T's argument. Verizon complies with the requirements of the rule and properly calculates the long-run incremental cost of the billing and collection services for purposes of the price floor.

86 Rates must at least cover the incremental cost of providing a service. The Commission noted in Docket UT-950200 that it uses incremental costs to establish price floors for individual services because guarding against cross-subsidy and predatory pricing is the primary function of incremental cost studies.[27]

87 A price floor for competitive retail offerings must include all of the offering company's own long-run incremental costs for competitive elements, plus the

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[27] *WUTC v. US West Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).*

imputation of the charges that it imposes on others for bottleneck services. Billing and collection services have been classified as competitive and are not bottleneck services—AT&T is free to use its own services, is free to develop new efficiencies in doing so, and is free to purchase the services from Verizon or other vendors. It is not proper to impute a charge that Verizon makes to another carrier for a competitive service, or to impute another carrier's actual costs. State policy and the Commission rule favor a competitive market for rate elements that are not bottleneck services, and Verizon's analysis is proper.

D. Sales by VLD below Verizon's price floor

88 Finally, AT&T argues that Verizon violates its price floor requirement and subjects AT&T and other interexchange carriers to a price squeeze through the sale by VLD of message toll service below Verizon's price floor. It urges that the two companies must be seen as identical twins for purposes of the analysis, and that pricing below the price floor by VLD must be seen as a violation by Verizon. Verizon responds by saying that the two companies are different corporate entities; that Verizon has no say in how VLD prices or markets its services; and that in any event VLD is not a party to the proceeding and cannot be affected by a decision.

89 We find that in the procedural posture of this docket, the Commission can neither find nor correct any violation by VLD. AT&T did not prove that Verizon controls VLD's pricing, so the Commission has no basis on which to order Verizon to correct any violation. VLD is not a party, and the Commission therefore cannot direct VLD to alter its prices. Moreover, while information about VLD's prices are in evidence, that firm has not had the opportunity to respond to the evidence or to the contentions about that evidence.

90 **Conclusion.** The Commission rejects AT&T's challenges to the price floor calculations. Verizon must recalculate its price floor for toll service, however,

with the changes in authorized access charges that we direct in this order. It must file its recalculated price floor, with all supporting workpapers, when it makes its compliance filing in response to this order.

91 We acknowledge the concerns in Verizon's study that Dr. Selwyn identifies. We expect that in a future proceeding, Verizon will provide cost information through a study that corrects the identified flaws, including the use for some purposes of estimates and budgeted figures instead of verifiable data.

92 Finally, we are concerned on several grounds about the relationship between VLD and Verizon, and its implications for both competition and regulation. VLD is making substantial inroads on Verizon's toll traffic. Questions arose on this record that the record could not answer about the level of those prices, the relationship between the two subsidiaries, and the effect on the regulated company. Does the corporate relationship operate to the benefit of the parent and the disadvantage of Verizon and other competing carriers? Is there an explanation from VLD that renders the actions and the relationships rational and free from concern? We expect to see a thorough exploration of the relationship, and its consequences, in any future proceeding where the revenues or the consequences of the actions of the two entities are relevant to the matter at issue.

E. Federal law

93 AT&T contends that the level of Verizon's access-charge rates violates various provisions of federal law. It argues that the Telecommunications Act of 1996 requires reasonable and nondiscriminatory rates (Sec. 251(c)(2)(D)) that are based on cost (Sec. 252(d)(2)); and rates that may contribute, in a manner determined by the State, to universal service (Sec. 254(f)). It urges the Commission to find violations of each of those sections.

94 AT&T repeats the factual allegations that it makes with regard to violations of Washington State law. It contends that those facts also violate federal law.

95 The Commission need not decide issues arising under federal law. We have found violations of Washington State law, and it is unnecessary for purposes of this proceeding to decide whether the same facts constitute violations of federal law.

V. SETTING ACCESS CHARGES

96 The Commission found above that Verizon's access charges operate, contrary to RCW 80.36.186, to give an undue or unreasonable preference or advantage to Verizon and its affiliate, VLD, and to subject AT&T and other interexchange carriers to an undue or unreasonable prejudice or competitive disadvantage. Recognizing the possibility that the Commission might reach such a result, the parties offer several proposals aimed at correcting adverse effects of the charges. We will address the issues as to the originating and terminating access charges first, and then will address the interim terminating access charge, or ITAC.

A. Originating and terminating access charges

97 The rates now in effect differ somewhat from the rates in effect at the time of AT&T's complaint. This is because the Company filed a tariff to become effective on May 24, 2003, to comply with WAC 480-120-540, following the rejection by the Washington State Supreme Court of the appeal of the validity of that rule. The Commission allowed the tariff to become effective, subject to any changes that might be made in this docket.

98 Table I below shows: Verizon's rates at the time the complaint was filed; Verizon's rates in May 2003, following its access charge filing; AT&T's proposed

UNE-based rate level;[28] AT&T's proposed Interstate rate level; and Commission Staff's proposed Qwest-level rates.

1. Verizon rate proposal

99 Verizon contends that no reductions may be made to its access charges without the revenue-neutral increase of other Verizon rates. Verizon contends that its current access charges meet the requirements of law, that they have been found fair, just, and reasonable, and that they must continue in effect. As we have discussed elsewhere in this order, we reject Verizon's contentions that its rates are presently at a level that complies with all pertinent provisions of law, and we must determine an alternative rate level that is not also flawed.

2. AT&T Alternative Proposals

100 **a. UNE-level.** First, AT&T argues that only cost-based rates, at the level of unbundled network elements, are permissible. We reject this proposal. Access services must have the flexibility to contribute to the cost of the loop and other common costs of the Company to the extent lawful and permissible. While the UNE rates have an embedded contribution to common costs and an element of return to the ILEC, the purpose of furthering competition for local exchange service through resale of services and the purpose of facilitating access to ILEC customers by all interexchange carriers are sufficiently different that different rates may properly apply to the different services.[29]

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[28] The Commission has established the costs and charges for unbundled network elements – called UNEs – in prior "generic" proceedings. See, orders in Dockets UT-980369, UT-003013, and UT-023003. Consistent with federal law, UNEs – which local exchange companies must make available to competitors in the local exchange market – must be priced based on direct costs and a common costs factor, plus a reasonable profit.

[29] *See, CALLS order, supra, paragraph 178.*

Table 1

Docket No. UT-020406

COMPARISON OF PARTIES' PROPOSED RATES
WASINGTON INTRASTATE
SWITCHED ACCESS -- RATE DESIGN

Ln #	RATE ELEMENT	PRE-5-24-2003 RATES	VERIZON'S CURRENT Post-5-24-2003 RATES	AT&T PROPOSED RATES UNE-BASED RATES	AT&T PROPOSED RATES INTERSTATE RATES	STAFF PROPOSED RATES
	(A)	(B)	(C) See Note 1	(D)	(E)	(F)
	ORIGINATING					
1	Transport Tandem Switched Fac	$0.0000290	$0.0000290	$0.0000000	$0.0001004	$0.0000290
2	Tandem Switched Term	$0.0001690	$0.0001690	$0.0002012	$0.0002277	$0.0001690
3	Tandem Switching	$0.0015000	$0.0015000	$0.0014100	$0.0025285	$0.0015000
4	Premium Transport (Interconnection) - RIC	$0.0130780	$0.0130780	$0.0000000	$0.0000000	$0.0000000
	End Office Switching					
5	Premium	$0.0151497	$0.0158197	$0.0014151	$0.0019634	$0.0158172
6	Nonpremium	$0.0075749	$0.0071177	$0.0014151	$0.0019634	$0.0071177
	Carrier Common Line - Premium					
7	- Zone 1	$0.0100000	$0.0100000	$0.0000000	$0.0015543	$0.0000000
8	- Zone 2	$0.0461670	$0.0461670	$0.0000000	$0.0015543	$0.0000000
9	- Zone 3	$0.0461670	$0.0461670	$0.0000000	$0.0015543	$0.0000000
	Carrier Common Line - Non-Premium					
10	- Zone 1	$0.0050000	$0.0050000	$0.0000000	$0.0000000	$0.0000000
11	- Zone 2	$0.0050000	$0.0050000	$0.0000000	$0.0000000	$0.0000000
12	- Zone 3	$0.0050000	$0.0050000	$0.0000000	$0.0000000	$0.0000000
	TERMINATING					
13	Transport Tandem Switched Fac	$0.0000028	$0.0000028	$0.0000000	$0.0001004	$0.0000028
14	Tandem Switched Term	$0.0000947	$0.0000947	$0.0002012	$0.0002277	$0.0000947
15	Tandem Switching	$0.0013141	$0.0013141	$0.0014100	$0.0025285	$0.0013141
16	Premium Transport (Interconneciton)	$0.0000000	$0.0000000	$0.0000000	$0.0000000	$0.0000000
	End Office Switching					
17	Premium End Office Switching	$0.0021080	$0.0014151	$0.0014151	$0.0019634	$0.0014151
18	Nonpremium End Office Switching	$0.0021080	$0.0014151	$0.0014151	$0.0019634	$0.0014151
19	DS1 Term - Direct Trunked	$37.50	$37.50	$21.18	$23.80	$37.50
20	DS3 Term - Direct Trunked	$300.00	$300.00	$86.51	$509.16	$300.00
21	INTERIM TERMINATING ACCESS CHARGE (ITAC)	$0.0323794	$0.0323794 See Note 2	$0.0000000	$0.0000000	$0.0188679
	OTHER (Non-Traffic Sensitive)					
	Direct Trunked					
22	Voice Grade Fac	$3.00	$3.00	$0.11	$5.00	$3.00
23	DS1 Fac	$3.00	$3.00	$1.20	$7.73	$3.00
24	DS3 Fac	$35.00	$35.00	$9.44	$51.51	$35.00
	Entrance Facility					
25	2 Wire	$30.00	$30.00	$30.35	$29.15	$30.00
26	4 Wire	$48.00	$48.00	$56.19	$45.47	$48.00
27	DS1 First System	$244.19	$244.19	$91.66	$220.85	$244.19
28	DS1 Add'n	$140.30	$140.30	$91.66	$227.63	$140.30
29	DS3 - Electrical	$1,131.74	$1,131.74	$453.50	$1,114.76	$1,131.74
30	DS3 - Optical	$957.50	$957.50	$453.50	$937.50	$957.50
31	DS1 to Voice Multiplex	$190.00	$190.00	$160.37	$190.19	$190.00
32	DS3 to DS1 Multiplex	$410.97	$410.97	$516.61	$518.50	$410.97
33	PROPOSED ANNUAL REVENUE CHANGE		$0	-$38,422,330	-$34,916,251	-$32,000,000

Note: 1 Verizon's May 24, 2003 rates are shown at the level filed.
2 Verizon requests an increase in its current ITAC rate to $0.04742.

101 **b. Interstate rate level.** AT&T's alternative argument is that the Commission should adopt the level of interstate access rates for Verizon's intrastate access charges.

102 As we noted above, the federal and state statutes are different; the respective regulatory patterns are different; and the respective means of analysis are different. Each has its own attributes and each is concerned with a different part of the business. AT&T did not provide any sufficient basis for us to find that the application of interstate charges to the intrastate market is appropriate.

103 **c. Commission Staff proposal.** The Commission Staff proposes that Verizon rates be set at the level of Qwest Corporation in Washington intrastate operations. In practice, this means elimination of the Residual Interconnection Charge (RIC),which Verizon identifies as "premium transport," and Carrier Common Line charge (CCLC), as the Commission Staff proposes no other changes to Verizon's access charges except the ITAC, which we consider separately, below.[30]

104 The Commission ordered Qwest to discontinue the two charges in Docket No. UT-950200, a general rate case involving that company.[31] There, the Commission determined that the Common Carrier Line Charge (CCLC) was created as a mechanism to avoid the rapid and total redistribution of non-traffic sensitive (NTS) costs onto end users in the state. The Commission ruled that the charge had outlived its usefulness and that it should be terminated as a specific rate element of switched access. The order stated that there was no longer a reason to treat that one shared cost differently from the company's many other shared and common costs.

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[30] Commission Staff opening brief, Appendix 2.

[31] *WUTC v. US West Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order, April 11, 1996.*

105 Commission Staff urges that we take the same step with Verizon in this docket, contending that doing so is required to prevent harm to Verizon's competitors for long distance business.

106 Verizon opposes the move, arguing that the Commission established the Verizon charges to continue the historic pattern of contributions by interexchange traffic to the costs of providing the infrastructure enabling interexchange traffic to reach telephone company subscribers.

107 As noted above, we have rejected Verizon's contention that simply because the Commission previously established the rate structure in Docket No. U-85-23, and found in the Merger order that the rates were fair, just, and reasonable, the Commission is barred from changing either Verizon's rate structure or access charge.

108 The evidence in this docket is persuasive that the current rate structure harms competition. The access-charge structure must be changed. Elimination of the RIC and CCLC access-charge rate elements and conforming with Qwest access charge rates are necessary. Only if Verizon's rates fall to that level will the level of originating access charges cease being unduly or unreasonably prejudicial and unduly harmful to Verizon's competitors in the interexchange market. Setting rates at Qwest's level is consistent with our authority in RCW 80.04.110 to set uniform rates to counter anticompetitive practices.

B. Specific rate elements

1. Terminating access

109 On May 24, 2003, a Verizon tariff filing to comply with WAC 480-120-540 became effective and reduced its terminating access charges to the level of Verizon's interconnection access charges. The filing puts the terminating access charges at

the level required by rule and satisfies Commission Staff's concerns about rate level on this element. We have rejected AT&T's proposed rate levels, we accept the current terminating rate levels for purposes of this proceeding, and we need explore this issue no further.

2. Originating access

110 The Commission accepts the originating access charges that Verizon filed for effect on May 24 as an appropriate level for originating access, with two exceptions. For the reasons stated above, the Commission finds that the RIC and the CCLC—elements found improper for Qwest in Docket UT-950200—are also improper for Verizon, and that its charges must fall to the level of Qwest's rate for originating access service.

C. The Interim Terminating Access Charge (ITAC)

111 One element in the total Verizon access charge applied or imputed to each interexchange call that it terminates is a component known as the ITAC, or "interim terminating access charge" referenced in WAC 480-120-540. The rule, set out above in footnote 11, provides for such a rate element for universal service charges as the Commission may authorize. Verizon's current rates include an ITAC of about 3.2 cents per minute of access use.

112 The ITAC and its formula have roots in Docket No. UT-980311, which the Commission initiated to propose a universal service program that could take effect if approved by the 1999 legislative session. It was not so approved.

113 One impetus for a universal service fund was the concern that when competition for local exchange service required local exchange companies to reduce prices in low-cost exchanges to meet competition, the funding source that renders affordable the provision of service in high-cost exchanges will evaporate and

must be replaced through a source of universal service revenue. It was this concern that led in part to adoption of the ITAC in WAC 480-120-540.

114 The order by which the Commission adopted WAC 480-120-540 stated the Commission's intention to use the methodology that was then being developed in Docket No. UT-980311. That docket was a multifaceted proceeding, which included an adjudication and a rulemaking proceeding, and which culminated in a report to the Legislature recommending legislative approval of a universal service program. The program was based on the adoption of a revenue benchmark to determine the point at which support is needed and the identification of actual costs to determine the amount of support needed.

115 The Commission in UT-980311 proposed a revenue benchmark by which needy exchanges could be identified. Because not all companies provided revenue information in the adjudicative docket, the Commission used a revenue benchmark proposed by the FCC.[32] In the docket's adjudicative proceeding, the Commission established costs for each of Verizon's exchanges in Washington State. It expressed concerns in the order about the sufficiency of the cost information, but determined that the information was sufficient for use in calculating the ITAC [33] as well as for use in making a universal service proposal to the Legislature.[34] The federal revenue benchmark set the point of need at $31 for residential service and $51 for business service. The universal service fund proposal to the Legislature would, in essence, fund certain costs above the revenue benchmark in exchanges whose average costs exceeded the benchmark.

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[32] First Report and Order, *In re Federal-State Joint Board on Universal Service, Docket No. 96-45 (May 8, 1997).* The FCC never adopted the proposed benchmark.
[33] *Tenth Supplemental Order, In re Determining Costs for Universal Service, Docket No. UT-980311 (1998).*
[34] "Promoting Competition and Reforming Universal Service," Washington Utilities and Transportation Commission, docket No. UT-980311 (Nov. 1998).

116 The Commission has previously authorized Verizon to implement an ITAC. The issues here are whether an ITAC is lawful and if so, at what level the ITAC should continue.

1. Verizon opposes reduction of the ITAC

117 Verizon argues that the ITAC is not within the scope of the filed complaint and cannot be resolved.

118 At the time this complaint was filed, the access charge rule authorizing the ITAC had been found unlawful by the State Court of Appeals.[35] However, the Washington State Supreme Court overturned that finding on further judicial review.[36] The ITAC issue was addressed in this docket by exhibits, witnesses' oral testimony, and argument. Verizon had ample opportunity to understand the issue, had the opportunity to respond to it, and did respond fully and capably. It suffers no prejudice from our consideration of the issue.[37] To the extent necessary, we deem the complaint to be amended to include the issue, consistent with WAC 480-09-425(4).

119 Verizon does propose to update the ITAC, however, to reflect an increased need for universal service funding resulting from an increase in qualifying lines in high-cost exchanges. We address this proposal below.

2. AT&T: Eliminate the ITAC entirely

120 AT&T proposes that the Commission eliminate the ITAC for all Verizon access customers. It argues that the rate element contributes to making Verizon's overall access charges unfair, discriminatory, and improper. Commission Staff

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[35] Wash. Indep. Tel. Ass'n. v. Wash. Util. & Transp. Comm'n. 110 Wn., App. 147, 39 P.3d, 342 (2002)
[36] Wash. Indep. Tel. Ass'n. v. Wash. Util. & Transp. Comm'n., 148 Wn 2d 887, 64 P.3d 606 (2003).
[37] *See, Fifth Supplemental Order in this docket, at paragraph 21. Compare, Tel-West v. Qwest, Docket No. UT-013097, Order of May 22, 2002.*

agrees that an ITAC could violate provisions of law, but recommends here that the charge be reduced and that, as reduced, the charge would be lawful. We address the Staff proposal below.

121 Verizon opposes the AT&T proposal for legal reasons, arguing that it is entitled to the ITAC by rule. We ruled above that compliance with a rule does not automatically entitle the compliant action to lawful status; instead, we look at the facts and circumstances of the action and the application of the law to the action.

122 Here, we reject AT&T's argument. We find that AT&T failed to demonstrate that the ITAC, as such, is unduly discriminatory, unreasonably preferential, or unreasonably prejudicial or competitively disadvantageous. AT&T argues that the ITAC is not an explicit rate element, contrary to law. The authority it cites is not pertinent to these facts, and this ITAC is an explicit rate element. The determination of whether a rate is unduly prejudicial or otherwise improper under pertinent law is one in which the law grants discretion to the Commission to exercise its judgment in whether or not to find a violation.[38] We rule that the ITAC is not, *per se,* unduly harmful.

3. Commission Staff: Reduce the calculated ITAC to reflect identified interstate universal service support

123 Commission Staff accepts Verizon's proposed update to the ITAC by recalculating it with current line-count information in high-cost areas.

124 While AT&T and WorldCom opposed the ITAC on legal grounds in this docket, they did not challenge the methodology by which it is calculated. Commission Staff and Verizon agree that the ITAC is proper, but disagree about one of the details in its calculation.

[38] Both RCW 80.04.180 and 80.04.186 grant primary jurisdiction to the Commission to determine whether a company's actions violate the statute.

125 We found above that the ITAC is not unlawful, as such, nor is making a change to the ITAC unlawful as such. We also found above that rates complying with WAC 480-120-540 are not automatically lawful, but must meet all other pertinent provisions of law. The questions for our decision now are first, what is the proper level of the ITAC, and second, whether the ITAC at that level is unlawful, considering its purpose and its effect.

126 Verizon recalculates the ITAC, finding that a calculation based on its current number of lines in high-cost exchanges requires an increase in the needed total company level of support to $35 million, and an increase in the ITAC from the current 3.2 cents per minute[39] to 4.7 cents per minute. Commission Staff accepts this calculation.

127 Staff goes on, however, to observe that the FCC has identified a $21 million element of federal universal service support for interstate switched access rates.[40] Staff proposes to consider those funds available to reduce the revenue requirement for intrastate universal service support in the ITAC, reducing it to about 1.8 cents per minute.

128 Staff's argument is that at the time the revenue benchmark was proposed, it was on a total company basis—that is, it included both interstate and intrastate revenues. The interstate contributions to universal service were not calculated, as the support was implicit and not quantified. However, Staff states that the support has now been quantified, and that the explicit federal-jurisdiction universal service support—$21 million—should therefore be deducted from the $35 million total universal service support required.

129 Verizon argues that the just-quantified level of universal service support ($21 million) was already considered at its implicit value in the benchmark (the

[39] We round the numbers for purposes of this discussion but show the numbers of record in the tables.
[40] *CALLS order, supra*

explicit support was calculated in a revenue-neutral manner that maintained overall interstate revenue) and that deducting it results in double-counting of the $21 million.

130 Under Verizon's view, the revenue benchmark was set on total company revenue. Interstate revenues are included in the benchmark. The calculation of the federal universal service support was done on a revenue-neutral basis. Therefore, the total revenue was unchanged and, because the $21 million is not *additional* revenue, it cannot be considered. Verizon urges that the federal designation as universal service support is neutral to the calculation of state required support.

131 The counter to Verizon's argument is that no element of revenue in the benchmark is company-specific. It is an average number, based on average total company revenue figures of companies when the benchmark was calculated. It is improper to change *any* numbers in the benchmark, because the benchmark does not measure anything to do with Verizon's (or any other company's) actual performance. Instead, it is merely an external standard by which "high-cost" exchanges are identified.

4. Commission Discussion and Conclusion

132 In our view, it is clear that the revenue benchmark is a total company measure that includes both federal and state revenues of companies – on average – that were measured in its creation. It is independent from and represents no portion of Verizon's actual operations. Because the benchmark is not a company-specific benchmark, it is improper to substitute any actual company result for any element in the benchmark. It simply does not matter what the Company's actual results are, or whether the Company's actual interstate or intrastate revenues fall, rise, or stay the same, with reference to the benchmark. Neither does it matter what happened, on average, to other companies. Only by recalculating the

benchmark on a consistent basis would the benchmark change or would any change in average or company-specific revenues affect the calculation of the ITAC.

133 Staff and Verizon agree that the proper measure of total company support is to compare the existing benchmark (based on both interstate and intrastate revenues) with the costs above the benchmark of serving high-cost exchanges, which have been calculated without making jurisdictional separations.

134 We reject both Verizon's and Staff's arguments. Verizon's position must fall because, given the demonstrated ability of access charges to provide an unreasonable preference or prejudice, it is improper to allow the ITAC to continue to gather from intrastate sources the entire universal service revenues for total company operations. Similarly, it would be improper to credit the entire $21 million to total company universal service needs when it is by FCC definition limited to support for interstate universal service needs.[41]

135 We find that the ITAC should be calculated on the basis of jurisdictional responsibility. For the purposes of this proceeding, we adopt the FCC determination that the federal share of universal service support should be 25% and the state share 75%.[42] This is consistent with the Commission's 1998 *Report to the Legislature*, at pages 49D and 85. This decision produces a fair and equitable allocation that is consistent with federal provisions and that fully funds the state responsibility for universal service support.

136 Both Verizon and Commission Staff begin the derivation of the ITAC with the recalculation of Verizon's universal service needs according to the formula and the process identified in Docket No. UT-980311, increasing the need by recognizing recent increases in the number of eligible lines. We believe that

[41] *CALLS order at paragraph 232, .*
[42] FCC Order 97-157 (May 7, 1997), at paragraph 269.

doing so is improper in this proceeding, because we earlier ruled, and reaffirm in this order, that we will not consider Verizon's revenue needs in this docket.

137 Therefore, we will direct Verizon to reduce its current ITAC of approximately 3.24 cents downward by 25% to eliminate from the ITAC any collections for interstate universal service needs. The result is about 2.4 cents, shown in Table 2. We understand Verizon's contention that it requires additional revenue, but believe that the best forum to determine all of its revenue needs, and the sources of revenue to fill those needs, is within the context of a general rate case. Verizon is free to request an increase in its ITAC, but should do so in the context of a proceeding in which the Commission may review in detail the Company's revenue needs and the assumptions surrounding the ITAC.

138 For purposes of this proceeding, the Commission is satisfied that this result is proper on this record and that it is fair. It is abundantly clear that, given the pernicious effects of high access charges on competition for interexchange toll traffic, the Commission must not allow funding of total company universal service needs entirely from intrastate revenue sources. At the level we find appropriate, given the record in this docket, the ITAC is the minimum that will meet the goals of the ITAC and it is not unduly or unreasonably preferential or harmful.

D. CONCLUSION AS TO ACCESS CHARGE LEVELS

Table 2 shows that the result of the Commission's decisions regarding Verizon's appropriate access levels.

TABLE 2

Authorized access charge rates
AT&T v. Verizon, Docket No. UT-20406

Originating access charges	
Transport Tandem Switched Fac.	$0.0000290
Tandem Switched Term	$0.0001690
Tandem Switching	$0.0015000
Premium Transport (RIC)	$0.00
End Office Switching	
Premium	$0.0158172
Non-premium	$0.0071177
Carrier Common Line	$0.00
Terminating Access Charges	
Transport Tandem Switched Fac	$0.0000028
Tandem Switched Term	$0.0000947
Tandem Switching	$0.0013141
Premium Transport (RIC)	$0.00
End Office Switching	
Premium	$0.0014151
Non-premium	$0.0014151
DS1 term – Direct Trunked	$37.50
DS3 Term – Direct Trunked	$300.00
Interim Terminating Access Charge (ITAC)	$0.0242846
Non-Traffic Sensitive charges	
Direct Trunked	
Voice Grade Fac	$3.00
DS1 Fac	$3.00
DS3 Fac	$35.00
Entrance Facility	
2 wire	$30.00
4 Wire	$48.00
DS1 First System	$244.19
DS1 Add'n	$140.30
DS3 – Electrical	$1,131.74
DS3 – Optical	$957.50
DS1 to voice Multiplex	$190.00
DS3 to DS1 Multiplex	$410.97

VI. EARNINGS

139 (1) The parties presented evidence and argument addresses to the level of Verizon's earnings. Verizon contended that is earnings are below its authorized level of return; Commission Staff proposed some accounting adjustments that, if accepted, would demonstrate a higher return than Verizon contends.

140 (2) It is unnecessary for us to address earnings in this decisions, because procedural means exist for Verizon to seek rate relief as a result of this decision that will allow it the opportunity to earn a fair return. It is inappropriate to address earnings in this decision because, consistent with the fifth and sixth supplemental orders in this docket, the status of the Company's earnings is not relevant to the issues raised by the complaint, and also because a rate proceeding initiated by Verizon will afford a much greater opportunity to explore the issues that this decision has acknowledged and any others that may require attention.

141 (3) We make no findings and draw no conclusions from the parties' presentations on earnings.

VII. CONCLUSION

A. Implementing rate adjustments

142 The Commission has found that AT&T has sustained its complaint, in part, against Verizon’s access charge rates. To correct the improper rates and to reduce the access charge rates to a level consistent with statutory requirements, the Commission directs Verizon to file, within 10 days after the date of this order, tariffs that will implement the terms of this order.

143 The Commission recognizes that the complaint that initiated this proceeding was filed more than a year ago. While the length of time for its prosecution results from several causes, it is clear that AT&T, WorldCom, and other interexchange carriers deserve a prompt reduction in rates.

144 We have ruled against Verizon's request that it be allowed revenue-neutral rate increases to compensate for the revenue reduction resulting from this decision. We recognize, however, that implementing the access charge reductions will cause a considerable reduction in Verizon's revenues, and that we must afford Verizon a reasonable opportunity to earn a reasonable return. The parties' testimony varied on the issue of Verizon's earnings level. It is essential for the continuity of Verizon's service to all of its customers that the transition to lower access charge rates be undertaken in a way that allows Verizon sufficient time to assess the consequences of this decision, to determine whether it needs to increase other rates, and to prepare a procedurally proper response to that need.

145 Verizon's testimony of record made it clear that the Company is conscious of its revenue situation and that it has been considering for some time the possibility of a rate case filing. Its offer of extensive rate-related information demonstrates that the Company does not need a long time to prepare a general rate case presentation if it chooses to make such a filing.

146 Balancing the need for prompt implementation of the rates and the need for a studied but prompt preparation and determination of any resulting filing, we direct that the Company make its access charge compliance rate filing to become effective on October 1, 2003.

B. Other matters

147 The record in this docket touched on several matters that give us cause for concern and that we look forward to addressing in an appropriate context. We

have already identified some such matters in the discussions above. Two warrant special attention.

148 We have concerns about the ITAC in light of evolving competitive realities. It was contemplated as an interim measure, but appears to have acquired a longevity that was not anticipated. The nature of the revenue benchmark, the nature of the underlying cost study, the questions about continuing ability to require some support for costs from all customer classes in light of competitive realities, and the relationship with federal universal service support all deserve to be addressed in greater detail than appears on this record. Given the need to reduce access charges, the need for contribution to costs by all services, and the need for support in high-cost areas, we expect to address this issue again in the future.

149 We also have concerns about the relationship between Verizon and VLD. Dr. Blackmon addressed this issue in his testimony at TR 561-563.[43] While we found no Verizon sales on average below the price floor established in WAC 480-80-204(6), the record indicates that VLD may be reselling Verizon services at a level below the wholesale prices at which it obtains them from Verizon, and below Verizon's price floor. Not surprisingly, the record shows that Verizon has lost considerable market share to VLD, especially among business customers. Because of the common ownership, VLD is more than a mere third-party marketer. We are concerned about possible effects of VLD's operations on competitive and regulatory issues, and expect to address these issues, in a future proceeding as well.

150 Having discussed in detail the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of these facts and conclusions. Those

[43] *TR 561-63*

portions of the preceding detailed findings and conclusions pertaining to the ultimate findings and conclusions are incorporated herein by this reference.

VII. FINDINGS OF FACT

151 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with the authority to regulate rates, rules, practices, accounts, securities, and transfers of public service companies, including telecommunications companies, and to hear complaints of competitive telecommunications companies against other telecommunications companies.

152 (2) AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), the complainant, is a competitive telecommunications company.

153 (3) Verizon Northwest, Inc. ("Verizon"), the respondent, is an incumbent local exchange telecommunications company. Verizon provides both competitive and noncompetitive services, including the competitive offering of intrastate message toll ("long distance or interexchange") service.

154 (4) AT&T provides competitive interexchange message toll ("long distance") service between exchanges within, and exchanges both within and without, the service territory of Verizon. To receive messages from or carry messages to Verizon subscribers, AT&T must purchase "access" to Verizon's network by means of switches and associated facilities including the "local loop," that is, the wires delivering messages to a Verizon customer by means of a telecommunications instrument connected to Verizon's network. For this service, Verizon charges "switched access charges" under its tariff for Washington State. The

Commission has either approved Verizon's access charges or has allowed them to become effective pursuant to law.

155 (5) "Access" to instruments connected to Verizon's network is an essential, noncompetitive service that is not available from any other telecommunications provider.

156 (6) AT&T filed a complaint against Verizon on April 3, 2002, to initiate this docket. The complaint alleged that in the pricing of its access charges and in the pricing of its own interexchange message toll service, and in the sale of services to and pricing of message toll service by its affiliate, Verizon Long Distance ("VLD"), Verizon violated provisions of Commission rule, Washington State law, and United States regulations and statutes. Verizon answered, denying the allegations of the complaint.

157 (7) The Commission granted intervenor status to WorldCom and its regulated subsidiaries ("WorldCom"), to Washington Electronic Business and Telecommunications Coalition ("WeBTEC") and to The Citizens Utility Alliance of Washington, Spokane Neighborhood Action programs. Other participants as a matter of right are the Staff of the Washington Utilities and Transportation Commission ("Commission Staff," or "Staff") and the Public Counsel Section of the Washington State Attorney General ("Public Counsel").

158 (8) Verizon moved for summary disposition (without hearing) on several grounds.

159 (9) An historical level of revenue from services that have become competitive or that affect a competitive marketplace may not be sustainable in light of competition and the need to prevent prejudice or preference in the provision of competitive services.

160 (10) Verizon's access charges are considerably higher than the costs of providing switched access service.

161 (11) The high level of Verizon's access charges hinder interexchange carriers' ability to compete because the interexchange carriers must average their costs, and including the cost of Verizon access charges in the average limits their ability to compete in markets where access charges are lower. Reducing terminating access charges to the level of such charges imposed by Qwest Communications would eliminate the prejudice against carriers who compete in both the Verizon and the Qwest markets. The testimony of Staff witness Dr. Blackmon, regarding the appropriate level of rates is credible.

162 (12) The high level of Verizon's access charges provides an unreasonable preference to Verizon. The charges elevate the cost of service to Verizon's competitors in the interexchange market and provide Verizon an unreasonably large return on those services. Verizon must price its own access services at a level that includes the imputation of its charges for essential access services. Verizon therefore also earns a large return on its own provision of such services. Because competing carriers must pay the access charges, they earn much less on a comparable volume of comparable services and may need to sell below their costs to compete with Verizon in Verizon's service territory. Reducing access charges to the level of Qwest charges for comparable services will reduce the preference to Verizon and reduce the prejudice to interexchange carriers AT&T and WorldCom.

163 (13) Access services are functionally comparable to interconnection services that Verizon provides to competitive local exchange companies (CLECs) and to commercial mobile radio service (CMRS or wireless) telecommunications providers. Verizon charges lower rates for

interconnection services and for interstate access services than it charges for intrastate access services. Interconnection rates for CLECs and CMRS providers are set according to standards mandated in federal law. Although the means to provide the services are substantially similar , the services are different, and the customers are engaged in different businesses providing different services to consumers.

164 (14) Access services provided for intrastate telecommunications are identical with access services provided for interstate telecommunications. Access charges for interstate telecommunications are set under the jurisdiction of the Federal Communications Commission (FCC).

165 (15) Verizon has calculated its price floor for toll service using its own long-run incremental cost for non-essential services and using the imputed prices of essential services. Dr. Selwyn's proposals for alternative calculations are not credible. Billing and collection, and marketing, are not essential services.

166 (16) Verizon Long Distance (VLD), which is a commonly-owned company with Verizon Northwest, Inc., appears from the evidence of record to price its long-distance services below Verizon's price floor and below its own costs. The record does not show that Verizon controls the rates that VLD charges for its services. VLD is not a party to this proceeding and had no opportunity to cross examine evidence nor to present opposing evidence.

167 (17) An "originating access charge" is placed on interexchange traffic originating on Verizon's network. A "terminating access charge" is placed on traffic that is delivered to Verizon's network. A message that both originates and terminates on Verizon's network is subject to both charges. In addition, Verizon has implemented an interim terminating access charge pursuant to WAC 480-120-540.

168 (18) Verizon filed revisions to its access charge tariff that became effective on May 24, 2003. The Commission allowed the tariff revisions to become effective, subject to revisions that the Commission might order in this docket. Verizon's terminating access charges (exclusive of the interim terminating access charge, or ITAC) now meet the requirements of WAC 480-120-540 and the Commission Staff proposed rate level.

169 (19) Verizon's originating access charges also meet the requirements of WAC 480-120-540. They differ from Commission Staff's proposed rate level in that they include a common-carrier line charge, or CCLC; and a rate for premium transport (also called a residual interconnection charge or RIC). The Commission ordered US WEST (now Qwest Corporation) to eliminate the RIC and the CCLC in Docket No. UT-950200. If Verizon reduces these two charges to zero, Verizon's originating access charges will not impose an undue burden on competitors nor provide an unreasonable preference to Verizon.

170 (20) The interim terminating access charge, or ITAC, is a charge authorized in WAC 480-120-540(3) that is designed to support the provision of telecommunications service to high-cost exchanges with the advent of competition. Verizon calculated its total-company ITAC consistently with WAC 480-120-540 and the methodology established in Docket No. UT-980311. Verizon does not reduce the total company universal service calculation to account for any federal contribution to or responsibility for universal service support. The revenue benchmark established in Docket No. UT-980311 does not represent Verizon's actual performance, and no adjustment for Verizon actual results, including changes in federal universal service support, should be made to the benchmark or to the application of the benchmark. The Commission can limit the ITAC to intrastate universal service support by identifying the intrastate portion of total company universal service support.

171 (21) The Commission makes no finding as to Verizon's actual earnings for Washington intrastate regulatory purposes. The timing of the effective date of the compliance filing required in this docket, coupled with procedural means available for Verizon to seek an increase in its rates, will allow Verizon the opportunity to seek an increase in its rates to offset reductions ordered herein, to the extent that the Company supports them in a tariff filing or filings with the Commission.

VIII. CONCLUSIONS OF LAW

172 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to this proceeding and the subject matter thereof.

173 (2) The Commission is not barred from proceeding to hear a complaint alleging violations of RCW 80.04.110, 80.36.180, 80.36.186, federal law, and Commission rules and orders against a regulated utility when, if sustained, the result could lower revenues to the point that a general increase in the respondent's rates might be required to allow the company the opportunity to earn a fair return. The Commission's second supplemental order in *MCI Telecommunications Corp. v. GTE-Northwest, Docket No. UT-970653 (Oct. 22, 1997)* is distinguishable and is not precedential for this proceeding.

174 (3) The doctrine disfavoring single-issue ratemaking does not prevent the Commission from hearing a complaint against the tariff of a regulated company.

175 (4) A regulated utility company is not entitled as a matter of law to "rate rebalancing," in which substantial reductions in some rates must be offset by a revenue-neutral increase in other rates, but is entitled to seek an

increase in its rates and charges when it believes it is entitled to rate relief. *RCW 80.04.130, RCW 80.36.140.*

176 (5) Commission orders that find a company's rates to be fair, just, and reasonable upon a factual record do not bar the Commission from determining on another record, by complaint or on application of the regulated company, that rates are not fair, just, and reasonable and that the rates must change. Such a decision is not modifying or rehearing the prior order, but is establishing new rates on a prospective basis. *RCW 80.04.130, RCW 80.04.200, RCW 80.04.210.*

177 (6) A Commission order establishing a rate structure for a regulated company upon a factual record does not bar the Commission from determining on another record that a different structure is required by the application of law to facts found upon a different factual record. *RCW 80.04.110, RCW 80.04.200, RCW 80.04.210.*

178 (7) A complaint by a competitive company against another company under RCW 80.04.110 is not limited to an examination of the level of a rate complained of, but may consider whether

> 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 require correction. *RCW 80.04.110 (emphasis added).*

179 (8) A Commission rule cannot override any statute under which the action authorized by rule created or became a violation of the statute. *H&H*

Partnership v. State, 115 Wn.App. 510 (2003); Armstrong v. State, 91 Wn.App. 530, 958 P.2d 1010 (1998); American Network, Inc., v. Wash. Util. & Transp. Comm'n, 113 Wn.2d 59, 776 P.2d 950 (1989).

180 (9) A complainant alleging a violation of RCW 80.04.110, 80.36.180, 80.36.186, federal law, or Commission order or rule need not allege or prove actual damages. Failure to prove actual damages is not a sufficient basis to dismiss a complaint. *RCW 80.04.110.*

181 (10) Verizon's excessively high access charges constitute a violation of RCW 80.04.110 and 80.36.186, in that they provide an unreasonable preference and advantage to Verizon and operate as an unreasonable prejudice against an interexchange carrier required to pay the charges to reach or serve Verizon's subscribers.

182 (11) The level of Verizon's access charges when applied consistently to all switched interexchange traffic does not, as a matter of law, unduly discriminate against an interexchange company required to pay the charges to reach or serve Verizon's local exchange service subscribers. *RCW 80.36.180.*

183 (12) Verizon's price floor calculation for its message toll service, including the imputation of its charges to others for services essential to the provision of message toll service, does not violate WAC 480-120-204(6). Verizon must recalculate its price floor when refilling rates pursuant to the terms of this order.

184 (13) Verizon and Verizon Long Distance (VLD) are subsidiaries of a single corporation. VLD is not a party to this proceeding. Verizon is not shown on this record to have control over the regulated activities of VLD. Rates

and practices of VLD cannot be determined to be violations of law in this proceeding.

185 (14) As far as here relevant, Verizon's total access charges consist of originating access charges; terminating access charges; and an interim terminating access charge (ITAC). After the beginning of this proceeding, Verizon filed access tariff revisions that became effective on May 24, 2003, by operation of law, subject to further action of the Commission in this docket.

b. Verizon's current terminating access charges comply with the laws, rules, and orders under which the Company's access charges were challenged.

c. Verizon's current originating access charges comply with the laws, rules, and orders under which the Company's access charges were challenged, with two exceptions. When these rates are changed, consistent with this order, Verizon's originating access charges will comply with laws, rules and order under which they were challenged.

i. Verizon's premium transport (Interconnection) charge, also known as residual interconnection charge, must be reduced to zero.

ii. Verizon's carrier common line charge must be reduced to zero.

d. Verizon's ITAC must be recalculated.

i. The level of total company universal service support to meet the calculation under the methodology established in the 10th Supplemental Order in Docket UT-980311 should not in this docket be adjusted to reflect changed conditions after setting the current ITAC, as consideration of cost and revenue changes should take place in an appropriate proceeding, such as a general rate case.

ii. Verizon's current ITAC assigns to intrastate revenue the responsibility to provide total-company universal service contributions. The Commission should require Verizon to reduce its ITAC rate by 25% to eliminate contributions for interstate universal service purposes, to $0.0242846. Docket UT-980311; *FCC Order 97-157.*

186 (15) Verizon should be ordered to file revised access charges in this docket, consistent with the terms of this order, no later than ten days after the date of this order. The revised charges should be filed to be effective on October 1, 2003.

187 (16) If Verizon believes that it is entitled to rate relief as a result of this order, it may seek increases in its rates and charges in a new docket, pursuant to Commission procedures.

IX. ORDER

188 (1) Based on the above findings of fact and conclusions of law, the Commission orders the following:

189 (2) AT&T's complaint is sustained in part and denied in part, as set out above in this order.

190 (3) Verizon must file revised access charge tariff items, consistent with the terms of this order, no later than ten days after the date of this order. It must file the tariff revisions to be effective on October 1, 2003.

191 (4) Verizon must file, with its compliance filing, a recalculation of its price floor pursuant to WAC 480-120-204(6). Verizon must include its work papers with its filing.

192 (5) The Commission retains jurisdiction over this proceeding and the parties thereto to effectuate the terms of this order.

DATED at Olympia, Washington, and effective this ___ day of August, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

Procedural History, Docket No. UT-020406

1 **History.** 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) pursuant to RCW 80.04.110, alleging violations of RCW 80.36.180, RCW 80.36.186, and federal law. The complaint alleges that Verizon's switched access charges far exceed Verizon's cost of providing that access, and that doing so violates provisions of law, order, or rule. The complaint further alleges that Verizon is charging prices below its cost floor to its affiliates and itself, and that doing so violates law, rule, or order. AT&T also alleges that the gap between Verizon's intrastate switched access rates and predatory pricing of toll services produces a "price squeeze" on Verizon's competitors in toll markets in Washington.

2 On April 11, 2003, Verizon answered the Complaint, denying the allegations. On April 11, 2002, Verizon also moved to dismiss the Complaint. On July 16, 2002, the Commission entered its Second Supplemental Order denying Verizon's motion to dismiss and holding that AT&T's complaint should proceed to hearing.

3 The Commission convened a prehearing conference regarding scheduling on August 27, 2002. On September 4, 2002, the administrative law judge entered the Fourth Supplemental Order, which included a schedule jointly proposed by the parties. Pursuant to the schedule, AT&T and Staff filed their direct evidence on September 30, 2002. Verizon filed direct evidence on December 3, 2002. AT&T filed rebuttal evidence on January 31, 2003. Commission Staff filed rebuttal evidence on February 7, 2003.

4 The parties filed motions that, *inter alia,* objected to some of the filed direct evidence and asked the Commission to limit the scope of the proceeding to the

subject of the complaint and to foreclose Verizon from seeking a rate increase as a necessary adjunct to any order lowering its access charges. The motion also sought summary determination and an extension of the hearing schedule.

5 On February 21, 2003, the Commission entered its Fifth Supplemental Order disposing of all the outstanding petitions and motions filed to that date. In that order, the Commission determined the scope of the proceeding and then ruled on the three motions to strike and motions in limine. Finally, the Commission ruled on Verizon's motions for summary determination, AT&T's petition for interlocutory review, Verizon's motion to file additional testimony and the Commission denied Verizon's motion to continue hearings.

6 On February 25, 2003, Verizon filed the surrebuttal testimony of seven witnesses: Orville D. Fulp, Carl R. Danner, Terry R. Dye, David G. Tucek, Nancy Heuring, Dennis B. Trimble, and Duane K. Simmons.

7 After the Commission entered its Fifth Supplemental Order, the parties filed six pleadings associated with clarification of that Order, or with motions to strike surrebuttal testimony. The pleadings and the Commission's response in the Seventh Supplemental Order included: Staff's request for interlocutory review (denied) and clarification (granted) of the Fifth Supplemental order; Verizon's motion for clarification of that order (granted in part and denied in part), Staff's motion to strike Verizon's surrebuttal testimony (granted in part); AT&T's motion to strike Verizon's surrebuttal testimony or to authorize responsive testimony (granted, in part) and Public Counsel's motion to strike surrebuttal testimony of witnesses Dye and Danner and for a limiting instruction (granted).

8 On February 28, 2003, Commission Staff filed with the Commission a request on behalf of all parties to continue the hearing schedule in order to allow parties to pursue a settlement. As part of the request, the parties indicated that if they were unable to reach settlement, hearings in this matter would begin on the

morning of Wednesday, March 5, 2003. The Commission granted the request. On March 4, 2003, AT&T, Verizon and Commission Staff advised the Commission that they planned to file a proposed settlement on March 5, 2003. The Commission further continued the hearing in this matter until Friday, March 7, 2003.

9 On March 5, 2003, AT&T, WorldCom, Verizon and Commission Staff (Participating Parties) jointly filed a proposed settlement. The proposed Settlement Stipulation (Stipulation) consisted of a seven-page document, with three exhibits attached. The Stipulation was accompanied by a list of proposed exhibits in the docket that the Participating Parties contended were appropriate to support it. The Stipulation would have resolved all disputes among the Participating Parties. If approved, the proposal would have reduced access charges but would have increased certain rates and charges for business and residential customers.

10 On March 6, 2003, Public Counsel filed its Opposition to Settlement, Motion to Strike, and Objection to Hearing. Public Counsel asked the Commission to limit the scope of the settlement hearing and decline to conduct a hearing on rate increase issues, to reject the Stipulation, and to strike proffered testimony and exhibits relating to rate rebalancing and rate increases.

11 On March 7, 2003, the Commission heard testimony describing the settlement proposal from witnesses for three of the Participating Parties: Dr. Lee Selwyn on behalf of AT&T; Dr. Carl Danner on behalf of Verizon; and Dr. Glenn Blackmon on behalf of Commission Staff. The Stipulation was identified as Exhibit No. 300, and was offered by the Participating Parties. The Commission also heard argument on Public Counsel's opposition to the Stipulation.

12 On April 4, 2003, the Commission received statements from AT&T, WorldCom, and Commission Staff, and from Verizon that the proposed settlement did not

have continuing viability. On April 11, 2003, the Commission entered its Eighth Supplemental Order setting evidentiary hearings to begin May 7, 2003. We draw no inferences from the fact or from the content of the settlement proposal, but note its existence for a complete statement of the docket's procedural history.

13 Evidentiary hearings were convened on May 7, and 8, 2003. On May 9, 2003, the Commission issued a notice and set the filing date of June 9 for simultaneous briefs and June 17, for answering briefs.