

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

AT&T COMMUNICATIONS OF)	
THE PACIFIC NORTHWEST,)	DOCKET NO. UT-020406
INC.,)	
)	TWELFTH SUPPLEMENTAL ORDER
Complainant,)	
v.)	ORDER DENYING
)	RECONSIDERATION; CLARIFYING
VERIZON NORTHWEST, INC.,)	ELEVENTH SUPPLEMENTAL
)	ORDER
Respondent.)	
.....)	

1 **Synopsis:** *The Commission denies Commission Staff's and Verizon's arguments seeking Reconsideration of the Commission's Eleventh Supplemental Order, determining that the order correctly resolves the level of Verizon's Interim Terminating Access Charge in the context of the complaint initiating this proceeding. The Commission grants Staff's requests for clarification of the Eleventh Supplemental Order.*

2 **Procedural background:** This matter involves a complaint by AT&T Communications of the Pacific Northwest, Inc. (AT&T) against Verizon Northwest, Inc. (Verizon), alleging that Verizon's charges for intrastate interexchange traffic were unlawful. The Commission sustained the complaint, in part, and in its Eleventh Supplemental Order directed Verizon to file a compliance tariff establishing lower access charge rates to be effective September 30, 2003. Verizon did timely file such rates, under protest, complying with the directions in the Commission Order.¹

3 **Petition for Reconsideration and Clarification:** Commission Staff timely filed a petition for reconsideration of the order on the sole issue of whether the

¹ Verizon also petitioned for judicial review of the decision while the petition for reconsideration was pending.

Commission was correct in rejecting the Commission Staff methodology in reducing Verizon's Interim Terminating Access Charge, or ITAC. Commission Staff also asked for clarification of the order to offer corrections to errors in citations. Verizon answered the petition, opposing the Staff arguments on reconsideration and also restating its opposition to any reduction of the ITAC.²

4 **Commission Decision:** The Commission denies reconsideration, determining that the Commission decision in this matter on the level of the ITAC does not suffer from the infirmities alleged by Commission Staff and Verizon.

5 **Appearances:** Commission Staff appeared on reconsideration by Shannon Smith, assistant attorney general, Olympia. Verizon appeared on reconsideration by Judith Endejan, attorney, Seattle.

I. BACKGROUND TO THE PETITION

6 The Commission established a rule governing some aspects of access charges in WAC 480-120-540. Subsection 3 of the rule authorizes local exchange companies to file and the Commission to approve terminating access charges that enable the provision of universal service, although the methodology to do so is not specified in the rule.

7 At the time it adopted WAC 480-120-540(3), the Commission was developing a proposal for legislative approval that would establish a state universal service

² In its answer to the Staff petition, Verizon states an observation but not a challenge related to the Commission's jurisdiction. In footnote 1, Verizon says that the Commission lost jurisdiction over the petition for reconsideration when Verizon filed its petition for judicial review. RCW 34.05.470(3) provides, "If a petition for reconsideration [of a final agency order] is filed, . . . the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration." Commission Staff filed the petition for reconsideration on August 22, and the petition for judicial review bears a signature date of August 27. We believe Verizon's observation is not correct.

fund. In the order adopting the rule, the Commission referred to the pending proposal in several places. (Adoption Order, Docket No. UT-970325).

8 It is apparent from the references in the rule adoption order, the Commission anticipated that the methodology adopted in UT-980311 would be appropriate to use in calculating universal service needs under WAC 480-120-540(3). It was also anticipated that the Legislature would approve a universal service funding mechanism; that national efforts aimed at addressing issues relating to universal service funding would bear fruit; and that the rule would be needed for only a short interim period. It is now some five years since adoption of the rule, and some of these and other expectations of progress have not been realized.

A. The ITAC methodology

9 In docket No. UT-980311, the Commission accepted for purposes of the proceeding and for purposes of WAC 480-120-540(3) a cost study that calculated the total company costs of providing service in each exchange now operated by Verizon. The Commission in Docket No. UT-980311 adopted the concept of a revenue benchmark, the level of the benchmark, and the concept that support for total company universal service requirements should come from customers of both interstate and intrastate services.

10 Verizon's current ITAC is established on the methodology set out in UT-980311 and contemplated in the order adopting WAC 480-120-540. In this docket, Verizon asked the Commission to increase the amount of the ITAC to reflect an increase in the number of lines in exchanges eligible for subsidy under the methodology that the Commission had accepted in UT-980311. Commission Staff did not oppose the proposed increase, but asked the Commission to reduce the revenue requirement of the ITAC to reflect the amount of a federal universal service subsidy to Verizon aimed specifically at reducing access charges. The Commission rejected both requests in the 11th Supplemental Order.

B. The Commission Decision

- 11 In reducing the existing intrastate, interexchange access charges in response to the complaint, the Commission in the 11th Supplemental Order rejected the suggestion that it update the current ITAC to account for new circumstances. This is consistent with its ruling earlier in the docket that the proceeding was limited to determining whether the evidence supported AT&T's contentions in the complaint and that Verizon, if it felt it necessary, could seek an increase in its rates and charges in another proceeding.
- 12 The Commission also rejected Commission Staff's argument that federal universal service funds earmarked for federal access charge reductions should be applied to reduce the ITAC, which addresses the cost of providing basic service in high-cost areas.
- 13 The Commission agreed with the contentions of AT&T and Commission Staff that higher-than-necessary access charges violate Washington law, and determined that intrastate access charges should not bear more than the minimum necessary responsibility for universal service needs. However, the Commission directed that the ITAC rate, which was set to support total company high-cost area needs, must not credit the entire federal contribution but must be reduced to support only an appropriate state portion of high-cost area needs.
- 14 The issue in this docket is not what rate would be appropriate for the ITAC if Verizon were to file for an increase in the rate. The issue is whether the existing rate, challenged by the complainant as violating provisions of law, actually violates the law. The Commission's Eleventh Supplemental Order found that it did, and determined it must be reduced, consistent with the record, in order to eliminate the violation. Commission Staff and Verizon both challenge the result and the methodology used in the order.

C. Challenges to the methodology of the 11th Supplemental Order

1. Commission Staff challenges to the ITAC

- 15 Commission Staff argues that the Commission erred in rejecting Staff's proposed methodology, and that the Commission should now accept its proposed methodology and further lower Verizon's ITAC. It makes several points.
- 16 (a) Commission Staff's first argument is that the Federal Communications Commission rejected the 75% intrastate/25% interstate apportionment of cost responsibility that the Commission accepted in sustaining AT&T's complaint, and that the Commission should not, therefore, rely on it. Staff cites to the FCC's CALLS order,³ but not to a specific page or paragraph.
- 17 The Commission rejects this argument. As Verizon notes, Commission Staff does not cite to any specific provision of the CALLS order to support its contention. It appears to be more accurate to say that the CALLS order neither specifically adopts nor rejects the 75%/25% division of state/federal responsibility for the high-cost aspects of universal service. The 11th Supplemental Order cites to the pertinent FCC authority at the time the Commission adopted the methodology in Docket No. UT-980311, and to its acceptance in that docket. In applying Washington law, the Commission must look to Washington State and Commission authority. Staff does not contend that any FCC action bars this Commission from referring to its own prior dockets.

³ *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, Sixth Report and Order in CC Docket Nos. 96-292 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12, 962 (2000).*

18 Moreover, it is also true to say that the CALLS order does not adopt the concept of a revenue benchmark to assess the responsibility of universal service support for basic service high-cost areas. Accepting Staff's argument could require us to reject the entire underpinning of Washington's universal service support mechanism for basic service high-cost areas, which we believe to be inappropriate.

19 (b) Staff next argues that the Commission order errs because it holds that Verizon's \$21 million federal universal service support receipt reflects 25% of Verizon's need, and the Company total need must therefore be \$84 million instead of the \$33 million that Staff accepts. That is not at all what the order says or does.

20 The order holds that it is improper for the ITAC to collect from intrastate customers more than shown necessary on this record. Given the apparent acceptance of a level of state responsibility and the acknowledgement of that proportion in UT-980311, the demonstration that Verizon is receiving some federal funding, and the lack of a comprehensive record, the Commission found it proper to limit the ITAC to an intrastate share of 75% of the total-company need used to determine the current ITAC. Staff's contentions that the order would require a much larger total or intrastate responsibility, without any cost or other evidentiary support whatsoever, have no basis in the record or in the order.

21 (c) Staff next contends that mandating a 75% state responsibility for all companies would result in overrecovery for some and underrecovery for others of the appropriate intrastate share of universal service support for providing basic service in high-cost areas.

22 If our order did mandate application to all companies, Staff's contention might be true. The Commission emphatically does not, however, determine that a 75% apportionment to intrastate responsibility must be applied in every setting. The

rule on its face gives the Commission discretion to decide such matters without the mechanical application of the formula, but with regard to the level of need demonstrated by the company.⁴ Here, given the record available to the Commission, the acceptance of the UT-980311 methodological framework by the parties, and the need to reduce access charges to the lowest necessary level in order to comply with state law, the Commission found the 75% level appropriate and lawful. Verizon and other companies are free to demonstrate on a different record that facts not available in this record justify a different level of universal service support.

23 (d) Commission Staff next contends that the order has a negative effect on the terminating access charge policy set out in WAC 480-120-540. The Commission disagrees. The rule clearly states that the Commission may allow support through access charges when necessary for provision of basic service. The Commission's decision in this docket merely provides that it is improper for intrastate access charges to support total company costs for the provision of basic telephone service in the factual setting of this docket, a result that is clearly anticipated in the rules and in the orders and report in UT-980311.

24 (e) Finally, Commission Staff argues that under the Eleventh Supplemental Order, a Company may receive more revenue than it needs from the ITAC to support basic service, and the excess revenue is shielded from the requirements of the rule.

25 It is always true that if a Commission errs in assessing need, a company may receive more or less revenue than it needs. That points to the need for an adequate record to assess need, resources, and revenues. Slavish application of

⁴ WAC 480-120-540(3) reads as follows: 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. (*Emphasis added*).

any formula, including the formula that led to Verizon's current ITAC, can produce inappropriate or unlawful results. Other decisions in Commission's 11th Supplemental Order demonstrate this clearly. The Commission's ITAC decision in the Eleventh Supplemental Order is based upon the record in this docket. It is consistent with pertinent theory and rule, and it is an appropriate decision for the record on which it is based.

26 (f) **Conclusion.** Commission Staff sees more in the order than the Commission intended. The order does not mandate the application of any formula for state and federal participation in support for basic service in future proceedings. The order does find it inappropriate to credit federal access charge relief entirely to support for basic service, which appears to be a result that would be inconsistent with conditions under which the funding is made available. The result may differ on facts proved on a different record. The result of the Eleventh Order reduces the ITAC to the level that is consistent with the requirements of law for service to intrastate interexchange carriers, consistent with WAC 480-120-540, consistent with the theories expressed in the orders and report in UT-980311, and consistent with the requirements of law as applied to the record in this docket.

2. Verizon Challenges to the ITAC

27 Verizon also challenges the Eleventh Supplemental Order's ruling on the ITAC.

28 (a) Verizon argues that the order is wrong because it conflicts with the order adopting WAC 480-120-540(3), which references to the methodology in UT-980311. Verizon argues that the order is unlawful because it conflicts with the rule. As to each of those contentions, the Commission disagrees.

29 The order is consistent with the rule. The rule states in subsection 3:

(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. (*Emphasis added*).

The rule does *not* specify a methodology by which the Commission must determine whether a company may recover any costs, or how the Commission must determine the amount to be recovered. There is no violation of the rule.

30 The order adopting the rule, which was entered prior to the conclusion of Docket No. UT-980311, states an expectation that the Commission will use the methodology that would be determined UT-980311 in setting the amount of any interim universal service terminating access charge under WAC 480-120-540(3), but it does not bind the Commission to using that exact methodology forever. In any event, the Eleventh Supplemental Order does not violate but is fully consistent with the results of UT-980311.

31 The only departure Verizon cites from the expectations stated in the orders in UT-980311 is the failure to fund total company costs of providing basic services in high-cost exchanges entirely with intrastate revenues. While the federal access charge contribution is not directed specifically to high-cost basic services, it contributes to total company revenue. It is improper on the facts shown of record, given the orders and report in UT-980311 and their relationship with WAC 480-120-540, to assess Verizon's total company costs of high-cost basic service entirely upon intrastate customers.

32 (b) Verizon next argues that because total company costs are used to calculate the costs of providing basic service in high-cost exchanges, and because total company costs are used to calculate the revenue benchmark, it is inappropriate to base the ITAC on intrastate costs. We disagree.

- 33 Under the assumptions used in UT-980311, the difference between total company costs of high-cost exchanges and the total company revenue benchmark is a total-company need for universal service support of high-cost exchanges.
- 34 However, it does not flow from those statements that intrastate revenues must provide all of the total-company support any more than it flows from those statements that interstate revenues must provide the entire total-company support. Instead, what flows from those statements and from the determination in the Eleventh Supplemental Order as to the legal consequences of unduly high access charges on the legal rights of interexchange carriers that intrastate customers should pay no more than is necessary to support service in high-cost exchanges. Verizon's proposal does not meet this test, and Commission Staff's proposal does not meet this test. The Commission's order does meet this test.
- 35 Each jurisdiction should support its share of needed universal service costs. Based on the record in this docket, the Commission's Eleventh Supplemental Order lawfully and appropriately satisfies Verizon's needs of record.
- 36 (c) Verizon next contends that Verizon's federal universal service support does not address the total company needs that the ITAC addresses. We have acknowledged that above. That statement is not, however, a proof for Verizon's contention that therefore intrastate ratepayers must pay both the intrastate and interstate shares of the costs of high-cost basic service in the absence of a sufficient record that such payments are appropriate and lawful in the context of this proceeding. Here we find no such sufficient record.
- 37 (d) Finally, Verizon concludes that the Commission's Eleventh Supplemental Order erred in rejecting the use of updated evidence of revenue need, and that it erred in reducing the ITAC to meeting only the level of intrastate need. We disagree with both conclusions.

38 The Commission addressed the first argument above; Verizon is free to prove increased revenue need in a general rate case and to use all appropriate and generally available procedures to address asserted revenue shortfalls.

39 The Commission also addressed above the propriety of finding, in the light of proof of violation of state law and on the record in this docket, that the ITAC must be reduced to the level necessary to support the intrastate portion of high cost service needs.

3. Conclusion

40 On reconsideration, the Commission concludes that the allegations of error in the 11th Supplemental Order that are in the petition and the answer should be denied. The Commission declines to change the result of its deliberations as to the level of the ITAC.

II. ORDER ON RECONSIDERATION

41 (1) The Commission denies Commission Staff's Petition for Reconsideration of the Commission's 11th Supplemental Order.

III. ORDER ON CLARIFICATION

42 (1) The Commission grants Commission Staff's petition for clarification of the order.

43 (2) In so doing, references to "WAC 480-120-204(6)" should be corrected to read "WAC 480-80-204(6)" in paragraphs 63, 82, 84, 183, and 191, and in note 26. In addition, in Table 1, Row 5, Column C, the Order states that Verizon Northwest Inc.'s (Verizon) filed rate for End Office Switching –

premium is \$0.0158197. The current rate should be listed as \$0.0158172,
per Commission Staff submissions.

DATED at Olympia, Washington, and effective this 11th day of September, 2003

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner